

THE ROLE OF EXPERTISE IN THE DEVELOPMENT OF ADMINISTRATIVE DECISIONS DURING THE HEALTH CRISIS IN FRANCE A LEGAL PERSPECTIVE ON THE YEAR 2020

Vlad GRIGORESCU, *Ph.D candidate*

“Al. I. Cuza” University, Iași
vlad.grigorescu@student.uaic.ro

ABSTRACT

This study explores the critical role played by expertise in shaping administrative decisions during France's health crisis in 2020. It examines how expert input informed government policy during the COVID-19 pandemic, focusing on both traditional and ad-hoc expert committees such as the High Authority of Health (HAS), the High Council for Public Health (HCSP), and the specially convened Scientific Council. The research provides an in-depth legal analysis of the state of health emergency, the emergence of specialized expert bodies, and the interaction between administrative expertise and legislative actions, primarily through the Conseil d'État and administrative judiciary. The study concludes that expertise, despite facing occasional criticism, was instrumental in producing coherent and effective administrative norms and policies during an unprecedented public health emergency.

KEYWORDS: *administrative decisions, expertise, COVID-19, France, health crisis, health emergency, public health*

J.E.L. Classification: I18, K23, H12, H83

1.INTRODUCTION

Monday, December 21, 2020, the European Medicines Agency gave the green light for the marketing of the Pfizer/BioNTech vaccine. This authorization thus marked the beginning of the vaccine's use within the European Union. The official vaccination campaign was expected to start on December 27 in all Member States. The French High Authority of Health (*Haute Autorité de Santé*, HAS) had approved the use of the precious serum a few days prior to the official start of the campaign. In a recommendation issued on July 28, 2020, the HAS stated:

“In the context of the unprecedented COVID-19 pandemic crisis, there are currently strong expectations for a curative treatment and a vaccine against SARS-CoV-2. Once they have demonstrated their safety and effectiveness, these vaccines will, in addition to essential barrier measures and possible treatments, constitute the best tool for preventing and combating the pandemic.” (strategie-vaccinale-contre-la-covid-19, 28.07.2020)

The year 2020 was marked by a severe health crisis that disrupted the activity of the entire planet: national lockdowns, travel restrictions, closures of public and private institutions. This exceptional context was particularly trying both for citizens—who were the primary subjects of

the constraints imposed by the pandemic (mask mandates or the ban on gatherings of more than six people)—and for the Administration, which had to adapt to the new situation on the fly. National governments sought to implement measures that balanced public health goals with respect for fundamental freedoms. To maintain efficiency, the French government opted to use ordinances, which are more flexible and faster-resulting in an explosion of administrative and legislative norms during the pandemic.

In France, the two lockdowns imposed to curb the spread of the virus highlighted sometimes absurd decisions, such as the closure of non-essential shops, hairdressers, and cinemas, while pet grooming salons remained open (Le Figaro Magazine 27 novembre 2020). Faced with increasingly complex and difficult problems, political leaders were compelled to turn to experts, equipped with the necessary knowledge to inform their decisions. Aside from a few measures deemed "absurd" by civil society, the government's overall policy was coherent and effective. This was partly due to the contributions of experts who managed to remain independent from the political sphere—the two lockdowns helped slow the spread of the virus nationally and prevented the saturation of intensive care units. It is also worth noting that the health sector has traditionally been one of the primary fields where expert input is heavily relied upon, given the critical stakes and the need for specialized knowledge.

It is worth noting that both the media and citizen groups occasionally criticized the expertise that accompanied political decisions. For instance, the *Conseil scientifique* (Scientific Council), which was designed to support the government, sometimes complicated the process and issued opinions without being fully aware of the realities on the ground. The abrupt deconfinement policy following the first wave of COVID-19, combined with the "stop-and-go" strategy, generated public confusion, while other countries, such as Sweden, opted for a more stable approach in this regard.

Some doctors (notably Professor Didier Raoult and Professor Michaël Peyromaure) even criticized the *Conseil scientifique*—and in particular its president, Jean-François Delfraissy—for underestimating the severity of the epidemic and for not advocating a strict implementation of the "test, trace, isolate" plan. However, the Council did not lose its credibility and sought to correct possible mistakes along the way.

