The Control Of The Exercise Of The Mayor's Administrative Police Power In Cameroon's Administrative Law: Contribution To The Protection From The Abuse Of Citizen's Rights In The Sub-Saharan African States

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Résumé

En matière de police administrative, l'intervention des autorités de contrôle vise à protéger la collectivité contre elle-même, contre ses dirigeants et contre les tiers avec lesquels elle entre en contact. Le contrôle institué pour la police administrative de la mairie en droit camerounais est hybride car exercé par les autorités étatiques de régulation et les tribunaux compétents.

Le pouvoir de contrôle reconnu au préfet sur les actes de police du maire est le pouvoir d'approbation et d'annulation mais loin d'alléguer que ce pouvoir est illimité car on constate également l'existence de tribunaux administratifs et de juridictions judiciaires dans le domaine du contrôle de police qui ne doit pas être négligé. Bien que le maire soit libre et même contraint de prendre les mesures nécessaires au maintien de l'ordre public dans sa commune en suivant les procédures et matières visées par la police, un contrôle par précontentieux éventuel est nécessaire ainsi qu'une tutelle. Le préfet peut, avant de saisir le tribunal administratif, former une requête préalable assimilable à une requête précontentieuse qu'il adresse au maire pour qu'il revienne sur sa décision. Cette demande proroge le délai de contentieux. La responsabilité pénale du maire peut être engagée à l'occasion des fonctions de gestion du patrimoine et des services de la commune (faute d'exploitation d'ouvrages ou de services), ainsi qu'à l'occasion de l'exercice des pouvoirs de police. Dans ce dernier cas, le maire ainsi que la commune peuvent être déclarés pénalement responsables.

Mots clés : maire, ordre public. Police administrative.

Abstract

In terms of administrative police, intervention by authorities control aims to protect the community against itself, against its leaders and against third parties with which it comes in contact. The control instituted for the administrative police of the mayor in Cameroonian law is hybrid because it is exercised by the regulatory state authorities and the competent courts.

The supervisory power recognized to the Divisional Officer over police actions of the mayor is the power of approbation and annulment but far from adducing that this power is limitless because we can also see the existence of administrative courts and judicial courts in the domain of police control which shouldn't be neglected. Although the mayor is free and even forced to take the necessary measures to maintain public order in his municipality by following the procedures and matters covered by the police, a control by possible pre-litigation is necessary as well as tutelage. The Divisional Officer may, before referring to the administrative court, form a prior request, comparable to a pre-litigation petition that he addresses to the mayor so that he can reverse his decision. This request extends the time limit for litigation. The mayor's criminal liability may be incurred on the occasion of the functions of management of the heritage and services of the municipality (faulty operation of works or services), as well as on the occasion of the exercise of police powers. In the latter case, the mayor as well as the municipality can be declared criminally liable.

Keywords: *mayor, public order. Administrative police.*

Introduction

Thanks to the Major National Dialogue[1], the process of decentralisation has been fast gaining flesh with the adoption of new law on decentralisation[2] testified by the government willingness to accelerate this process with the forth coming regional elections organised for December 2020 to complete the long-awaited Regional Councils. Wide gap between the political slogan of the 1990s introduced in the 18 January 1996 Constitution, fruits of the conditionalities which was more imposed than desired, what an author called a poisoned gift is today becoming a reality.

The decentralized administrative authorities exercise regulatory power, the basis of which is essentially legislative and under the supervisory control of State bodies. Unlike the regulatory power of Ministers, the regulatory power of the authorities of decentralized territorial communities (DTC) is ***special in*** *terms of its geographical area and general in terms of its object*[3]. The legislator who fixes, in accordance with the Constitution the principles of free local administration and the competences of the decentralized communities, attributes to these authorities a regulatory power within the limits of their attributions. According to article 55 of the Constitution[4], the decentralized territorial collectivities are *councils* and the *regions*. Besides these, there is another type of decentralized territorial collectivity, namely urban communities. These are supra-communal structures whose constitutionality does not pose a problem insofar as article 55 referred to, states that "*any other type of decentralized territorial collectivity is created by law*". The urban community is divided into district urban municipalities. Within decentralized territorial communities, the authorities vested with regulatory power are essentially two in number: the deliberative body and the executive body[5]. Within the municipality, the executive body is embodied by the *Mayor*, elected by and within the municipal council. Also, within the framework of the exercise of their regulatory power, the executive of the municipality and that of the community are responsible for republishing, if necessary, the laws and police regulations and for bringing the populations to observe them, to see to the general application of laws and regulations in the municipality and the community, to carry out government instructions or to take measures to give them application in the municipality and the community. More specifically, the regulatory power of the Mayor or the Super-Mayor otherwise known by the name of the City Mayor today is deployed in matters of police measures. Thus, he is responsible for the municipal police and the execution of related acts. The purpose of this police force is to ensure, in relation with the competent administrative authorities, order, tranquility, public hygiene and today the protection of humanity. He is also responsible for ensuring the police of the communal roads or the community.

