# INTERNSHIP REPORT AND SUMMARY

## Identification of the participant

Surname: HEDARY

First name: Delphine

Nationality: French

Seniority: Member of the Council of State since 1999

## Identification of the internship

Host jurisdiction/institution: Tribunal Supremo.

Town/city: Madrid

Country: Spain

Dates of the internship: from 19 to 30 September 2022

### SUMMARY

I was able to complete a relatively long internship in Madrid (2 weeks), the duration of which allowed me to **discover various supreme jurisdictional, advisory and regulatory institutions** and **immerse myself in the litigation practice of the Supreme Court**, which welcomed me and organised my internship with great care.

I am very grateful to the Council of State and ACA for giving me the opportunity to undertake this internship, as well as to all the people I met and especially to those who hosted me at the Supreme Court, who made it a very interesting experience.

1. The organisation of the institutions differs from that of France mainly in that the Supreme Court combines the powers corresponding in France to those of the Court of Cassation on the one hand and the Administrative Claims Division of the Council of State on the other, whereas the *Consejo de Estado* only exercises advisory functions, which are comparable with those exercised in the Advisory Divisions of the Council of State. However, the cases of referral as well as the modalities of appointment and functioning include notable differences between these two institutions in their advisory role.

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The Spanish Constitutional Court exercises constitutionality review in a way that is significantly different from that practised in France.

The *Defensor del pueblo* has a role comparable with that of the Defender of Rights in France, while the *Comision nacional de los mercados y la competencia* has similar tasks to those of the Competition Council and several regulatory authorities in France. The impact of EU law helps to bring about a strong convergence in the role of the regulatory authorities.

The tasks and functioning of all these institutions are conditioned by the constitutional organisation of Spain, a country in which the Autonomous Communities have extensive powers, even to adopt provisions of a legislative nature, which may therefore be subject to constitutional review and control of compliance with competition rules, even on appeal from another Autonomous Community. It is also the Autonomous Communities that provide the courts within their territorial jurisdiction with operational resources, leading to both disparities in allocations between the Communities and greater difficulty in harmonising the material conditions for handling cases, particularly electronic tools for the digital transition. In contrast, in the French administrative judiciary, the Council of State is responsible for overseeing the resources of all administrative tribunals and administrative courts of appeal.

Finally, I could not fail to be struck by the impact of the political situation on the functioning of the courts, especially at the time of my internship, when the subject had a high media profile, since it had the effect (through mechanisms that I will explain later) of reducing the powers of the General Council of the Judiciary and blocking the appointment of magistrates, leading to the fact that eight of the 33 posts of magistrate in the Administrative Claims Chamber of the Supreme Court were vacant.

2. As regards my immersion in the workings of the litigation process, which was facilitated by numerous informal exchanges, in addition to the scheduled meetings, it enabled me to note the differences from French practice with regard to the filtering of appeals, the procedures for exercising collegiality, the role of the rapporteur, and the practice of public hearings.

In attending several judgment sessions, I was also able to note differences on certain points of substantive law, but these are ad hoc and I will not develop them in this report.

## **I. Internship programme** (see Annex 1)

1/ At the Supreme Court:

- Meeting with the President of the Administrative Claims Chamber;

- Meetings and exchanges with several magistrates of this Chamber, in particular the mentor judge.

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Meetings and exchanges with the director and a *Letrada* (rapporteur) of the *technical office* in charge of the procedure for the admission of appeals in cassation;

- Attendance at two deliberation sessions of the Fifth Division of the Administrative Claims Chamber (environmental and public authority liability claims);

- Attendance at the public hearing of the Criminal Chamber and its deliberations;

- Heritage tour of the Supreme Court.

2/ <u>Other courts with jurisdiction over administrative claims</u>
- *Audiencia National*: meeting with the President of the Administrative Claims Chamber.

- *Tribunal superior de Madrid*: meeting with the President of the Administrative Claims Chamber

3/ <u>Other institutions</u>
- *Consejo general del poder judicial* (High Council of the Judiciary) equivalent of the French High Council for the Judiciary;

- *Tribunal Constitutional* meeting with the President and the Secretary General;

- *Consejo de Estado* meeting with the Secretary General and a *Letrado* (rapporteur).

- *Comision national de mercado y competencia* meeting with the President and one of the College members. This institution brings together the powers exercised in France by the Competition Council, the Energy Regulation Commission, and the transport, audiovisual, telecommunications and postal regulatory authorities.

