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Congolese administrative court of appeals judge: Guardian of legality or decision-maker on the merits?

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ABSTRACT

The Congolese Council of State, as a court of cassation, has as its primary mission among many others to ensure the legality of decisions rendered in final instance by general administrative courts and specialized administrative courts.

Since time immemorial, the traditional functions of this supreme court have been limited to legal review, which means that this court has assumed the obligation, in accordance with the law, to verify the interpretation of the law and the legal characterization of the facts.

Moreover, drawing inspiration from French law regarding the proper administration of justice, a judge on the Congolese Court of Cassation can act as a substantive judge who resolves disputes between the parties by granting or denying the rights claimed. The Council of State can adjust the effects of its annulments over time, balancing the public interest and legal certainty.

This discretionary power brings this judge closer to being a substantive decision-maker rather than merely a censor; this means that, given the blurred boundaries, he obviously ensures legality but decides on the merits when efficiency requires it.

In short, the Congolese judge of administrative cassation is primarily the guardian of legality but becomes a decision-maker on substantive matters in exceptional cases when legal conditions and the interests of justice so require

Keywords: Congolese Council of State, administrative cassation, legality review, substantive judge, judicial review, annulment, legal certainty, administration of justice.

1. INTRODUCTION

The judiciary plays an indisputable role as the guardian of individual freedoms and the fundamental rights of citizens. In the Congolese judicial system, judicial cassation has a long history, whereas administrative cassation is a relatively recent procedure established by the 2016 Law on Administrative Courts.

With the adoption of the Law on Administrative Courts, the Congolese legislature decided to end the decades-long integration of administrative courts into the judicial system and to establish an autonomous administrative branch.

The Court of Cassation, which emerged from the split of the Supreme Court of Justice, serves as the court of cassation, that is, it reviews criminal and civil decisions rendered as a final judgment by lower courts. Similarly, the Congolese Council of State acts as the court of cassation for decisions rendered by both ordinary and specialized administrative courts.

In fact, the litigation division of the Council of State hears appeals in cassation directed against rulings and judgments rendered as the final or first and final instance by administrative courts of general jurisdiction, and against decisions rendered as the final instance or on appeal by specialized administrative courts (such as the Court of Auditors acting as the audit court for public accountants responsible for revenue or expenditures, disciplinary tribunals for public officials, and professional disciplinary tribunals within professional associations) .

This new administrative system has made it possible to ensure both the advisory and oversight functions regarding administrative action at all levels central, provincial, and local where it is exercised, with the Council of State serving as the court of cassation, in addition to other powers granted to it by law.

The rules governing the jurisdiction of administrative courts fall within the legislative domain. Certain rules of litigation procedure fall within the legislative or even constitutional domain, but the majority of them fall within the regulatory domain.

The implementation of this reform contributed, on the one hand, to the creation of general administrative courts that did not previously exist and, on the other hand, to the recognition of specialized administrative courts, including, among others, the Court of Auditors and the disciplinary tribunals of public administrations or professional associations, which previously did not enjoy the status of specialized administrative courts conferred upon them by the aforementioned organic law.

Furthermore, it appears that the incorporation of these specialized administrative courts into the administrative court system is grounded in the available remedies either the right to appeal where such a level of review is not provided, or the right to cassation as a consequence of the constitutional enshrinement of the guarantee of the right to a defense.

Thus, the administrative court is a specific type of court. By virtue of a general principle of law, it adjudicates administrative disputes.

It should be emphasized that since cassation is not an ordinary remedy nor a third level of jurisdiction, its status as an extraordinary remedy supports the review of the application of the law to the facts by a court of last resort. The stakes of cassation are high, as it is not only a matter of ensuring the legality of judicial decisions but also of safeguarding the rights of litigants against potential abuse or judicial errors. This mission is entrusted to the judge of the Council of State.

Furthermore, MASANI MATSHI emphasizes that: “The importance of the role played by a court of cassation lies in its mission to ensure the correct interpretation and application of the law and, thereby, to ensure the unification of case law.

Drawing on French and Belgian traditions, the administrative court of cassation judge is recognized in our judicial system as a judge of law, not of fact. As the highest court in the system, the Council of State ensures the uniform interpretation of the law and, consequently, sanctions violations of the law by lower courts within its jurisdiction without substituting for them in the assessment of the facts.