The assessment of the legal framework and of its stakeholders shows that the decentralization laws passed in 2004 in Cameroon have local development and governance as their main thrust. The new laws certainly create an environment that represents an irreversible step forward for the process of decentralization but are in need of completion by the passing of legal instruments of application for them to effectively accelerate the pace of decentralization process and good governance. Cameroon formally embarked on the decentralization process following this law, which was meant to transfer some responsibilities from the central government to local government in order to enhance efficiency, democracy accountability of public institutions, as well as the responsiveness of state agencies to local needs[6]. The 2009 law on its part makes provision for the new rules for the management of councils. Most recently in 2019, a new law was passed on decentralization based on regional and local authorities. The purpose of the new law is to atone for the sins of previous laws and to accelerate the decentralization process which has been very slow and '*dépassé'*. It introduces new impetus in terms of powers of the municipal authority. It is clear that in Cameroon the mayor exercises his police powers under the supervision of the supervisory authority which prevents or stops the application of inappropriate or illegal measures. In order to set this surveillance in motion, the law provides: "*the acts of the Mayor or the Municipal administrator are communicated to the supervisory authority under*

[1] The event took place between September 30 and October 4, 2019, the Government of Cameroon and various opposition parties aimed at resolving the Anglophone crises.

[2] Law n° 2019/024 of 24 Dec 2019 bearing the General Code of Decentralised Territorial Collectivities.

[3] See **Bernard Reymond GUIMDO DONGMO**, cours polycopié de Droit Administratif, licence, 2ème année, Université de Dschang, F.S.J.P, année académique 2018-2019.

[4] See article 55 of law n° 96/06 of 18 January 1996 purporting to amend some provisions of 2nd June 1972 Constitution.

[5] See article 164 (1) of law n° 2019/024 of 24 Dec 2019 bearing the General Code of Decentralised Territorial Collectivities.

[6] **Timothy OBEN MBUAGBO** & **Celestina TASSANG NEH FRU**, "Contemporary aspects of a bureaucratic hold-up of city governance in Cameroon", *international journal of Sociology and Anthropology* vol. 3. Department of Sociology and Anthropology, Faculty of Social and Management Science, university of Buea, 2011, p. 355.

registered mail. They are enforceable after approval from this authority"[7].

While this new law on decentralization seems to respond *inter alia* to the recommendations of the Grand National Dialogue and constitutes a positive towards the process of decentralisation as we witnessed innovations in the exercise of the supervision of the state on Territorial Collectivities, but unfortunately from a vantage point shaded by the bracing influence of the supervisory authority over the municipal administrator. The term control as used in the law *"is susceptible to various meanings, which make it vague, if not equivocal"*[8] it is also "*very different meanings depending on whether it is considered from the angle of Anglo-Saxon or French terminology"*[9] it equally means *"Mastery"*[10]. The notion of control therefore designs an assembly of control exercised by the representatives of the state on organs and on acts of decentralized territorial collectivises in view of ensuring the respect of legality, to make succeed the interest of the State where local interest has an inclination to take the lead[11].

The supervision of local authorities is materialized by the control exercised over local authorities. It is to avoid that decentralised authorities enacts acts prejudicial to the unity bedrock of any decentralizes state. Thus, **Professor COMBEAU Pascal** clearly says that "*the very notion of decentralization cannot develop without control of the State over local authorities*"[12]. The power of controls over the mayor's acts is a power that ensures that the action of the latter or the contents of a standard taken by him are not contrary to a standard, an organ, or even to an entity above. In terms of administrative police, intervention by authorities control aims to protect the community against itself, against its leaders and against third parties with which it comes in contact. The control instituted for the administrative police of the mayor in Cameroonian law is hybrid because it is exercised by the regulatory state authorities **(I)** and the competent courts in the matter **(II).**

I- THE NECESSARY STATE SUPERVISION OVER THE MUNICIPALITY: THE CONTROL OF MUNICIPAL POLICE MEASURES BY THE TUTELAGE AUTHORITY UNDER CAMEROONIAN LAW

The mayor's police power can only be understood as a power within the state and not outside the state. The attribution of the power of control to the state authorities aims to ensure that the local entities power remain under the aegis of the State. In principle, it is for the State to preserve the principles of indivisibility of national sovereignty, of State unity and of territorial integrity. LUCHAIRE F. said in this connection that "*sovereignty is in the traditional design an attribute of the state; it follows that the indivisibility of sovereignty is also that of the State and that as much as the unity of the State, it is opposed to federalism"*[13].