- *Defensor del pueblo* (Defender of Rights)

In addition, thanks to the relationships I have built up over many years in the field of environmental law, which is my personal speciality, during my stay in Madrid I was able to meet the *Fiscal de sala de la Fiscalia coordinadora de medio ambiante e urbanismo*, i.e. the person who is the public prosecutor for the environment and urban planning for the whole of Spain.

## II. The host institution

1. **The Supreme Court is the final court of appeal for all claims in Spain**. It is competent in civil, criminal, social and administrative law. It thus brings together the equivalent in France

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of the competences of the Court of Cassation (for the first three areas) and the Administrative Claims Division of the Council of State (for administrative claims).

Like the latter, it is competent as a court of cassation for disputes that the courts in charge of administrative claims have judged at first instance and on appeal, and **it also exercises contentious jurisdiction at first and last instance** over appeals against decisions of higher State authorities. On this last aspect, it is the rank of the signatory that determines the jurisdiction of the court. Thus, the decisions of the Council of Ministers and the delegated government commissions fall under the jurisdiction of the Supreme Court in the first and last instance, while the National Court has jurisdiction in the first and last instance for appeals against the acts of Ministers and Secretaries of State as well as those of institutions such as the Bank of France, the Financial Markets Commission and the Competition Commission.
The Supreme Court is also competent in the first and last instance for decisions concerning the personnel, administration and management of the assets of constitutional institutions such as the two chambers of Parliament, the Constitutional Court, the Court of Auditors and the Defender of Rights. This is also the case with regard to decisions of the General Council of the Judiciary, which has powers comparable with those of the High Council for the Judiciary in France for the appointment, promotion and discipline of judges (including administrative judges, unlike in France).

The system is complicated in Spain by the fact that the Autonomous Communities constitute a legal order that is in part parallel to that of the Central State. One consequence of this is that the High Courts of Justice have both jurisdiction in the first instance against certain acts of State administration emanating from authorities below the rank of Minister or Secretary of State, and jurisdiction to appeal against decisions given by the administrative courts.

The document presenting the organisation of administrative claims, the translation into French of which I have revised, both for the personal interest I found in this exercise and to be of service to my hosts, allows us to see in detail the complexity of the distribution of competences within the courts responsible for administrative claims (Annex 2).

2. Eighty percent of **the members of the Supreme Court** are appointed from among judges with more than 15 years' experience; 20% may be chosen from among academics or senior civil servants with a career of more than 15 years who have proven their legal ability.
Their appointment is discretionary and is the responsibility of the High Council of the Judiciary (CSPJ), which, since the Constitution adopted with the return of the monarchy, has been responsible for appointing the judges of the Supreme Court, the National Court and the presidents of the High Courts, among others. The CSPJ is composed of 20 members, who elect the 21$^{st}$ to chair them. Twelve members are judges, half elected by the National Assembly and half by the Senate. Eight are lawyers who were initially elected by judges, but as the Constitution is not entirely clear on this point, when they were renewed, the political authorities wanted MPs, with a 3/5$^{ths}$ majority, to elect the lawyers as well. As a result, the 20 members of the CSPJ are elected by MPs.

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For the past 4 years, the political situation in Spain, marked by the multiplicity of parties represented in Parliament, has had the practical effect that MPs have not been able to achieve the 3/5$^{ths}$ majority necessary to elect the members of the CSPJ. Instead, they agreed to limit the powers of the CSPJ by means of an organic law (the adoption of which only requires an absolute majority of half of the MPs plus one vote) by prohibiting it from making appointments to the most important posts of judges, thus confining it to its powers of career management and discipline. The practical consequence of this is that more and more judicial posts are vacant: 8 out of 33 in the Administrative Claims Chamber of the Supreme Court during my internship, with the expectation that this number will increase in view of the forthcoming expiry of the mandates of judges currently in office.

For a French lawyer conditioned by Montesquieu's theory of the separation of powers, and who, like many of her colleagues until last year, was appointed to the Council of State solely on the basis of her ranking in a set of tests, 80% of which were marked anonymously, the Spanish situation, both *de jure* (the principle of full election by MPs of the persons responsible for guaranteeing the independence of the judiciary, in particular by appointing judges to the most important posts) and *de facto* (the limitation of the powers of this body by a law), is surprising. However, it does not affect the personal independence of the judges, as those I met at the three levels of jurisdiction ( High Court of Madrid, National Court, Supreme Court) all assured me that they never receive the slightest intervention in the handling of cases and feel completely independent.