It is certainly true that: “The judge of cassation is not a trial judge but rather a judge of law; thus, he is the judge of the judgment. He is not a judge of the third level of jurisdiction; he is the judge of the work of the judges. He does not adjudicate the facts, but he takes the facts as if they are established by the trial judge. And the prohibition against the Court of Cassation hearing the merits of cases is a fundamental rule, from which the statutes do not even derogate when they exceptionally authorize the Court of Cassation by quashing without remand to bring the dispute to an end when the facts, as they have been definitively established and assessed by the trial judges, allow it to apply the appropriate rule of law.

We must ask ourselves: if the administrative judge were to systematically act as a decision-maker on the merits, there would be a risk of blurring the distinction between review of legality and adjudication on the merits, which could

compromise legal certainty and the specialized role of the lower administrative courts.

However, it appears that, due to the demands of efficiency and the imperatives of protecting fundamental rights, the administrative court of cassation has found itself compelled to adjust its approach by adopting a sometimes-humanistic stance to adjudicate between the parties on the merits of the dispute, particularly in the best interests of the law.

In light of the foregoing, we are faced with an administrative court of cassation judge who has gradually shifted from the comfortable role of reviewing legality to examining the merits of the decision challenged on appeal; he has become not only a judge of law but also a judge of fact.

Does the Congolese court of cassation remain strictly the guardian of legality, or does it tend, in certain cases, to become a true decision-maker on the merits? This issue gives rise to both theoretical and practical debate; in other words, on the one hand, the very nature of an appeal to the Court of Cassation presupposes a review of legal compliance, while on the other hand, case law may reveal an expansion of the supreme court's discretion.

2. REVIEW OF LEGALITY: THE PRIMARY MISSION OF THE COURT OF CASSATION

The Council of State is the highest administrative court, with jurisdiction to hear all appeals in cassation regarding all decisions rendered by both ordinary courts and specialized administrative courts.

Unlike an appeal, the purpose of this remedy is not to have the dispute retried but to ensure that judgments or rulings comply with the law. The Court of Cassation is not a "trial court" and does not constitute an additional "third level" of jurisdiction, even though it may ultimately be called upon, in the event of a reversal brought before it, to resolve the dispute.

According to Jean WALINE, "An appeal to the Court of Cassation seeks to verify whether a decision rendered as a final judgment complies with the law. If the judge discovers a legal defect, he or she sets aside the decision and remands the case to the competent court to rule again on the merits".

The review of legality involves the administrative judge of the Court of Cassation verifying whether the decisions of the administrative courts were rendered in accordance with the legal norms in force and comply with the applicable legal framework. In this context, the judge does not re-examine the merits of the case but focuses on the conformity of administrative acts with the norms (laws, regulations, general principles of law).

2.1 Conditions for admissibility of an appeal to the court of cassation and stay of execution

The rationale behind these conditions is that they help filter out frivolous or dilatory appeals, guarantee the stability of administrative decisions, and ensure the consistency of case law.

These conditions also serve to guarantee legal certainty and must be applied in a reasonable and proportionate manner so as not to restrict access to administrative justice: the standing of the petitioner, the interest in bringing the action, the time limit for filing an appeal, the grounds for cassation, the stay of execution...

2.1.1 Parties

Article 359, paragraph 1, of Organic Law No. 16/027 of October 15, 2016, on the Organization, Jurisdiction, and Functioning of Administrative Courts, provides: "An appeal to the Court of Cassation is open to any person who was a party to the decision under appeal, as well as to the Attorney General attached to the Council of State."

Based on this provision, it is clear that only the parties who were present at the proceedings before the court of last resort have standing to file an appeal to the Court of Cassation, to the exclusion of any person not involved in that administrative proceeding of last resort.

Furthermore, the party filing the appeal to the Court of Cassation must demonstrate a legal interest, which must be assessed as in appellate proceedings in light of the operative part of the judgment or decision rendered.

It should be noted, however, that in administrative or judicial cassation proceedings, representation by counsel is an absolute requirement; this means that, on pain of being deemed inadmissible, the petitions initiating the appeal, the briefs in cassation, and the closing arguments must be signed by an attorney admitted to the Council of State.

However, since the Law on the Bar in the Democratic Republic of the Congo formerly regulated the practice of law before the Supreme Court of Justice which has since been divided into the Constitutional Court, the Court of Cassation, and the Council of State only attorneys practicing in matters of cassation are authorized to appear before the Council of State when it sits in matters of administrative cassation.

