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INSTITUTIONAL CHANGES IN THE FRENCH FINANCIAL JUDICIARY

Abstract

This publication is a part of the study of the French *Code des juridictions financières* in the field of the institutional aspects of the control of public finances. The main purpose of this publication is not only to describe the specificity of the French legal system in this field but also to focus on the recent changes that were introduced in 2023 by the French legislator. The general control is still exercised by the Court of Auditors (*Cour des comptes*) and Regional and territorial chambers of audit (*Chambres régionales et territoriales des comptes*). What is important is the fact that the new financial jurisdiction (*Cour d'appel financière*) appeared and took his first judgement in January 2024. This new Financial Appeals Court has not yet been analyzed in the doctrine.

The methodology used by the author is related to the functional approach of the comparative method, the historical-descriptive and dogmatic method, with particular emphasis on the regulations of French law.

This study analyzes the provisions of the French *Code des juridictions financières* related to the above mentioned new financial jurisdiction (*Cour d'appel financière*) and presents its place in the whole system – especially in relation to the Court of Auditors (*Cour des comptes*) and highest Administrative Court (*Conseil d'Etat*). The analysis of the very important role of the latter court is carried out in relation to its counterparts in Polish law, where the author's use of a functional approach to the comparative method plays a key role. The present article may also be considered as the first step towards a further in-depth analysis and research, and thus the verification of the thesis on possible application

of structures and solutions that were introduced in France by the Polish legislator or any other European country.

KEYWORDS

French law, financial law, control, Court of Auditors, public finance discipline

SŁOWA KLUCZOWE

prawo francuskie, prawo finansowe, kontrola, Trybunał Obrachunkowy, dyscyplina finansów publicznych

I. INTRODUCTION

The peculiarities of the French financial law and fiscal system are evinced, among other things, in the rather elaborate tax framework and in the significant role of case law,¹ by virtue of which, in certain aspects, the system closely resembles the solutions characteristic of the common law system.

The French financial judiciary was shaped concurrently with the decentralization processes initiated by the Act of 2 March 1982 on the rights and freedoms of communes, departments and regions.² Thus, from the outset, judicial control of public finances relied not only on the key role of the Court of Accounts (*Cour des comptes*) but also on the supplementary control exercised by the Regional and Territorial Chambers of Accounts (*chambres régionales et territoriales des comptes*) and the so-called supporting institutions of the Court of Accounts.³

Due to its limited scope, this article will not attempt to analyze all aspects of the financial judiciary in France, but it will outline the current framework of controlling public finances under French law, which saw a change following the establishment of the new Financial Court of Appeal (*Cour d'appel financière*) in 2023. In this regard, it is a distinguishing feature of the French financial system that all audit bodies are included in a single piece of legislation, the Code of Financial Jurisdictions (*Code des juridictions financières*), whose current content results from the latest reform that entered into force in 2023.⁴

¹ Michel Bouvier, *Les Finances locales* (19th edn LGDJ Paris 2022) 7.

² Law of 2 March 1982 no 82-213 – *Loi relative aux droits et libertés des communes, des départements et des régions*.

³ Michał Mariański, 'Kontrola finansów publicznych w prawie francuskim. Wybrane aspekty instytucjonalne' (2023) 28 Białostockie Studia Prawnicze 215.

⁴ Fr. Ordonnance n° 2022-408 du 23 mars 2022 relative au régime de responsabilité financière des gestionnaires publics, JORF n°0070 du 24 mars 2022.

The methodology employed by this author is informed by the historical-descriptive as well as the dogmatic method, though it also adopts the functional approach of the comparative method with a particular focus on the provisions of French law. It should also be underlined that although the legal-comparative law method used in this study has a theoretical dimension – as an *ex post* guideline for the legislator – it may, above all, serve a practical purpose as a tool for improving the application of the law. Comparative law constitutes a science, a research method as well as the findings obtained by means of the comparative method.⁵ It is further noted in Polish scholarship that comparative law is, in principle, a certain methodology for conducting research whose outcomes may be relevant for regulation at a level higher than merely national.⁶

Therefore, as part of this study, the author will briefly discuss where the Court of Accounts (*Cour des comptes*) and the Regional and Territorial Chambers of Accounts (*chambres régionales et territoriales des comptes*) stand within the French legal system, only to focus subsequently on the competences of the new Financial Court of Appeal (*Cour d'appel financière*). In the course of these deliberations, necessary references will be made to the competences and role of the supreme administrative court in France – the *Conseil d'Etat*.

