

# Quality Assurance of Administrative Judiciary: Perspectives from France

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## Abstract

*This study objective is necessary to understand the concepts related to quality in the administrative judiciary: perspectives from France. The current study also identifies the main requirements for achieving quality in the administrative judiciary function. The study embraces the descriptive and analytical approaches in order to identify and analyze the concepts and measures of quality that are compatible with the nature and specificity of administrative cases. The study has reached some results, the most important of which are: The real measure of quality in the administrative judiciary is represented as the achievement of the strategic objective of the administrative judiciary. Another result turns out to be that the quality of the performance of the administrative judiciary, whether quantitative or qualitative, is, in fact, just a means to achieve this goal.*

**Keywords:** *Quality, administrative judiciary, quality standards, France.*

## Introduction

The concept of “quality” appeared for the first time in industrial facilities in 1915 (Taylor, 1919), stating a standard represented in the characteristics of the product. This concept gradually indicated the process of improving the product. As a result, the concept of quality at these facilities became represented in the correspondence between the qualitative characteristics of the product and the characteristics required to be available in it by users or consumers, reflecting the level of their satisfaction with the product (Cluzel-Métayer & Sauviat, 2016).

The establishment of the French administrative judiciary refers to the year 1799. However, the interest in quality in the performance of the administrative judiciary in France started lately to show up. Given that the general concept of quality is represented in the ability to meet the needs of the concerned facility, the quality, in turn, has a special concept defined by the difference of the nature and function of every facility (Stirn, 2012). In fact, the administrative courts practice a role differs in its nature from the role that other courts do. Thus, it does not make sense to generalize the concept of quality among all courts without differentiation (Sauvé, 2016).

Quality is not from the concepts or the adopted legal theories. Therefore, it is difficult to specify a legal concept of quality, either in the administrative judiciary or in the civil one. So, if we want to define the concept of quality in the administrative judiciary, we must take into account the nature of the work of the facility, its privacy and its objectives (Alkharman & Hassan, 2023). Even if we were able to set a concept of quality, the concept itself is not fixed, as it gets advanced correspondingly with the administrative law, especially the latter is considered the most flexible (Sauvé, 2009).

Actually, the concept of quality in the administrative judiciary in France is the subject of a wide heated controversy, given what is involved under this concept of broad and relative ideas that vary according to the nature of the judiciary and the lawsuits it considers. Therefore, the majority of opinions consider that quality as a concept linked to the performance of the administrative judiciary, while other opinions linking it to the goal of administrative judiciary. These options also differed in determining quality requirements in the administrative judiciary based on different indicators or criteria. These criteria cover three types of the quality:

1. The procedural quality (quantitative quality).
2. Objective quality (qualitative quality).
3. Quality efficacy (realistic quality).

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We shall attempt to analyze these three standards in this study.

## Methodology

This study was accomplished by following two approaches: the first is the descriptive approach. We have collected information and ideas related to the concepts and criteria of quality of the French administrative judiciary from all available references. We have drawn on the Qualijus research project prepared by the Center for Studies and Research in Administrative and Political Sciences at the University of Paris 2 and the University of Limoges in France in 2015. Moreover, we relied on research, conferences and websites that discussed this topic. We have chosen France as the place of study, as it is the typical example of the administrative judiciary that was established for the first time as an independent judicial body.

On the other hand, the second approach is the analytical approach, in which we have analyzed the two elements (performance and goal) that are mainly related to the concept of quality in the administrative judiciary. In this study, we tried to combine these two elements to reach an integrated concept of quality, explaining the relationship between them. We have also included the requirements of achieving quality in the administrative judiciary within three basic criteria: the procedural criterion, the objective criterion, and finally, according to Frydman's perception, the criterion of quality effectiveness, which was accepted by some French jurists.

## Analyzing The Concept of Quality in the French Administrative Judiciary

The French dictionary of Larousse (2016) defines the quality that it is “an excellence in goals to reach a great result or success obtained in a special area”. From another perspective, the term “quality” had officially been defined by the International Organization for Standardization (ISO) as “the ability of an entity to meet the needs it is intended to satisfy” (Cluzel-Métayer & Sauviat, 2016).