However, with the advent of the New law on Decentralization, there have been some innovations concerning the aspect of tutorship which is thus to the effect that, administrative tutorship on local councils is carried out by the Divisional officer meanwhile that of the city council is done by the governor. The supervisory power recognized to the D.O over police actions of the mayor is the power to approbation and annulment (**A**) but far from adducing that this power is limitless because we can also see the existence of administrative remedies in the domain of police control which shouldn't be neglected (**B**).

A- *A priori* and *a posteriori* control of the municipal police by the supervisory authority

By definition, the control of the municipal police through the supervision refers to a set of powers granted by law to the higher authority, representative of the State, over the agents of decentralized communities and their acts with the aim of protecting general interests. It should be

[7] See article 74 (1) of law 2019/024 of 24 Dec. 2019 on the General Code of Decentralized Territorial Collectivities. "*The acts taken by the Territorial Collectivities are transmitted to the State representative at the Territorial Collectivities concerned, by registered mail or by deposit with the competent service, against acknowledgment of receipt".*

[8] **André DELAUBADERE**, *Traité de Droit administrative*, tome3, vol 1, 1971, cited by Célestine KEUTCHA TCHAPNGA, *activités Le control de l'Etat sur les prives au Cameroun*, Thèse de Doctorat, Université de droit, d'économie et de science d'Aix-Marseille, 1992 p. 3

[9] Ibid.

[10] **Alain BOCKEL Van**, "Le contrôle juridictionnel dans les pays francophone d'Afrique de l'ouest », *R.D.P.*, D. LEVY, Aspect généraux du contrôle, ouvrage collectif, Traité des Science 1986, P.1

[11] Aliyou SALI, La Réforme du droit des Collectivités Territoriales Décentralisées au Cameroun, op.cit. p. 128

[12] **COMBEAU P**. le contrôle de l'Etat sur les collectivités territoriales aujourd'hui, op.cit. p1.

[13] **F. LUCHAIRE,** "*les fondements Constitutionnels de la décentralisation*", R.D.P. 1982, p.1552. In fact, according to the author, no other entity outside the State can take advantage of the attributes of State sovereignty which is the materialization of the State's public power. It is because of the need for the State to exercise or allow the exercise of a power of control over the police acts of the mayor.

noted that the central regulatory authorities exercise only a tiny part of the control of local acts, the important part being entrusted to lower regulatory entities. This is obviously the control carried out by the representative of the State or by the governor and the D.O appointed supervisory authorities[14]. Cornerstone in the monitoring of local communities, the representative of the State has a dual control since it is in both *a priori* (1) and *a posterior* (2).

1- *A priori* control of the municipal police measures through the power of approval recognized to the supervisory authority

Speaking of the *a priori* control exercised by the supervisory authority over municipal police measures, it should be noted that it is exercised before the entry into force of the mayor's act. In the same vein as its Senegalese counterpart, the Cameroonian legislator has thus maintained the principle of prior approval which allows the national regulatory authority to authorize the entry into force of acts of local authorities. *Article 76 paragraph 1 of the law on decentralization clearly states that "(...) remain subject to the prior approval of the representative of the State (...) the initial budgets, annexes, non-budget accounts and special expenditure authorizations, loans and loan guarantees, international cooperation agreements: state affairs; guarantees and equity investments, agreements relating to the execution or control of public contracts, the delegation of public services, the recruitment of certain personnel (...)".*

On analysis of the Cameroonian legislative corpus, it appears normal to assert that the said control relates to both form and substance, the acts in question being administrative acts although local. The objective of the control is ultimately to identify any defects likely to affect the legality of the measures taken by the mayor. The D.O therefore appears as "*a sort of first filter of legality*", prior to the possible action of the administrative judge, since he is called upon to seek all the elements notably the interest to act, incompetence, misuse of power, violation of laws and regulations, defect in form and procedure, liable to initiate the nullity of an administrative act before the administrative judge. *A priori* control of legality of acts appears like a sword of Damocles on the territorial collectivities likely to paralyze to a certain extent their functioning. It can even be compared to a power of annulment when the refusal of approval is synonymous with a hidden annulment of the act, which cannot come into force without "*this discharge of legality* ". All the more so since it is accompanied by a *posteriori* control.

