

The New Financial Governance Exigencies in The Control Of The Regularity Of Public Spending in Cameroon

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Abstract: Economic growth, economic development and financial stability constitute the major preoccupation of states' authorities, be it in the developed or developing countries. The attainment of such objectives greatly depends on the available material and financial resources. Even when such resources do exist, the problematic of their effective and judicious utilization for the enhancement of development surfaces. This is because of the perpetual crisis of public spending characterized by acts of mismanagement, corruption and the embezzlement of such funds by those charged with its management. This further justifies the putting in place of control mechanisms to pre-empt and sanction such acts. As an aspect of this control mechanisms, the control of the regularity of public spending stands out very clearly. It is a control mechanism that has witnessed enormous reforms, the most recent haven been influenced by the concept of the new financial governance. These reforms are all geared towards the proper and effective utilization of public spending. This article therefore seeks to expose the technics inherent to the control of the regularity of public spending and how it has been influenced by the new financial governance exigencies within the context of Cameroon.

Keywords: Competence, Control, De facto, De jure, Effectiveness, Equivalence, Execution, Governance, Principles.

1. INTRODUCTION AND BACKGROUND TO STUDY

If finances constitute the nerves of every State, and indispensable to its subsistence and development, then it can be affirmed that public spending on its part is the central nerve of Public Finances[1]. The execution of public spending is a general contemporary preoccupation, whose stakes are nevertheless amplified in third world countries that are yet to attain a substantial and sustainable level of economic growth and development like their counterparts of the developed Countries. It is evident that much has been written about the control of public spending in general and regularity control in particular, but the advent of the concept of the new financial governance has put in place new mechanisms for regularity control which necessitates elucidation.

States, Public Collectivities and Entities spend in order to realize well defined objectives. These objectives or charges as to what concerned the State have evolved with time[2]. from the conception of the "Gendarme State" whereby the state was charged with the tasks of maintaining order, thus reducing the role of public spending to the functioning of the police, the army, Justice and diplomacy, to the conception of the "interventionist State" or the "welfare-State" where the state had and still has the responsibility of ensuring the wellbeing of citizens by orientating the national activities and redistributing the wealth of the nations. Today, modern states still assume the responsibilities of both the "Gendarme and the Welfare State" notwithstanding the liberalization of the economy which has given rise to the notion of the "Regulatory State". These charges which necessitate public spending should not therefore be underestimated, for they condition the political and socio-economic development of the State for, they can play a more active role in the economic development of States

and guarantees as well their financial stability and economic growth[3]. This then justifies why the control of such spending become indispensable. Even at this, the constant modernization of control mechanisms remains a contemporary political exigency to every State, hence the concept of the new financial governance. How this concept has influenced the control of the regularity of public spending in Cameroon therefore constitutes the substratum of this study. To arrive at the result of this study, methods inherent to the law and the sociology of the law have been used, owing to the fact that Public Finance is both a legal and extra legal science.

2. CONCEPTUAL FRAMEWORK

The concepts raised in this study cut across public spending, the new financial governance and regularity control.

Generally, public spending is considered as that generic term designating all withdrawals of money from the coffers of a public entity, geared towards the realization of a public utility operation[4]. Procedure-wise, public spending is governed by a number of cardinal and indispensable conditions and principles, and is subjected to different classifications.

With regards to the conditions, they are dual: those of form and those associated with the content. Concerning the form, they should be contained in the budget be it that of the State, territorial collectivity or Public Establishment, and should be duly authorized by the deliberative organs concerned. The content on its part necessitates the existence of a public debt which justifies payment. It goes the same with the principles.

These principles generally include: the separation of the functions of vote-holders from those of accountants, work done and its equivalent remuneration, the specialization of budgetary charges, transparency and sincerity. These principles are normally spelled out in laws governing the financial regime of every State or public entity. It is to this effect that Law n° 2007/006 of 26 December 2007 on the Financial Regime of the state of Cameroon clearly spells out these principles in its article 12 (2). All these are aimed at ensuring the exhaustive execution of budgetary operations, and to furnish information which will eventually permit the evaluation and control of such operations by the appropriate institutions. These principles may differ in the way they are applied depending on the class of expenditure involved. Public spending is subjected to many forms of classifications. Notwithstanding the administrative and political forms, the economic classification which favors the intervention of the State in the economic sector seems more considerable. This classification distinguishes three major types of expenditures:

- functioning expenditures which permits the State services to realize their missions in a permanent and continuous manner;
- investment expenditures which ensures building and constructions thereby guaranteeing development;
- Transferred expenses which include the redistribution of credits towards certain sectors, or the allocation of credits to foreign organizations.