2.1.2 Time limits for appeals

"The time limits for filing an appeal in cassation are fixed in advance". The time limit available to the parties to file an appeal in cassation is three months from the date of service of the contested decision; failure to comply with this time limit results in the appeal being dismissed as time barred.

The Prosecutor at the Council of State may file an appeal in any case, even after the deadlines have expired, if and only if it is in the sole interest of the law.

To file a brief response, the parties have only one month and three months for parties residing abroad from the date of service of the petition.

2.1.3 Preliminary proceedings

It is worth noting that the preliminary procedure is an essential step designed to screen appeals to the Court of Cassation to verify their admissibility and merit before the case is referred to the Court.

This screening process serves to review cases in order to eliminate those that unnecessarily burden the Registry of the Council of State and to allow those that merit further consideration to proceed normally, given the written nature of the cassation procedure.

Furthermore, in the legislature's view, this procedure is intended to inform the Court of Cassation by providing it with the necessary information to assess the appeal.

The savings in time and resources are inherent in the preliminary procedure simply because it serves to avoid unnecessary and costly proceedings; in other words, these procedures make it possible to resolve disputes at an early stage and avoid lengthy and costly legal proceedings that will lead nowhere.

However, this procedure has been criticized for running counter to the principle of adversarial proceedings and the right to a defense, since the parties are not involved, are not informed of the grounds for screening, and have no opportunity to present their arguments or defenses.

Striking a balance between the need to filter out frivolous claims and the protection of the parties' rights would help alleviate this situation. The best approach would be to involve the parties so that, at the very least, they would know after having presented their defense that if a case has not been referred to the investigating chamber during this screening phase, it is for a specific reason.

However, it should be noted that the screening is not mandatory; it is purely and simply an administrative phase that has nothing to do with the merits of the case and, by extension, nothing to do with the right to a defense, but rather serves to review the cases and set aside those that are less likely to proceed.

2.1.4 Stay of execution

A stay of execution is also granted in an appeal to the Council of State if and only if the final decision, which is being challenged on appeal, risks exposing the appellant to the loss of a sum that should not be borne by them upon enforcement of the lower court's judgment should their grounds for appeal be upheld, the grounds invoked prove to be well-founded upon preliminary review and are such as to justify the annulment or reversal of the decision rendered by the trial court.

It is important to note that a motion to stay the enforcement of a judicial decision must be filed in a separate petition from the appeal to the Court of Cassation.

In short, it can be concluded that a stay of execution in administrative litigation is equivalent to defenses against enforcement in civil proceedings.

2.2 Grounds for appeal to the court of cassation

A ground of appeal is an argument presented by a litigant in support of a petition or brief before an administrative court, whether in the plaintiff's or defendant's brief. These arguments may relate to facts (factual grounds) or to the law (legal grounds).

Grounds for administrative cassation encapsulate the reasons invoked by the petitioner to challenge an administrative judicial decision before the judge of the Council of State sitting in cassation proceedings and may be raised only in cases of violation of the law, lack of jurisdiction, procedural defect, abuse of power, or error of law or fact.

According to Augustin KOMBE KALALA, "Deficiencies in reasoning constitute a category of grounds for cassation that sanction a judicial decision not for its content (the law applied), but for its lack of justification. This is an essential formal requirement that allows the Court of Cassation to exercise its review. The objective is to ensure that the reasoning of the trial judges is logical, comprehensive, and transparent".

JACQUES BORE and LOUIS BORE add: "The obligation to provide reasons for judgments is the most valuable guarantee for litigants; it protects them against arbitrariness, provides

them with proof that their claim and arguments have been seriously examined; and, at the same time, it prevents the judge from removing his or her decision from the review of the Court of Cassation".

Thus, these grounds unquestionably enable the supreme administrative court to review the legality of the decision challenged on appeal and to overturn it if it is unlawful.

2.3 Prohibition of new grounds

At this stage, the parties are prohibited from raising new grounds that have never been the subject of debate in any court whether at the first or second instance which justifies the limited nature of administrative cassation, which is intended to review legality.

By its very nature, the rule regarding the inadmissibility of new grounds applies equally to both the court of cassation and the parties. Under no circumstances and for no reason whatsoever may the court responsible for interpreting the law exceed the bounds of its jurisdiction, which prohibits it from considering the merits of the case.

