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Compensation for damages arising from public works according to trends of the French Judicial discretion

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Abstract:

The compensation system for public works damage has a particular nature, not only in relation to private law, but also to the provisions of the law of administrative liability. Most of the compensation system resulting from these provisions was exclusively determined by case law that extended the particularism of the compensation system. However, compensation obviously remains subject to certain rules of the administrative liability law, similar to those of private law. Regarding the eligibility conditions for compensation rights, the area of public works has seen various developments of mechanisms of strict liability. Therefore, in the filed of public works, the conditions for compensation remain subject to certain rules of public law, such as the confirmed and direct nature of the damage, or its connection to public administrative work and other rules that the French judiciary had a creative and innovative role in establishing.

Keywords: Damages, Public work, France, judicial trends.

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Introduction:

Early in France as 1873, State's responsibility for damage caused by public services established by Blanco judgment decision(1) and made the jurisdiction to hear lawsuit to administrative courts.

In this case, a child run over and injured by a cart from a state-run tobacco factory. The father had taken legal action to have the State declared civilly responsible for the damage, based on articles 1382 to 1384 of the civil code. The Tribunal of conflicts assigned jurisdiction to hear the dispute to the administrative jurisdiction.

Later, in 1895 with the Cames judgment, the Council of State of France for the first time admitted the possibility of liability without fault, on the sole basis of risk. In this decision, council determined the scope of administrative liability, while stated that "… not every error, every act of negligence, every irregularity... will necessarily entail the liability of the State. It is up to the judge to determine in each case if there is a fault attributable to the service of such a nature to establish the state liability…"(2).

A disagreement between jurists arose as to the justification of administrative liability. while some jurists establish it on risk liability, the others called for rebuild totally new rules of liability

(1) Council of State, June 21. 1895; D 1896-3-65. The plaintiff. A -power hammer injured a worker in a State arsenal. The accident was unexplained. See McMahon; "Delictual Liability in France "[I9731 24 N.I.L.Q. 491.

(2) Council of State, February 10, 1905, Rcc. 139; D 1906-831.

based, not on risk, but based on the fault(1).

Later, cases developed this theme and gradually a scale of liability, ranging from "fault of particular gravity" through "gross fault" to "simple fault" became established. By 1925, it was accepted that a gross fault was necessary to establish the administrative liability"(2).

The modern position, it is necessary for the fault to reach a certain level of gravity, the level demanded varying in the light of the nature of the administrative activity during which the damage arose. The system characterized by a scale of graded faults in respect of administrative activity. In practice the Council of State of France distinguishes three levels of gravity of fault: 'simple fault' which exceeds small, tolerable imperfections; 'heavy or gross fault' which ought never to be committed by an employee of average competence; and finally 'fault of particular gravity', or that gross fault which is absolutely inexcusable and intolerable in any and every circumstance."(3).

The main problem of this research is concentrating on determining the legal basis for compensation of the damages

(1) L. Duguit, Traité de droit constitutionnel: Tome premier (Constitutional Law Treaty: Volume 1, E. de Boccard, 1921, p. 69; É. Pisier-Kouchner, Le service public dans la théorie de l'État de Léon Duguit, Paris: LGDJ, 1972, p. 196. Also M. Hauriou, Précis de droit administratif ET de droit public (Summary of administrative law and public law): Réimpression de la 12e édition de 1933, Bibliothèque Dalloz, 2002, p. 385.

(2) Council of State, March 13, 1925. R.D.P. 1925-274 concl. Rivet. Compare Everett v. Grifiths (below.

(3) See e.g. Comes (above); Regnaulf-Desroziers Council of State, March 281 1919, Rec. 329; Couite'as Council of State, November 30, 1923, Rcc. 789.

arising from public works, whether it is devoted to an application of the general provisions of the civil liability rules, or the application of administrative liability provisions for the damages arising from them.

This research will focus on damages causes by public work, which are one of the most important work carried out by government agencies that constitute very extensive category of infrastructure projects. Some of questions that could be arise, what is the special nature of compensation system for public works damages in the case of their execution or because of the works constructed? Is the compensation rules of administrative liability caused by public work differ from rules in civil liability? In addition, how was judgments of court affected compensation rules in France? Are judicial trends have affected on the compensation system?

This study will chose France as a subject of study because it is one of the most important countries that has developed administrative judicial system, as there are theories that were invented by the French Council of State and found its reflection on civil law not only in France, but in many countries, ex. the theory of emergency conditions

Depending on the core of the study is judicial trends, so, it will use analytical methodology to reach answers to the questions that have raised.

This study will divide to two main parts, first will discuss definition of damage arising from public works and the second parts will examine special compensation systems.

1. Definition of damage arising from public works:

Public bodies become liable to pay compensation to citizens in a multiplicity of circumstances. Even before the advent of judicial review in its modern form ,those employed by the executive were liable to pay damages for intentional and unjustified interference with the person or property of the

citizen. Indeed such actions were in early days the principal, and sometimes the only, weapon for testing the validity of executive measures and for bringing the executive to account(1).

It is rare that law defines the meaning of the damage arising from public works project, but it is otherwise sometimes qualifying the categories of damage and described them as damage of public works project. "Public works project" which is defined by many legislations as "the erection, construction, alteration, repair or improvement of any public structure, building, road, or other public improvement of any kind".

Thus, the legislations confined with identifying some cases of damage arising from public works projects without setting a specific definition of the damage arising from public works project.

This is the case for the lengthening of routes noticed at the end of land development operations carried out with a view to the construction of a large public structure, such as a motorway, which under the terms of Article L. 123-26 of the Rural Code "are considered as damage arising from public works"(2).

Likewise, pipe construction work for transporting thermal energy, which has declared to attain a public interest "has the character of public works". Apart from these hypotheses, the definition of damage to public works is, as we mentioned before,

(1) Law Commission, Remedies against public bodies: a scoping report, 2006, p. 10.

