PURPOSE AND FUNCTIONS OF THE ADMINISTRATIVE SUPREME COURT OF SPAIN.

The Judicial Power in Spain is a unique power for the whole State, unlike the Executive or the Legislative one, which are structured at a state level and also at a regional level, through of the so-called Autonomous Communities, in which the entire national territory is divided.

The Supreme Court is a unique judicial body in Spain with jurisdiction over the whole country, being the highest court in all the areas of Law (Civil, Criminal, Administrative and Labour). The Supreme Court is composed of five Chambers, the third of those Chambers is the Administrative Supreme Court (hereinafter SAC).

The SAC hears, as a single-instance court, administrative appeals against certain acts and provisions that will be exposed later. On the other hand, the Supreme Administrative Court acts as a court of cassation, since it hears the appeals in cassation against the decisions of the lower administrative courts.

In recent years there has been a significant modification of the role of the SAC, which has fundamentally affected its role as a judicial body that unifies and determines the case-law interpretation of the Law. The aim of this significant reform, in force since 2016, is to allow the Supreme Court itself to be responsible for selecting the appeals that must be admitted for processing, through a system of selection of issues based on their legal importance.

The complexity of the Spanish judicial system lies in the requirement to combine two elements: the uniqueness of the Judiciary and the duality of the legal system (laws and decisions of the State and laws and decisions of the Autonomous Communities).

Given the importance and extent of regional Law, that is, that approved by the Parliaments and appropriate authorities of the Autonomous Communities, there are Regional Administrative Courts, that culminate the judicial structure in every Autonomous Communities. It is for this reason that its resolutions are not subject to an appeal of cassation before the Supreme Court, in what regards to the interpretation of the regional Law. On the contrary, there can be an appeal against those decisions in what refers to the implementation or application of State law or European Union law. For their decisions to be appealed in cassation before the Supreme Court, it is essential that it be invoked that those decisions have incurred in the infringement of a State Law or European norm and that it has been relevant and decisive on the ruling of the judgment.

Concerning the SAC adjudicating as a single instance court, that is a characteristic of the Spanish system which is not, however, strange in other European judicial systems. Indeed, the Supreme Court serves as a single instance court in several cases, which are objectively determined by the criteria of the body responsible for the challenged act.

First of all, it should be noted that this is not its primary function, which, as has been said before, it is the unification of the interpretation of State and European Law through the appeal of cassation.

On the other hand, from the perspective of the Spanish Constitution, there is no formal right to a second hearing in the administrative jurisdiction. That is why the procedural system
established in the Law 29/1998, on Administrative Jurisdiction, includes some issues which are resolved in a single instance. In general, the judgments pronounced by lower administrative courts can be appealed in cassation before the Supreme Court. However, taking into account the nature and legal regime of the appeal of cassation, that appeal cannot be defined, properly speaking, as a second instance.

The role of the Supreme Court as a single instance court is well established by Law. In this type of proceedings, the Supreme Court does not act as a cassation body, since it does not review a previous decision of a lower court, but rather directly decides on the appeal directed against general provisions and administrative acts of the Government, and its delegated Committees. Furthermore, the SAC hears as a single instance court, administrative actions of the Legislative Power of the State about staff and patrimony. It also has to decide on the challenge of the administrative activity of other constitutional bodies, such as that of the Ombudsman and, Constitutional Court, and finally, of the decisions of the General Council of the Judiciary, including its general provisions.

The reason for assigning these competencies to the Supreme Court is, in the first place, the result of the historical evolution in the construction of contentious-administrative jurisdiction, because, since its origins, it reserved this jurisdiction for the Supreme Court by a criterion of the hierarchical position. This hierarchical criterion responds, in summary, to the will of the Organic Law of the judicial power, that the decisions of the highest body of each State power, be controlled exclusively by the Supreme Court. This criterion only leaves aside the decision on the constitutionality of the laws, which exclusively belongs to the Constitutional Court, which is a judicial body not integrated into the Judiciary.

Concerning the importance of this duty as a single instance court, the Third or Administrative Chamber of the Supreme Court pronounced 2,246 judgments in 2017. No statistics show or state how many of these judgments resolve direct claims, but it can be affirmed that the number of claims submitted in a single instance is about a 20 %, and above all, they usually address issues of a high technical or legal complexity.

The SAC always sits as a collegiate court, also when it acts as a single instance court. The possibility of a single judge resolving a case is not envisaged, either with regards to the judgment nor regarding the conduct of the proceedings.

When the SAC adjudicates as a single instance court, its purposes are the same as those of any other administrative judicial body acting as such, that is, to resolve the case in a reasoned and consistent manner, examining all the facts and Law issues duly raised by the parties to the case.

Now, without a doubt, the primary role or function of the Supreme Administrative Court is that consisting in unifying the interpretation of the Law made by the rest of the courts, through an appeal of cassation. A review of the concept could lead it back to those cases in which the judgment appealed contradicts the state law or European law, jurisprudence of the CC (Constitutional Court) or the case-law of the Supreme Administrative Court, and the issue at stake transcends the specific case, since it affects a large number of situations, so that its resolution be subject to a general implementation or application. The Procedural Law establishes a series of assumptions in which that interest of cassation is presumed with greater or lesser intensity. However, only those cases in which a lower court deliberately departs from
the existing case-law SAC’s interpretation can be subject, in any case, to the existence of cassational interest.

To summarize all the above, the following conclusions can be drawn:

1. The Supreme Court is the highest jurisdictional body in all of the categories, except as provided in the matter of constitutional guarantees.

2. The Administrative Division of the Regional Courts of Justice that exists in every Autonomous Community are the competent courts for the interpretation of regional Law.

3. The recent modification of the appeal of cassation, in force since 2016, has delved into the idea that the SAC may dedicate its main but not only role to ensure the uniform interpretation of State and European Law.

4. However, this modification has not affected the competences or powers of the SAC as a single instance court, which have been kept and which respond to a criterion of constitutional architecture.

5. The appeals on cassation before the Supreme Administrative Court against the resolutions issued by the rest of jurisdictional administrative courts may be made dependent on the concurrence of their cassational interest, that means, the appeal must raise an issue which stirs up enough interest to resolve a cassation appeal in order to develop case law.

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