2.4 The exception for grounds of public order

Contrary to the prohibition on raising a new ground of appeal in cassation proceedings, it is nevertheless accepted that grounds of public policy may be raised for the first time during these proceedings before the Council of State, sitting in cassation, either by the parties or ex officio by the judge himself.

The rationale for this exception lies in the fact that a ground based on the violation of a rule of public policy must necessarily be deemed to be part of the case, since the trial judge was required to examine it and is at fault for failing to raise it on his or her own motion. This is the case, for example, when a judge rules ultra petita, or when an appeal is filed by an attorney who does not hold the special power of attorney.

The French Council of State, for example, was able to set aside ex officio a ruling by the Administrative Court of Appeal that erroneously found the administration not liable in a case where the strict liability regime should have applied (CE ass. May 26, 1995, Nguyen et al., No. 143238) or that of another court that failed to raise on its own initiative the lack of jurisdiction vitiating the decision challenged before it (CE March 29, 2000, Pacha, No. 196127).

Since this is a matter of public policy, it should be noted that the parties to the appeal cannot waive this ground; rather, it applies erga omnes, which means that it must be raised at any stage of the proceedings without relying on any consent or silence on the part of the parties involved.

The Court of Cassation is therefore required to raise this ground of appeal on its own motion, even if the parties had waived it on appeal.

In connection with this public policy exception, the Council of State of the Democratic Republic, to which the case was referred for cassation, had rendered a judgment declining jurisdiction on the grounds that the matter for which it was seized on appeal did not fall within its jurisdiction as the supreme court of cassation.

2.4.1 Grounds relating to the validity of the decision under appeal

These grounds are similar to those of "external legality" in actions for abuse of power and concern the failure of judges of last resort to observe the rules of jurisdiction, form, and procedure (for example, an irregular composition of the court, disregard for the rights of the defense, failure to hold a public hearing, failure to state the names of the judges, or the absence or insufficiency of reasoning).

For failing to comply with the provisions of Article 368 of Organic Law No. 16/027 of October 15, 2016, on the organization, jurisdiction, and operation of the courts of the administrative order, the plaintiff's motion for a preliminary injunction and stay of execution in the Court of Cassation was declared inadmissible.

2.4.2 Grounds based on the merits of the decision

These grounds for appeal consist of challenging the judicial decision contested in the Court of Cassation on the grounds that it was erroneous in its assessment of the facts or in the application of the law. By challenging the decision rendered on appeal or as a final judgment, the appellant seeks to demonstrate that the facts were misappraised or that the law was misapplied, resulting in an unlawful or unjust decision.

Furthermore, the cassation judge hearing the case is tasked with verifying whether the decision contains an error of law, which may take several forms: "the trial judge's failure to recognize his or her own powers …, the application of a provision that did not apply …, or, conversely, the failure to apply a provision or rule that should have been applied …, an error consisting in failing to raise, on its own motion, a ground of lack of jurisdiction …".

It is in this light that H. CHAVRIER and M. DELAMARRE argue that: "While any ground of appeal based on an error of

law must be examined by the Court of Cassation since the review of such an error falls, by its very nature, within its jurisdiction the same does not apply to grounds relating to the facts of the case." The reasoning followed in this regard can be broken down into four levels: the finding of facts …, the assessment of facts…, the characterization of facts…, and finally the misrepresentation of facts...".

It is therefore important to note that these grounds must be based on specific and detailed evidence, and not on mere allegations.

3. BALANCE BETWEEN LEGALITY REVIEW AND JUDICIAL EFFICIENCY

This stage appears to be crucial in the administrative cassation process, as the judge examines whether the challenged decision complies with the law and general principles of law.

In reviewing the legality of the decision under appeal, according to Marceau LONG et al., "the cassation judge must be careful not to become a trial judge. Nevertheless, the judge does examine the facts and their legal characterization. The judge does not review the court's assessment of the facts, except where there has been a distortion of the facts.

Jacqueline MORAND-DEVILIER emphasizes that: "When the Council finds that one of the grounds for cassation is well-founded, it may either remand the case to the same court or a court of the same level, or rule on the merits of the case itself if it deems this to be in the interest of the proper administration of justice".