Cameroon on its part, through its aforementioned financial regime has brought out its own classification specific to its public spending which nevertheless obeys the logic of the economic classification. This she does by exposing the current expenditures, the investment, and the financial operations expenditures. These categories are subjected to well define procedures as to what concern their execution. Per their execution, the procedures of ordinary expenditure can be distinguished from that of special expenditures.

Ordinary expenditures are an object of an act of commitment on an appropriate budgetary line, with a specific imputation. They are executed using commitment and purchase orders and are justified by an investment, a functioning charge or expenses to the benefit of the personnel. Its procedure for execution covers four phases. These include:

- the act of commitment phase which creates a legal obligation for the public entity and is imputed in a précised budgetary chapter;
- the liquidation phase whereby the debt is verified and its amount evaluated;
- The authorization phase which is the last administrative phase by which the vote holder, in conformity with the outcome of the liquidation phase authorizes the public Accountant to pay the expenditure that was engaged. This act is subjected to the visa of the Finance Controller as the case may be;

- The payment phase which is the last; it is here that the public Accountant, after verifying the total regularity of the operation, effectively pays the public debt. This is unlike special expenditures.
- Special expenditures on their part are those that do not respect the four phases of execution and generally obeys a simplified procedure. They are classified depending on the different situations that justify such simplicity. These include:
 - Payment before liquidation: this is a case where advance payments are given to the contractor before execution begins or part payment in the course of such execution;
 - Payment before authorization : such payments in principle are clearly outlined by the Authority in charge of Finance and concern circumstantial and urgent needs such as vacations, mission allowances, the remunerations of state agents either taking up or leaving their service in the course of the month amongst others;
 - Payment without authorization: this concerns debts whose existence has already been verified and amount calculated before hand, and which cut across multiple expenditures of the same regime and are renewable at a regular interval without major modification. These include pension, salaries.
- There are also the sovereign funds which are kept at the level of the President of the Republic and other ministerial departments[5].

These procedures of execution and various principles relative to public spending are not facultative, but obligatory. This implies that their non respect will give rise to financial irregularities, infractions and acts of mismanagement, thus calling for sanctions on such defaulters. It is here that the role of financial control institutions comes into play.

Based on the premise that “... every financial power necessitates a treasury, every treasury needs to render accounts, and every account needs an impartial judge”, we can logically affirm with Pierre MOINOT that *the existence of institutions charged with the control of public funds by applying the most demanding principles of impartiality is indispensable*. [6]

Such control and its mechanisms may differ depending on who or what animates it. It is to this effect that there co-exist political, jurisdictional and administrative controls of public finance in most States[7]. As to what concern the jurisdictional control, its regime varies; while ordinary jurisdictions play an important control role in some political Regimes, other Regimes have seen the necessity of putting in place specialized jurisdictions qualified as Financial Jurisdictions. In Cameroon such Financial Jurisdiction comprises of the Audit bench of the Supreme Court and the recently created “Special Criminal Tribunal” (Law n°2011 /028 of 14 December 2011 creating the Special criminal Tribunal). On its part, while the administrative control is exercised by organs and institutions internal or attached to the administration, the political control is external to the administration and is masterminded by parliament.

The execution of public spending necessitates the intervention of a number of actors. As the case may be, it is either the Vote holder who authorizes such spending or the Credit administrators and managers who negotiate the spending, and the Accountants who effectively pay out the credits. This signifies that the effective realization of the general objectives of public spending which are economic growth, economic development and financial stability largely depends on the managerial ability of these authorities who intervene in the chain of execution. As such certain behavioral patterns of these authorities can either inhibit or jeopardize the attainment of these objectives. Among these are the embezzlement of public funds in all its forms (theft, corruption, over-billing of expenses), and mismanagement. This does not only jeopardizes the attainment of these objectives, but completely puts to question the “General Interest” Principle which is suppose to characterize the management of public finances and State Property.