In the new system of financial jurisdiction in France, the Court of Accounts is the court of first instance, while the new Financial Court of Appeal is a second-instance tribunal. The *Cour d'appel financière* is composed equally of representatives of the Court of Accounts itself and the supreme administrative court in France (*Conseil d'Etat*). In the system of financial jurisdiction, the latter is a court of cassation to which parties are able to appeal against the decisions of the Financial Court of Appeal through extraordinary appeal.

Furthermore, the inquiry and analysis presented in this study do have their practical significance, given that the Financial Court of Appeal, presided over by Mr. Pierre Moscovici, already delivered its first judgment on 12 January 2024 on the appeal filed by the General Prosecutor against the ruling of a chamber of the Court of Accounts.⁷

Consequently, the analysis presented here is relevant insofar as French law is characterized by the significant role of case law in formulating legislation and fine-tuning its provisions. In view of the above, a delineation of the nature and competences of the new institution – the Financial Court of Appeal (*Cour d'appel financière*) – may offer an incentive for further research and comparative investigations in this respect as well as assessments of the structures and solutions intro-

⁵ Iwona Szymczak, 'Metoda nauki o porównywaniu systemów prawnych' (2014) 3 *Ruch Prawniczy, Ekonomiczny i Socjologiczny* 37.

⁶ Roman Tokarczyk, *Komparatystyka prawnicza* (1st edn, Wolters Kluwer, 2008) 25.

⁷ Case 2024-01 12 January 2024 The French Financial Court of Appeal - Alpeexpo Company (fr. *Arrêt n° 2024-01 „Alpeexpo Company”*).

duced in France in terms of potential application by the Polish or other European lawmaker.

II. COURT OF ACCOUNTS AND CHAMBERS OF ACCOUNTS IN FRANCE

Both prior to and after the 2023 reform, the Court of Accounts (*Cour des comptes*) remains a key institution for public finance control in France. Detailed regulations pertaining to the court are contained in the Code of Financial Jurisdictions (*Code des juridictions financières*, hereinafter the CJF), Article L.111-1 to Article L.143-9.

The Court's primary tasks are to audit public accounts of the state and the main public institutions as well as verify whether the implementation of the financial plans was correct in budgetary and legal terms. The Court issues two types of rulings: discharge rulings when the accounting officer has fulfilled their duties and obligations⁸ as well as rulings on debit when the said officer has incurred irregular expenditure or collected irregular revenue.⁹

It is also worth stressing that the Court carries out a very broad range of informative and scientific activities, for instance, by publishing annual reports concerned with public and local finances. The reports in question often identify key challenges in public finance and its control, providing a starting point for many subsequent analyses.¹⁰ The latest report of the Court of Accounts, dated March 2023, delivers observations on the 40th anniversary of the decentralization process in France.¹¹ Spanning more than 500 pages, the document examines the chief challenges facing local government units in France.

Historically, the Court of Accounts was established by Napoleon under the law of 16 September 1807. It may also be noted that this body is also underpinned in the Constitution of the Fifth Republic of 1958.¹² Moreover, to ensure that it

⁸ Fr. *des arrêts de décharge si le comptable public a respecté ses obligations*.

⁹ Fr. *des arrêts de débet lorsque celui-ci a payé des dépenses ou encaissé des recettes irrégulières*.

¹⁰ Michał Mariański, 'Wyzwania stojące przed organizacją i funkcjonowaniem JST we Francji świetle raportu francuskiego Cour des comptes z 2023 roku' (2024) 2 *Dyskurs Prawniczy i Administracyjny* 41.

