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RESEARCH ARTICLE

Section: *Digital Humanities***The administrative judge and the constitutional judge: Expanded jurisdiction and reciprocal influence in protecting individual rights — a comparative study**

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ABSTRACT

This research examines the mutual influence between the administrative judge and the constitutional judge through a comparative analytical framework. It begins by exploring the role of the administrative judge in safeguarding individual rights and freedoms, highlighting key mechanisms that demonstrate the effectiveness of administrative judicial oversight—such as proportionality review and scrutiny of disciplinary measures. The study then addresses the French *Priority Question of Constitutionality* (QPC), often referred to as the mechanism for raising unconstitutionality, to illustrate how this procedure has expanded the administrative judge's involvement in assessing the constitutionality of legislative provisions.

The research subsequently turns to the constitutional judge's role in protecting rights and freedoms, drawing particularly on the achievements of the French Constitutional Council—beginning with its landmark 1971 decision on freedom of association, which conferred constitutional value on the Preamble to the 1958 Constitution. Central to the significance of the Constitutional Council's jurisprudence is the binding force of its decisions, which automatically impose obligations on both the judiciary and the administration.

Finally, the study analyzes the positive reciprocal influence between administrative and constitutional judges. It demonstrates that the administrative judge, through participation in constitutional review mechanisms, has in some respects evolved into a “miniature constitutional council.” The research also highlights the view of jurist Bernard Stirn, who argues that while the administrative judge remains careful not to encroach upon the Constitutional Council's authority, he nevertheless exercises strong and impactful control that can indirectly shape constitutional reasoning. Although the dynamics of mutual influence may fluctuate over time, the overarching relationship is characterized by harmony and cooperation, which ultimately enhances the protection of rights within the legal system.

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1 . Introduction

The relationship between administrative justice and constitutional justice has undergone profound evolution in modern legal systems. This study examines two interconnected domains: **judicial review** and **reciprocal institutional influence**. Over time, administrative judicial review has expanded significantly, empowering the administrative judge to impose sanctions on public authorities that act arbitrarily—whether through disciplinary measures against public employees or through general administrative decisions in various sectors. Contemporary administrative courts apply rigorous scrutiny, particularly when detecting abuse of power or manifest errors in judgment. In parallel, administrative judges increasingly confront questions of constitutionality, thereby engaging—at least partially—in functions traditionally reserved for constitutional courts.

The constitutional judge, by contrast, is entrusted with safeguarding the supremacy of the constitution. This includes preventing public authorities from exceeding their constitutional mandates and invalidating legislative acts that conflict with higher constitutional norms. The jurisprudence of the French Constitutional Council, which has shaped many global constitutional systems, provides an important reference point for understanding this role.

This research investigates the **mutual influence** that has emerged between administrative and constitutional judges. It argues that administrative judges have come to exercise an indirect form of constitutional review—interpreting legislation in light of constitutional principles and filtering claims of unconstitutionality—while the constitutional judge remains the sole authority empowered to annul legislation. The study demonstrates that this reciprocal influence is embedded both in legal texts and in judicial practice: administrative law draws heavily on constitutional foundations, and constitutional adjudication often relies on principles developed within administrative jurisprudence. Notably, administrative judges have maintained professional restraint, respecting constitutional boundaries while contributing to the coherence of the broader legal order.

The primary aim of this research is to clarify the respective scopes of administrative and constitutional judicial review over administrative decisions and legislative acts, and to illustrate the ways in which both jurisdictions influence each other. Understanding this dynamic is essential for improving cooperation between the two judicial bodies, minimizing conflicts, and strengthening the rule of law.

The significance of the study lies in its contribution to a clearer conceptual understanding of the relationship between administrative and constitutional judges—an issue that, to the best of our knowledge, has received limited academic attention. By analyzing areas of convergence and interaction between these judicial spheres, the research challenges the misconception that they operate as entirely separate systems.

Two central research problems guide this analysis:

1. To what extent has the development of administrative and constitutional judicial review enhanced the protection of individual rights and freedoms?
2. To what extent has the mutual influence between administrative and constitutional judges contributed to strengthening these protections?