The fear of the abuse of such financial powers attributed to these authorities instigated the advent of the Regime of “Control” in the process of executing public spending. It was to this effect that Napoleon I instituted the “*Cour des Competes*” in France as far back as 1807[8], not only to judge and sanction the credit Managers and Accountants for acts of mismanagement, but also to envisage reforms.[9].

The constant multiplication of acts of embezzlement and corruption which Peter EIGEN qualifies as “a Universal cancer,” leaves no State indifferent vis-à-vis the continuous amelioration of control mechanisms, so as to minimize the negative effects of the perpetual “crisis of public spending[10]. This has led to the conception of “new financial governance” which does not only consider the classical or formal control of the regularity of public spending, but goes further to institute the

novelty of the substantive control of such spending.[11]. Put differently, the concept of the New Financial Governance, conceived as a remedy to the perpetual crises of public spending is a set of measures, rules and principles geared towards the amelioration of the productivity of public spending.

3. RESEARCH PROBLEM

With regards to the above, the principal problematic here will be to unveil in detail these new financial governance exigencies which henceforth condition the control of the regularity of public spending. Put differently, how has this concept influenced the control of the regularity of public spending and what are the mechanisms which every control institution takes into consideration during control operation?

4. METHODOLOGICAL FRAMEWORK

The methodological framework used in an attempt to resolve the above problematic is dual: Public finance as a legal science will nevertheless necessitate the prioritization of the legal methodological approach, seen across the strict interpretation of legal and regulatory texts and other norms which FRANCOIS GENY qualifies as “*the free scientific research*”[12]. and the analysis of doctrinal opinions. In order to better explore this legal approach, recourse has been made to the different methods of reasoning such as induction, deduction and other forms of interpretations such as systemic, historic and functional. But apart from being a legal science, it also possesses a hybrid character due to its interdisciplinary and multidisciplinary nature.[13]. It is as such that priority has been accorded to the legal approach, which was completed by methods inherent to the sociology of the law. In this respect, the observation of control practices inherent to countries, the exploitation of information and the drawing of conclusions were of prime importance in this study. Also, doctrinal analysis also helped to corroborate some of the findings.

5. RESULT OF STUDY

On its part, the result of this study which has been elaborated below indicates that far from putting to question formal regularity as the ultimate goal of the control of public finances in general and public spending in particular, the concept of the new financial governance has instead contributed to its consolidation, and goes further to institute the result based control, which transcends the strict traditional premise of form to incorporate the substantial dimension of content.

6. ANALYSIS OF THE RESULT OF STUDY

In effect, the control of public spending from its genesis expressly envisaged the regularity of financial operations as its sole objective, by practically insisting on its formal conception [14]. Unfortunately, this proved insufficient vis-à-vis the quest for a better mastery of public spending. Conscious of these limits, the new financial governance has prescribed regularity in its full apprehension by insisting on its substantial connotation. As such, the control of public spending henceforth will not only be geared towards assuring the conformity of financial operations to legal dispositions which govern them, but also and especially that the project or service which justifies such engagement was effectively executed[15]. This implies that the preoccupations of conformity and the effectiveness of realizations ought to constitute the content of regularity control[16]. Added to these is also the control of the competence of public spending stake holders. It is therefore the fusion between conformity, effective execution and competence that should condition a veritable regularity of public spending, and not exclusively the conformity to legal texts governing it. This is inter alia, the object of the law on the Financial Regime of the State of Cameroon of 2007. This financial constitution of Cameroon contained in law n° 2007/006 of December 26, 2007 prescribes the control of the regularity of public spending in the following words:

“ a control of the regularity ... of the public administration, enterprises, establishments, as well as public entities haven received subvention, some assistance or any caution from the State or from any moral person of public law shall be carried out by competent specialised services of the Executive ”.

In order to generalise such control to all the State departments, the Financial Regime for Local Governments which is the object of law no 2009/011 of July 10, 2009, has adopted the spirit of the above disposition. It stipulates to the fact that:

“a control of regularity ... for the management of Decentralised Territorial Collectivities and local public establishments as well as private entities haven received subvention, some assistance or any caution from the Territorial Collectivities can be carried out by specialised services of the State in conformity with laws and regulations in place”.