Expertise takes on a particular significance when it comes to managing public health risks: expert opinions are more essential than ever in defining the measures necessary to respond to the situation. While nothing seems to have changed in sectors traditionally subject to constant expert input (such as urban planning and environmental policy), expertise—especially in public health—has become an imperative for stability and good governance in the development of administrative decisions. The health crisis clearly brought to light a wide variety of administrative decisions, such as specific measures imposing local curfews. (Jacques Chevalier, RDSS n.5 , p. 831-838),

According to Cornu's *Vocabulaire Juridique*, expertise is defined as "a procedural measure involving a technician appointed by the judge to examine a factual question requiring specialized knowledge, where a simple consultation would not be sufficient to enlighten the judge. The expert subsequently issues a purely technical opinion." This is the traditional definition of expertise used in civil and administrative proceedings.

In a public health context, however, the meaning of the term must be adjusted, moving it closer to the domain of consultation. Legitimately, it may refer to the act of seeking an opinion or advice—purely optional—from a person or organization with the relevant expertise, to help inform the decision-making process. Michèle Lenoble-Pinson, in *Dire et écrire le droit*, advises against

using the term “expertise” in the sense of “competence, quality, know-how,” and recommends the use of the word “experience” instead.

Bouillet, in his *Dictionnaire de la langue française*, defines expertise as “the examination and verification of a disputed matter by commissioners possessing specialized knowledge on the issue.” The *Larousse* dictionary describes expertise as “the examination of something for the purpose of estimating or evaluating it,” referring thus to material goods and excluding legal connotations. *Le Petit Robert* provides two definitions : “1. A technical examination by an expert during legal proceedings; 2. Expertise in a specific field.” Finally, the *Dictionnaire de synonymes* assigns to expertise meanings such as “assessment, appraisal, study, examination, verification.”

Within the context of this study, expertise is understood as a series of scientific recommendations issued by a competent authority to assist the Administration in decision-making, during a defined period, with the objective of overcoming the health crisis (Jacques Chevalier).

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While the concept of a health crisis is not new, the notion of a state of health emergency entered the French legal landscape with the adoption of the law of March 23, 2020 (quest-ce-que-letat-durgence-sanitaire). It refers to an exceptional measure that can be declared by the Council of Ministers in the event of a public health disaster that endangers public safety and health. The state of emergency is declared for the first time by decree in the Council of Ministers, based on a report from the Minister of Health, for a maximum duration of one month. The decree specifies the territorial areas to which it applies. The public health data on which the decree is based are made public. Beyond one month, the extension of the state of emergency must be authorized by law, which also sets its duration. A decree issued in the Council of Ministers may terminate the state of emergency before the legal deadline.

Declaring a health emergency opens the door for the use of special police powers by the Prime Minister, who may, by decree, enact measures that limit certain fundamental freedoms (such as freedom of movement and assembly), requisition property to address the public health threat, or introduce temporary price controls (on items such as surgical masks or hand sanitizer). The legal framework for implementing the state of health emergency is laid out in the French Public Health Code (*Code de la Santé Publique*).

Before the COVID crisis, only one provision referred to situations involving a health threat: former Article L3110-1, introduced by the law of March 5, 2007 (Law No. 2007-294), later renumbered L3131-1, which stated:

“In the event of a serious health threat requiring emergency measures, notably in the case of an epidemic threat, the Minister of Health may, by a reasoned order, prescribe in the interest of public health any measure proportionate to the risks involved and appropriate to the circumstances of time and place, to prevent and limit the possible consequences of threats to the health of the population.”

The new Article L.3131-1 of the Public Health Code adds that:

“ *The minister may also take such measures after the end of the state of health emergency provided for in Chapter I bis of this title, in order to ensure the lasting resolution of the health crisis.*”

The law of March 23, 2020, introduced Chapter I bis into the Public Health Code, concerning the state of health emergency (Articles L.3131-12 to L.3131-20).

The Code stipulates that in such a situation:

“ *A scientific committee shall be convened without delay. Its president is appointed by decree of the President of the Republic. This committee includes two qualified individuals respectively appointed by the President of the National Assembly and the President of the Senate, as well as other qualified individuals appointed by decree*” (Article L.3131-19).