3. Within **the Administrative Claims Chamber** (or 'Third Chamber'), the examination of cases is divided into five divisions. The first is in charge of admission decisions on appeals in cassation. Each year, a magistrate from each of the other divisions is appointed to it. The examination of appeals is first carried out within the 'technical office' by a *letrado*, a rapporteur who is a public official of a state administration or a local authority, appointed for 3 renewable years at the Supreme Court. Magistrates decide on admission on the basis of the proposal prepared by a *letrado*.
The second division is responsible for tax matters; the third for regulated sectors; the fourth for the civil service and public contracts; the fifth for the environment, urban planning, the responsibility of the State for its assets and the law on foreigners.
In Part IV, I will detail some aspects of the workings that particularly interested me in comparison with France.

## III. The law of the host country

I was particularly interested in and found original the way in which the defence of fundamental rights guaranteed by the Constitution is carried out before the Spanish courts.

The *recurso de amparo* (literally 'appeal for protection' or 'for refuge') has no exact equivalent in France, so much so that even the French version of the website of the

Constitutional Court of Spain mentions the 'recours d'amparo'. This is an appeal addressed to this court directly to invoke the violation of the rights and freedoms guaranteed by Articles 14 to 29 of the Constitution, which include equality before the law, the right to life and physical integrity, the freedoms of thought, assembly and association, the right to honour and to personal and family privacy, etc. Adopted in 1978, the Spanish Constitution contains formulations of fundamental rights marked by the historical context.

This appeal may be directed against decisions of the National Assembly (the *Cortes*) and of the legislative assemblies of the Autonomous Communities; against administrative decisions of the government; against an act of a judicial body and against decisions of the electoral commissions on the proclamation of candidates and results. Questionable 'decisions' can include the omission of a decision. When it is directed against an administrative or legal measure, the *recurso de amparo* must have been preceded by the exhaustion of all remedies and be lodged within 20 or 30 days of the contested decision. It can therefore be filed against a judgment of the Supreme Court, a notable difference from French law.

It can be filed by the person who has a 'legitimate interest' (the person who considers him/herself wronged) but also by the Defender of Rights and by the Public Prosecutor.

The appeal is submitted directly to the Constitutional Court, whereas the priority question of constitutionality, with which it can be compared, must in France be submitted to the court, administrative or judicial, before which the dispute in which the question is raised is taking place. Thus, while the Council of State and the Court of Cassation are responsible for examining whether the priority question of constitutionality is new or serious, in Spain it is the Constitutional Court that carries out the examination of the admission of *recursos de amparo*, which represent 95% of the appeals brought before it. However, only 2% of these appeals are admitted, after an investigation carried out with the help of the *letrados*, who assist the 12 members of the Constitutional Court.
Admission is only granted if the appeal establishes what can be translated as 'the justification of special constitutional importance'.

The other five percent are the appeals of unconstitutionality against laws that may be lodged by the Government, 50 deputies or 50 senators, the Defender of Rights and the deliberative bodies of the Autonomous Communities against laws that may infringe their autonomous status. These are the appeals that raise the most complex legal issues. Unlike in France, these appeals are filed after the promulgation of the law, without suspensive effect on its application, and the Court has no binding deadline to rule on them. The only prior checks are those on whether a treaty complies with the Constitution before it is signed and on the autonomous status of the Communities.

## IV. The comparative law aspect

1. **In the litigation function**, I observed differences throughout the processing of appeals.

1.1. Firstly, with regard to the admission of appeals in cassation, as mentioned above, the procedure is centralised in a 'technical office' made up of around 100 *letrados*. Twenty of them work for the Administrative Claims Chamber, supervised by five coordinators with specialisations corresponding to those of the different divisions of this chamber. The *letrados* prepare for the magistrates the admission decisions which, in the case of administrative claims, are taken within the First Division of the Third Chamber.
In contrast, at the Council of State the procedure for admitting appeals in cassation is carried out within each of the chambers of the Administrative Claims Division, between which they are divided according to the subject matter. Once assigned to one of the 10 chambers of the Administrative Claims Division, an appeal is examined directly by a rapporteur who has the function of a judge. If the appeal is admitted, the same rapporteur usually continues the examination of the case.

Even more important than this organisational difference is the requirement, for the admission of an appeal to the Supreme Court, that the appellant demonstrate an 'interest in cassation'. The mere criticism of the judgment, even if well founded, even for an error of law, is not sufficient for an appeal to be admitted, since cassation is not considered to correct the specific errors of the subordinate courts but to clarify them by setting, defining, supplementing or amending the case-law.
Also, the *letrado* proposes either non-admission with a decision accompanied by a brief statement of reasons, or non-admission with an extended statement of reasons to explain that there is no interest in cassation in admitting the appeal (although a plea may be founded), or admission with a reasoned decision on the interest in cassation and on the question(s) justifying admission. The judgment in cassation only deals with the questions admitted. The rate of admission of appeals is thus limited to 20%, whereas it is over 30% at the Council of State.
This notion of 'interest in cassation' does not exist before the Council of State, where appeals may be admitted to correct errors of law, and even errors in the legal qualification of facts, when the case-law is already well established. Decisions of non-admission are explained in a very concise statement of reasons with reference to the grounds raised. Admission decisions are not explained.