2- *A posteriori* control of the municipal police measures through the power of annulment recognized to the supervisory authority

A posteriori control allows the representative of the State to verify the legality of the measure taken by the mayor after its entry into force. It could be done by means of an obligation to transmit documents to the representative of the State. As in legislative texts of several black French African countries[15] the transmission obligation is enshrined in article 74 al 1 of the Cameroonian law on decentralization which specifies that the acts taken by the local authorities are transmitted to the representative of the State to the local authority concerned, who immediately issues the acknowledgment of receipt. The refusal of any transmission may lead to the suspension of the municipal police concerned. Moreover, the acts transmitted to the representative of the State may be subject, in the event of a declared illegality, to a referral before the administrative judge. The referral is a legal technique which permits Administrative representatives to refer to the competent administrative court acts transmitted to him and vitiated by illegality in a period of one month from the date of reception. It must be said that the Cameroonian legislator leaves the possibility for the authority in charge of control to communicate the various irregularities of the act to the local authorities. Far from becoming an explicit technique of *a priori* control[16], the legal requirement of the communication of irregularities of the transmitted act, participates in the educational role of the authority in charge of the control which informs the mayor of the failures of the measure, in charge for him to integrate them.

It is in this logic that the possibility of requesting a second reading comes into play. The request for a second reading can also be implicitly considered as a power of reform recognized to the Representative of the State. Indeed, it aims to get the local authorities to review certain

[14] The Decisions taken by the mayor are immediately submitted to the Divisional office for approval. His decisions are not enforceable but only after the D.O's visa or within 15 days of their submission to the Prefecture. Only temporary regulations are immediately enforceable. And even in this case the D.O can cancel them in case of abuse or violation of the law or regulations.

[15] The text governing decentralization in Gabon does not say less (These are articles 90, 103 and 245), thus joining the code of local authorities of Senegal (Article 334).

[16] This is the point of view of Hilaire KOUOMEGNE NOUBISSI who affirms that the legal requirement of communication of the irregularities provided for by article 73 al 1 of the law can be assimilated to *a prior* approval of the act, the legislator not specifying whether the observations made should be incorporated before the entry into force of the said act. KOUOMEGNE NOUBISSI I. *Décentralisation et centralisation au Cameroun* p.311.

elements of the police concerned in order to be able to come into force after the said measure. In reality, the administrative authority has the choice between summon a second reading to get the local authorities a reformation of the act or institute proceedings before the administrative judge through automatically referral. Even if in practice, "*the referral does not consistently leads to the annulment of the act criminalizes, the judge naturally being sovereign in the matter*"[17] it should be noted that "the simple threat of a referral is often enough to lead to its withdrawal by the collectivity"[18].

Yet it may be noted in Cameroon's law that the Divisional Officer explicitly has a real power of annulment of police measures taken by the mayor. This is a continuation of the power to annul acts of local authorities formerly admitted under the aegis of the Senegalese law of 1966 bearing the code of municipal administration and of the Cameroonian law of 2019 mentioned above. Article 77 (4) of the law provides expressly that the representative of the State may annul acts of territorial collectivities which are manifestly illegal, in particular in the event of influence or assault , (...)"[19].

The Divisional Officer may annul or suspend any act of the Mayor or the Municipal Administrator taken in violation of the laws and regulations, subject to the Municipal Magistrate concerned to file a contentious appeal in the forms, deadlines and procedures provided for by the regulations. In application of these texts, annulment of municipal decrees are quite often pronounced. However, the Divisional Officer cannot annul a decree when an annulled disposition is one with the other provisions of the decree because, it is no more annulment, but reformation[20]. Moreover, the order by which a mayor has reported an earlier order that prohibited outdoor ceremonies away to order a police measure, caused the disappearance of a previous prescription enacted. Therefore, if the D.O believes that the order requires a prohibition whose utility was not known by the municipal authority, it belongs to him to decide but only after a formal writing notice addressed to the mayor and remained without follow-up and it exceeds its powers when, instead of proceeding in accordance with this article, it annulled the mayor's decree.

The administrative authority in charge of control equally enjoys full powers to ensure the protection of civil liberties and neutralize any trespass. The power of annulment thus recognized to the authority in charge of control is not incompatible with the possibility granted to local authorities to bring an action against the disputed acts before the administrative judge.