The same article outlines the committee's missions:

“*[It] shall periodically issue opinions on the state of the public health disaster, the relevant scientific knowledge, and the measures needed to address it—including those falling under Articles L.3131-15 to L.3131-17—as well as on the appropriate duration of their application.*”

The text also establishes the requirement to communicate these opinions simultaneously to the Prime Minister, the President of the National Assembly, and the President of the Senate. Additionally, the committee is automatically dissolved at the end of the health emergency.

Has expertise become an indispensable tool for producing coherent administrative norms during a health crisis?

The diversification of public health expertise authorities (I) is complemented by administrative and legislative expertise, which is the result of the joint work carried out by the Council of State (*Conseil d'État*) and the administrative judiciary (II).

2.THE DIVERSIFICATION OF PUBLIC HEALTH EXPERTISE AUTHORITIES

The role of expertise during the health crisis extended beyond the field of public health. It impacted vital sectors such as the public insurance system (housing aid, child benefits), the labor sector (through allocations for furlough or partial unemployment), and the economy (via state aid to businesses affected by the crisis). This involved a symbiosis of various types of expertise, all aimed at providing guidance to the legislature for the adoption of coherent and effective measures.

Nevertheless, health expertise was the most prominent and was at the origin of the special policies adopted by the government in 2020. In addition to traditional expert authorities (A), ad hoc committees were created to manage the health crisis (B).

A. Traditional Public Health Expertise Authorities

The network of health expertise includes the **established institutional channels**, which were reinforced during the health crisis by committees specifically focused on pandemic management within France. The media often highlighted the role and recommendations of these special committees, occasionally overlooking the traditional authorities that were equally involved in managing the crisis.

This circle of expertise comprises specialized structures such as the High Authority of Health (*Haute Autorité de Santé*, HAS) and the High Council for Public Health (*Haut Conseil de la Santé Publique*, HCSP). The HAS is an independent administrative authority with a scientific mandate, created by the law of August 13, 2004. Its role is to:

“*Evaluate medications, medical devices, and professional procedures for reimbursement, recommend professional best practices, formulate vaccination and public health*

recommendations, and measure and improve quality in hospitals, clinics, general practice, and in social and medico-social institutions.”

It is specifically tasked with issuing recommendations aligned with its three missions, to improve the quality of the public health system.

The HCSP, meanwhile, is responsible for advising the Minister of Health by producing public health reports and formulating recommendations. The government could have relied on these existing institutional mechanisms to manage the health crisis, as these authorities include medical experts capable of defining the appropriate measures to contain the spread of the virus. In this context, the creation of a *Scientific Council* may have seemed unnecessary, given that the experts in these established bodies already had the scientific legitimacy to act as genuine supports to the government—not merely as “spokespeople tasked with describing the situation.”

The HCSP provides:

“The expertise necessary for managing health risks,” and coordinates:

“Forward-looking thinking on public health issues, its contributions to the formulation, annual monitoring, and multi-year evaluation of the national health strategy, and the design and assessment of strategies for health promotion, prevention, and safety—including their economic dimensions in terms of mobilized resources and anticipated benefits for public health—as well as its contributions to the development of a comprehensive and coordinated child health policy.”

Normally, in the event of a health crisis, the HCSP should be the government’s primary expert body, without exception. Moreover, the HCSP includes a specialized commission on infectious and emerging diseases, which was urgently reactivated at the beginning of February. On February 18, 2020, the HCSP issued an emergency opinion on protecting staff and disinfecting facilities where COVID-positive patients were present (Coronavirus SARS-CoV-2, Avis du 18 février 2020¹). In issuing this opinion, the HCSP relied on existing knowledge about the virus and maintained constant dialogue with the European Centre for Disease Prevention and Control (ECDC). Additionally, the HCSP emphasized the importance of proper implementation of cleaning procedures and standard precautions, such as hand sanitizing with alcohol-based gel and the use of personal protective equipment (surgical masks, FFP1 or FFP2 types).

Dozens of opinions issued in March covered a wide range of topics, from general public health concerns to more specific issues (Jacques Chevallier). The HAS issued opinions on virus testing procedures and the use of serological tests (May 18, 2020). In a recommendation dated July 19, 2020, concerning vaccination strategy, the HAS begun laying out the pillars of the future vaccination campaign. It first identified the most vulnerable populations and proposed tailored quarantine measures for the elderly in nursing homes (*EPHAD*), for mentally ill individuals institutionalized in psychiatric centers, and for detainees. It then presented four possible scenarios and concluded that health and social care professionals would be the priority targets of the vaccination campaign. Vulnerable individuals would also be included in the initial phase of vaccination. However, the July 19 recommendation remained vague about the modalities of implementation and lacked detail on how the strategy would be carried out.