### *Quality: A Concept Related to Performance*

Specifying quality through the performance provided by the administrative judiciary makes it possible to perform a positive link between performance and quality. So, the logic of performance generally refers to the type of means and tools employed by the administrative judiciary to adjudicate administrative cases, and it is a procedural approach in itself. Yet, this approach also indicates to methodological methods followed by the judicial system to setting goals and evaluating results. It is in itself a qualitative approach, either the administrative judiciary followed a procedural or qualitative approach the nature of the administrative judiciary is an important and basic factor in enhancing the quality of this judiciary (National School of Administration, 2017).

The relationship between performance and quality appears clearly, for quality cannot be separated from the logic of performance. As for the public, quality reflects their expectations in providing a better service to litigants. Thus, it reflects the extent of service development and performance provided by facility of judiciary. Following this lead, the close relationship between quality and performance comes out to improve public services provided to the public (Cluzel-Métayer & Sauviat, 2016).

The vice-president of the French Council of the State, Jean-Marc Sauvé, had determined the quality of the administrative judiciary performance based on three sides: (Sauvé, 2009)

1. New expectations for the public sector and legal workers in exchange for public service to the judiciary.
2. Desire to better allocate public resources to the judiciary.
3. Improving the service provided to litigants.

In accordance with the three elements of quality identified by the vice-chair of the French Council of the State, we note that two elements of the quality of the performance of the administrative judiciary are directly related to the type of public service provided by this judiciary. The good service of the judiciary appears, either by establishing a new service to the public or by improving a service existing beforehand (Cluzel-Métayer, 2006). Taking into account that establishing a new service or improving it must share in solving a certain problem facing litigants such as, new electronic services, decreasing costs, court fees, especially for low-income people, and simplifying the judicial process....etc. At this point, the concept of the quality of performance for the administrative judiciary supposes removing all obstacles that face litigants in their

dealing with the administrative judiciary facility, processed through the principle of the quality of public service provided to the public (Frydman, 2007).

This is in addition to improving the financial resources that enable the judiciary to improve public services as it should be. No doubt that establishing new qualitative services requires the disbursement of additional expenses that are not limited only to the quantitative aspects mainly related to the number of services provided, but it should also cover all efforts exerted by courts to improve the quality of service, from one hand, and the decision of the court from the other in the expense of performance (Frydman, 2007).

The study, which was conducted as part of QUALIJUS research, revealed that determining the quality of the performance of the administrative judiciary with a quantitative view represented in the number of cases and services provided, is not sufficient as a measure to judge the quality of the performance and activity of the administrative judiciary. It also includes the qualitative quality, by examining the nature and type of judgments issued by the administrative judiciary. Therefore, some jurists linked the concept of judicial quality to its strategic goal, which is to achieve social justice, which we will present as follows:

#### *Quality: A Concept Related to Goal*

The concept of quality of the administrative judiciary relates to the main goal of the judiciary, achieving the social justice. This goal is embodied in the quality of the decision issued and in its adaptation with the specific circumstances of each case (Mbongo, 2007; Cheema et al., 2023; Cheema et al., 2023). To put it another way, the more was the judicial decision achieving the social justice between administration, from one hand and individuals, from the other, the most qualified was the decision, that is according to “the legal sociology” (Frydman, 2007).

In view of the special nature of the administrative dispute based on the varying legal positions of the parties to the lawsuit, the administrative judge cannot achieve good justice except by establishing a balance between the conflicting interests in the administrative case. Consequently, the good justice in this context is the one in which the administrative judiciary seeks to achieve a balance between these interests and to conduct an examination of the proportionality between them (Sagalovitsch, 2016).

If there was a general agreement that achieving justice is the goal of judiciary in general, the concept of justice is not fixed and evolves over time without the emergence of a clear consensus. There are those who see that justice has a short-term goal, which is to resolve a clearly defined conflict, while others believe that justice has a long-term goal that is seen as a factor of calm and social peace (Cadiet & Pauliat, 2014). The first party views that justice as a target to resolve emerging conflicts among opponents and it is determined by the framework of judicial justice and does not exceed it (Berthier, 2012). While supporters of the second party view that justice has a vast social concept and they are supporters of the legal sociology, in which the idea of justice as a tool to put society in order is embodied (Vauchez, 2007). In accordance with this opinion, the desired goals for each judiciary alone and its representation of the judicial function depend basically on goals determined by the society itself, and it is also developing and not stable.