(2) Council of State, 5 oct. 2005, M. ET Mme X et EARL X-Ledoux, req. No.259808 - Administrative courts of appeal, Nancy, 1er oct. 2012.

a result of case law(1).

1.1. Forms of Damages arising from Public work project:

With regard to "operational" damage, the incorporation of administrative liability naturally assumes not only that there is a public works operation but also that a direct causal relate attaches the damage suffered to this operation(2).

Damage resulting from the existence or operation of a public work project may be vary in many different forms that we can summarized them as follows:

1.1.1. Damage caused by an existing structure of a public Utilities:

Damage caused by an existing structure of a public utilities happen in any such a manner that harm by any way the nearby areas of such existing structure: like damage resulting from the enjoyment disturbances (such as odors coming from a sewer or a treatment plant, smoke from a household waste incinerator, noise in the vicinity of an aerodrome, etc.).

There are also commercial damage like (decrease in turnover due to new developments), and the damage may happen by a depreciation in the value of a building (due to the presence of a source of nuisance: motorway, aerodrome, etc.).

1.1.2. Damage related to an absence of public utilities:

Damage related to the absence of a public utilities occurs When such damage could have been avoided either if the public administration had established a public structure or at least if

(1) J-P. Dubois, Directory of public authority responsibility, Septembre 2015.

(2) F. Sabiani, damage of public works, Dalloz, 2018/2019.

the latter take the appropriate measures to avoid the occurred damage (such as posting warning signs, or taking a protective measures, etc.).

In the light of the first case when there is an expressly legislative or regulatory obligation upon the public administration to build a public structure and when there are a failing to do that either deliberately or a deliberately and the damage occurs, therefore the responsibility on fault will be raised upon the public administration. In contrast, there will be no fault will be held on the part of public authorities in the absence of such an expressly obligation upon the concerned authority to build a public structure(1).

In the second case where the public administration does not take the appropriate protective measures to avoid the occurred damage (like posting warning signs, or taking any other protective measure), hence the damage will not be regarded as a damage caused by any public work in itself, i.e. it will not be attributed to the public work(2).

Otherwise, the damage could consider as a damage caused by the deficiency of the public administration that resulting from not taking the appropriate supplies like the lack of installation of appropriate signage that should include a clear instructions emanated from administrative authority in order to avoid the occurrence of anticipated damage.

(1) For more information, See : P. Delebecque, Construction Law, Seventh ed., Dalloz Action, 2019.

(2) F. Sabiani, damage of public works, Dalloz, 2018/2019.

According to the case law related with the latter issue, the Council of State in France decided the liability of the public administration for the simple fault committed on such cases, like, skiing accidents that have occurred inside the developed slopes(1).

The judgement of the Council of State refused to compensate damage occurs from the public work itself, but instead the Council decided to refer to other compensation systems that are generally less favorable for the victim (such as administrative liability to the public service itself, or even liability for gross negligence).

The case law seems to exclude in these cases the eligibility to obtain compensation for the damage arising from public works itself.

An old decision of the Council of State adopted eligibility for deserving a compensation caused by the absence of marking out of a rock in a waterway(2). However, this decision could interpret as a sanction for the lack of normal maintenance of the channel, which for its part was developed and so on it indeed constituted as a part of the public structure(3).

On the other hand, with regard to collapses caused by natural disasters associated with sea or rivers and while the public

(1) Council of State, 22 December 1971, Cne de Mont-de-Lans, req. No.80060.

(2) Council of State, 18 December 1931, Robin, req. No.6991.

(3) For more information, See P. Delebecque, op. cit.

authorities had not provided any protection for private property[1] , the Council of State recalled that:

"In the absence of any obligatory legislative or regulatory provisions, the state and the municipalities have a duty to ensure the protection of riparian property rights… against the natural disasters of water".

However, in such cases public authorities' responsibility can arise when the damage suffered was caused or aggravated either by Poor or improper state maintenance of public works, or by a fault committed by the administrative authority"[2]. In these two cases, liability for fault on public work was likely to be incurred either based on simple fault in malfunctioning of the public work or based on gross negligence in exercise of police forces in failing to keep order.

1.2. Characters of public works construction([3])*:*

Public works are very extensive category of infrastructure projects: it defined as an immovable, artificial property, which aims to achieve a public interest.

(1) For more information about Damages caused by Natural Resources, See, E. Brans, Liability for Damage to Public Natural Resources: Standing, Damage and Damage Assessment, Kluwer Law International B.V., 2001.

(2) Council of State, 19 oct. 1988, min. du Redéploiement industriel ET du Commerce extérieur c/Veillard ET a., req. No.71248.

(3) for more information see: J.-Philippe Ferreira, L'originalité de la responsabilité du fait des dommages de travaux publics (The originality of the liability for damage to public works), Dalloz Nouvelle Bibliotheque De Theses, Volume 192, 2020.

It is therefore including any public buildings (municipal buildings, schools, hospitals) or any developed real estate infrastructure, or even transportable infrastructure (roads, railroads, bridges, pipelines, canals, ports, airports) , public services (water supply and treatment, sewage treatment, electrical grid, dams), or any physical assets and facilities since it aims to achieve public interest(1).

From that, definition we can concluded the main characters of public works construction, which should be as the following:

1.2.1. Real estate character of the construction:

Only a building creating by nature or by humans in order to be a public destination, can acquire the status of a public work construction.

The following have been qualified by a case law as a public work: market installations anchored to the ground(2), the automatic barrier gates to access a public facility including parking lots, airports, stadiums, public places, and at complex junctions like ports, rail, tunnels and a public hospital(3), an electoral panel fixed to the ground(4).

(1) For more information, See F. Sabiani, op. cit.

(2) Conflict Tribunal, 12 January 1987, Derouet c/Sté Les Fils de Mme Géraud, No.02430.

(3) CAA. (Administrative courts of appeal) Versailles, 3 July 2014, M. B., req. No.12VE01902.