B- Monitoring the mayor's police measures through administrative recourse

A request to an administrative authority, an administrative appeal is an optional remedy which should play in favour of the administered and not constitute an obstacle to justice: it is a remedy available to an eventual victims of irregular police measures. Indeed, the legal adjustment of the police powers recognized to the mayor is also done by means of pre-litigation appeal. Although the mayor is free and even forced to take the necessary measures to maintain public order in his municipality by following the procedures and matters covered by the police, a control by possible pre-litigation is necessary (1). As well as a tutelage appeal (2).

1- Pre-litigation appeal: a form of control of the municipal police

Pre-litigation appeal is an appeal exercised to the author of the contested act and which may be addressed even in the absence of an enabling texts. It is to ask the author of an act to annul, that is to say to remove it, so it to repeal or modify it. The graceful appeal can also be used to constitute a decision on the part of the administration: it is a form of contesting the absence of a decision providing for a decision. Under the terms of the provisions of the municipal law "*the acts of the Mayor or of the Municipal administrator may be the subject of a free appeal to their author*". This appeal takes place only after the act in question has been published or notified, as the case may be. It may, exceptionally intervene prior to the formality of notification if it happens that in a way the applicant had knowledge of the act. Knowledge must relate to the existence and content of the order. The only knowledge of the facts is not enough. For example, the petition formed against the decision of a body by one of its members who was present at the meeting where the decision was taken, is admissible[21]. The same applies when the person concerned lodged an administrative appeal against a decision taken without his "*knowledge*", thus demonstrating that he was aware of it.

[17] **AUBY J-B., NOGUELLOU R**. Droit des collectivités Locales, PUF., Paris, 4ed 2008, p.324.

[18] Joseph KANKEU, "L'autonomie des collectivités territoriales décentralisées : quelle autonomie", Juridis périodique, no 85m Janvier-Février- Mars 2011, p.93.

[19] Notwithstanding the provisions of paragraph 2 above, *the representative of the State can annul the acts of the territorial collectivities which are manifestly illegal, in particular in the event of influence or assault,* (…)

[20] CE. 13 Dec 1912, Maire de Maury, Lebon, P.198

[21] See the case of Dame Ngue Andrée du 25 March 1969 CFJ/CAY, judgement du 25 march 1969, Dame Ngue Andrée c/Commune de plein exercice de Mbalmayo

In either case, the appeal is aimed at one thing, the mayor's retraction: he is asked to reverse his decision by letting him know that it is illegal or inopportune. Otherwise, a tutelage appeal is possible.

2- The tutelage appeal as a form of control of the mayor's police measures

Unlike hierarchical recourse, the supervisory recourse is a recourse to the D.O against an act of the mayor. It is an appeal which is directed against the act of the mayor and not against the person of the mayor. Its purpose is to solicit the D.O so that he seizes the administrative tribunal, which will examine the legality of the police measure taken by the mayor. The tutelage appeal has a particularity which results in the fact that the D.O's refusal to seize the court cannot be the subject of a jurisdictional appeal. In the event of failure or the mayor remains silent for one month after the appeal without charge, the contested decree is submitted to the D.O for assessment. This means that the applicant refers the matter to the D.O, who has two months to follow up. The time limits for the litigation only run from the referral to the D.O.

II- THE JURISDICTIONAL CONTROL OF THE MAYOR'S POLICE MEASURES UNDER CAMEROONIAN LAW

To ensure that the fundamental principles of the unitary State are not called into question, the constituents of the decentralized unitary States have established a control of the legality of acts of local Collectivities. The control of legality of acts appears as an essential complement to the principle of free administration of local communities. It thus aims to ensure that the entities endowed with autonomy do not exercise it in conflict with the national legal order. Jurisdictional control must "*maintain cohesion, synchrony in the actions implemented with the general policy of the State so that there are no fundamental differences*"[22] because, decentralization is a way of being of the State. It is in this logic that the mayor's police power is subject to the control of the administrative (A) as well as the judicial judge (B) in Cameroonian law.

A- The administrative judge control over the mayor's police measures

To ensure that these basic principles of the unitary State are respected, the Cameroonian legislator has left the possibility for the State representative in the local community to submit acts that would undermine the indivisibility of the State, to the unity of sovereignty and the integrity of the territory under the control of the administrative judge. Thus, the involvement of the administrative courts in the process of controlling the mayor's police measures sufficiently demonstrates the will of the French-speaking Black African States in general and of Cameroon in particular, to control this public policy and avoid any anarchic exercise of powers transferred. The control of the mayor's police measures under Cameroonian law would therefore be justified by the susceptibility for said police to be the subject of an appeal before the administrative judge (1) and maximum control before the administrative judge (2).