¹¹ Rapport Cour des comptes. *Rapport public annuel 2023 La décentralisation 40 ans après*, mars 2023, pdf. <www.ccomptes.fr> accessed 30 June 2024.

¹² Stanisław Bożyk, 'Wspomaganie parlamentu przez Trybunał Obrachunkowy we Francji. Aktualne problemy reform konstytucyjnych' (1st edn Temida 2, 2013) 337.

fulfils its mission in a completely independent way, the Court is composed of irremovable judges and has been granted a high degree of operational autonomy.¹³

In addition to its purely jurisdictional powers, the Court of Accounts assists the Parliament and the Government in monitoring compliance with financial statutes. Hence, internal audits assess whether the public funds of the state and other public institutions are properly used.¹⁴

In a general description of the French financial control model, one cannot fail to mention that besides their respective judicial functions, the Court and the Chambers of Accounts conduct extensive administrative audits of management on the part of administrators of public funds.

The Chambers of Accounts, as the second pillar of public financial control in France, are divided into regional chambers (*chambres régionales des comptes*) provided for in Article L.211 – L.245 CJF, and territorial chambers (*chambres territoriales des comptes*) referred to in Article L.250 – L.274 CJF.¹⁵ In addition, due to the revised regional division in France under the law of 16 January 2015, the number of regional chambers in mainland France has been reduced by the relevant decree to thirteen, while the five territorial chambers competent for overseas territories have been retained.¹⁶ It is also worth noting that the regional and the territorial chambers are a homogeneous group in terms of their institutional organization and scope of competence. In this way, they support the Court of Account (*Cour des comptes*) in that they jointly make up a system of overall assessment of the financial records maintained by public accounting officers as well as administrators of public funds.¹⁷

III. THE SITUATION BEFORE THE REFORM AND THE ROLE OF THE *CONSEIL D'ETAT*

Originally, the Court of Accounts was an institution which heard appeals against rulings of both types of chambers of accounts. As a body that issued var-

¹³ Jacques Magnet, *La Cour des comptes* (2nd edn Berger Levrault, collection Administration nouvelle 1972) 31.

¹⁴ Michel Bouvier, 'Nowe zarządzanie finansami publicznymi i strategię reform administracji we Francji' in Jacek Czaputowicz (ed), 'Zarządzanie zmianą w administracji publicznej' (Kontrast Warszawa 2012) 40-61.

¹⁵ Adam Błaszko, 'Organizacja samorządu terytorialnego oraz nadzoru nad samorządem we Francji' (2019) 6 *Finanse Komunalne* 63.

¹⁶ Fr. décret 2015-1199 du 30 septembre 2015.

¹⁷ Michał Mariański, Luiza Budner-Iwanicka, 'Podstawy prawne funkcjonowania Izb obrachunkowych w Polsce i we Francji. Wybrane aspekty prawno-porównawcze' (2024) 1 *Studia Prawnoustrojowe* 243.

ious types of rulings, it was also a first-instance court whose decisions could be contested at the *Conseil d'Etat*, the Supreme Administrative Court, as the appellate institution. It should be emphasized at this point that the author has deliberately chosen not to use a literal translation of the latter's name in order not to mislead as to its role; instead, it is described in terms of its actual function and the position that it occupies within the French judicial system.¹⁸

In the current framework, the Court of Accounts remains a court of first instance – within the extent discussed above; however, its rulings cannot be appealed against with the Supreme Administrative Court (*Conseil d'Etat*) as previously, but have to be filed with the new Financial Court of Appeal.

Even so, the *Conseil d'Etat* still has a substantial role to play as, by virtue of decrees with the legal force of statutes, it determines the number of chambers of the Financial Court of Appeal, their composition, the rules of presidency and the conditions under which the Financial Court of Appeal decides in plenary or in chambers. It may be noted that the French legal order distinguishes three categories of regulatory decrees (*décrets réglementaires*): ordinary decrees (*les décrets simples*), decrees of the supreme administrative court (*les décrets en Conseil d'État*) and decrees of the Council of Ministers (*décrets en conseil des ministres*).¹⁹ The decrees issued by the *Conseil d'État* are regulatory texts issued within the limits of the law and drafted according to a procedure different from ordinary decrees; also, they are provided with the closing formula “*Le Conseil d'État entendu*”. There are four grounds on which such decrees are issued: the provision in Article 37 of the Constitution,²⁰ a specific statute, another decree, or the will of the Government expressed in view of the importance of the subject matter of the decree. Thus, the principal basis for the *Conseil d'Etat* to issue decrees with the force of law derives from Article 37 of the French Constitution.