However, when reviewing compliance, the administrative cassation judge may render decisions in various ways: a judgment dismissing the appeal, a judgment quashing the decision with or without remand, a judgment reversing the decision, a judgment annulling the decision with retroactive effect, or a judgment annulling the decision with deferred effect.

3.1 Dismissal of the decision

This refers to rulings in which the grounds for appeal are unfounded, which means that the ruling or judgment challenged on appeal is upheld.

In such cases, the administrative court of cassation is required to dismiss the appeal if it finds that the challenged decision complies with the law and contains no procedural defects.

3.2 Cassation of the decision with or without remand

Professors F. VUNDUAWE and J.M. MBOKO emphasize that "in principle, the Council of State does not hear the merits of cases in cassation proceedings. If any dispute remains to be adjudicated, it remands the case for review on the merits to the same court, but with a different composition, or to another court of the same rank and order that it designates".

The same authors go on to argue that: "In the event that the challenged decision is quashed on grounds of lack of jurisdiction, the case is directly referred to the competent court designated by the Council of State. The court to which the case is referred is required to comply with the Council of State's decision on the point of law it has ruled upon.

Unless otherwise provided by law, the Council of State does not hear cases on their merits but rather rules on decisions rendered as a final instance by courts of the ordinary and specialized administrative jurisdictions.

In the event of a reversal, the case is remanded to a court of the same order, nature, and level, which may be the same court that rendered the reversed decision provided it is composed of different judges or another court, and which must review the proceedings.

If the challenged decision is quashed on grounds of lack of jurisdiction, the case is remanded to the competent court designated by the Court of Cassation. (Article 361, paragraph 4, of the Organic Law on Administrative Courts).

On the other hand, there is also the possibility that the appellate court may overturn the challenged decision without remanding the case; given the points it addresses, its intervention leaves nothing further for the trial court to decide. This would be the case where the appellate court declares the administrative court lacking jurisdiction to resolve the dispute.

It should be noted, however, that when the Council of State renders its decision on appeal without remand meaning it decides to rule on the merits of the dispute itself this decision may have several effects: reversal, retroactive effect, and deferred effect:

3.2.1 Judgment of annulment with retroactive effect

It should be noted that in such cases, the judge hearing the appeal sets aside the challenged decision with retroactive effect, which means that the decision is deemed null and void from the time it was rendered.

When the decision challenged on appeal is overturned, the consequence is that the overturned judgment or ruling is deemed never to have existed, and the original administrative act which had been validated or annulled by the judgment returns to the state it was in prior to the overturned judgment.

Thus, by applying the theory of annulment, the judge removes the unlawful act from the legal order ab initio from the very beginning and, consequently, all legal situations arising from the overturned decision are called into question; the parties are therefore restored to the status quo ante.

3.2.2 Judgment of annulment with deferred effects

The decision rendered by the Court of Cassation, following the annulment of the appellate judgment or ruling, will take effect only as of a date set by the court itself; in other words, the court defers the effects of its decision in order to avoid the abrupt consequences resulting from the annulment.

This annulment judgment with deferred effect may or may not include a remand, meaning that the judge employs the technique of quashing and remanding cumulatively, specifying that his or her ruling will apply only as of a specific date.

In this context, it should be noted that deferred effects are ordered only at the request of one of the parties to the cassation proceedings, who fears that immediate annulment would create chaos or severely undermine their interests; alternatively, the judge may be asked to defer the effects in order to preserve legal certainty and the continuity of public service, in accordance with the interest of the proper administration of justice.

3.2.3 Reversal judgment

In this judgment, the administrative court of cassation reverses the challenged decision if, and only if, the latter was rendered under conditions contrary to the law; however, the reversal is possible without requiring a remand to a lower court.

It directly overturns the resolution of the dispute, acting as a trial court, and this is not done at its discretion, but rather on a purely legal basis in the interest of the proper administration of justice to such an extent that the objective pursued by this court is to avoid an unnecessary remand that would delay the final resolution when the outcome is beyond any doubt.

In short, a cassation ruling implying reversal entails the annulment by the supreme administrative court of a decision rendered as a final judgment by lower administrative courts; this means that such a ruling is issued only when the matter in dispute no longer raises a legal issue and all the facts remain undisputed.

3.3 Possibility of resolving the dispute on the merits

In principle, the administrative court of cassation does not have jurisdiction to rule on the merits of the case; however, "when the case is remanded by the joint chambers in a matter that has already been the subject of a first remand or in a matter that has been the subject of an appeal filed by the Attorney General before the Council of State in the interest of the law, the litigation chamber rules on the merits".