A deeper study of these legal dispositions and other doctrinal opinions reveals the existence of certain mechanisms put at the disposal of control institutions to enable them realize the control of regularity. These mechanisms correspond to the three dimensions of regularity which are the conformity to norms - that is formal regularity, the effectiveness of execution that is substantial regularity, and personal competence in the execution of public expenditures.

6.1. The Control Of Formal Regularity And Its Mechanisms:

The execution of public spending necessitates the intervention of a number of actors. As the case may be, it is either the Vote holder who authorizes such spending or the Credit administrators and managers who negotiate the spending, and the Accountants who effectively pay out the credits. In order for these actors to meet the general objectives of public spending which are economic growth and economic development, they are obliged to ensure the conformity of their actions to existing norms. The absence of this obligation on the part of the expenditure stake holders will eventually give rise to irregularities in the execution of public expenditures. This implies that control institutions, having preventive and reparatory objectives, controls the conformity of public spending in order to establish acts which do not conform to existing financial norms. Conformity as a mechanism for the control of the regularity of public spending ensures that public spending, that is, the engagement, liquidation, authorization and payment of public charges was in conformity with the different laws and regulations in force. This mechanism touches on the formal aspect of the acts posed by the spending authorities. Here, the control organ juxtaposes the laws and regulations governing the engagement, liquidation and authorization of payment phases of public spending with the acts in question and asses if the acts were taken in strict compliance of the former, without which it will give rise to irregular management.

From the reading of the financial constitution of 2007 (cited above) in combination with law n^o 74/18 of 5th December, 1974 on the control of public finance stake holders and which proceeds with the enumeration of acts of mismanagement constituting irregularities, it becomes clear that the control of the conformity of public spending is realized through the control of the justifying documents of public spending and the control of rules and principles relative to it.

6.1.1. The control of justifying documents:

The law n^o 74/18 of 5th December, 1974 defines acts of mismanagement which constitute irregularities and goes further to enumerate such acts in articles 3(a-j) and 6(a-h), which can engage the responsibilities of State, Decentralized territorial Collectivities and State Corporation's agents. An examination of these enumerations reveals that a portion of them is based on the absence and/or insufficient justifying documents of public spending. They include: engagement of expenditure without enough justifying documents; engagement of expenditure without the endorsement or without the authorization of the competent statutory authority; engagement of expenditure without certification of documents; the use of state agents or goods for personal aims when those advantages have not been granted by law, engagement of expenditures not authorized by the statutory competent organ.

This control of justifying documents covers the administrative procedure of the execution of public expenditure and touches on documents related to the engagement, authorization and liquidation of spending. The preoccupation here concerns especially the existence of certain précised documents. For the relevance of illustration, the existence of the act of commitment at the engagement phase, the endorsement of the Finance Controller among others. Per the above therefore, control institutions in Cameroon are empowered to control justifying documents of the execution of public spending. It holds same for the control of rules and principles.

6.1.2. The control of rules and principles relative to public spending:

The law n^o 74/18 cited above and the financial constitution of 2007 further unveils the control of rules and principles relative to the execution of public expenditure as another form of the control of conformity of public spending. The control of conformity also touches on the content of legal rules. It entails the verification of the exact application of the different legal instruments that govern public finance in general and public expenditure in particular; notably laws and regulations, and even conventions integrated into the internal financial legal order. The law of 1974 in its above cited

enumerations consecrates cardinal rules which expenditure stake holders ought to guard against. These include: the recruitment of an agent contrary to the provisions of the labor law in vigor; engagement of expenditures without having the quality (*power*) to do so or without delegation of power to that effect; engagement of expenditures without available or delegated credit; recruitment and effective employment of a worker without the knowledge of the budget controller when this control is made provision for by rules; irregular modification or change of the credit allocation; violation of status or internal regulation of the establishment; by passing of credit allocated by the statutory competent organ; deliberate engagement of the enterprise in ruinous operations or in disproportion to its means; irregular handling or absence of account; contracts awarded without calling for competition or to companies in financial difficulties; the refusal by the account auditor to communicate the above mentioned irregularities to the competent authority.

The control of conformity is an occasion for the verification of the respect of all the principles of Public Financial law relative to public spending. Remarkable among these principles are the principles of universality, uniqueness, specialization, annual, and most recently sincerity. The financial constitution of 2007 is very clear on these.