In the opinion of this author, it is a highly interesting and, at the same time, controversial matter that the aforementioned reform establishes very strong organizational dependence between the new Financial Court of Appeal and the Court of Accounts as well as the Supreme Administrative Court (*Conseil d'Etat*). That dependence is evinced in the fact that the new Court of Appeals operates under the chairmanship of the first President of the Court of Accounts, while the bench is further composed of four representatives of the *Conseil d'Etat*, four

¹⁸ Anna Klimaszewska and others, ‘Spółka z ograniczoną odpowiedzialnością (société à responsabilité limitée) we francuskim kodeksie handlowym’ (1st edition Wydawnictwo UWM 2017) 42.

¹⁹ Muriel Fabre-Magnan, François Brunet, Introduction générale au droit (1st eds PUF 2017) 49.

²⁰ Fr. *Les matières autres que celles qui sont du domaine de la loi ont un caractère réglementaire. Les textes de forme législative intervenus en ces matières peuvent être modifiés par décrets pris après avis du Conseil d'État. Ceux de ces textes qui interviendraient après l'entrée en vigueur de la présente Constitution ne pourront être modifiés par décret que si le Conseil Constitutionnel a déclaré qu'ils ont un caractère réglementaire en vertu de l'alinéa précédent.*

representatives of the *Cour des comptes*, and two qualified persons with more than ten years' experience in the field of public management. Such composition of the new court makes it a de facto intermediate institution between the court of first instance and the court of cassation, as their representatives account for as much as eighty per cent of its members. In theory, this could raise doubts about the impartiality of appellate rulings which, after all, concern the judgments of the Court of Accounts. Similar reservations may also be expressed with respect to the cassation rulings of the *Conseil d'Etat*.

In this respect, one must not overlook the fairly specific role that the Supreme Administrative Court plays within the French judiciary. In other legal systems, such as Poland, the competences of the Supreme Administrative Court are not as extensive, although it is emphasized in the doctrine that the scope of cognizance of the Polish *Najwyższy Sąd Administracyjny* has gradually expanded since the early 1990s.²¹ In the legal order of the Fifth French Republic, the *Conseil d'Etat* functions as an advisory body to the government and as the highest organ of the administrative judiciary. France's experience of the formation of the administrative judiciary during the Napoleonic period, which originated with the *Conseil d'Etat*, had a major impact on the French model, though it has rarely been adopted by other countries. From the outset, the distinctive feature of that model was that the adjudication of administrative disputes was separated from the court system; moreover, the bodies hearing such disputes were recognized as an integral part of the executive. In consequence, even the contemporary *Conseil d'Etat* is a body with a special systemic position and mixed judicial-administrative tasks.²²

That exceptional role of the *Conseil d'Etat*, which may sometimes be difficult to understand in other legal orders, should be attributed to both historical developments and conceptual considerations.

The historical aspect should primarily be associated with the fact that the shape and the rules which govern the functioning of the administrative courts in France are rooted primarily in case law. This concerns such key issues as the liability of the state for the loss caused by its functionaries or the concept of the so-called public service (*service public*), which was identified and defined in the 1873 ruling in the *Blanco* case.²³ Other crucial judgments for the administrative judiciary include those issued in the *Terrier* case of 1903,²⁴ the *Feutry* case of 1908²⁵ and the *Thérond* case of 1910.²⁶

²¹ Maciej Dębski, 'Zmiany w polskim sądownictwie administracyjnym (zagadnienia wybrane)' (2022) 98 *Acta Universitatis Lodziensis. Folia Iuridica* 265.