The following chapters explore these questions by examining the respective roles of administrative and constitutional judges and the mechanisms through which their interaction advances the protection of individual rights.

Chapter One

The Role of the Administrative and Constitutional Judiciary in Protecting the Rights and Freedoms of Individuals

This chapter examines how administrative and constitutional judges contribute—each within their respective jurisdictions—to the protection of individual rights and liberties. It consists of two main sections: the first analyzes the evolving role of the administrative judge in this field, and the second explores the constitutional judge's function and authority in safeguarding fundamental rights.

Section One: The Role of the Administrative Judge in Protecting the Rights and Freedoms of Individuals

This section is divided into two parts.

Part A discusses the administrative judge's contribution to protecting individuals' rights. Part B explains how administrative judicial control evolved with the introduction of the *Priority Question of Constitutionality* (QPC) in France since 2008.

A. The Administrative Judge and the Protection of Individual Rights

Administrative judicial review has witnessed significant expansion, particularly in matters concerning disciplinary sanctions imposed on public-sector employees. Traditionally, administrative courts adopted a restrained approach, intervening only to assess the legality of the decision, not its appropriateness. The choice of sanction was viewed as falling within the administration's discretionary authority.

However, modern administrative jurisprudence has shifted toward enhanced judicial scrutiny. Although the administrative judge still does not directly evaluate whether a sanction is "appropriate," he may annul it if it results from a manifest error of assessment—especially when a clear disproportion exists between the gravity of the misconduct and the severity of the punishment. This evolution strengthens judicial oversight and ensures that disciplinary measures remain fair, reasonable, and consistent with principles of justice.

Nonetheless, administrative case law sometimes struggles to clearly distinguish between review of manifest error and review of proportionality, which can lead to confusion in judicial reasoning.

A landmark example of the judge's role in broadening fundamental rights is the Morsang-sur-Orge decision, in which the Council of State prohibited the practice known as "dwarf-throwing." Although the activity did not violate traditional components of public order—health, safety, or public tranquility—the court held that it infringed upon human dignity, even with the participant's consent. This decision effectively added human dignity as an inherent and non-negotiable component of administrative police powers.

While critics argued that the court overstepped by introducing a "fifth element" of public order, many scholars praised the ruling as a progressive step toward the recognition of intangible rights and as an example of how administrative courts can influence constitutional reasoning. The decision also challenges the notion that only the ordinary judiciary is responsible for safeguarding individual freedoms.

B. The Development of Administrative Judicial Control and the Priority Constitutional Question

For much of the twentieth century, French legal doctrine strongly opposed any form of constitutional review by administrative judges. Leading scholars such as Maurice Hauriou and Carré de Malberg held that the constitutionality of legislation should remain outside the scope of administrative judicial review.

Contemporary jurisprudence, however, paints a much different picture. As noted by Vincent Cheneval and others, the administrative judge has become a significant contributor to the protection of fundamental rights. A major turning point occurred with the adoption of the 2008 constitutional reform, introducing Article 61-1 and establishing the *Question Prioritaire de Constitutionnalité* (QPC). This mechanism enables litigants to challenge the constitutionality of a legislative provision during the course of a trial if it is believed to violate rights and freedoms guaranteed by the Constitution.

An organic law adopted on 10 December 2009 established the procedural framework for applying Article 61-1. Through this mechanism, the administrative judge acts as a procedural filter, determining whether the constitutional challenge is admissible, serious, and relevant before sending it to the Constitutional Council. The QPC may be raised at any stage of judicial proceedings—first instance, appeal, or cassation—and may concern any legislative provision applicable to the dispute. Importantly, all laws predating the 1958 Constitution may be subject to constitutional review, with limited exceptions such as parliamentary regulations.

For a constitutional question to be referred to the Constitutional Council, three conditions must be met:

- A. The contested legislative provision must apply to the dispute.
- B. It must not have been previously declared constitutional, unless circumstances have changed.
- C. The question must be new or sufficiently serious, as assessed by the Council of State or the Court of Cassation.