As to what concerns the principle of the universality of the budget, article 5(1), (3) and (4) preview it in the following words: *“the budget presents resources and charges of the State as authorized by the finance law under the form of income and expenditure within the context of a budgetary year. Total income covers the execution of total expenditures...”*.

Article 5(1) and (5) of the same law consecrate the principle of the uniqueness of the budget as follows: *“the budget describes the charges and resources of the State as authorized by the finance law under the form of income and expenditure within the context of a budgetary year. All Revenue and expenditures are drawn up in a unique document known as the general budget”*.

The principle of equilibrium stems from article 2(1) of the above cited law: *“each year, the finance law previews and authorizes total revenue and total expenditures of the State by determining their nature, amount, allocation and by fixing their equilibrium, following conditions and reserves preview by this law”*.

On its part, article 2(1) and 10(1) and (2) clearly brings out the principle of the specialization of credits: *“each year, the finance law previews and authorizes total revenue and total expenditures of the State by determining their nature... credits are specialized according to programs. Credits are repartitioned according to chapters and in paragraph...”*.

The annual principle of the budget draws its endorsement from articles 2(1), 5(1) and (2): *“each year, the finance law previews and authorizes total revenue and total expenditures of the State... the budget describes the charges and resources of the State as authorized by the finance law under the form of income and expenditure within the context of a budgetary year. The budgetary year covers a civil year”*.

Article 3(1) brings in a novelty, that is, the principle sincerity. It stipulates that: *“the finance law presents in a sincere manner, the totality of revenue and charges of the State. This principle implies that information furnished should be clear, precise and complete with regards to the available data at the national and international plan, and at the moment of the elaboration of previsions”*.

From the above, the control of the conformity of public spending can be conceived as envisaging the guarantee of financial legality. In effect, the principle of legality *“lacto sensu”* is often considered by doctrine as the principal pivot of the State of law. It militates in favor of controlling every aspect of the live of the State using legal instruments whose application is guaranteed by the Judge. In financial matters, this principle stipulates that all financial operations realized by public persons should be in the form of norms and contained in legal texts which have the characteristic of legal acts. The control of conformity consists in the verification of the exact application of norms so as to detect their eventual non respect. This implies that this control can be utilized to attain the objective inherent to the principle of legality; a means of the concretization of the principle. In concrete terms, the control of the conformity of public spending becomes a means for the realization of financial legality, for it is a truism that it envisages nothing else than the respect of this financial legality. Thanks to this control, the security and integrity of public spending which the principle of legality seeks is guaranteed to the benefit of the public collectivity, or better still, to the benefit of the general interest. The public contracts code in its article 106(b, d, f, j, k, l, m, n, o) is to this effect. The control of conformity and the principle of legality thus become complementary.

Evidently therefore, the control of conformity on public spending is first and foremost the control of justifying documents of financial operations before being a control of the legal rules and principles of the budgetary law. But as a result of its limits in the option of the better mastery of public spending, the public powers opted for the reinforcement of the control of regularity by incorporating substantial exigencies as advanced by the new financial governance concept.

6.2. The Control Of The Effectiveness Of Public Spending:

The control of the effectiveness of public spending is seen across the material and immaterial existence of the object of public spending, the equivalence between work done and amount disbursed, and the quality standard of such realization. The control of the regularity of public spending does not only have as finality the exact application of general and impersonal rules geared towards certifying if the orders and instructions given were concretely executed. As such, the control of regularity is not uniquely a control of the “forms” of administrative actions; it is also the control of the effective realization or the physical concretization of the instructions of given expenses. Beyond formal regularity, it seeks to conceive substantial regularity. Endowed with a specific content, it has a particular interest in Cameroon where the least Franc used have to be materialized by a concrete realization which the organs of control will have to attest its real existence and above all its quality. This therefore implies that the techniques used here are different: the control of existence of the realization and the control of the equivalence between the realization and the total amount disbursed, including its quality standards.

6.2.1. The control of the existence of the object of public spending:

Article 3(e) of the law of 1974 cited above stipulates: “*engagement of expenditure without enough justifying documents or without justification of the execution of the work, the supply of goods or services*”, shall constitute acts of mismanagement. This is further amplified by article 106(g) of the public contracts code which is the object of Decree n° 2004/275 of September 24, 2004 which states that: “*the certification and clearance of expenditure without execution of work, provision of service or supply of goods*”, shall be considered as violations to the code and sanctioned per the law of 1974 above.