²² Lech Garlicki, 'Wprowadzenie' in Leszek Garlicki (eds) *Sądownictwo administracyjne w Europie Zachodniej* (1st ed Państwowe Wydawnictwo Naukowe Warszawa 1990) 9.

²³ Judgement of French Court *Tribunal des conflits* of 8 February 1873.

²⁴ Judgement of French Court *Conseil d'Etat* of 6 February 1903.

²⁵ Judgement of French Court *Tribunal des conflits* of 29 February 1908.

²⁶ Judgement of French Court *Conseil d'Etat* of 4 March 1910.

As for the conceptual considerations, although they situate France among the countries with two independent jurisdictions involving common and administrative courts, the nature of the latter is quite unique. The administrative judiciary, despite its well-established jurisprudential origin, was constitutionally and legally constituted only following the rulings issued by the French Constitutional Court (*Conseil Constitutionnel*) in the 1980s, which asserted that the control of administration by means of administrative courts headed by the *Conseil d'Etat* is among the foremost principles of the system of the Fifth Republic.²⁷ The decision of the Constitutional Court (*Conseil Constitutionnel*) of 22 July 1980 is particularly noteworthy,²⁸ as it expressly recognized that the principle of independent judiciary applied to the administrative courts as well. Furthermore, it is observed in the French doctrine that conceptually, the administrative judiciary on the Seine is structured like a planetary system, whose pivotal element and the center around which the other elements are organized is the *Conseil d'Etat*.²⁹ Other studies compare the understanding of the role and importance of the *Conseil d'Etat* to finding a key and essential element to the order of administrative judiciary in France.³⁰

IV. COMPETENCES OF THE NEW FINANCIAL COURT

The competences of the Financial Court of Appeal in France are set out in detail in the (*Code des juridictions financières*; hereinafter the CJF), specifically in Article L.311-1 – L.311-7.

The very first provisions of that legislation, i.e. Article L.311-1, specify that the Financial Court of Appeal shall hear appeals against rulings by the chamber of litigation of the Court of Accounts referred to in Article L.131-21, with the exception of the judgments referred to in the second section of Article L.111-1. Pursuant to the cited article, these exceptions concern cases in which the Court of Accounts rules at first instance, including appeals against decisions of the territorial chambers of accounts.

It may be important to note that one of the elements of the reform which introduced the Financial Court of Appeal was the establishment of a new chamber dedicated to disputes – the so-called *chambre du contentieux* – within the structure of the Court of Accounts.

²⁷ Michał Mariański, 'Specyfika organizacji samorządu terytorialnego we Francji' (2010) 12 *Studia Elckie* 284.

²⁸ Decision of the Constitutional Court (*Conseil Constitutionnel*) of 22 July 1980 no 80-119 regarding the act validating administrative acts.

²⁹ René Chapus, 'Droit du contentieux administratif' (1999) 51 *Revue internationale de droit compare* 1164.

³⁰ Georges Vedel, Pierre Delvolvé, *Droit administratif* (1st edn PUF Paris 1992) 74.

Regarding the organization of the new Financial Court of Appeal, Article L.311-2 CJF indicates that it is chaired by the first President of the Court of Accounts, while the bench is further composed of four representatives of the *Conseil d'Etat*, four representatives of the *Cour des comptes*, and two qualified persons with more than ten years of experience in public management. Moreover, the members of the Financial Court of Appeal are appointed under a decree of the Prime Minister for a period of five years. Pursuant to Article L.311-3, all members are to submit to the President of the Financial Court of Appeal an exhaustive, accurate and sincere declaration of potential conflicts of interest, stating the connections and interests that the applicant has had in the five years preceding the appointment and which may have or appear to have an impact on the independent, impartial and objective performance of their duties.³¹

Further concerning the working mode and organization of the Financial Court of Appeal, Article L.311-4 provides that it adjudicates sitting on a full bench or in chambers. In chambers, it is presided over by one of the persons mentioned in 1° or 2° of Article L. 311-2, i.e. either a representative of the Court of Accounts or a representative of the *Conseil d'Etat*. In addition, it is the decree of the latter court that determines the number of chambers, their composition, the rules of the presidency, and the conditions under which the Financial Court of Appeal rules in plenary or in chambers.