The severity of the filter for the admission of appeals in cassation before the Supreme Court seems to me, however, to be counterbalanced by the possibility of filing a *recurso de amparo* against a decision of this court and of bringing a liability action against the administration that has harmed the person who has not won the case through proceedings about legality.

Conversely, there are similarities between the two supreme courts. Thus, 'series' are treated in the same way at the Supreme Court and the Council of State, with the investigation

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and complete judgment of one or more representative cases while the others are put on hold until the legal solution is determined. Similarly, in the event of cassation in an appeal, the two high courts may settle the case on the merits if all the facts are sufficiently established.

1.2. Secondly, the role of the rapporteur seems to me to be more important at the *Tribunal supremo*, and the role of collegiality less important than at the Administrative Claims Division of the Council of State. At the *Tribunal supremo*, the rapporteur presents the case he or she has studied to the panel, composed of four other colleagues, including a president, without necessarily communicating a note in advance and without presenting a draft judgment. He or she prepares the draft after the meeting, which in practice is therefore hardly amended at all by his or her colleagues. Signing is carried out by secure electronic means; amendments are possible but rarely made. In contrast, at the Council of State, any case studied by a rapporteur is then reviewed by the president of the chamber or one of the two assessors; the drafts are drawn up before the session and quite freely amended, or even rewritten, by the reviser, then by the panel and finally by the president of the judgment session.

The importance of the rapporteur is perhaps also greater at the *Tribunal supremo* because, unlike the Council of State, there is no 'public rapporteur' and very few public hearings. This was surprising for me because the public hearing has acquired a very important place in French administrative jurisdiction. This is the moment of crystallisation, with the public rapporteur having to set out the main factual and, above all, legal elements before the parties, who may take the floor. This requires a very careful development of the reasoning and the way to respond to all the arguments. Collegiality is enriched by the hearing of the conclusions of the public rapporteur, and where appropriate the oral observations of the parties. At the *Tribunal supremo*, there are almost never public hearings in administrative matters, and rarely in criminal matters. At the judgment session of the Criminal Chamber I attended, the only case that was heard in public was at the request of the defendant's lawyer, and it was not the most important of those that were subsequently deliberated in camera.

These differences in operation also seem to me to be the cause of the difference in the way decisions are drafted. In contrast to the very concise style of the decisions of the Council of State (and the Constitutional Council), decisions of the administrative courts (and the Constitutional Court) are lengthy, as they include the recapitulation of the allegations of the parties, the development of the reasoning leading to the rejection or acceptance of a plea, including references to case-law precedents. They therefore bring together elements that are in the rapporteurs' notes, in the conclusions of the public rapporteurs and in the judgments of the French administrative courts. 'Special votes' (dissenting opinions from those of the majority) may be published following decisions of the Supreme Court (and the Constitutional Court). The 'secrecy of the deliberation' is understood in Spain as covering only the secrecy of the words exchanged, whereas in France it is considered to include also the secrecy of the voting of the persons participating in the judgment.

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2. I also found it interesting to compare the exercise of **the advisory function** by the two Councils of State. The most important difference is the way members are appointed, which has an impact on the way the institution works.

The *Consejo de Estado* is composed of four categories of member.
The permanent advisors, of which there are now nine (previously there were eight), are appointed for life, without age limit, by the President of the Government, exclusively from among persons who have exercised eminent functions, such as ministers, ambassadors, governor of the Central Bank, former members of the Constitutional Court or the Supreme Court, etc. They know about administration and politics.
The *consejeros natos*, i.e. '*de jure* councillors', are 10 in number and sit on the *Consejo de Estado* by virtue of the functions they hold at the same time in the various sectors of the public sphere, representing the administrations, rather like the college of State representatives on the board of directors of a public administrative establishment in France.
There are also 10 councillors elected for 4 years, who may be drawn from the Autonomous Communities.
Finally, there are 30 *Letrados*, who in the *Consejo de Estado* constitute a body, recruited through a competition that is considered the most difficult of all those in the public sphere in Spain. They are very high-level lawyers who can spend their entire career in this body, the most elitist and prestigious in the Spanish civil service. They are referred to by the same term as the *letrados* of the Supreme Court, but their mode of recruitment, status and role are very different. They are responsible for studying and reporting on cases on which the *Consejo de Estado* is consulted (bills or decrees, decisions involving the responsibility of the State for amounts exceeding EUR 50 000, declarations of nullity of the most important administrative decisions, appeals of unconstitutionality presented by the government before the Constitutional Court is consulted, decisions relating to changes of name and titles of nobility, etc.). They draft opinions, which the *Consejo de Estado* must deliver within 2 months, or within 2 weeks when the government declares an emergency. In particular, they may consult the *consejeros natos*, but unlike the work of the Advisory Division of the French Council of State, the administrations concerned by the text or the issue being consulted are not systematically heard.