Consequently, the two elements of performance and goal can be combined and reconciled to reach an integrated concept of quality in the administrative judiciary. We can visualize the relationship between performance and the goal through the administrative judiciary, using the tools and means that achieve the desired goal of the judiciary, expressing the satisfaction of the members of society. On the contrary, the performance that does not achieve that result is excluded.

#### **Comparative Analysis Between the Two Concepts: Performance & Goal**

If the concept of the quality of the administrative judiciary is related to the performance of this judiciary, then we must, first, define the nature of this performance and the role played by the administrative judge. How can we assess the level of quality of the administrative judiciary without specifying, first, the nature of this performance?

The concept of performance practiced by the administrative judiciary reflects a general and non-specific meaning, as it includes all procedures carried out by the judiciary, the tools it uses, and the nature of control it exercises in administrative cases in general. This concept also includes the constructive role of the

administrative judiciary, by devising the legal principles and judicial theories it presents and the methods it follows in developing these judicial rules (Jean, 2005).

As for the goal of the administrative judiciary, it represents the final result that the administrative judiciary seeks to achieve, which is the achievement of social justice and the rule of law. The relationship between the concepts of performance and goal is highlighted in the necessity of linking the two concepts together in order to achieve quality in the function of this judiciary. It is not conceivable that we can determine the performance that achieves quality in the administrative judiciary and administrative courts except by defining the strategic objective of this judiciary (Alexander et al., 2023). As mentioned before, administrative judiciary is delineated in achieving social justice as well as preserving the rule of law. That is to say, it is the judicial performance that is characterized by quality that achieves, in fact, the goal for which this judiciary was established.

Accordingly, we reach a logical conclusion which is that achieving quality in the administrative judiciary is indirectly linked to achieving its strategic goal. This is done by practicing performance leading to this goal. This equation can be explained as follows:

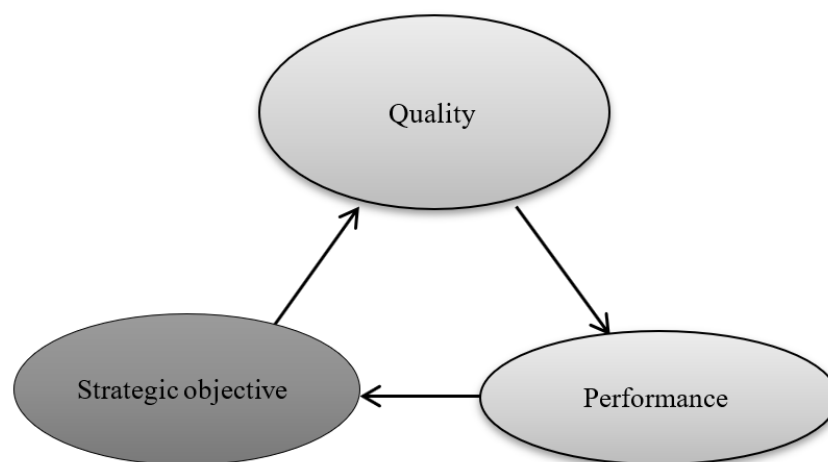


Figure 1.

The figure above clearly shows that we are encountered with three elements interrelated with each other: that of; quality, performance, and purpose. Performance and goal for the administrative judiciary are two necessary elements to achieve quality. Conceptually speaking, thus, we can describe quality as, choosing performance that achieves the basic objectives of the administrative judiciary (justice, equality, protection of rights and freedoms, and ensuring respect for the principle of legality) at the lowest possible time and cost. It is certain that there are certain requirements or criteria that are suitable for assessing the quality of the judiciary. However, these requirements and standards are not fixed, as they are constantly subject to modification and development.