As for the procedural aspects of the court's functioning, Article L.311-5 CJF specifies that the rules set out for the Court of Accounts in Chapter II, Title IV, Book I apply. In addition, Article L.311-6 makes it clear that the deadline for appeal and its filing suspends the execution of judgments of the chamber of litigation (*chambre du contentieux*) of the Court of Accounts. The final article of that part of pertinent legislation – L.311-7 – provides that a decree of the supreme administrative court of France (*Conseil d'Etat*) determines the conditions for the application of that particular book of the Code.

The aforementioned decrees have been collected in the regulatory part of the Code of Financial Jurisdictions – where the successive articles are marked with the letter R – specifically in R.311-1 to R.341-1. Thus, under one of the first decrees,³² which supplied details to complement the statutory provisions (indicated by the letter 'L'), Article R.311-1 was introduced, which specifies that the Financial Court of Appeal operates within the Court of Accounts, having its seat there. In addition, according to Article R.311-2, the secretariat of the Financial Court of Appeal is provided by the services of the Court of Accounts.³³

³¹ This article specifies that any material change in the connections and interests held requires an additional declaration in the same form.

³² Fr. décret n°2022-1604 du 22 décembre 2022 - art 7.

³³ The composition of each chamber shall ensure a balanced representation of the different categories of members provided for in points 1 to 3 of Article L. 311-2. The president of each chamber is appointed for the duration of his term of office by the president of the Financial Appeal

Furthermore, the decree clarifies that the composition of the Financial Court of Appeal includes ten alternate members who are appointed on the same terms as full members (Article L.311-3 CJF).

Regarding the procedural aspects, Article R.311-4 states that when adjudicating in plenary session, the Financial Court of Appeal is chaired by its president, who may also preside over this body when it rules in chambers. Here, Article R.311-5 adds that the Financial Court of Appeal has two chambers, each of which consists of five full members and five alternate members appointed by the president of the Financial Court of Appeal.

Pursuant to Article R.311-7, cases brought before the Financial Court of Appeal are heard in chambers and the President of the Financial Court or the president of the chamber hearing the case may refer the case to a plenary session. However, the President of the Financial Court of Appeal may decide that the case be registered directly in plenary. By virtue of a decree, Article R.311-8 and Article R.311-9 further specify that in the event of the absence or incapacity of the president of the court during a plenary or chamber sitting, the second president of the chamber or, in the absence of the latter, a judge with seniority presides.

A vital elaboration of the statutory regulations is found in Article R.311-10, which sets out that in the event of vacancy, absence or incapacity of a member of a chamber, an alternate deputy member takes their place; should the latter be absent, the President of the Court of Accounts will delegate an ordinary or alternate member of the other chamber. The members thus designated are selected in order of seniority of appointment to the Financial Court of Appeal. In the cases of equal seniority of several members, the most senior member is selected.

It is worth noting that the Financial Court of Appeal can only validly deliberate in plenary sessions or in chambers if at least six or three members of the panel are present, respectively, including, pursuant to Article R.311-11, at least one representative of the Court of Accounts and at least one representative of the *Conseil d'Etat*. Crowning the above, Article R.311-13 provides that the President of the Financial Court of Appeal appoints one or more senior judicial officers (*greffier*) chosen from among the representatives of the Court of Accounts, who take the oath before the president. Those senior judicial officers (*greffiers*), who have their Polish equivalent in the well-known institution of the court referenda, are responsible for the proper conduct of court proceedings and assist the member of the Financial Court of Appeal in charge of the investigation.³⁴

Another set of provisions introduced by the decrees of the French Supreme Administrative Court (*Conseil d'Etat*) elaborate on the statutory regulations with respect to procedure. Thus, Article R.321-1 provides that, in principle, the pro-

Court from among the ordinary members referred to in 1° and 2° of Article L.311-2 (thus among the representatives of the *Cour des Comptes* and *Conseil d'Etat*).