1- The mayor's police measures liable to appeal before the administrative judge

The law on the decentralisation in Cameroon in Article 77 Paragraph 2 provides specifically that "*the representative of the State shall refer to the competent administrative court acts provided* (...) *it considers engulfed of illegality within maximum period of one month (01) from the date of their receipt*". These are acts which cannot be annulled by the State Representative but which, depending on the case, may be the subject of an appeal for abuse of power or of a prefectural referral before the administrative judge. Police orders can be challenged as part of an abuse of power appeal in court by different people. When the police decision is regulatory in nature, it can be challenged quite broadly by anyone with an interest in it. On the other hand, when the police decision is of an individual nature, it can only be challenged *a priori* by the person concerned. However, an individual decision may be appealed against by a third party if it is likely to adversely affect him. In matters of administrative police, the time limit for appealing against a municipal police decision is the ordinary law time limit. It begins to run from the publication or notification as the case may be. It is a period which can be extended if, within this period, the applicant has lodged a pre-litigation appeal asking the mayor to reconsider his decision or a request to the D.O to defer the decision himself.

The Divisional Officer may, by virtue of the supervisory power conferred on him, refer to the administrative court the regulatory and individual decisions that the mayor takes in the exercise of his police power and that he considers contrary to a legality within the time limit of 01 months following their transmission. However, the police measure relating to parking, to the operation, by associations, of drinking establishments for the duration of the events they organize are excluded. The appeal period begins on the day of receipt of the decision at the prefecture. The D.O may, before referring to the administrative court, form a prior request, comparable to a pre-litigation petition that he addresses to the mayor so that

[22] **MONEMBOU C**. le pouvoir réglementaire... op.cit., p.105.

he can reverse his decision. This request extends the time limit for litigation.

2- The mayor's police measures: subject to maximum judicial control

The judge exercises extensive control over the mayor's administrative police measures. It ensures both that the latter are strictly adapted to circumstances which the motivate them. When controlling an administrative police measure, the administrative judge follows a two-step reasoning. This approach is, moreover, conditioned by two factors. In addition to the fact that the administrative police measure can have no other purpose than the maintenance or restoration of public order, the legality of such a measure presupposes on the one hand the existence of a disturbance of the public order, and on the other hand a proportionality between this and the seriousness of the disturbance. These include the control of the appropriateness and legality of the municipal police. The administrative judge substitutes his assessment of the situation for that of the active administration and determines the measures which respect legality. It thus exercises its power of control over the value of the motives of the municipal police and over the mayor's obligation to act. Under the control of the value of the reasons for the municipal police, the administrative court is required to verify that the measure does not concern a private interest, which he has an objective of safeguarding foreign interest to public order: that the disturbance of public order is serious enough to justify the measure taken, that the mayor has no other means to maintain order.

Indeed, the reasons are the factual and legal reasons which prompted the mayor to take an administrative police measure because, this decision must be motivated by the existence of a threat likely to disturb public order. Thus, the judge must ascertain whether these threats really existed at the time of the decision making. The French Constitutional Council has specified that administrative police measure likely to affect constitutionally guaranteed freedoms must be justified by the need to safeguard public order. In order to safeguard and protect public freedom, in matters of municipal police, the judge reverses the burden of proof. It requires the mayor to provide proof that the police measure was justified by the existence of a threat to public order. If it is not established that the disturbances invoked actually occurred, the mayor's decision is deemed to have been made on the basis of the incorrect facts and it will be set aside.

In addition, to control the administrative police measures of the mayor, the judge bases the existence of a police purpose. The administrative judge does not question the competence of the mayor author of the act but, he examines rigorously whether this act was taken for the purpose of the police, that is to say in order to ensure the public order. The judge therefore censures any municipal police measure having a goal other than that of maintaining public order. The mayor's police power is a finalized power and therefore cannot be used for a purpose other than public order: for example, a mayor takes a measure to ensure the execution of a contract or for financial purposes or personal to the perpetrator of the threat. However, the purpose of the police should not be confused with police law. The goal is the objective pursued by the mayor by taking police measures. On the other hand, police law are the means that the mayor has the right to employ in order to exercise his police power. At the municipal level, the administrative police are the competence of the mayor and he is in principle prohibited from delegating it to another authority. Consequently, he is bound by the obligation to exercise said power for the purpose of safeguarding and ensuring public order. The activity of the administrative police, like any administrative activity, is carried out in legally. To be legal, an administrative police measure must be justified by the existence of a disturbance or threat of disturbance of public order. Indeed, the restrictions on public freedoms imposed by such measures are only justified if public order is in danger. Depending on the circumstances of each case, the judge therefore verifies whether public order, in its various components, is threatened by the activity or behaviour that the police measure regulates. Once this step has been completed, the administrative judge checks the adaptation of the measure taken to disturbing public order.