The opinions are drafted by a *letrado*, whose name does not appear in the version adopted and made public in order to protect his or her independence. Even when the consultation concerns a bill or decree, unlike the Council of State, the *Consejo de Estado* does not prepare its version of the draft text. It merely provides a legal opinion, sometimes suggesting a different wording on a particular passage of the draft standard.

Each opinion is deliberated by the panel with a view to obtaining its approval. If the opinion he or she has prepared is not adopted, the *letrado* who prepared it may refuse to draft a different opinion, and it is then up to a councillor (the one who proposed an alternative) to prepare the draft. It is unthinkable for a rapporteur in the Council of State to refuse to draft what the majority has adopted, even if it is far from what he or she thinks! This is possible in the *Consejo de Estado* because the letrados and the councillors derive their legitimacy from two different sources: the former from their legal excellence, which is confirmed by their success in a legal competition; the latter from the excellence of their politico-administrative career,

which is confirmed by their appointment by the President of the Government. In contrast, at the Council of State, all members are merged into a single body, regardless of their previous life, their mode of appointment, whether they enter in the grade of auditor, Master of Requests or Councillor of State, which are only different grades. As in the jurisdictional function, collegiality seems to me to have greater weight in the Council of State than in our counterpart across the Pyrenees.

## V. The European aspect

It was in the realm of competition and regulatory law that I saw the impact of European law most clearly during my internship. In this area, which is highly regulated by European Union law, the substantive and procedural rules are largely unified. This has an impact on institutions, as the *Comision national de los mercados y la competencia* has the same tasks as the Competition Council and several regulatory authorities in France (energy, transport, audiovisual, post and telecommunications).

However, the constitutional organisation of Spain has an impact in this sector, as the Autonomous Communities have the power to pass laws on economic matters. They sometimes use it to put up *de facto* barriers to trade, for example by imposing licences for the provision of services without complying with the EU Services Directive. The commission responsible for enforcing competition law therefore operates in a more complex legal setting than in France.

Moreover, the differences I have noted above in the exercise of the litigation function between Spain and France also gave me cause to reflect on the different ways in which each country applies Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

## VI. The 'good practice' aspect within the jurisdiction visited

The requirement to demonstrate an 'interest in cassation' in order to justify the admission of an appeal, in addition to the existence of grounds likely to lead to the cassation of the contested judgment, seems to me interesting. It reinforces the idea that cassation is not a third level of jurisdiction, that the supreme court is responsible for establishing case-law by interpreting the rule of law in a general way, but not for rectifying the solution given to a particular dispute by a court. This results in the Supreme Court having significantly lower admission rates than the Council of State. This is reflected in the fact that at the Council of State, only decisions that contribute to case-law are 'filed'... and not all decisions are filed.

This is a choice of litigation policy, not simply a technical or organisational issue, and is therefore beyond the scope of this report. In the event that the Council of State wishes to reduce the rate of admission of appeals and move towards a more restrictive interpretation of

its role in cassation, the filter rule used by the *Tribunal supremo* on the criterion of 'interest in cassation' would seem to me to be an interesting avenue.

Another aspect, this time a technical one, seemed interesting to me in the Spanish courts: the secure electronic signature of judgments. It has developed with teleworking due to COVID. Each magistrate in the Supreme Court, the National Court and the high courts now has a magnetic card that allows him or her to be identified when logging on by computer to access the database in which the projects in which he or she is participating are filed. This allows him or her to apply an electronic signature remotely (if necessary after making an amendment) in a secure manner. There is currently no equivalent in the Council of State.

## VII. Benefits of the internship

I am very happy to have been able to benefit from this in-depth discovery of the supreme jurisdictional institutions of Spain, counterparts of those I have worked with or in for many years.