### Requirements of Quality in the French Administrative Judiciary

Arguing the requirements for achieving quality in the French administrative judiciary is of a great interest in France at present, either from the side of jurisprudence or the judiciary. At the same time, it is the subject of a wide doctrinal controversy, given the broad and relative ideas and meanings that it considers under the concept of quality. There is a general tendency and almost general agreement on some basic requirements to achieve the quality of the administrative judiciary. These requirements are generally divided into two main types: *procedural quality requirements* and *objective quality requirements*. However, there are those who add a third type, that is; *realistic or logical quality requirements*. We will try in the following to explain and analyze these three types.

### *Requirements of Procedural Quality*

Procedural quality reflects quantitative quality through the number of procedures and services that guarantee the right of individuals to resort to the judiciary and facilitates the litigation process, providing a good judicial service.

### *Possibility of Individuals Accessing the Judiciary*

Such possibility is the first criterion to achieve the procedural quality of the administrative judiciary. It is the condition that enables all individuals to exercise one of their rights, which is the right to litigation. This could be achieved by establishing legislative texts that guarantee them this right, whether before the court of the First Instance or before the Administrative Court of Appeal (Sauvé, 2016). This stance supports the right to appeal as highly stated at the European level (Article (6) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950), in addition to the French National Law (Preamble to the French Constitution, 1958). The right to litigation is based on other criteria that enable individuals to use this right and access to justice such as, establishing the principle of judicial assistance (fees exemption). Another example is that, accessing to the judiciary without the mediation of a lawyer in some cases as means to simplify administrative litigation procedures, information provided to litigants, digital access to courts, or access to judicial buildings for persons with disabilities (French Council State, 2010).

### *Flexibility in Dealing with The Formal Rules for Accepting Administrative Lawsuits*

The second criterion to achieve procedural quality of the administrative judiciary differs correspondingly with the difference of the administrative lawsuit's nature. So in the annulment cases, the judiciary should give a kind of flexibility in dealing with the conditions and rules for accepting these cases according to its assessment of the specific circumstances of each case (Garapon, 1997). The administrative judge deals with rules and procedures that are constantly changing and amending (Amrani-Mekki, 2004). The jurisprudence of the French Council State realized this fact a long time ago and came to the fact that: "raising the level of performance and quality of any judiciary must come from the judiciary itself" (Laferrrière, 2020).

Following the rulings of the French Council State finds that giving flexibility to the formal and procedural rules for accepting *annulment and full jurisdiction lawsuits* is a general judicial policy for the Council and is not limited to predetermined rules (Rivero, 1996). Also, the judicial policy of the French Council State is to be lenient in accepting the condition of interest in the administrative case and not to be strict in it, and to be satisfied with the availability of potential interest at the time of filing the lawsuit only (Abu Irmilah, 2022). Likewise, the French Council State has recently accepted full court cases (administrative contract cases) brought by third parties (other than the parties to the contract) after these cases were limited to the parties of the contract (Abu Irmilah, 2022).

### *Resolve Cases Within A Reasonable Time*

Sauvé (2016) reveals significant and major rates increases both in appeals as well as in the time taken to issue judgments in France as follows: (8.9%) annually before administrative courts for a period of fifty years, (2.8%) annually before administrative courts of appeal since its inception, and (1.3%) before the French Council State. As a result, the French administrative judiciary has witnessed a major shift in order to meet the demands of litigants (Sauvé, 2016). First of transformations was the issuance of the Decree (1953) No. (53/934) related to the reform of administrative litigation and the issuance of the law (1987) related to the amendment of administrative litigation.

At the legislative and administrative levels, several measurements have been taken to increase the speed and transparency of judicial procedures, on top of which is the issuance of law No. 597 of 30 June 2000 regarding summary procedures before administrative courts of all kinds. It included (30) articles aimed at simplifying legal procedures during the course of administrative cases. Based on that, the administrative judge must take legal measures and rule on the case as soon as possible (Art. 13). Also, The French Administrative Judiciary Law (2019) allowed the judge to simplify any procedure that does not include legislative provisions, as well as the possibility of exempting the government commissioner or the general rapporteur from announcing his conclusions in the session in order to simplify the litigation procedures as much as possible (Art. R. 732-1-1). All of these developments improved the quality of the work and

performance of the administrative judiciary and led to a significant decrease in the duration of cases and the issuance of judgment before the administrative courts. The average time expected for judgment before the administrative courts in 1990 was two years and six months, and it reduced slightly to ten months (Sauvé, 2016).

