
New developments in contentious administrative cassation appeal

Royal Decree-Law 5/2023 introduces modifications to the Administrative Jurisdiction Act, also affecting the regulation of cassation appeals

Spain - Legal flash

June 29, 2023



Key aspects

- > It introduces new grounds for objective cassation interest (*“interés casacional objetivo”*)
- > Certain procedural periods are reduced when processing some cassation appeals
- > It regulates preferential processing in cassation
- > Witness lawsuits are regulated by groups or categories
- > Succinct reasons must be given if the appeal is dismissed as inadmissible
- > It regulates preliminary rulings in cassation



Developments in the regulation of cases involving objective cassation interest

- > **New grounds for annulment interest / objective cassation interest for the formation of case law (“*interés casacional objetivo para la formación de la jurisprudencia*”).** The grounds for objective cassation interest provided for in article 88.3.b) of the Administrative Jurisdiction Act (the “AJA”) is expanded, including a new ground, which assumes that objective cassation interest exists not only in the event of deliberate deviation from previous case law because it is considered erroneous, as until now, but also in cases where the deviation of the appealed decision occurs without a reasoned explanation to do so, despite having been cited in the debate or being established case law.
- > **Reasons for dismissing the appeal as inadmissible.** In cases provided under article 88.2 of the AJA, inadmissibility must be decided in a “succinctly reasoned” ruling.

Developments in procedural periods

- > **Certain deadlines are reduced.** Articles 89.5 and 90.1 of the AJA reduce some of the previous deadlines granted for processing cassation appeals, including the following:
 - (i) The deadline to appear before the Supreme Court following the lower court’s decision considering the cassation appeal to be prepared is reduced from 30 to 15 court days.
 - (ii) The deadline to hold an exceptional hearing to determine whether the cassation appeal has an objective interest has been reduced from 30 to 20 court days.
- > **Time limits to prepare main statements are maintained.** However, the time limits to draft the statements to prepare the appeal, the application initiating proceedings and statements of opposition have not changed, since their current duration is adjusted to the relevance and high technical complexity of the appeal.



Developments in the regulation of the preferential processing of appeals

- **Regulation of preferential processing in cassation.** Under Royal Decree-Law 5/2023 (“RDL 5/2023”), in cases involving a large number of appeals that raise a legal issue that is substantially identical, the admission of one or several of them for preferential processing and resolution may be agreed, and the admission procedure of the others will be stayed until a judgment is handed down. Once a judgment on the merits has been issued, the stayed appeals will be attached and a period of ten days will be allowed to file pleadings. If the appeal is not withdrawn and the judgment challenged in cassation coincides with the Supreme Court's decision, the pending appeals will be inadmissible. If the judgment does not coincide, an order of admission will be issued and the cassation appeal will continue to be processed,.
- **Witness lawsuits by groups or categories.** Article 37.2 of the AJA is amended as to the regulation of witness lawsuits and now provides that, in the event of numerous appeals involving a substantially similar controversy, they can be grouped into categories or groups, and the court, if they have not been accumulated, may admit one or more appeals from each group or category for processing on a preferential basis.

Regulation of preliminary rulings in cassation

- **Preliminary rulings in cassation.** Under the new section 5 of article 56 of the AJA, appeals filed before judicial-review courts may be stayed in cases involving a legal issue that is substantially identical to that raised in a cassation appeal that has already been admitted for processing.

In these cases, if once the claim and answer to the complaint have been filed, a court becomes aware that the Supreme Court has already admitted for processing a cassation appeal involving a legal issue that is substantially identical to that raised in the appeal it is processing, the parties will be heard for ten days at any time before deciding on the stay. If it finds that the legal issue is substantially identical and that the ruling handed down in cassation may serve to resolve the proceedings, it will order the stay of all other cases until a final judgment is handed down on the cassation appeal. Once the judgment has been handed down, the stay will be lifted and a new hearing will be held, typically for ten days, enabling parties to make pleadings on the ruling's impact on the proceedings.



Entry into force and transitional regime

- > **Entry into force of RDL 5/2023:** The procedural amendments provided for in Title VII of Book Five of RDL 5/2023, including the amendment of the AJA, will enter into force on July 29, 2023.

- > **Transitional regime of the procedural amendments to the AJA.** The transitional regime includes the following rules:
 - (i) The amendments to articles 37.2 and 56.5 of the AJA will apply to all ongoing proceedings still awaiting a decision on the date RDL 5/2023 enters into force.

 - (ii) The regime applicable to cassation appeals before judicial-review courts provided for in RDL 5/2023 will apply to court decisions issued after it enters into force.

 - (iii) However, the new regulation of preferential processing (article 94 of the AJA) will apply to appeals that have been prepared and are pending admission on the date RDL 5/2023 enters into force. For these purposes, whether *ex officio* or at a party's request, the suspension of the admission procedure of these appeals may be agreed on with regard to any of the cassation appeals admitted before the entry into force of RDL 5/2023.



CUATRECASAS

Meet our team



José Mª Macías
Senior associate

josem.macias@cuatrecasas.com



Elicia Rodríguez
Senior lawyer from the
Knowledge and Innovation Group

elicia.rodriguez@cuatrecasas.com



Alvaro Luna
Senior associate

alvaro.luna@cuatrecasas.com



Jose Antonio Guerrero
Senior associate

joseantonio.guerrero@cuatrecasas.com



Fernando Mª Alejandre
Senior associate

fernandomaria.alejandre@cuatrecasas.com



CUATRECASAS

For additional information, please contact our [*Knowledge and Innovation Group*](#) lawyers or your regular contact person at Cuatrecasas.

©2023 CUATRECASAS

All rights reserved.

This document is a compilation of legal information prepared by Cuatrecasas. The information and comments in it do not constitute legal advice.

Cuatrecasas owns the intellectual property rights over this document. Any reproduction, distribution, assignment, or any other full or partial use of this document is prohibited, unless with the consent of Cuatrecasas.