In effect the above article goes to confirm the fact that credit managers, store accountants, finance controllers and contract engineers prior to any certification or liquidation, have to ensure that the work, supplies, or services already exist. Their task therefore consists in ascertaining that the object of such expenses has already been validated by the competent reception committee. The non respect of the above stipulations, give rise to fictitious realizations and which is eventually sanctioned. This is even the object of Circular n° 08/00003/MINFI of January 15, 2008 on the Instructions relative to the execution and control of the execution of the budget of the State and other subsidised entities for 2008, which states in its Title II, chapter II, article 6, paragraph 6 that: « *the responsibility of the members of the reception committee is engaged in the case of any misappropriation resulting from...the fictitious execution... whose reception is validated*”. This role is often exercised in conjunction with the control of the equivalence between the realization and the total amount disbursed, including its quality standards.

6.2.2. The control of the equivalence between work done, its quality and total amount disbursed:

To control the effectiveness of public spending also signify that the work done or services realized are equivalent to the amount of money ready to be disbursed from the State coffers. It is therefore a control of equivalence since its goal is neither to render poor the agent who has realized the work, nor the State which has benefited from the work done and has paid the debt generated. The Circular n° 08/00003/MINFI of January 15, 2008 on the Instructions related to the execution and control of the execution of the budget of the State and other subsidised entities for 2008 points to this. Title II, chapter II, article 6, paragraph 6 stipulates: « *the responsibility of the members of the reception committee is engaged in the case of any misappropriation resulting from the partial, fictitious... execution... whose reception is validated*”.

This evokes the notion of partial realization of execution which constitute a pure contrast to equivalence of work done and amount disbursed.

Also, the amount disbursed and the realization from a technical view should in effect be equivalent. The official price list is of prime utility in this case especially for the organ of control which has to ensure such equivalence. Article 106(h) and (i) of the public contracts code respectively illustrate this equivalence in the following words: “*the payment of a contract*”.

beyond its price and that of the possible additional clauses;” and “the signing of a contract at unit prices not in accordance with the official commodity price list or not within the generally accepted price scale;” shall constitute violations to the said code. The violation of such equivalence will generate mismanagement resulting from “over billing” of public contracts.

Away from the exigency of equivalence between work done and credit disbursed by the State, the control of effectiveness is also geared towards the certification of the physical realization of work in accordance with technical norms governing the said sector, that is to say by scrupulously respecting the criteria and quality standards relative to the realization of works, supplies and services for the State. As such, the controller has to attest that services rendered and constructions validated were executed as they ought to from the qualitative point of view. It is to this effect that *Circular n° 08/0003/MINFI* of January 15, 2008 on the Instructions related to the execution and control of the execution of the budget of the State and other subsidised entities for 2008 goes further to engage the responsibility of the contract engineer in the cases of technical imperfections on structures realized, over billing of contracts, over estimation of quantities and meters of measurement in the following words: « *the responsibility of the members of the reception committee is engaged in the case of any misappropriation resulting from the partial, fictitious... execution... whose reception is validated. That of the contract engineer is total as to what concerned technical imperfections and the overbilling of quantities and meters*”.

Furthermore, *Circular n° 004/CAB/PM* of June 13, 2001 related to the mastery and control of the execution of constructions, rehabilitations and repairs of public buildings brings out the importance and necessity of this control as follows: «*those responsible for the award of public contracts in violation of the provisions of this code shall be liable to the sanctions provided for by the laws in force, notably Law No. 73/7 of December 7 1973 relating to the preferential claim of the treasury to safeguard public funds and Law No. 74/18 of 5 December 1974 concerning the control of authorizing Officers and vote holders of the State, of local authorities and of State undertakings as amended by Law No. 76/4 of 8 July 1976, without prejudice to the invalidation of the said contracts as well as disciplinary and legal action being taken against them.*”(Article 105(1)).

Control institutions are therefore solicited to control the effectiveness of public spending using techniques and mechanisms which transcend the control of just physical existence to embrace the control of the equivalence between the realization and the total amount disbursed, including its quality standards. And to crown it all, the concretization of the control of the conformity and effectiveness is also realized through the control of stake holders’ competence in the execution of public expenditures.