(4) Administrative courts of appeal, Lyon, 10 Avril 2014, Mme A., req. No.12LY20166, AJDA 2014. 1865.

However, this qualification does not include a floating diving board installed on a beach and not fixed to the ground(1); a removable stand installed in a public square(2); the air corridors of an aerodrome(3); a bench not fixed to the ground in the courtyard of a college(4)

When damage caused by a moving component that constitute a dependency for a public structure as if it assigned to its operation, the damage attributed to the public structure itself. That is what held by Council of State in France in such movable component of the following cases: household waste container forming an outbuilding of a residential building(5); cover of a sewer manhole constitute an outbuilding of the public road(6)

The controversy in such recent referrals is that the existence of such dependence is obviously difficult to appreciate. So in order to prove that such damage caused by a moving element is a damage resulting from public works, the injured party must demonstrate that this moving element is functional linked to a

(1) Council of State, 12 oct. 1973, Cne de Saint-Brévins-les-Pins, req. No.84798.

(2) Council of State, 21 Avril 1982, Mme Daunes, req. No.13282.

(3) Council of State, 2 December 1987, Cie Air-Inter, req. No.65517 – Council of State, 18 February 2004, Cne de Savigny-le-Temple, req. No.251016.

(4) Council of State, 26 sept. 2001, Dpt du Bas-Rhin, req. No.204575. H. Arbousset, Un banc non fixé au sol n'est pas un ouvrage public (A bench not fixed to the ground is not a public work), note sous Council of State, 26 septembre 2001, AJDA, Juan 2002, p.549 et s.

(5) Council of State, 7 Juan 1999, OPHLM d'Arcueil-Gentilly, req. No.181605.

(6) Administrative courts of appeal, Nancy, 22 mars 2012, Cne de Flaxlanden, req. No.11NC01157.

public structure.

Furthermore, the attractive effect of public work leads to qualifying as damage to public works damage which not actually caused by a public work or structure, but which can be traced back to them. The limit of this reachability is not always certain(1).

The same result applied when Public work is considered as an instrument of damage and that what was held by Council of State in such following cases: damages caused by natural elements when the public structure was only the instrument of the damage: collapse of a layer of snow and ice from the roof of a post office(2).

On the other hand, as air corridors are not public works damage caused by birds in an air corridor is not damage to public works.

1.2.2 Artificial nature of the public structure(3):

The public "construction" is necessarily a result of human work and so it has an artificial character: Therefore, it presupposes the existence of a minimum planning and interference of humans for acquiring this quality.

Otherwise, the building, which remains its natural state, cannot acquire the qualification of public work.

(1) For more information, See F. Sabiani, op. cit.

(2) Council of State, 4 February 1972, min. des Postes et Télécommunications c/Trifaro, req. No.82473.

(3) For more information, See, R. F. Cushman, D. F. Coppi, J. D. Carter and P. J. Gorman, Proving and Pricing Construction Claims, Aspen Publishers; 3rd edition, 2010, p. 433.

So the following qualification therefore ruled out of public structure by the Council of State: a watercourse used for discharge of wastewater without any particular arrangement from public authority(1); an undeveloped beach(2); an undeveloped garbage dump(3).

In addition, ski slopes in their natural state(4); the delimitation of an area for observing a volcanic eruption by rudimentary markings and signs recalling safety instructions without modifying the natural state of the site(5); an undeveloped beach and cliff(6).

In contrast, there is a public work when there is a minimum limit of development: Fitted gutter for rainwater drainage(7); depositing garbage constructed by the municipality(8); Adding supporting a safety net along the ski slope(9); clear and grassy extension along of an aerodrome runway(10).

(1) Council of State, 2 December 1955, Cne de Salies-du-Salat, req. No.22568.

(2) Administrative courts of appeal, Marseille, 17 July 2012, req. No.10MA01424

(3) Council of State, 5 Avril 1974, Allieu, req. No.87140.

(4) Council of State, 28 oct. 1977, Cne de Merfy, req. Nos 95537 ET 01493.

(5) Council of State, sect., 12 December 1986, Rebora, req. No.51249.

(6) Administrative courts of appeal, Bordeaux, 1er Avril 2008, Thiault, req. No.05BX01994.

(7) Council of State, 9 July 1975, Cne de Simiane-la-Rotonde, req. No.93696.

(8) Council of State, 3 July 1970, Cne de Dourgne, req. Nos 76289 et 76296.

(9) Council of State, 13 February 1987, Vieville, req. No.55617.

(10) Administrative courts of appeal, Lyon, 3 May 2012, CCI de Saône et Loire, req. No.11LY01703.

However, It was judged that the realization of cleaning works by the municipality, or the regulation of the speed of the ships by the mayor, are not sufficient to confer the character of public structure to a channel in a non-state-owned watercourse(1).

1.2.3. Aiming to achieve public interest:

Finally, the building must be assigned to achieve "a public interest" that might even to be: for direct public use (landlines of communication); or for a public service (buildings occupied by public services, ports, airports), even if it is of an industrial and commercial nature.

However, in the absence of achieving a public interest, the work could considered as public work: thus a cement track that forming a part of the "Atlantic Wall", built by the Germans. During the Occupation, is not a public work since it is never have been assigned to provide the service of national defense(2). The result is the same for a hangar that forming a part of the maritime public domain, which placed by a temporary occupation agreement under the disposal of a company that are assigned to

(1) Administrative courts of appeal, Marseille, 5 February 2004, Cne de Mandelieu-la-Napoule, req. No.00MA01884. S. Deliancourt, Le mécanisme de l'article L. 318-3 du Code de l'urbanisme : un procédé particulier d'incorporation d'une voie privée dans le doMayne public communal (The mechanism of Article L. 318-3 of the Town Planning Code: a specific process for incorporating a private road into the municipal public doMayn), JCP A. 2008, n° 22, p. 41.