The system of expertise composed of traditional authorities was not, in the government’s view, sufficient to formulate a rapid response to the health crisis. However, this does not mean that the expertise provided by these authorities was ineffective. On the contrary, the use of treatments, confinement and curfew measures, and the management of patients suffering from severe forms of the disease were all subjects of opinions, recommendations, and framework notes issued by the experts within these traditional health bodies.

B. The Emergence of Specialized Expert Structures

The decision to create a scientific body "tasked with informing public decision-making in managing the health situation related to the coronavirus" was made following an informal meeting at the Élysée Palace on March 5, 2020. On March 11, 2020, the *Scientific Council (Conseil scientifique)* was officially created and began its work the same day. This structure aimed to meet the demands of impartiality and independence, while remaining transdisciplinary. Its functioning was intended to be "flexible, agile, and responsive."

Several reasons explain the emergence of this new form of expert body:

1. The government needed a committee specifically created to focus exclusively on the epidemic, relieving pressure on already overburdened health authorities.
2. The effectiveness of such a body is increased by its single focus on a temporary situation.
3. A single expertise objective offers a more stable and secure pathway for managing the epidemic; an authority working across too broad a field might lose its focus, leaving the government to handle the crisis alone.

Professor Chevallier noted that an informal structure, closely integrated into political decision-making and composed of members selected *intuitu personae*, may be more effective and stable than a Health Authority that brings together different types of expertise from various sectors.

Despite its improvised origins, the legislature quickly formalized the Scientific Council's existence in the Public Health Code. Article L3131-19, added by the law of March 23, 2020, requires that a scientific committee be convened immediately in case of a public health emergency. The law also defines its composition and responsibilities. Moreover, the law of July 9, 2020 imposed an obligation to periodically issue opinions on the measures taken—at least until October 30, 2020 (*Article 1, VI*).

On March 24, 2020, the government also created the Committee for Analysis, Research, and Expertise (CARE) on COVID-19, bringing together twelve researchers and medical professionals. Its mission was to prepare for the end of lockdown and to provide opinions on "proposals for innovative scientific, technological, and therapeutic approaches." In this role, the committee monitored the various treatments administered to COVID-positive patients, clinical trials, serological and virologic tests, and contributed to defining the main axes of France's vaccination strategy.

Its opinion of July 9 on vaccination strategy addressed several key questions, including the criteria for immunogenicity, the evaluation of anti-SARS-CoV-2 vaccines, the challenges and outlook for vaccination, and the prospects for population-wide immunity.

The competence granted to experts must naturally be accompanied by essential principles such as transparency, impartiality, and objectivity. Flawed or biased expertise can negatively impact decision-making and, in the context of a health crisis, can become a harmful experience for any democracy. Moreover, the process of producing expert opinions must itself reflect the values of pluralisme and openness.

The Scientific Council was expected to issue its opinions based on the latest scientific research, completely detached from political considerations. From the beginning, it made its opinions public in order to clearly distinguish between scientific expertise and political decision-making. The transparency of expertise was established as a foundational principle by the Council (France Stratégie, Rapport 2018).

The structure of its opinions followed a classical model inspired by traditional health authorities:

1. Situation analysis based on statistical data;
2. Review of experiences gained during the epidemic;
3. Presentation of recommendations, along with possible scenarios;
4. Acknowledgment of topics outside its jurisdiction (such as the postponement of municipal elections);
5. Finally, the practical consequences of the recommendations issued.

The Council did not hesitate to impose strict conditions for preparing France's exit from lockdown, including:

- The state of intensive care services;
- A reduction in case numbers across the territory;
- The expansion of the national testing strategy;
- The use of digital tools to track undiagnosed cases (Avis du Conseil scientifique du 2 avril 2020).

The opinions issued by the Scientific Council took the form of "recommendations that political decision-makers are expected to follow" (R. Magni-Berton, PUG, 2020)—making expertise not only a source of knowledge but also a true guide to action.