On the doctrinal level, a large part of the French jurisprudence was concerned with questioning the time taken to consider cases. The administrative court's keenness not to prolong the adjudication of cases would enhance the quality of the administrative judiciary's work and matters that are not easy to achieve, as it requires the beginning of setting standards regarding the terms of the reasonable time it takes for each case (Sauvé, 2009).

This does not mean that the judge seeks to speed up the adjudication of cases at the expense of achieving justice, which will lead to completely opposite results, but the judge is keen on the quality and efficiency of judicial justice and its ability to meet the demands of litigants according to global standards. Among these indicators is that justice is achieved in a timely manner and without undue delay in taking legal measures (Frydman, 2007).

#### *Requirements of Objective Quality*

The objective quality of the administrative judiciary is mainly related to the qualitative quality of the decisions issued by the administrative courts in the state, which require a lot of accuracy and rigor in legal thinking (Frydman, 2007).

This thinking has received remarkable attention in modern French jurisprudence, as it is one of the signs of development through which we can measure the objective quality index of the judiciary. Is the judicial thinking restricted or liberated, flexible or rigid, traditional or sophisticated?

The method of drafting judicial decisions in France and their reasoning is an essential element of the quality of judicial decisions in France and a major issue related to the quality of the French administrative judiciary. The French administrative judge has now become more careful in responding accurately to all the petitions filed, so that litigants and the public are well aware of the reasons for issuing judicial decisions and are convinced of their content, which achieve the principle of legal certainty in society (Cluzel-Métayer et al., 2012).

This was confirmed by Mr. Martin's report, which stated: "One of the requirements for the quality of the work of the administrative judiciary is to facilitate the reading of the maximum extent possible and to enrich its media content without compromising the rigor and accuracy of the logic and thought of the legal judge" (Cluzel-Métayer et al., 2012)

Some judicial departments in the French Council of State are currently experimenting with a new formulation that prefers a direct, sloppy approach, which is more understandable to the parties of the conflict, especially those who do not receive the assistance of a lawyer. The aim is to make the court's decision more clear and transparent without compromising the accuracy and quality of legal reasoning. This accountability is one of the most important issues that the administrative authority must face today. Because by formulating court decisions in a manner that is closer to natural and developing their motives in reality and the law, administrative judges give. They give themselves the opportunity to make the public and the legal community understand the decisions issued by them, thus reinforcing the principle of legal certainty in the hearts of litigants and individuals in general (Cluzel-Métayer & Sauviat, 2016).

However, the procedures for activating the quality of work and performance of the administrative judiciary do not stop at an end. This is what prompted modern French jurisprudence to believe in the need to carry out new reforms to continue progress towards the quality and efficiency of the entire administrative judiciary.

Some critics have pointed to the need to activate the powers of some important French administrative judiciary in order to strengthen its representation and, above all, developing competences the Supreme Council of administrative courts and Administrative Court of Appeal. So that this council must have broad decision-making or proposition power, more than simply a consultative authority. The formation of these administrative bodies and departments of the administrative judiciary and the selection of their heads was previously proposed by the French State Council office in 2011, but it has not been implemented so far

(Sauvé, 2016). Professor Frydman (2007) says, “The attempt to rely on objective quality instead of procedural quality in determining the efficiency and quality of the administrative judiciary is in fact a question of balance, and the importance of these different dimensions varies from time to time, but they all contribute to providing a good service to public justice”.

Because of this relative and variable disparity between objective quality and procedural quality, Professor Frydman (2007) added a new third criterion, which is the criterion of “quality effectiveness”. So that through this criterion it can be compatible with the relative shift that Professor Frydman observed in the quality of judicial decisions. Which we will try to explain as follows.

### **Requirements of Quality Effectiveness**

To continue to meet the quality requirements, the necessary steps and measures must be taken to ensure the activation of the quality process and to improve its performance. Several reforms that have led to an improvement in the quality of the work of the French administrative judiciary have been successfully completed.