(2) Council of State, 1er oct. 1971, Sté nouvelle foncière du Cap Ferret, req. No.78313.

build a catamaran there[1]

1.2.4. Autonomy of public works from public property[2]:

According to the general rule, the public construction is very often a result of a public work operation made by the public authority and owned therefore by it, but this is not always the case. As this notion has been expanded by Council of State in France to include buildings owned by a private individual and used for a public interest[3].

So when the building was already built by one or more individuals in their own budget; but it was allocated on behalf of the public administration, so this private ownership does not deny the status of public work since the usage of this building is aims to achieve public interest :

Therefore, if the public juristic person has rented a building from one of the individuals and has allocated it as a school or hospital and the public administration has concluded a contract with a contractor for the restoration or maintenance of the property. this contract is considered a public works contract

(1) Council of State, 27 mars 2015, Sté Titaua limited company, req. No.361673. A-S. Juilles, Une nouvelle lecture de la clause exorbitante du droit commun (A new reading of the exorbitant clause of common law) – Tribunal des conflits 13 octobre 2014 (A new reading of the exorbitant clause of common law - Conflict Tribunal October 13, 2014) AJCT 2015, p. 48 . A. Camus, Le pouvoir de gestion du doMayne public (The power to manage the public domain), th. Paris X, 2013, p. 646.

(2) for more information see: J.-Philippe Ferreira, L'originalité de la responsabilité du fait des dommages de travaux publics (The originality of the liability for damage to public works), Dalloz Nouvelle Bibliotheque De Theses, Volume 192, 2020.

(3) Council of State, 15 mars 1961, ville de Lavaur, req. No.43599.

because the contract will be disbursed for the benefit of the public juristic person, so there is an autonomy of the public work from the public property(1).

In sum, the ownership of the work by a private person does not preclude its character as a public work.

In contrast, when a work was carried out on behalf of private persons in order to achieve their private interest, this work cannot be considered as a public construction(2).

Concerning a Private property of concessionaires, the Council of State held that the immovable property that owned by a concessionary company and assigned to do a public service are thus public works. It held so for the following cases: a hub owned by SNCF then a private person(3) and a transformer substation belonging to ERDF, a private company(4).

The same result applies to buildings that their private owners allocate for a public interest (Private property used for public

(1) For more information, See P. Delebecque, op. cit

(2) Conflict Tribunal 28 mars 1955, Effimieff, No.01525.

(3) Council of State, 30 sept. 1955, Caisse régionale de sécurité sociale de Nantes, req. No.13899.

(4) Conflict Tribunal, 12 Avril 2010, Sté ERDF c/Épx Michel, No.C3718 note F. Melleray, Note sous l'arrêt du Tribunal des conflits du 12 avril 2010 Electricité réseau distribution de France (ERDF) contre Michel (Note under the judgment of the Conflict Tribunal of April 12, 2010 Electricité network distribution de France (ERDF) against Michel), RFDA, 2010, p. 572. – Conflict Tribunal, 17 December 2012, Vidal c/ ERDF, No.C3871.

interest)[1]. It held so for the following cases: private roads open to public traffic and maintained by the city[2] and land belonging to a company and simply converted by the municipality into a temporary parking lot[3].

Finally, in application of the a dependency theory, the immovable property belonging to private persons but incorporated in a public structure, and which constitutes a dependency on it, is considered as public works as a private property constituting a dependency of a public work. This is what held for the following cases: an embankment essential to support or protect the pavement of a main road[4]; a wall overhanging a highway and preventing the fall of materials from the upper funds[5]; a wall intended to support the public highway[6].

This result also prevailed for a special connection of the subscriber going from the latter's meter to the main water, gas, or electricity pipe. Although it is consider as a property of the subscriber[7], but "the particular connection of it, even for its portion that was established inside a private building, give it the

(1) For further information see, W. A. Moseley, Construction Damages and Remedies, American Bar Association; Second edition, 2016, p. 141.

(2) Council of State, 30 May 1947, ville de Rueil, req. No.71253 – Council of State, 30 November 1979, ville de Jœuf, req. No.2651.

(3) Council of State, 19 oct. 1979, Sté Difamelec-Au Roy de la télévision, req. No.5858.

(4) Administrative courts of appeal, Bordeaux, 16 February 2012, Dpt de la Haute-Garonne, req. No.11BX00388.

(5) Council of State, 15 Avril 2015, Mme Nederveen, req. No.369339.

(6) Council of State, 26 February 2016, SCI Jenapy 01, req. No.389258.

(7) Council of State, qui dépend notamment des cahiers des charges

character of a public structure"[1].

In addition, the same result goes for all special connections on the public network, even in the absence of a counter. Moreover, that what held for the following cases: connection of a sewer line to the town's main network[2]; connection of a fire hydrant to the public network[3]; telephone pipes[4].

Therefore, in order to prove that the damage caused by private property regarded as damage committed by public works, it should demonstrated, where appropriate, that this property incorporated into a public work.

For example, the real estate belonging to the France Telecom company are no longer in principle public works since the company acquired the legal personality under private law on December 31, 1996. In a private works that incorporated in a public structure such as a public road, constitute a dependency to public construction[5].

In the case of "street furniture" (Urban furniture) such as (bus shelters, toilets, advertising and municipal information columns)

(1) Conflict Tribunal, ٣ July ١٩٩٥, SCI du ١٣٨ rue Victor Hugo c/EDF, No.٠٢٩٥٥.

(2) Council of State, 28 May 1971, ville de Saint-Jean-de-Maurienne, req. No.72369.

(3) Conflict Tribunal, 26 mars 1990, SCI du 47 avenue du Maréchal Joffre c/Cie générale des eaux, No.02600.

(4) Council of State, 19 December 1990, Gaz de France, req. No.78607.