Learning about the organisation, functioning and practices of institutions entrusted with the same tasks in another country enables one to analyse what one knows in one's own country, to become aware of the part played by choices that counterbalance the weight of historical heritage, and to measure the impact of a politico-institutional system on the functioning of the courts. This helps one to question one's usual practices and to enrich the analysis one can make of them. Since my return, I have shared the observations and analyses to which this internship led me with several of my colleagues.

I also found an intrinsic interest in learning more about a country in which I have a long-standing interest and sympathy, and in the exercise of immersing myself in a foreign language and culture in order to work.

This internship has reinforced my interest in international cooperation, mutual training and the development of networks of lawyers from different institutions and countries, in which I already participate (in particular through my specialisation in environmental law).

All this was possible thanks to the high quality of the welcome I received, particularly within the Administrative Claims Chamber of the Supreme Court, where a magistrate acted as my mentor, providing me with invaluable assistance in getting to know and understand the workings of the jurisdictional institutions and the individualities of administrative claims, and where the secretary to the President of the Chamber was responsible for organising the various meetings with the personalities that I met inside and outside the Supreme Court. Numerous informal exchanges, facilitated by my mastery of the Spanish language and the friendliness of my interlocutors, added to the contribution of the scheduled meetings and appointments. I would like to express my deep gratitude to all those who contributed to the richness of this course (whom I am forbidden to name by ACA's editorial instructions).

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## VIII. Suggestions

Firstly, I suggest that several of the particular strengths of the internship from which I benefited should be applied as far as possible to other internships:
- long immersion;
- the presence at the same time of one or more judges from other countries. The Supreme Court organised the reception of a Portuguese counterpart at the same time as me, which enabled us to enhance our comparisons.
- the discovery during the internship of other nearby institutions contributing to the supreme jurisdictional functions, in order to better understand the functioning of the whole national system.

I also suggest that reciprocal visits between judges and people involved in the exercise of judicial functions (e.g. the *Letrados*) from one country to another be facilitated and developed. Personal specialisations could be taken into account in order to strengthen expert networks.

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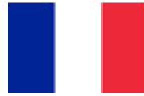
**Annex 1 - PROGRAMME**