Once referred, the Constitutional Council must issue a decision within three months. If the text is deemed constitutional, it remains applicable unless it conflicts with international or European norms. If it

is deemed unconstitutional, two consequences follow:

- The provision is excluded from application in the ongoing case.
- The provision is repealed immediately or on a future date determined by the Council.

Decisions of the Constitutional Council are final and not subject to appeal. Through this mechanism, administrative judges now play an indirect but significant role in constitutional review, reinforcing their position as protectors of individual rights.

Section Two: The Constitutional Judge and the Safeguarding of Individual Rights and Freedoms

This section discusses, first, the foundational role played by the constitutional judge—drawing especially from the evolution of the French Constitutional Council—and second, the binding nature of constitutional decisions.

A. The Foundational Role of the Constitutional Judge

1. Constitutional Expansion of Rights and Freedoms

Since the 1970s, the French Constitutional Council has played a decisive role in advancing fundamental rights. Its decision of 16 July 1971, concerning freedom of association, marked a historic turning point by recognizing the constitutional value of the 1958 Preamble, which itself refers to the 1946 Preamble and the principles of the 1789 Declaration of the Rights of Man and of the Citizen.

Following this jurisprudential expansion, the Council constitutionalized numerous rights and principles, such as:

- Equality before the law (1973),
- Freedom of thought and expression,
- Non-retroactivity of criminal law,
- Proportionality of penalties,
- The right to property as a fundamental guarantee.

The Council also recognized the constitutional value of “fundamental principles recognized by the laws of the Republic,” granting the administrative judiciary room to develop additional rights, including:

- Freedom of assembly and association,
- Academic freedom,
- Rights of defense,
- Freedom of education.

Similarly, the Constitutional Council elevated socio-economic principles—such as the right to health, equality between men and women, the right to strike, and the right to work—into the constitutional sphere, illustrating its dynamic role in shaping fundamental rights.

The Council has also constitutionalized certain objectives of constitutional value, such as the continuity of public services and respect for human dignity. Balancing these principles with sometimes conflicting rights—such as reconciling individual liberty with public order—has become one of the council’s essential functions.

Importantly, the Council has never established a hierarchy among constitutional norms, meaning that all constitutional principles hold equal value unless the Constitution itself provides otherwise.

2. The Necessity of a Constitutional Judiciary

Constitutional adjudication ensures the supremacy of the Constitution and prevents legislative or executive encroachment on fundamental rights. Montesquieu’s theory of separation of powers provides the philosophical foundation: power must be checked by power to prevent tyranny. Judicial control over legislation ensures that laws do not become instruments of arbitrary state authority.

A democratic state requires adherence to the rule of law, including a hierarchy of norms in which the Constitution forms the highest binding authority. The Constitutional Council plays a crucial role in enforcing this hierarchy through its interpretations, which sometimes require creative and expansive reading of constitutional

texts. However, this interpretative power has sparked concerns about the risk of politicization, prompting debates—including proposals by former President François Hollande—to reform the Council’s composition, particularly regarding the lifetime membership of former presidents.

B. Binding Nature of Constitutional Council Decisions

1. Enforceability of Constitutional Decisions

Constitutional Council decisions possess exceptional legal force. They are binding on all public authorities—judicial, administrative, and governmental—and are final and unappealable. A debate persists, however, regarding whether only the operative part of a decision is binding, or whether the reasoning (*motifs*) should also be treated as authoritative.

The Court of Cassation, in its landmark Prescher decision, affirmed that both the operative part and the reasoning are binding. Nevertheless, jurisprudence generally limits this binding effect to cases involving the same legal provision under similar circumstances. This interpretation reflects Article 62 of the French Constitution, which outlines the effects of constitutional decisions.

Scholars such as Olivier Duhamel have criticized the ambiguous hierarchy in which the Constitutional Council exists “outside” the judicial structure while nevertheless imposing binding rulings on courts.

2. Appeals of Unconstitutionality

Even in systems where courts cannot annul legislation directly—absent express constitutional authority—indirect constitutional review may occur through mechanisms analogous to the QPC.