(5) Council of State, 11 July 2001, Adelée, req. No.229486; AJDA 2002. 266; Conflict Tribunal, 5 mars 2012, Sté Generali Assurances IARD et a. c/Sté France Télécom, No.C3826; AJDA 2012. 1423. J. Dufau, Propriété publique et domanialité publique (Public property and public doMayn), AJDA 2012, p. 1381.

which is frequently belonging to private companies but fixed to the ground of the public highway (they are therefore in reality buildings by destination), they should for this reason also be considered as public works. Nevertheless, indeed, judicial jurisprudence denies them this qualification when they are not a property belonging to a public person(1).

2. Special compensation systems(2):

2.1. Damage caused to its users by a public service of an industrial and commercial nature:

When the damage caused by a public service of an industrial and commercial nature, we must determine whether the victim was harmed because he was using or intended to use the service. There is a contractual relation between the public service of an industrial and commercial nature and the user, or otherwise the injured party was acting as a third party. There is no contractual relation between the public service of an industrial and commercial nature and the user(3).

Disputes arising from relations of public services of an industrial and commercial nature on behalf of its users constitute an over stock of the Court of Civil Jurisdiction which prevails

(1) Civ. 1re, 4 January 1983, Sté J.C. Decaux c/Affichage Publicité Hude, Bull. civ. I, No.7; Quot. jur., 5 May 1984. F. Moderne, Les principaux problèmes d'exploitation (The Mayn operating problems), AJDA 1989, p. 26.

(2) for more information see: J.-Philippe Ferreira, L'originalité de la responsabilité du fait des dommages de travaux publics (The originality of the liability for damage to public works), Dalloz Nouvelle Bibliotheque De Theses, Volume 192, 2020.

(3) For more information, See P. Delebecque, op. cit.

over an over stock of an the Court of administrative Jurisdiction that it is interference in such cases related to the concept of public works(1).

Consequently, repairing of damages suffered by such users of public services of an industrial and commercial nature falls under the Court of Civil Jurisdiction and so on the private law is the law that should be applicable in such mentioned cases. This solution, initiated by the Council of State(2), and it was confirmed by the Court of Conflicts in 1954, in it is judgement that the repairing of damages suffered by the users as a result of a fire caused by the fall of lightning on an electrical network devoid of protection devices(3).

However, with the industrial and commercial nature of the public sewerage *networks* services (CGCT, art. L.2224-11) the refusal to extend the collective sewerage network considered as a refusal to carry out public infrastructure works will not to be a dispute between an industrial and commercial public service and a user that fall under *the Court* of *Civil Jurisdiction*, but it will be a dispute that falls under *the Court* of administrative *Jurisdiction*(4).

(1) For more information, See P. Delebecque, op. cit

(2) Council of State, 14 May 1937, Sté des forces motrices de la Tarde, req. No.41515.

(3) Conflict Tribunal, 24 Juan 1954, Galland c/EDF, Minodier c/EDF ET Salel c/Sté lozérienne d'énergie électrique, 3 esp., nos 01453.

(4) Council of State, 8 Juan 2015, M. Bellaiche, req. No.362783.

2.1.1. Damage caused to a user in a contractual situation.

When the user is a subscriber of the industrial and commercial public service, this subscription contract is necessarily a private law contract(1), and this circumstance Summoned the competence of the *Court* of *Civil Jurisdiction* and so on the private law will be applicable concerning such disputes(2).

For example, having regards to the relations of private law that arises from the subscription contract that binds both on the one hand the user. On the other hand the industrial and commercial public service which is responsible for the distribution of drinking water, it is only for the Court of Civil Jurisdiction to appreciate the damage harmed the first party due to the breach of the particular connection that serving the user(3).

The courts remain competent even when the action brought not against the service itself, but against a person having collaborated in the execution of such services. I.e. action brought against the party acts in behalf of a public entity(4).

(1) Même s'il contient des clauses exorbitantes de droit commun: Council of State, 13 oct. 1961, Ets Campanon-Rey, req. No.44689. For more information, See P. Delebecque, op. cit

(2) For more information, See F. Sabiani, op. cit.

(3) Conflict Tribunal, 20 January 2003, Épx Fernandes c/Synd. Intercommunal d'adduction d'eau potable de Montrichard, No.C3327, Dr. adm. 2003.

(4) Conflict Tribunal, 21 mars 2005, X c/Synd. Départemental des collectivités publiques électrifiées de la Dordogne, No.C3442

2.1.2. Damage caused to a user in a legal situation.

On the other hand, the Court of Civil Jurisdiction will be hold a competent even when the users of the service are in a legal situation, and not in a contractual situation. On the rule of "the legal nature of the links existing between the industrial and commercial public services and their users, which are organized by the private law"(1).

2.1.3. Status of the user.

It can sometimes be difficult to determine whether the injured party had the status of the user in relation to the industrial and commercial public service responsible for the damage or not.

Case law can be interpreted as applying this qualification to the person who suffers from the damage as a contractual user of the public service, whether he is used it or whether he only intended to use it. Thus, a user is the one who contractually bound to the service, especially the subscriber, but on condition

(1) Council of State, 19 February 2009, Mlle Beaufils et a., req. No.293020; AJDA 2009. 340; ibid. 2010. 430, note D. Pouyaud, La responsabilité du fait des lois pour les dommages causés par des animaux appartenant à des espèces protégées. Problèmes de procédure. La recevabilité du moyen en cassation Note sur Conseil d'Etat, Section, 30 juillet 2003, Association pour le développement de l'aquaculture en région Centre et autres (Liability under the laws for damage caused by animals belonging to protected species. Procedural problems. Admissibility of the appeal Note on Council of State,, Section, July 30, 2003, Association pour le développement de l ' aquaculture in the Center region and others), AJDA 2003, p. 1815 ; O. Févrot, Evolution dans le contentieux des accidents de ski (Evolution in ski accident litigation), AJDA 2010 p. 430.

that the damage suffered during the provision of the service(1).