***INTERCAMBIO***

***EXCMA. SRA. Dª. DELPHINE HEDARY, CONSEJERA DEL CONSEJO DE ESTADO FRANCÉS***

***MADRID, del 19 al 30 de septiembre 2022***

**ANNEX 2 - ORGANISATION OF ADMINISTRATIVE CLAIMS** *(revised translation D Hedary)*

| **TRIBUNAUX ADMINISTRATIFS (art. 8 LJ)**<br>*En général, des organismes dont la compétence s'étend à l'ensemble du territoire national*<br>**Unique ou 1ª Instance** | - Actes des autorités locales, à l'exception des contestations des instruments de planification urbaine.<br>- Actes des communautés autonomes (sauf s'ils émanent de leur organe délibérant («conseil de gouvernement»):<br>  o Questions de personnel (autres que la création ou la cessation de la relation de fonctionnaire)<br>  o Amendes n'excédant pas 60 000 € ou sanctions de cessation d'activité ou de privation d'exercice des droits n'excédant pas 6 mois<br>  o Demandes de d´indemmisation pour responsabilité ne dépassant pas 30.050<br>- Recours contre:<br>  o L'administration territoriale de l'État et les organismes publics de l'État qui n'ont pas de compétence sur l'ensemble du territoire national, lorsqu'ils traitent de l'exercice des pouvoirs sur le domaine public, les travaux publics de l'État, l'expropriation, mines, eaux, montagnes et forest.<br>  o Décisions sur les étrangers.<br>  o Actes des commissions électorales de zone ou sur la proclamation des candidatures par les commissions électorales.<br>- Autoriser l'entrée dans les domiciles et autres établissements qui nécessitent le consentement du propriétaire, à condition que l'entrée ait pour but l'exécution forcée d'actes administratifs (sauf en matière de protection des mineurs).<br>- Procéder aux mêmes autorisations lorsque la Commission nationale de la concurrence exige l'entrée dans les maisons, les locaux, les terrains et les moyens de transport et que le propriétaire s'y oppose ou qu'il y a un risque qu'il le fasse.<br>- Autoriser ou ratifier des mesures urgentes prises par les autorités sanitaires impliquant la privation ou la restriction des droits fondamentaux. |
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| **TRIBUNAUX CENTRAUX DU CONTENTIEUX ADMINISTRATIF**<br><br>**Unique**<br>**ou**<br>**1ª Instance** | Ils connaissent en première et dernière instance les recours en matière de:<br>• Personnel, dans le cas d'actes émanant de Ministres ou de Secrétaires d'État, à moins qu'ils ne soient confirmatifs d'actes émanant d'organes inférieurs ou qu'ils ne concernent certaines questions relatives au personnel militaire ou à la création ou à la cessation de la relation de service dans la fonction publique.<br>• Les actes des organes centraux de l'administration générale de l'Etat, lorsqu'ils dépassent la compétence des Tribunaux Administratifs.<br>• Dispositions générales et actes émanant d'organismes et d'entités appartenant au secteur public et ayant une compétence sur l'ensemble du territoire national. Il convient de noter que, si l'organe qui a émis l'acte appartient à l'administration générale de l'État, que son niveau organique est inférieur à celui de ministre ou de secrétaire d'État et qu'il s'occupe de questions de personnel, de propriétés spéciales et d'expropriation forcée, la compétence sera celle des Tribunaux Supérieurs, comme cela sera détaillé ci-dessous.<br>• Décisions des ministres et secrétaires d'État en matière de responsabilité pécuniaire pour un montant ne dépassant pas 30 050 €.<br><br>En 1re instance :<br>• Décisions rendues par la Commission espagnole de discipline sportive en matière d'audit.<br>• Décisions de rejet d'irrecevabilité des demandes d'asile politique.<br><br>Par ailleurs:<br>• Autoriser l'exécution des actes adoptés par la deuxième section de la Commission de la propriété intellectuelle pour interrompre la fourniture des services de la société de l'information ou pour retirer les contenus qui portent atteinte aux droits de ce type.<br>• Connaître les procédures de déclaration judiciaire d'extinction des partis politiques. |
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| TRIBUNAUX CENTRAUX DU CONTENTIEUX ADMINISTRATIF<br><br>Unique<br>ou<br>1ª Instance | Ils connaissent en première et dernière instance les recours en matière de:<br>• Personnel, dans le cas d'actes émanant de Ministres ou de Secrétaires d'État, à moins qu'ils ne soient confirmatifs d'actes émanant d'organes inférieurs ou qu'ils ne concernent certaines questions relatives au personnel militaire ou à la création ou à la cessation de la relation de service dans la fonction publique.<br>• Les actes des organes centraux de l'administration générale de l'Etat, lorsqu'ils dépassent la compétence des Tribunaux Administratifs.<br>• Dispositions générales et actes émanant d'organismes et d'entités appartenant au secteur public et ayant une compétence sur l'ensemble du territoire national. Il convient de noter que, si l'organe qui a émis l'acte appartient à l'administration générale de l'État, que son niveau organique est inférieur à celui de ministre ou de secrétaire d'État et qu'il s'occupe de questions de personnel, de propriétés spéciales et d'expropriation forcée, la compétence sera celle des Tribunaux Supérieurs, comme cela sera détaillé ci-dessous.<br>• Décisions des ministres et secrétaires d'État en matière de responsabilité pécuniaire pour un montant ne dépassant pas 30 050 €.<br>En 1re instance :<br>• Décisions rendues par la Commission espagnole de discipline sportive en matière d'audit.<br>• Décisions de rejet d'irrecevabilité des demandes d'asile politique.<br>Par ailleurs:<br>• Autoriser l'exécution des actes adoptés par la deuxième section de la Commission de la propriété intellectuelle pour interrompre la fourniture des services de la société de l'information ou pour retirer les contenus qui portent atteinte aux droits de ce type.<br>• Connaître les procédures de déclaration judiciaire d'extinction des partis politiques. |
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**CHAMBRES DU CONTENTIEUX ADMINISTRATIF TRIBUNAUX SUPÉRIEURS DE JUSTICE**

**Unique ou 2ª instance (appel)**

jugent en première instance les contentieux contre:

- Actes des entités locales et des communautés autonomes qui dépassent les compétences des tribunaux administratifs.
- Dispositions générales des Communautés autonomes et des Entités locales.
- Actes et dispositions en matière de personnel, d'administration et de gestion du patrimoine émanant des organes analogues aux organes constitutionnels dans les Communautés autonomes. Nous faisons référence aux organes directeurs de l'Assemblée législative, de la Cour des comptes et du Médiateur.
- Actes et résolutions émis par les Commissions pré- contentieux (TEAR) et les Commissions de pré- contentieux Locales (TEAL) qui mettent fin au processus économique-administratif.
- Actes et dispositions des commissions électorales des provinces et des communautés autonomes. Également contre les résolutions des Conseils électoraux sur la proclamation des élus et l'élection des présidents des Corporations locales.
- Accords entre administrations publiques compétentes dans leur communauté autonome.
- Interdiction ou proposition de modification des réunions.
- Comme indiqué ci-dessus, les actes et résolutions émanant d'organes de l'administration générale de l'État ayant un niveau organique inférieur à celui de ministre ou de secrétaire d'État et une compétence sur l'ensemble du territoire national, lorsqu'ils traitent de questions de personnel, de propriétés spéciales et d'expropriation forcée.
- Actes et résolutions des Communautés autonomes en matière de concurrence.
- Décisions prises par l'instance chargée de statuer sur les recours en matière de marchés publics.
- Décisions rendues par les tribunaux administratifs territoriaux dans le cadre de recours contractuels.
- Autres procédures administratives non expressément attribuées à d'autres juridictions administratives.