³⁴ In addition, the *greffier* prepares and organizes hearings, keeps books and registers, announces judgments and publishes them in accordance with the law.

visions of the code of financial jurisdictions (*Code des juridictions financières*), which pertain to the Court of Accounts, apply to the Financial Court of Appeal as well. In addition, the Secretariat of the Financial Court of Appeal, in accordance with Article R.321-1, is required to promptly communicate requests for appeal and supplementary submissions, if any, to other persons entitled to file an appeal.

If the appeal is duly lodged within one month of the communication referred to in Article R.321-2, the party with the status of the respondent may become acquainted with all the documents attached to the appeal application at the Secretariat of the Financial Court of Appeal and file a response to the appeal. The Secretariat serves a copy of the first response to the appeal on the appellant, who, within one month from being served, may submit a response, which in turn will be conveyed to the respondent. On the basis of the latter, the respondent has fifteen days to submit a second response to the appeal, which is transmitted to the appellant. The appellant may submit yet another reply within fifteen days of the transmission. This procedure, described in Article R.321-3, is, in fact, a measure enabling an extended dialogue between the parties, as the double reply to the appeal and the double counter-reply are elements that are extremely rarely explicitly included in procedural acts.

In addition, pursuant to Article R.321-4, if the appeal application is not accompanied by a copy of the ruling issued by the chamber of litigation of the Court of Accounts, the appellant is requested to supplement the application. The request states that failure to do so will result in the appeal being rejected as inadmissible after the expiry of the prescribed time limit, which, except in extraordinary circumstances, may not be less than fifteen days. The decree also clarifies that when a case is brought before the Financial Court of Appeal, its president appoints one or more full or alternate members, state councilors or chief councilors of the Court of Accounts to provide additional information on the case.

Furthermore, Article R.321-6 indicates that if a member of the Financial Court of Appeal in charge of supplementary information finds that there are reasons for them to be excluded from the case, they should abstain from voting, immediately advising the Chairman of the Adjudicating Panel. The latter appoints another judge to replace the former. Likewise, a party wishing to challenge the impartiality of a member of the Financial Court of Appeal in charge of supplementary information files a request with the president of the Court within one month from the date of appointment of the member or the occurrence of an event which gives rise to the request, as the case may be.³⁵ It may be noted that the actions of the recused member prior to their becoming aware of the request for exclusion may not be challenged. Furthermore, the President of the Financial Court of Appeal rules on the recusal by way of a decision without stating reasons thereto, which

³⁵ The application should indicate precisely the reasons for filing the complaint and include in an annex documents confirming the content contained therein.

may only be appealed against before the *Conseil d'Etat* along with the ruling issued subsequently.

As far as the member responsible for supplementary information is concerned, pursuant to Article R.321-7, they are required to issue a closing order in which they present the results of their work. This order is not appealable (*pas susceptible de recours*).

The issuance of the ruling by the Financial Court of Appeal is subject to the requirements and procedures applicable to the Court of Accounts. In particular, pursuant to Article R.322-2, it is the presiding judge who exercises control over a hearing and decides the direction of the hearings at which the member of the Financial Court of Appeal in charge of supplementary information presents the outcome of their investigation. The person who is a party to the appeal or their attorney may make oral submissions while the members of the panel and the prosecutor may direct questions to the person who is a party to the appeal or the witnesses, asking the President to speak. The person who is a party to the appeal may, under the same conditions, ask questions of witnesses and, where appropriate, other persons who are party to the appeal. Additionally, the prosecutor or the person who is a party to the appeal may request a suspension of the hearing at any time. The last of the articles relating to hearings, which were introduced by virtue of a decree, is Article R.322-3 – provides that after the public hearing, the panel deliberates without the member of the Financial Court of Appeal in charge of supplementary information or the prosecution in attendance. If a vote has to be taken, the Chairman collects the opinion of each member of the panel successively, in reverse order of seniority, while decisions are taken by majority vote.³⁶