Consequently, the subscriber to an industrial and commercial public service who is harmed of the damage caused by his own private connection is regarded as a user, whose action falls under the jurisdiction of the civil court(2).

However, if the user of the industrial and commercial service is a juristic person, then the legal status of the user will be limited to a juristic person itself and it will not be extend to its representatives or employees(3).

On the other side, this qualification also apply to the person who suffers from the damage as a user of the service even though there is no an express contractual relation with a public service but he is used to uses this service. So even in the absence contractual relation with a public service the concerned party regarded as a user, whose action falls under the jurisdiction of the civil court.

But anyone suffered from damages caused by the main pipe or another particular connection with no usage or intention to use it or with no contractual relation with a public service, the administrative law will be applicable, provided that this damage occurred during the operation of a public structure(4).

Based on the above, the status of user is included: the person who used to use the service outside of any contractual relationship;

(1) For further cases, See, J. R. Knowles, 200 Contractual Problems and their Solutions, Wiley-Blackwell; 3rd edition, 2012, p. 303.

(2) Pour un abonné au gaz, Council of State, 22 January 1960, Gladieu, req. No.39796.

(3) Council of State, 22 Juan 1956, EDF c/Cts Depery, req. No.8117.

(4) Council of State, 25 Juan 1954, EDF c/Anro, req. No.96110.

butcher having a fall on the premises of a slaughterhouse(1); passenger without a ticket using the SNCF service(2); or the person who intended to use the service, but not given the opportunity to do so(3).

On the other hand, the status of the user discarded if the injured party was not the user of the service or he did not intend to use it and the damage occurred during the operation of a public structure. It held so for many cases as: Person injured by the collapse of a marquee in the Vic-en-Bigorre station when the injured party was there to attend the celebration of the centenary of a railway line and not to take the train(4). For the court of cassation, these owners have the status of user if they have paid the costs of connection and installation of electricity meters(5). Owner of a building put on fire due to an electric arc with a pylon caused by the dropping of a cable under the effect of a strong wind(6). A victim suffered from health problems caused by electromagnetic waves arising from an ERDF transformer

(1) Council of State, 25 February 1983, de Stephanou, req. No.24362.

(2) Conflict Tribunal, ٥ December ١٩٨٣, Niddam c/SNCF, No.02307.

(3) Conflict Tribunal, 17 oct. 1966, Vve Canasse c/SNCF, No.01892.

(4) Council of State, sect., 27 November 1967, Labat, req. Nos 66729 et 66798. For more information, See P. Delebecque, op. cit.

(5) Civ. 1re, 20 Juan 2006, EDF c/Larquey et a., No.04-17.239, Bull. civ. I, No.324. P. Sablière, Les ouvrages de production, de transport et de distribution d'électricité sont-ils encore des ouvrages publics et faut-il qu'ils le soient? (Are electricity production, transmission and distribution works still public works and should they be?), AJDA 2005. 2324 ; P. Sablière, Production d'électricité, ouvrage public et intermitence (Electricity production, public works and intermittence), AJDA 2015, p.1454

(6) Conflict Tribunal, 17 December 2007, EDF c/Sté d'assurances Pacifica, No.C3647.

station[1].

In sum, to determine the status of the user in cases the damage caused by a public service with an industrial and commercial nature, we must find out whether the victim was harmed because he/she was, with a contract or without it, used or intended to use of the service, or he/she was acting as a third party.

2.2. Damage arising from contractual liability:

2.2.1. Primacy of contractual liability.

When the victim and the person who is responsible of the damage bound by contract, and the damage was caused during the performance of the latter, the public administrative regime for the compensation of public works damage is discarded in behalf of the private contractual regime[2].

This rule affirmed very clearly by the case law: "Regard to the legal relations which arise from the subscription contract binding upon the water distributor and the user. The user cannot, in the event of damage suffered by him on occasion for the supply of water bring any other action against its co-contracting party than that resulting from the contract, even though the cause of the damage lies in a defect in the design, construction, maintenance or operation of the public work which ensures the said supply "[3].

Exceptionally, the administrative judge must be interfered of the contractual action for compensation if the contract rise to

(1) Conflict Tribunal, 12 Avril 2010, Sté ERDF c/Épx Michel, No.C3718.

(2) For more information, See P. Delebecque, op. cit.

(3) Council of State, sect., 11 July 2001, Sté des eaux du Nord, req. No.221458.

the damaging performance is an administrative contract. Hence, the administrative judge must interfere to any contractual claim for compensation if the contract that giving rise to the wrongful execution is an administrative contrac[1]t.

The judge assesses the respective shares taken in the production of damage by natural elements and by the execution of a public works operation or by the existence or operation of a public structure. It may lead only to partially engage administrative liability, in particular depending on the aggravation of the damage by the existence or by the poor functioning of the structure[2].

2.2.2. Competence of administrative jurisdiction:

The dispute falls under administrative jurisdiction and contractual liability under administrative law if the co-contracting parties bound by an administrative contract.

This can be achieved in any one of the following cases: disputes between the public project owner and the private persons benefiting from it[3]; disputes between the owner and the contractor bound by the public works contract, which is an administrative contract by determination of the law[4].

Disputes between the contracting authority and the various manufacturers who are under contract to him, it is administrative

(1) For more information, See F. Sabiani, op. cit.

(2) J-P. Dubois, Directory of public authority responsibility, Septembre 2015.

(3) Council of State,, sect., 20 Avril 1956, min. de l'Agriculture c/Dame de la Chauvelais et a. M. Waline, Précis de droit administratif (Precise administrative law), t. 2, Paris, Montchrestien, 1970.

(4) For more information, See F. Sabiani, op. cit

because of the "attractive effect" of the public work: disputes between the contracting authority and the delegated contracting authority(1); the operation manager(2); as well as project managers and architects(3); disputes between the owners, the architect, the design office or the main contractor(4).