In Jordan, the constitutional amendments of 1 October 2011 established a Constitutional Court through Articles 58–61 of the Constitution, further implemented by Law No. 15 of 2012. The Court is composed of at least nine members appointed by the King and holds exclusive jurisdiction to:

- Review the constitutionality of laws and regulations,
- Interpret constitutional provisions.

Only three bodies may directly refer a case to the Jordanian Constitutional Court:

- The Senate,
- The House of Representatives,
- The Council of Ministers.

This reform reflects a broader commitment to strengthening the separation of powers and consolidating constitutional oversight.

Chapter Two Promoting the protection of rights through positive mutual influence between the constitutional judge and the administrative judge

In this chapter, the researcher addresses two issues, the first one the affirmative effect of the administrative judge, although this assertion does not enjoy the approval of all jurists, and the second issue is the collaboration between administrative and constitutional judges.

Section One: the affirmative effect of the administrative judge

In this first section, we deal with the analysis and the interpretation of some of the primary points to confirm this influence and examining Bernard Stern’s position on the issue of mutual influence.

a) Initial points

In France, as indicated previously, after 2008 the administrative judge became a reviewer of the constitutionality of laws and then an interpreter of the constitution. The French administrative judge reviewed the constitutionality of laws indirectly. For example, in the Cuaz decision where he decided that financial penalties were not “disproportionate, which means that he considered that the law should be applied because it was not tainted

by a lack of proportionality and we know that the review of proportionality is carried out by the constitutional judge. Hence, the administrative judge considered that the law that was objected to is constitutional.” Because it conforms to Article (13) of the Universal Declaration of Human and Citizen Rights of 1789 (the principle of equality before public burdens).

Despite the mutual influence between the constitutional judge and the administrative judge, the constitutional judge remains the only one capable of abolishing the law, while the administrative judge is limited in his power to interpret laws and sometimes the constitution, but it remains that the constitutional judge has the authority to issue decisions that enjoy the absolute power of the matter judged, while the administrative judge issues decisions that are limited to some cases.

Some have debated that the power of a French administrative judge to accept or reject the plea of unconstitutionality is a review of the constitutionality of laws. But the truth is that actual review is the power that can void the law, and this authority is only represented in the Constitutional Council. However, the administrative judge's decisions to refuse or accept the claim of unconstitutionality has a great impact on other administrative courts that will not hesitate to follow the same path, and certainly on the Constitutional Council as well. It is clear that the influence of the administrative judge has exacerbated in parallel with the development of his control, whereas in the past it protected the administration from itself and individuals, today it is protecting citizens from the administration's excesses.

In France, the administrative judge for a long time could not easily get rid of his role as state counsel. After the decision of Jaques Vabre that was issued by the Court of Cassation and then the decision of Niccol from the French Consultative Assembly, where the administrative judge confirmed the primacy of treaties over the law. It is worth noting that the decisions of the administrative judge when it gives superiority of the treaty over the laws a superior influence on the constitutional judge, who, like the administrative judge, is always keen to ensure that there is no divergence between the two courts, to preserve the integrity and unity of the internal legal system.

b) The position of Bernard Stern and the creative role of the administrative judge

In this last section we deal with the issue of the superiority of the administrative judge and the required cooperation between the administrative and constitutional judges, and in the second section, we emphasize the increasing importance of the administrative judge, even within the required cooperation.

1. Despite the dominance of the administrative Judge, the collaboration between the two judges is a master of the situation.

Legal principles were the cause of a raging disagreement between the administrative judiciary and the constitutional judiciary, especially on the issue of the legal force of general legal principles. It can be seen that the Constitutional Council, has proven itself, has begun to differentiate itself from the Shura Council, and has declined to adopt all the principles laid down by the Shura Council. General legal concepts have been a golden opportunity to spark this debate .