The rule of adaptation of the administrative police measure to the seriousness of the disturbance of public order was laid down by the Benjamin judgment of the C.E of May 19, 1933. The damage to the latter must therefore be proportional to the severity of the disorder that must be avoided or stopped. In other words, public order must not be able to be protected by a less rigorous measure. A fair balance between the requirements of maintaining public order and respect for public freedoms must be found. For example, in the Benjamin case, the mayor of Nevers had banned a lecture by Sieur Benjamin on various comic authors. Being known for his positions unfavourable to the secular school, the mayor annulled the conference for fear of excesses during the demonstration of teachers. The C.E ruled, however, that public order could be safeguarded by taking less stringent measures, such as strengthening the police force. The measure was deemed unsuitable for the seriousness of the disturbance that the mayor wanted to avoid and was therefore annulled.

B- The control of the municipal police exercised by the judicial judge

"*Freedom is the rule, police restriction the exception*"[23]. This formula of the government **commissioner CORNEILLE** sums up the spirit of the control of the police power of the mayors. It is a control which results from a compromise between two necessities: firstly, the need to maintain public order and secondly that of not infringing on public and individual freedoms. In fact, the use or non-use of the mayor's police powers may, depending on the case, engage the mayor's liability in civil (1) and criminal (2) terms.

1- The control of the mayor's police actions through the theory of civil responsibility

In principle, the competent judge in matters of administrative police is the administrative judge. It is only when the mayor is guilty of an assault that the judicial judge becomes competent. Thus, in the event of a trespass, the administrative judge is competent to assess the regular or irregular nature of the trespass[24] while the judicial judge fixes the amount of compensation and orders that the trespass be terminated[25]. On the other hand, in the event of an assault, three operations must be distinguished. The responsibility of the mayor is determined according to whether the fault is detachable or not from the service. Everything always starts with a damage without which there is no possible liability. When this evil suffered is perceived as injustice not only by the victims but also by society, it triggers a social reaction consisting in the application of a sanction. Hence the question of civil liability.

In addition, in administrative law, the concept of liability for fault detachable from the public service serves as the basis for assessing the liability of an administrative authority[26]. In matters of administrative police under Cameroonian law, the responsibility of the mayor will possibly be retained only if the committed fault is partially or totally detachable from the public service. Thus, his civil liability could be retained if the police measure that he took only intervened for service, the municipality will have to answer for these acts. When the mayor has committed a fault in the use of his police powers since this fault is not detachable from the service, the responsibility of the municipality can be engaged. It is in the absence of the personal fault of the mayor that the municipality can see its civil liability engaged. The municipality sees its liability removed or reduced when an authority under the State has taken the place of the mayor, in cases or in accordance with methods not provided for by law, to implement police measures. On the other hand, when the D.O intervenes in his powers of substitution, the possible responsibility which could result from this fall on the municipality.

2-The control of the Mayor's Police measures through the theory of criminal responsibility

The mayor's criminal liability may be incurred on the occasion of the functions of management of the heritage and services of the municipality (faulty operation of works or services), as well as on the occasion of the exercise of police powers. In the latter case, the mayor (a) as well as the municipality (b) can be declared criminally liable.

a- The mayor's criminal liability in the exercise of his administrative police power

If it has been said about the mayor's criminal liability that the criminal risk is omnipresent, it is undoubtedly because the scope of the incriminations which govern the matter and which in themselves are not too many, combines the extremely broad notion of activities committed in the exercise or in the course of the exercise of its functions or its missions. With those less important "*of the functions and missions of the mayor*". Indeed, the requirement of a fault committed within the framework of an activity in connection with the function or the mission of the mayor is expressly provided for by the Cameroonian legislation which criminalizes the abuses carried out against individuals by individuals, like the mayor, custodian of public authority. However, the definition of these offenses requires that the unlawful conduct which the Mayor is guilty of, intervened in the exercise of its municipal policing. On the other hand, the mayor is likely to see his criminal liability engaged for acts of recklessness or negligence.