However, the broadening of the experts' mandates never implied that they were granted decision-making power: the adoption or rejection of their recommendations ultimately depended on political discretion. Until recently, health expertise occupied a subordinate place on the government's agenda, always weighed against other political considerations. From the start of the pandemic, political leaders increasingly relied on scientific expertise to assess the situation and make decisions. This reliance also helps explain the disagreements that sometimes emerged between political leaders and the Scientific Council.

For instance, on April 14, the Council issued a note emphasizing the need to open the COVID-19 response to society and citizen-based expertise, proposing the creation of a "liaison committee with society (Jacques Chevallier)". This proposal was repeated in its June 2 and July 27 opinions but received no political response.

Another point of divergence emerged over the exit from the first lockdown: while the Council urged caution on April 2, the President of the Republic announced on April 13 that the lockdown would be lifted on May 11—clearly described as a "political decision" taken against expert advice (Macron, speech from 12th of May 2020).

A new conflict arose regarding the proposal to maintain strict confinement for elderly people: even though the Council recommended the measure, the President of the Republic declared on April 18 that no such "discrimination would be tolerated" and that he would instead appeal to individual responsibility (Statement of President Emmanuel Macron from 14th of June 2020).

Thus, the traditional expert authorities were supplemented by new structures created specifically to respond to the health crisis. Experience has shown that—aside from a few specific cases—this approach was welcome and helped improve crisis management. It also enabled a balance to be struck between the domain of public health expertise and that of political authority.

3. JOINT LEGISLATIVE AND ADMINISTRATIVE EXPERTISE

Just like the country as a whole, the legislature was not prepared for the crisis generated by the COVID-19 pandemic, which required the urgent adaptation of legislation and regulation across various domains such as public finance, justice, and social affairs. While the health authorities supported the legislature in decision-making related to the spread of the virus and its consequences,

legislative expertise was provided through the joint contribution of the Council of State (Conseil d'État) (A) and the administrative judiciary (B).

A. The Council of State – Pillar of Legislative Expertise

Managing the crisis and its wide-ranging consequences led the government to produce a large number of texts—draft laws, ordinances, and decrees—on which the Council of State's consultation was required under Article L.112-1 of the Code of Administrative Justice and Articles 38 and 39 of the Constitution.

Between March 12 and October 21, 2020, the Council examined 256 draft texts, 232 of which were related to the health crisis. These included 115 draft regulatory decrees and 70 draft ordinances (Sylvie Hubac et Laurent Domingo, RFDA n.4/2020 p.629-633), illustrating the government's preference for these more direct and flexible legal instruments compared to standard bills. Review deadlines were often minimized to just a few days, as the government faced new issues requiring near-immediate legal responses. For example, the bill extending the state of health emergency was submitted to the Council on April 29, reviewed on May 1, and deliberated in the Council of Ministers the very next day.

Thus, the Council of State's expertise occupied a central role in the government's law-making process. Due to the urgency, the government suspended or shortened, as much as possible, the usual timelines for adopting legislation. This meant the suspension of existing mandatory consultation regimes (e.g. Article 11 of Law No. 2020-920 of March 23, 2020, and Article 13 of Ordinance No. 2020-306 of March 25, 2020). Only consultations resulting in binding opinions were maintained—such as those involving the deliberative assemblies of overseas territories under Article 74 of the Constitution, obligations stemming from international or European law, or those involving the Scientific Committee under Article L.3131-19 of the Public Health Code.

As a result, the Council of State became the sole entity capable of advising the government on the legal soundness of its projects. Given the need for both caution and urgency, the Council focused strictly on the substance of the texts under review, avoiding ancillary questions.

Several waves of legislative texts followed between the start of the first lockdown (March 16) and the end of the second (December 21).

The Council of State's expertise was not initially required for texts issued before March 16: these were either adopted based on Article L.3131-1 of the Public Health Code or issued through a decree by the Prime Minister under his general police powers, invoking the theory of exceptional circumstances to regulate the freedom of movement and prevent virus spread (CE, 8 août 1919, *Labonne*, Rec.Lebon p.737) (e.g. Decree No. 2020-260 of March 16, 2020).