6.3. THE CONTROL OF COMPETENCE IN THE EXECUTION OF PUBLIC EXPENDITURE:

The control of the regularity of public spending further incorporates the control of the quality of the authors of such financial acts who intervene in the process of the execution of public expenditures. Be it either at the State, public establishments, public enterprises or decentralized entities’ levels, there are a number of actors who animate the process of the execution of public expenditure. Control institutions therefore preoccupy themselves with the verification of the quality of the authors of such acts, whether they had the legal competence to do so or not. This is done in order to establish and sanction eventual incompetence. This covers the engagement phase of public spending, the liquidation phase and the payment authorisation phase. Per the legal documents, it is therefore clear that both “*de jure*” public agents and “*de facto*” public agents who intervene in the chain of the execution of public expenditures are verified and controlled.

6.3.1. The control of “*de jure*” public agent:

Here, controller verifies the authenticity of the act posed to ensure that the author had the legal competence to do so before proceeding to sanctions in the case where such act constituted an act of mismanagement. This is the object of article 1 of Law No. 74/18 which stipulates as follows: “*every agent of the State, of a local public collectivity, of a public or Para public establishment or entity, having the quality of a credit administrator, all accounts auditors, and government auditors in any State enterprise irrespective of the status, and who is found guilty of any of the irregularities previewed in articles 3, 6 and 7 below, is subjected to a special fine inflicted in conformity with this present law.*” *De jure* expenditure stake holders are therefore those who have the legal authority to act within the chain of execution.

This is also the object of article 2(1) of Decree No. 2008/028 on the organisation and functioning of the Budget and Finance Disciplinary Board which declares that: *“the Board is charged with taking sanctions against public agents, **de jure** or ..., guilty of irregularities and acts of mismanagement committed in the exercise of their functions, irregularities and acts haven caused prejudice to the interest of the public power”*. This control further extends to *“de facto”* public agents.

6.3.2. The control of *“de facto”* public agent:

De facto public agents involved in the execution of public expenditure are those who without any legal authority infiltrate into the chain of execution and pose acts which either creates rights or obligation to the State or third parties. As such, their incompetence and ultra-vires actions ought to be established and sanctioned as if they effectively had such legal authority to act. This signifies that such acts are assimilated to those emanating from *de jure* public agent and sanctioned as such if they constitute acts of mismanagement.

Legal norms are very explicit on this. Article 3(a) of the law 1974/18 cited above endorsed it using the following words: *“is considered as irregularities per this present law, all acts of mismanagement prejudicial to the interest of the public power notably;*

The engagement of expenditures without having the quality and powers to do so or without haven received delegation to this effect...”. This is also the spirit of article 106(a) of the public contracts code cited above as it declares that: *“in accordance with the provisions of this code, the following shall be considered as violations: The signing of a contract without the powers to do so or without the delegation to this effect...”*.

On its part, article 2(1) of Decree No. 2008/028 declares that: *“the Board is charged with taking sanctions against, **de jure** or **de facto** public agents guilty of irregularities and acts of mismanagement committed in the exercise of their functions, irregularities and acts haven caused prejudice to the interest of the public power”*.

The sanctioning of the form and material content of the incompetence of public agents who indulge in the execution of public expenditures only goes a long way to ascertain and concretize the conformity and effectiveness control of public spending which are all sub sets of the general control of the regularity of public spending; a control which has moved from a mere pure control of formal regularity to that of substantial and competence regularity.

7. CONCLUSION

This therefore constitutes the theoretical framework and mechanisms of the control of the regularity of public spending in Cameroon. The pertinence of this study cannot be under-estimated, as it represents a humble contribution towards the edification, amelioration and modernization of public spending control mechanisms. The study vividly describes the new role which control institutions are called upon to play in the control of the regularity of public spending, especially within the era of new financial governance. This is done by critically examining the stakes and perspectives of the new financial system. By so doing, it will greatly enhance and modernize public spending management which constitutes permanent preoccupations of every government.

Also, the political significance of this work is pedagogical, as it will help empower the policy makers to envisage reforms on the institutional configuration of control institutions as well as their material character. In a nutshell, this work seeks to incite the adaptability of control institutions to governance exigencies with regards to regularity control. Since the novelty introduced by the concept of the new financial governance does not only end at regularity control but extends to performance, the later therefore becomes a new center of interest.

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