However, the jurisdiction of the administrative court accompanied by the rules of non-contractual liability if the parties are not bound by contract. For example, disputes between the contracting authority and a subcontractor, whether non-contractual liability is sought; the contracting authority(5); or that of the subcontractor(6) .

2.2.3. Competence of the civil jurisdiction:

In principle, the attractive effect of public work disappears on behalf of the competence of the civil jurisdiction "if the parties involved are united by a private law contract"(7). It held so for

(1) Council of State, 12 January 1994, Sté d'équipement du Poitou, req. No.70954.

(2) Administrative courts of appeal, Bordeaux, 27 February 1992, Cne de Tonneins et Entreprise Masini, req. Nos 89BX01230 et 89BX01607.

(3) La jurisprudence est ici très abondante. V. par ex.: Council of State, 18 March 1994, Berger, req. No.118356.

(4) Conflict Tribunal, 18 Juan 2007, Synd. Des copropriétaires de l'ensemble immobilier sis place de la Gare à La Varenne-Saint-Hilaire, No.C3515, AJDA 2007.

(5) Council of State, 6 May 1988, Cne d'Hérin c/Sté Vanesse, req. No.51338.

(6) Council of State, 29 Avril 1987, Synd. Intercommunautaire d'études et de programmation pour l'aménagement de la région grenobloise-Sieparg, req. No.69391.

(7) Conflict Tribunal, 26 Juan 2006, Sté Perriol c/Sté Autogrill Côté France SA.

many cases as: Disputes between the holder and his supplier(1). Disputes between the developer and the company responsible for the management of a public structure(2), or between the developer and the holders of the works contracts(3). Disputes between a public housing office and its tenant(4). Disputes between owners and a subcontractor of the main contractor or his insurer, if the action is based only on possible breaches of his contractual obligations towards one of the co-owners(5).

2.3. Damage resulting from an expropriation:

In the event of expropriation, "the compensation awarded covers all direct, material and certain damage caused by the expropriation" (Expropriation Code, art. L. 321-1).

As once, the expropriation project declared by the public utility and the transferability order notified to the owner of the property, the transfer of ownership can take place. This transfer of ownership could have done it by amicable agreement between the public entity and the expropriated person. However, in the absence of an amicable agreement, the public body may apply to the expropriation judge of the court, which issues an

(1) Conflict Tribunal, 22 May 2006, Sté Favilor 1 c/M. A. et a., No.C3484.

(2) Conflict Tribunal, 24 May 2004, SCI du port des Engraviers, No.C3331.

(3) Conflict Tribunal, 15 October 2012, Sté Port croisade, No.C3853, AJDA 2012.

(4) Conflict Tribunal, 24 May 2004, Cts Garcia c/OPHLM de l'Aude, No.C3399, M. Deguergue, De quelques difficultés de la notion de service social (Some difficulties of the concept of social service), AJDA 2008, p.179. Conflict Tribunal, 20 Juan 2005, Mme X c/OPHLM Habitat Marseille Provence, No.C3449. Conflict Tribunal, 14 oct. 2013, Benaïssa c/Office public départemental HLM de Saint-Dizier, No.C3916.

(5) Conflict Tribunal, 18 Juan 2007, Synd. Des copropriétaires de l'ensemble immobilier sis place de la Gare à La Varenne-Saint-Hilaire, No.C3515, AJDA 2007. 2125.

expropriation order[1].

It is therefore fall under the competence of the expropriations judge, who is not only fix the main compensation corresponding to the market value of the expropriated property, but he also consider all of the Additional compensation that may be caused due to additional material damage. Therefore, the expropriation judge thus repairs the damage caused by public works due to the expropriation of lands if the damage regarded as a direct result from the expropriation[2].

Regardless of the damage suffered by the expropriated party, the damage which is not consider as a direct consequence of the expropriation still governed by the general rules that applicable to public works damage. And that what affirmed by the case law which seems to consider the compensation on such damages caused by the work or structures that carried out on buildings after the expropriation, even it does not necessarily result from the transfer of ownership such as: Material losses resulting from flooding caused by the works[3].

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(1) For more information, See F. Sabiani, op. cit

(2) Ibid.

(3) Administrative courts of appeal, Bordeaux, 11 Juan 2001, Moutama, req. No.98BX00553, Dr. adm. 2002, No.59. J. P. Orlandini, La dénaturation des critères du doMayne public (The distortion of public doMayn criteria), thèses doctorat, l'université de toulouse, Le 27 novembre 2018, p. 150; F. Brenet, DoMayne public: l'actualisation des critères jurisprudentiels de la théorie de l'accessoire (Public domain: updating the case law criteria of the accessory theory), DA. Avril 2018, p.50; P-Y. Collombat, Rapport d'information Se donner les moyens de ses ambitions: les leçons des inondations du Var et du sud-est de la France (Information report Giving oneself the means to achieve one's ambitions: lessons from the floods in the Var and south-eastern France), n° 775, 24 sept. 2012.

Hence, compensation for damage resulting from expropriation does not necessarily imply transfer of ownership but it may include such damages caused by the work or structures carried out on buildings after the expropriation, even it does not necessarily result from the transfer of the ownership in itself.

2.4. Damage caused by a vehicle:

According to article 1 of law n ° 57-1424 of December 31, 1957, "the courts of the judicial order are the only ones competent to rule on any action in liability tend to repair any kind of damage caused by any vehicle", and this action is judged "in accordance with the rules of civil law. Hence this provision excludes the competence of the administrative courts to repair the damage caused by a vehicle to be repaired out of public compensation system, even if it was involved in the performance of public work.(1)

The court of conflicts considers that a vehicle within the meaning of the law of December 31, 1957 constitutes any vehicle "equipped with a device allowing it to move independently"(2).

(1) Law n° 57-1424 du 31 December 1957 attribuant compétence aux tribunaux judiciaires pour statuer sur les actions en responsabilité des dommages causés par tout véhicule et dirigés contre une personne de droit public.