#### *Proper Judge Test*

Some people point out that achieving and activating quality in the work of the French administrative judiciary must be consistent with reality. In the regions and provinces that are densely populated, qualified judges must be appointed to accommodate the largest possible number of cases and to shorten and simplify procedures. In regions with ethnic or religious pluralism, judges must be appointed free of any ethnic, religious or sectarian tendencies. The good distribution of human resources for judges throughout the French regions is considered one of the modern technical means that contribute to enhancing the effectiveness of quality in the administrative judiciary (Sauvé, 2016).

#### *Activating Alternative Means of Litigation*

Emphasis should be placed on the need to develop the use of mediation and conciliation to avoid submitting all cases to the judge by submitting them rather to the Reconciliation and Settlement Committee. Such alternative Committee can effectively compromise cases that usually last for several years in a short time and with summary procedures. These alternative ways of settling disputes also reduce the number of cases in the courts annually. In addition, they have a special advantage represented in bringing the points of view of the parties to the dispute, resulting in enhancing the acceptance of the decision and ensures the settlement of the dispute as much as possible (Mbongo, 2007).

#### *Effective Means of Enforcing Judicial Rulings*

One of the requirements for quality effectiveness in the administrative judiciary is also that the judiciary has effective means to implement its decisions. So that the administrative judge has the authority to issue a judicial order against an administration to enforce it to execute his judgments even if there is no legislative text. In this regard, the administrative judge may create appropriate solutions that guarantee respect for his decisions, such as imposing a threatening and retaliatory fine against the administration. He can also request the legislator to stipulate the establishment of the judicial Execution Department- like the civil judiciary- and other legal means that contribute to achieving effective administrative justice that enhance the effectiveness of the administrative judiciary (Grabias, 2017).

All of this confirms the principle of legal certainty in the hearts of litigants and individuals in general by enabling them to benefit from the positive effects resulting from the implementation of administrative judiciary decisions (French Council State, 2006).

### **Conclusion**

The concept of quality in the function of the administrative judiciary is an advanced, flexible and relative concept so that this concept falls under variable and unstable elements and requirements. The concept of the quality of the performance of the administrative judiciary, in general, differs from the point of view of the litigants from the point of view of others, such as judges, lawyers and employees. Therefore, the acceptance and satisfaction of society cannot be an indication of the quality of the administrative judiciary.

Instead, we conclude that such indication could lie in three major aspects including, procedural, objective, and factual.

In order for the administrative judiciary to achieve quality in its performance of its judicial function, such quality must include procedural, objective, factual or logical aspects. It is not possible to rely on one side without the other. In other words, it is not permissible to focus on procedural quality by simplifying the litigation procedures and neglecting the objective offender related to the quality of the administrative judge's legal thinking and the quality of judgments he issues and vice versa.

As a result, the administrative judiciary must achieve a balance between procedural standards and objective standards for quality requirements, in addition to taking all appropriate means to activate these requirements. There are many means that fall under these standards, and reflect the diversity in accepting the concept of the quality of the administrative judiciary. For example, the administrative judge must be quick in ruling at the expense of sacrificing the rigor of legal thinking and the development of judicial rules that he applies in administrative cases, and not too slow at the expense of the principles of security and legal certainty; the litigation period is prolonged and the litigants' request are not met in a reasonable time. The door of appeal should not be wide open or closed too much, at the risk of ignoring citizens in resorting to the judiciary and losing their rights, on top of which is the constitutional right to litigation.

A practical plan must be developed to achieve quality in the administrative judiciary, so that this judiciary achieves the required quality gradually and not all at once. The administrative judiciary begins to achieve quality. First by resorting the organizational structure of the administrative judiciary in order to achieve administrative reforms inside its departments, then it moves to the procedural aspect to reach the objective quality by issuing judicial rulings based on modern legal rules and principles that keep pace with the developments of the times.

Hence, the impact of achieving judicial quality on all members of society (litigants, lawyers, judges, officials... etc) appears in a way that guarantees them the constitutional right to a fair trial based on justice and equality that reflects their expectations and aspirations.

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