The final aspect of the regulatory part – namely, the issues pertaining to appeal – are detailed in Article R.331-1 to R.331-3. The first of these specifies that the decisions of the Financial Court of Appeal may be the subject of an appeal in cassation to the Supreme Administrative Court (*Conseil d'Etat*). This measure may be applied by the prosecutor or a person who is a party to the proceedings. In addition, pursuant to Article R.331-2, a party to the appeal may request, after the expiry of the deadline for filing it with the *Conseil d'Etat*, a review of the ruling when a new fact or circumstance comes to light that, having been unknown to the panel at the date of the ruling, is likely to prove a party not liable. The request for review is addressed to the President of the Financial Court of Appeal. If submitted on paper, it is to be sent by registered mail with acknowledgement of receipt. It must set out the facts and arguments invoked by the applicant and must include a copy of the judgment under appeal, along with its rationale. Finally, ending this part of the Code of Financial Jurisdictions, Article R.331-3 sets out that, in the case of an appeal filed with the Financial Court of Appeal (as a court of second

³⁶ Only members of the adjudicating panel who participated in the public hearing take part in voting on the Court's position.

instance), its president appoints a member responsible for examining the request for review, of which the parties to the appeal are to be notified. The proposals of the member in charge of the investigation are forwarded to the prosecutor, who presents the conclusions. Following a public hearing, the Financial Court of Appeal rules on the review of the judgment, deciding on the admissibility of the appeal and, if applicable, on the merits of the case.

V. CONCLUSIONS

The analysis of the reform of the French financial judiciary, whose key element was establishing a new Financial Court of Appeal, has revealed a number of aspects that may prompt further research and contribute to reflection on the concept of decent legislation³⁷ and validity of French solutions. A system in which the Court of Accounts (*Cour des comptes*) and the Supreme French Administrative Court (*Conseil d'Etat*) play crucial roles has been left in place. At the same time, provisions pertaining to the new Financial Court of Appeal have been included in the legislation which governs the two aforementioned courts, i.e. the Code of Financial Jurisdictions (*Code des juridictions financières*), as a result of which the regulations are consistent and complementary. In other words, numerous earlier provisions of the aforementioned Code, especially with respect to procedure, apply to the new financial court.

Moreover, the provisions relating to the new Financial Court of Appeal introduce several interesting and specific procedural solutions, notably the possibility of an extended dialogue between the parties contained in Article R.321-3, enabling a double reply to the appeal and a double counter-reply.

Moreover, the decrees of the French Supreme Administrative Court (*Conseil d'Etat*) carry great significance in this arrangement, as they define, e.g. the number of chambers, their composition, the rules of the presidency and the terms under which the Financial Court of Appeal rules in plenary or in chambers.

In the opinion of this author, it was a highly interesting, though at the same time controversial fact that the new Financial Court of Appeal is very strongly dependent – in terms of organization – on both the Court of Accounts and the Supreme Administrative Court (*Conseil d'Etat*). This is evinced in the fact that the new Court of Appeals operates under the chairmanship of the first President of the Court of Accounts, while the bench is further composed of four representatives of the *Conseil d'Etat*, four representatives of the *Cour des comptes*, and two qualified persons with more than ten years' experience in public management.

³⁷ Dawid Ziółkowski, 'Importance of the principle of decent legislation for Polish administrative law' (2024) 102 *Studia Iuridica* 242.

Such a composition of the new court may raise doubts about the impartiality of its rulings, which, after all, concern the judgments of the Court of Accounts. Much the same is the case with cassation appeals against the judgments of the new Financial Court of Appeal, which are heard by the Supreme Administrative Court (*Conseil d'Etat*), whose members sit on the former.

Undoubtedly, such an organization of the court of appeals has the advantage of being specialized and, therefore, efficient, though simultaneously, the actual two-instance nature of the appeal procedure and the impartiality of the rulings may be considered debatable. Obviously, the above will be verified in the course of judicial practice, which has only just been inaugurated with the first ruling that the new Financial Court of Appeal issued in January 2024. Nevertheless, bearing in mind the observations in this publication, a very interesting element for further analysis may be the potential complaints to the European Court of Human Rights, in which one would, e.g. challenge the independence of the court in view of its composition, as forty per cent of the judges are associated with the court of first instance and another forty per cent with the court of cassation.

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