- First wave (March 17–26): The Council issued opinions on the Amended Finance Act for 2020 (*Law No. 2020-289 of March 23, 2020*) and the Emergency Law to Address the COVID-19 Epidemic (*Law No. 2020-290 of March 23, 2020*), which introduced the concept of a “state of health emergency” into the Public Health Code. The Council also reviewed decrees on the police prefect's powers, adaptation of funeral regulations, and the creation of a fifth-class offense for violating pandemic-related rules (CE, 28 juin 1919, *Heyriès*, Rec.Lebon p. 651).
- Second wave (March 28–May 11): A series of ordinances addressed domains not yet regulated, such as price caps on hydroalcoholic gel and the creation of remote notarization procedures. Three new laws were adopted:

- The Amended Finance Law of April 25, 2020;
 - The Law of May 11, 2020 (*Law No. 2020-546*) extending the state of health emergency to July 10 and supplementing the March 23 emergency law;
 - The Law of June 17, 2020, with various provisions related to the health crisis.
- Third wave (May 12–June 22): This phase accompanied the general resumption of economic activity and return to in-person work. It included legislation on the second round of municipal elections, contingency "backup" laws in case of renewed outbreaks, social debt laws, a third Amended Finance Act, and the Law on Exiting the Health Emergency.
 - Fourth wave (September 21–December 21): This phase focused on the bill establishing a permanent emergency health management regime (known as the Castex Law, then under accelerated review in the National Assembly) and the law extending the state of emergency until February 16, 2021, which introduced a second lockdown. An additional ordinance dated December 9, 2020, extended, reinstated, or adapted various social measures to address the COVID-19 crisis.

The laws and ordinances submitted for the Council of State's opinion during this period aimed primarily to respond to the health crisis and its consequences, while pursuing several key objectives:

- Establishing the framework for legislative action in the event of a health crisis;
- Ensuring the continuity of essential public services;
- Supporting businesses and employment.

However, these texts were being adopted in a new legal context: that of the state of health emergency, a concept never previously addressed by the Council of State. The Council applied a three-part compliance test (necessity, suitability, and proportionality of the measures), while also reassessing the utility of each measure. Its approach sought to balance the constitutional principle of protecting public health with the respect for rights and freedoms guaranteed both by the French Constitution and the European Convention on Human Rights.

Moreover, the Council prioritized the production of legislation related to epidemic management, which led lawmakers to postpone the implementation of scheduled reforms in 2020—such as the reform of public housing assistance calculation, which was supposed to come into effect in April and June 2020. Although the quality of legislative drafting was not negatively impacted, it could have been improved had lawmakers planned more proactively, both in terms of method and substance (Sylvie Hubac et Laurent Domingo).

The Council of State also gave opinions on other legislative texts of local importance, essential for ensuring proper administration during the health crisis. It approved, for instance, Article 74 of the Engagement and Proximity Law, which entered into force via Decree No. 2020-634 of May 25, 2020, and formalized the "rescript of the prefect." From then on, local authorities and their groupings could request a formal position from the prefect before adopting an act within their competence. The benefit is twofold:

- It reassures local authorities about the legality of their proposed actions;
- If the act complies with the prefect's position, it bypasses subsequent legality control (CNIL, Avis du 24 avril 2020).

B. The Corrective Role of the Administrative Judge

The role of the administrative judge during the health crisis was strengthened through their function of reviewing and correcting decisions based on both health and legislative expertise. Indeed, the administrative courts saw a surge in activity, as the majority of decisions made during the pandemic were taken by public authorities—and therefore fell under the jurisdiction of administrative law.

Just like during the state of emergency for terrorism, the emergency interim proceedings for the protection of fundamental rights (*référé-liberté*) were heavily utilized (Camille Broyelle , AJDA, n.24/2020 , p.1355).

Most of the claims submitted concerned the right to life and the adequacy of state measures aimed at curbing the virus's spread:

“ Litigation related to the health emergency was above all litigation of inaction.”(Camille Broyelle , AJDA, n.24/2020 , p.1355).

There was also a notable increase in litigation challenging police measures adopted by mayors to address the epidemic. However, it must be remembered that the interim relief judge (*juge des référés*) only intervenes if they can immediately and effectively remedy a violation of a fundamental freedom. For police measures, the judge ensures the proportionality of the action, applying the three-part proportionality test within the context of the health crisis.

The interim judge intervenes on a provisional and urgent basis, considering the resources available to the administration. Under Article L.521-2 of the Code of Administrative Justice, the interim judge may order the competent authority to take, as a temporary measure, any action necessary to safeguard a fundamental freedom that is being seriously and unlawfully infringed.