In the exercise of their functions, the mayors can engage their personal liability in criminal matters. The criminal liability of elected officials may be involved whether it is a fault of service or a personal fault, the distinction not being taken into account in this type of liability. The offenses provided for by the applicable texts to any litigant (homicide or unintentional injuries, deliberate endangerment of others, etc.). But also damage to the environment in terms of water, waste and classified installations, noise or even illegal computer files... Some examples of situations that may give rise to criminal liability: concerning the environment and major risks: a mayor may be criminally liable in the event of water

[23] Conclusions sur CE, 10 août 1917, Badly, n°59855.
[24] CS - CA. 30 November 1978, ATANGANA NTONGA Sylvestre/ State of Cameroon
[25] CS-CA nº 51 of 23 March 1979, BABA YOUSSSOUFA / State of Cameroon
[26] See Salomon BILONG, « *cours de droit et pratique de la responsabilité administrative* », Mater's I, Faculty of Law and Political Science, University of Dschang, 2019/2020, Unpublished.

pollution: concerning town planning and buildings: the mayor may be criminally liable if he did not ensure compliance with the standards relating to protection against the risks of fire and panic in establishments open to the public concerning municipal facilities: the mayor must ensure the safety of the facilities (e.g. stadium facilities, tracks ski): concerning festive events: the mayor must ensure the necessary security measures .

In view of the various police powers of the mayor, it seemed useful to us to identify and define certain offenses. Attacking the inviolability of the home this offense consists of breaking into or attempting to break into the home of a person against their will and except in cases where the law authorizes it: Breach of individual liberty this offense implies an infringement of individual liberty (e.g. freedom to come and go, respect for private life, etc.) arbitrary, that is to say outside of legal cases

b- The possible criminal responsibility of the municipality in terms of municipal police

If the municipality can be responsible at the civil level, it cannot, on the other hand, be prosecuted at the criminal level despite the establishment by the Penal Code of the criminal liability of local authorities. Indeed, this criminal implication of local communities is only possible for activities likely to be the subject of a public service delegation agreement, which is not the case for administrative police activities. In administrative law, it is in principle that the administrative judge is competent in the event of litigation relating to administrative acts. This is also the case in matters of administrative police in which the administrative judge is called upon to exercise on the acts of the mayor, a control of legality and a control of expediency. The judicial judge, on his part, exercises control on the basis of the theory of civil liability and that of the mayor's criminal liability.

Conclusion

In light of this brief analysis of the administrative and jurisdictional framework of the mayor's police powers under Cameroonian law, it becomes obvious that the free administration granted to local authorities is not synonymous with free regulation. Indeed, the State, through its representative who is the Divisional Officer, informs, proposes, validates and monitors the execution of all the local projects which have been the subject of municipal police. The D.O thus exercises his supervisory power over the municipal police authorities and can, under the conditions set by the regulations in force, take their place. In addition to non-jurisdictional control, the mayor's police acts may be subject to control before the administrative and judicial courts.

If we only stick to the powers of the Municipal administrator as outlined in the new law on decentralisation, one will be tempted to believe that the Mayor has exorbitant powers against individuals living within the limits of the perimeter of the city council. In the name of public order, he orders and prohibits very often in defiance of individual freedoms but in proportions compatible with the law. However, it would be necessary to remain lucid and to beware of a vision which would err by excess of practical blindness. The preceding developments have revealed shortcomings because, beyond the principle, we see that the mayor is in reality only a scarecrow in matters of public tranquillity, safety and hygiene; the reality of power being held in this area by the Divisional and the Sub Divisional Officer. This situation is due to a series of factors, the most important of which seem to be: The strong supervision of the State over the municipality. This hold of the State over the council results from a certain Jacobinism specific to our young States concerned above all with strengthening their sovereignty both outside and inside.

This supervision is necessary in the sense that it avoids the dangers of a multiplication of decision-making centres. **Professor BINYOUM also** affirms that "there *is a great danger of seeing the establishment of a dispersion of energies, disorder or incoherence in administrative action"*[27]. We can also mention the lack of collaboration between the population and the police authorities in general. Indeed, the populations see through the mayor an executioner who is ready to demolish their house according to his whims and caprices and against whom one is consequently justified to protect oneself by bypassing his orders or by ignoring them. We also have the lack of publicity of the mayor's police measures. The mayor's orders do not receive sufficient circulation to their recipients, the mayors contenting themselves with posting them at the town hall. It would be desirable that in the future the regulatory municipal decrees be proclaimed by municipal officials who would read them publicly in local languages. The creation in each Municipality of a municipal official gazette is also necessary not only for the second publication of police laws and regulations but also to the popularization of local municipal news. In the end, we have the modesty of the means made available to the mayor: these means are material and personal. This situation allows some mayors to justify the shortcomings observed in their way of maintaining order, forgetting that the insufficiency of municipal revenue is partly due to the lack of dynamism of the municipal magistrate.

[27] **BINYOUM Joseph**, op.cit p.26