(2) Conflict Tribunal, 29 September 1997, Sarl Sofamm c/Sarl Sonobat, No.02981.

This quality has obviously been recognized by any means of transport such as school transport bus(1), airplane(2), train.(3)

It has been extended to the construction machinery such as "a loader backhoe" ;(4)"Piling vibrators(5); mechanical shovel(6);

As well as it extends to elements that constituting an extension of a vehicle at the time of the accident, such as: Cable stretched by a tractor with a view to pulling out a tree(7); "rotary mower" consisting of a tractor extended by an articulated rotating arm(8).

(1) Conflict Tribunal, 5 July 1982, Dris c/Cars Faure et Vignat, No.02231.

(2) Conflict Tribunal, 4 July 1991, Cts Oger et Bissières c/agent judiciaire du Trésor public, No.02664

(3) Conflict Tribunal, ٢ Juan 2008, Mme Dergam c/SNCF, No.C3619.

(4) Conflict Tribunal, 29 September 1997, Sarl Sofamm c/Sarl Sonobat, No.02981.

(5) Conflict Tribunal,12 February 2001, Cne de Courdimanche et Cie Groupama Ile-de-France c/agent judiciaire du Trésor, No.C3243.

(6) Conflict Tribunal, 12 December 2005, Gaz de France c/Sté Jean Lefebvre Picardie, No.C3492.

(7) Conflict Tribunal, 19 January 1976, Fray c/Coquard et Caisse régionale de réassurance mutuelle agricole du Sud-Est, No.02020.

(8) Conflict Tribunal, 30 Avril 2001, CPAM de Seine-et-Marne c/min. de l'Emploi et de la Solidarité, No.C3245.

2.5. Damage to the public domain:

Damage to the public domain are expressly excluded from the scope of the law of December 31, 1957 (L. no. 57-1424)As damage caused by a vehicle during public works in the public domain against third parties, comes under the public compensation system(1).

2.6. primacy of contractual liability:

According to the law of 31 December 1957, the Disputes Tribunal ruled that the legislature intended to derogate from the rules of jurisdiction under the principle of separation of administrative and judicial authorities concerning actions in tort liability (non – contractual acts). Therefore an action for damages based on contractual links between the alleged offender committed of the damage and the third party falls under the administrative jurisdiction where the contract, such as a public works contract, is subject to a public law regime(2).

Conclusion:

The previous study examined damages arising from public works and compensation for such damages and focusing on judicial trends in France. Also, it concentrated on determining the legal basis for compensation of the damages arising from public works, whether it is devoted to an application of the

(1) Conflict Tribunal, 26 oct. 1987, Sté mutuelle d'assurances du bâtiment et des travaux publics c/ville de Martigues, No.02479.

(2) Conflict Tribunal, 12 February 2001, Cne de Courdimanche et Cie Groupama Ile-de-France c/agent judiciaire du Trésor, No.C3243. For more information, for more information, See F. Sabiani, op. cit.

general provisions of the civil liability rules or the application of administrative liability provisions for the damages arising.

In sum, we could conclude this study with these consequences:

- The compensation system for public works damage has a particular nature, not only in relation to private law, but also even in relation to the public law of administrative liability. As well as almost of the compensation system has determined exclusively by case law.
- Conditions for deserving the right of compensation because public works has seen a various development of mechanisms of strict liability, that particularly tended to protect the injured persons, as the claimant needs only to prove that the tort occurred and that a public authority responsible.
- The law imputes strict liability to situations it considers inherently dangerous it discourages reckless behavior and needless loss by forcing potential defendants to take every possible precaution.
- A strict liability that impose the liability on a public authority without a finding of fault, it is also up to the judge to determine in each case if there is a fault attributable to the service of such a nature to establish the state liability.
- The courts of the judicial order are the only ones competent to rule on any action in liability tend to repair any kind of damage caused by any vehicle in accordance with the rules of civil law.
- The compensation of expropriation by the public authorities should covers all direct, material and certain damage caused by the expropriation.

Therefore, researcher recommend following the trends of the French judiciary in compensation for damages arising from public works because French judge played an important role in to create principles for the responsibility of the administrative authorities in many cases.

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التعويض عن الأضرار الناشئة عن الأشغال العامة وفق اجتهادات القضاء الفرنسي

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الملخص:

يتميز نظام التعويض عن الأضرار الناشئة عن الأشغال العامة في القانون الإداري بطبيعته الخاصة، ليس فقط لتعلق طبيعة التعويض عن الأضرار الناشئة عن هذه الأضرار بأحكام ترمي إلى تطبيق قواعد القانون الخاص، ولكن كذلك لتعلقها بأحكام قواعد القانون العام الموجب لمسؤولية الإدارة بالتعويض عن الأضرار الناشئة عن أعمالها. وهي أحكام تم إقرار مجمل نظام التعويض الناشئ عنها في فرنسا من خلال السوابق القضائية. فالأضرار التي تلحق بالأشغال العامة لا تخضع جميعها لذات نظام التعويض، فهذه الأنظمة تتمايز من حيث المبدأ بمجرد الاعتراف بالضرر على أنه ضرر ناشئ عن الأشغال العامة بحسب طبيعة هذا الضرر، مع العديد من الأنظمة العامة والخاصة على حد السواء التي وسعت من خصوصية نظام التعويض.

ومع ذلك، فإنه في مجال الأشغال العامة وتحديدًا ما يتعلق بشروط استحقاق التعويض، فإن التعويض يظل خاضعًا لقواعد معينة في القانون العام مثل الطبيعة المؤكدة والمباشرة للضرر، أو ارتباطه بالأعمال الإدارية العامة وغيرها من القواعد التي كان للقضاء الفَرنسيّ دورٌ خلاقٌ ومبدعٌ في إنشائها.

الكلمات الدالة: الأشغال العامة، الأضرار، فرنسا، التوجهات القضائية.

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