The Constitutional Council also used the concept of general legal principles, which prompted some jurists to talk about two types of general legal principles: the constitutional ones and the administrative ones. General legal principles have a power that exceeds all administrative work, regardless of their degree, but they remain without laws. There is no difference between a principle that has constitutional value and another that does not have this value, because the law obscures the constitution and imposes itself on the administration. After the Constitutional Council began to use the phrase, the following question was raised: Does the Constitutional Council mean the same general legal principles that the administrative judge discovered, or are they separate and belong to a higher degree. Then the situation worsened, according to Professor George Fodel, when the Constitutional Council resorted to another concept, which is the concept of “general principles by which the laws of the Republic are recognized “

Brigadier General Vaudel admits to the Constitutional Council the lack of rigor and accuracy sometimes in his style. In fact, Vaudel believes that when the Constitutional Council uses the term general legal principles, it does not mean at all the principles that an administrative judge discovers during his multi-source jurisprudence (texts, decisions, purely philosophical principles), but rather a linguistic use. What we want to shed light on in

our presentation is the always possible disagreement between the constitutional and administrative judges and the need to find solutions. This matter happened in France, and it will certainly happen in Arab countries despite the newness of the Constitutional Court in our Arab world.

The administrative judge belongs to the legal world, while the parliament and the shura belong to the political world. Hence, he does not want to take part in the world of politics because he feels that reviewing laws drives him into politics. However, we must not forget the role of the Administrative Court or the Shura Council as an advisory body to laws and, consequently, as a participant in setting laws. As Professor Henrion de Bancy says: The administrative judge participates in the administrative judgment because he judges the laws through their application, and this means that he participates in the legislative work.

Despite everything, and in the end, the Constitutional Council remains the only judicial authority capable of exercising oversight over laws, and adherence to this rule is the most faithful to the letter of the constitution and this conviction helps impose respect for the hierarchy of legal rules.

2. The increasing importance of administrative judge and require cooperation

When a constitutional judge decides the compatibility between law and the constitution, he does so basely on a strict interpretation of the constitution. Under the law-blocker rule, the administrative judge does not have the right to discuss the constitutionality of a law. Rather, he must apply the administrative decision that is consistent with the law, even if this law is unconstitutional in order not to exceed his limits and enter the court of the constitutional judge.

We have seen that the judicial decision issued by the Constitutional Council is binding on the administrative judge. But the strength of this *res judicata* effect does not include everything issued by the Constitutional Council. Yes, there is the power of the *res judicata* effect being explained, therefore, the difference of views in interpretation between the administrative and constitutional judge is still present, even if it is rare. An example, from French jurisprudence about the tacit rejection resulting from the silence of the administration. According to a constitutional judicial decision issued in June 1960, the administration silence that leads to an implicit rejection is a general legal principle. However, the Shura Council reaffirms, in a decision issued on February 217, 1970, the “municipality of Bozas” that the refusal decision resulting from the silence of the administration is not a general legal principle. Then the French legislator followed the path of consultation when issuing the law of April 12, 2000, considering that the silence of the administration does not always lead to an implicit rejection, but the silence of the administration can sometimes lead to a decision to accept. This means that the influence of the administrative judge on the legislator was stronger than the influence of the constitutional judge.

Finally, on the issue of treaties, the administrative judge is the guardian of the constitution because he rejects the acts of the treaty if it violates the constitution. Today, the administrative judge gives priority to the treaty over the domestic laws until the subsequent. However, since the treaties stipulate general philosophical principles amenable to several interpretations, the opportunities for disagreement and conflict between the constitutional judge and the administrative judge will be abundant in the future. The Arab states (Jordan, Lebanon, Egypt...) have concluded hundreds of treaties, and their unconstitutionality has not generally been challenged so far in respect of international obligations. But certainly, upon implementation, the matter will differ, and again the differences between the administrative judge and the constitutional judge will appear. Undoubtedly, the possibility of raising the issue of unconstitutionality in Jordan increases the importance of the administrative judge (the Jordanian for example) as a judge who interferes in the constitutional space. The French constitution notes in Article (39) an important role for the Consultative Council in the field of draft laws, studying them, and its role in constitutional amendments.