Les tribunaux supérieurs de justice sont le point culminant de l'organisation judiciaire sur le territoire des communautés autonomes. Par conséquent, leurs chambres du contentieux administratif connaissent, en appel, des affaires suivantes:

- Les recours contre les jugements et ordonnances rendus par les tribunaux administratifs.
- Recours en révision contre les jugements définitifs des tribunaux administratifs.
- Les questions de compétence entre les tribunaux administratifs de leur ressort.
- L'appel en cassation pour l'unification de la doctrine.
- L´appel en cassation dans l'intérêt de la loi.

| CHAMBRE DU CONTENTIEUX ADMINISTRATIF AUDIENCE NATIONALE<br><br>Unique ou 2ª instance (appel) | Elles sont compétentes en première et dernière instance sur:<br>• Les recours contre les dispositions générales et les actes des Ministres et Secrétaires d'Etat, ainsi que ceux en matière de personnel qui se réfèrent à la création ou à la cessation de la relation de service dans la fonction publique. Dans ce domaine, elle est également chargée de connaître des recours contre les contrats du ministère de la défense, relatifs aux promotions, à l'ordre d'ancienneté par grade et aux affectations.<br>• Recours contre les actes des Ministres et Secrétaires d'Etat ratifiant des actes d'autres organes.<br>• Recours contre les accords entre Administrations Publiques non attribués aux Tribunaux Supérieurs de Justice.<br>• Les actes de nature économico-administrative émanant du ministre de l'économie et des finances et de la commission précontentieuse économico-administratifs (TEAC), à l'exception de ceux attribués aux Tribunaux Supérieurs de Justice.<br>• Recours contre les actes émis par la Commission de surveillance des activités de financement du terrorisme, ainsi que la prolongation des délais des mesures qu'elle a adoptées.<br>• Les décisions de la Cour administrative centrale pour les recours contractuels, à l'exception de celles attribuées aux Tribunaux Supérieurs de Justice.<br>• Recours contre des actes de la Banque d´Espagne, de la Commission nationale des marchés financiers (Fonds de restructuration du secteur bancaire).<br>• Recours introduits par la Commission nationale de la concurrence.<br><br>En deuxième instance:<br>• Les recours contre les ordonnances et les jugements des tribunaux centraux du contentieux-administratif.<br>• Recours en révision contre les jugements définitifs des Tribunaux centraux du contentieux-administratif.<br>• Questions de compétence entre les tribunaux centraux en matière de contentieux administratif.<br><br>Par ailleurs: le transfert international de données lorsque la demande est faite par l'Agence espagnole de protection des données. |
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| CHAMBRE du CONTENTIEUX ADMINISTRATIF TRIBUNAL SUPRÊME<br><br>Unique ou 2ª instance (cassation) | Elle connaît des recours en première et dernière instance en matière de:<br>• Décisions du Conseil des ministres et des commissions déléguées du gouvernement.<br>• Décisions du Conseil général du pouvoir judiciaire.<br>• Décisions des organes compétents de L'Assemblée nationale, du Sénat, de Tribunal constitutionnel, de la Cour des comptes et du Défenseur des droits, en matière de personnel, d'administration et de gestion du patrimoine.<br>En cassation:<br>• Les pourvois en cassation de toute nature.<br>• Recours en cassation et révision contre les décisions de la Cour des comptes.<br>• Recours en révision contre des jugements définitifs rendus par les chambres du contentieux administratif des Tribunaux Supérieurs de Justice, l'Audience Nationale et Tribunal Suprême.<br>Par ailleurs:<br>• Recours contre les décisions en contentieux électoral et autres prévus par la législation électorale.<br>• Recours contre les actes des conseils électoraux adoptés dans le cadre de la procédure d'élection des membres des chambres de direction des tribunaux.<br>Enfin, autoriser: La transmission internationale de données lorsque la demande est faite par le Conseil Général du Pouvoir Judiciaire. |
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