A first notable case involved a request filed by the Jeunes Médecins union (*CE, ord. March 22, 2020, Jeunes Médecins, No. 439674*), which accused the state of failing to take sufficient confinement measures and requested that the Prime Minister and Minister of Health enforce a total lockdown.

The judge acknowledged that:

“It is the responsibility of the authorities to take, for the protection of public health, all necessary measures to prevent or limit the effects of the epidemic [...], and these measures must be necessary, appropriate, and proportionate to the public health objective they pursue.”

However, the judge also specified that:

“Given the current circumstances, a total confinement of the population was not feasible.”

The court nevertheless instructed the government to clarify the scope of the health exemption for leaving home and to re-examine within 48 hours the exception for "short trips near home," in light of confinement orders.

In an order dated April 17, 2020 (*CE, ord. April 17, 2020, Commune de Sceaux, No. 440057*), the administrative judge held that state-level police powers in matters of health emergencies do not prevent mayors from acting under their general police powers, provided that such action does not undermine the consistency of governmental measures. Local circumstances must also justify such intervention.

In this case, the mayor of Sceaux had imposed an obligation to wear a device covering the nose and mouth, despite a shortage of surgical masks in the commune. The Council of State found that the measure infringed upon freedom of movement and personal freedom, as protected under Article L.521-2 of the Code of Administrative Justice.

The judge acknowledged that, during a health crisis, national measures may be supplemented by local ones, but in a restrictive manner. Thus, mayoral intervention is possible, even though the concept of “local circumstances” remains very vague.

In the April 17 ruling, the mayor’s action was permitted only where there were compelling reasons linked to local circumstances that made the measure indispensable. Prior to the pandemic, the Council of State seemed to accept mayoral intervention only in cases of imminent danger—as in *CE, December 2, 2009, Commune de Rachecourt-sur-Marne, No. 309684*, where a mayor could not intervene in water regulation under his general police powers unless there was imminent peril.

In the context of the crisis, jurisprudence evolved toward allowing mayors to regulate specific local aspects via their police authority.

In another order dated April 20, 2020 (*CE, ord. April 20, 2020, Paris and Marseille Bar Associations, No. 439983*), the judge rejected a request for the state to supply masks to lawyers working in courts and police stations. The judge ruled that:

“Given the ongoing mask shortage, the State must first equip its own agents, toward whom it has a duty of prevention and security as an employer.”

Following this line of reasoning, the Administrative Court of Nice dismissed, in an order dated April 22, 2020 (*TA Nice, ord. April 22, 2020, Ligue des droits de l homme, No. 2001782*), a claim from the Human Rights League seeking to suspend an order by the Mayor of Nice imposing a curfew from 8 p.m. to 5 a.m. in certain city areas. The judge reiterated the dual requirement for specific administrative decisions and found that the measure did not conflict with a separate prefectural order imposing curfew starting at 10 p.m.

Finally, in an order dated September 2, 2020, the Administrative Court of Strasbourg (*No. 20055349*) instructed the prefect to clarify the scope of a police measure, underlining that—even during a health crisis—such measures cannot be general and absolute.

The decree in question mandated mask-wearing for all pedestrians at all times in communes with over 10,000 residents. It provided no time-based distinctions, only a general period of application. The judge found that:

“ Nothing in the file suggests there is a constant high population density or other specific conditions that would continuously contribute to the spread of COVID-19.”

The judge did not suspend the order immediately but instead considered the need to both preserve freedom of movement and contain the virus, giving the prefect one week to revise the decree.

4. CONCLUSIONS

The analysis underscores the indispensable role of expert knowledge in guiding administrative decision-making processes during health crises. The COVID-19 pandemic exemplified the necessity of specialized input from traditional and newly established advisory bodies, illustrating both their value and their limitations. While the involvement of entities such as HAS, HCSP, and particularly the Scientific Council was crucial in formulating timely and scientifically sound public health measures, challenges emerged, including issues of transparency, impartiality, and political independence. Additionally, the complementary functions performed by legislative and administrative institutions, notably the Conseil d'État and administrative judiciary, proved essential for the adaptability and legitimacy of crisis management strategies. Ultimately, this experience highlights the need to clearly delineate roles, maintain transparency, and foster public trust to enhance governmental responses in future health emergencies.

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