The French Constitutional Council recognized the role of the administrative judiciary and its authority to consider state decisions and its independence, in two decisions issued on July 22, 1980, and January 22, 1987, and in a decision issued on July 28, 1989, where it refused to grant the judicial judge the authority to consider the decisions of the governors related to deportation. Judge Bernard Stern's position, who pointed out that “administrative law has been covered up and that constitutional law has been” administered “(indicating that it has become administrative).

We also see that the administrative judge played a role in constructing a large number of established principles: In old decisions, government commissioners were building new concepts and thus supporting the role of the administrative judge in extracting constitutional principles derived from the republican tradition:

Tradition républicaine: for example the French decision of Heyriès of 1918 The one who established the theory of exceptional circumstances is the one who established Article 16 of the French Constitution, which granted exceptional powers to the President of the Republic, as well as many decisions issued by the Constitutional Council that nullified laws that did not take into account the theory of exceptional circumstances.

On the other hand, the influence of constitutional councils on administration administrative judiciary is evident by defining these constitutions for administrative frameworks or administrative frameworks: from administrative divisions (creating new governorates) to patterns of appointing administrative councils, passing through the powers of regional councils (municipalities).

Constitutions devote important space to the regulatory authority and its decisions and regulate the rules for signatures (signature of the Prime Minister and the competent ministers, etc.). It is the constitutional jurisprudence that set the boundaries between centralization and decentralization. More and more, there is also a meaningful dialogue between the constitutional councils and the administrative courts, and this matter contributes to strengthening the unity of public law. Many were afraid of the issue of inconsistency between the administrative and constitutional courts because these two institutions have to face the same issues, such as defining the fields of law, regulations, and electoral work or applying and interpreting the constitution's rules and preamble principles. Soon, the concerns expressed by more than one party dissipated and gave the opportunity to a harmonious agreement between the constitutional judge and the administrative judge, far from competing. Despite the distinction between constitutional law and administrative law, the Constitutional Council and the administrative courts are working together to lay down the same rules on at least two main issues, namely, on the one hand, the protection of fundamental rights and human rights, and on the other hand, laying the foundations for coordination between the various constitutional courts in the Arab world.

Conclusion

From the aforementioned, we conclude the significance of the independence of the judiciary. As the state of the The analysis presented throughout this study demonstrates that the independence of the judiciary is indispensable for the existence of a genuine state governed by the rule of law. The powers exercised by both the administrative judge and the constitutional judge reveal how essential judicial autonomy is when reviewing the actions of public authorities. The development of mechanisms such as the *Priority Question of Constitutionality* has further strengthened this autonomy by enabling the administrative judge to participate indirectly in constitutional oversight. Through this mechanism, the administrative judge plays a pivotal role in identifying defects in legislation and referring them to the Constitutional Council.

Similarly, the constitutional judge must remain fully independent to effectively supervise the legislative branch. Even in France—often regarded as a model democratic system—ongoing debates exist concerning reforms to the Constitutional Council, including proposals to amend the status of former presidents who retain membership for life. These discussions reflect a broader concern: constitutional review cannot achieve its purpose unless the body entrusted with it enjoys unquestioned independence.

Ultimately, the interaction between administrative and constitutional judges not only strengthens judicial protections but also reinforces the rule of law by ensuring that no authority remains unchecked. Their mutual influence shows that safeguarding individual rights is a shared judicial responsibility that requires independence, cooperation, and constant development.

Recommendations

- Strengthen judicial independence by activating existing legal provisions and enacting new legislative frameworks that reinforce the autonomy of both administrative and constitutional judges.
- Expand and clarify the scope of unconstitutionality claims, ensuring that judges across civil, administrative, and constitutional jurisdictions have clear authority to accept and assess such pleas, particularly when they concern fundamental rights.
- Encourage further specialized research on the influence of ordinary judges on constitutional judges. Many of the foundational principles that protect individual rights originate from the jurisprudence of civil and administrative courts. The constitutional judge has, in many instances, merely adopted or reformulated these principles. Greater scholarly attention is needed to illuminate this dynamic and to promote more balanced interaction between judicial bodies.

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