According to Pierre Olivier CAILLE, "... the most delicate issue is that of the scope of the review exercised by the Court of Cassation over the factual findings made by the trial court. The Council of State, unlike the Court of Cassation, does in fact review the factual accuracy of the facts in light of the documents in the case file".

H. MASANI follows the same line of reasoning, emphasizing that: "When the Council of State rules on a case following cassation a case arising from an appeal in the interest of the law it proceeds in the same manner as it would in a case arising from a file referred to it by the joint chambers".

In this scenario, the cassation judges are therefore called upon to act as a court of the same level as the court whose decision was quashed, in the role of a referring court, which implies that it will be considered an appellate court and will rule on the grounds brought before it with the evolving effects of an appeal; consequently, it will hear all claims originally raised before a trial court.

It may refer the case back to a trial court (the one that previously ruled and which, unless impossible, must rule in a panel or a court of the same nature) to reconsider the matter. It may also decide the case on its merits and must even do so in a second cassation appeal in the same proceeding.

It should be noted, however, that this judge's role remains constrained by the requirement to rely on strictly legal grounds and undisputed facts. The limitations of the trial courts sometimes prompt the Council of State to go further by filling procedural gaps, expediting the resolution of disputes to avoid unnecessary remands, and thereby combining the function of legal regulation with the imperative of ensuring the effectiveness of the law.

Thus, the supreme administrative court is endowed with full jurisdiction, which grants it the power to rule on both facts and law under well-defined conditions: a decision must be overturned on a ground that allows the court to resolve the

case on its merits; the evidence in the record must enable the court to render a decision on the merits; and the decision to be rendered must be one based on legality rather than mere expediency.

3.3.1 Toward a cassation decision on the merits?

In the interest of the proper administration of justice, the administrative cassation judge always has the discretion to take up the case so that he or she may hear the merits of the case; when the judge overturns the decision without remand, he or she rules as a trial judge but with finality.

It often happens that when the Court of Cassation judge conducts a thorough review of the reasoning, this may lead him or her to an indirect assessment of the facts. The finding of insufficiency or a contradiction may lead the judge to a coherent internal examination of the judicial reasoning. This intellectual exercise goes beyond the formal scope of reviewing legality.

The issue, therefore, is not one of completely substituting the trial judge, but rather one of striking a dynamic balance between legality and judicial efficiency.

That is why, in this vein, "the Council of State has the choice, under the terms of the law of December 31, 1987 the provisions of which have been codified on this point in Article L.821-2 of the Code of Administrative Justice between referring the case to the trial court or deciding the case itself on the merits. It then rules under the same conditions that would have applied to the referring court, that is, with full authority to retry the case".

In its ruling RAPC 012 of November 3, 2023, the Council of State overturned the appealed decision, holding that, in the interest of judicial efficiency and the proper administration of justice, it was appropriate to rule on the merits of the case , which amounts to saying that the Congolese judge of the administrative court of cassation is not merely a guardian of legality but also a decision-maker on the merits, as evidenced by the judgment in question.

CONCLUSION

Tradition has thus taught us that the essential mission of the administrative court of cassation is to serve as the guardian of legality, responsible for reviewing the effective application of the law by lower courts without examining the facts.

However, developments in case law and contemporary demands for the protection of fundamental rights tend to broaden the scope of intervention of this administrative court of cassation judge. In certain cases, he may rule on the merits, which brings him closer to the role of a true trial judge. This is not a radical transformation, but rather a functional adaptation.

Thus, the Congolese administrative court of cassation remains primarily the guardian of legality, while assuming—in exceptional and carefully defined circumstances—a decision-making role when the interests of justice so require.

Administrative cassation is therefore intended to address errors of law (violation of the law, lack of a legal basis, lack of jurisdiction) and to contribute to the predictability of the law. The balance between the legality and fairness of decisions is thus at the heart of both mechanisms.

The role of the administrative judge of the Court of Cassation must therefore reconcile the normative constraints of legality review with the effective resolution of citizens' disputes, without encroaching on the role of trial courts or the specific legislation governing administrative procedures.

This development does not entirely call into question the traditional role of legality review, but rather expands it toward a more operational and pragmatic dimension, thereby meeting the requirements for the effectiveness of administrative case law.

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