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Review article

Effect of the civil law severability doctrine on administrative contract Theory: A study of French and Egyptian laws

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ABSTRACT

This article investigates the application of the civil law severability doctrine in administrative law through an in-depth analysis of the French and Egyptian legal systems. Recognising the increasing complexity of administrative contracts and disputes, this study explores how administrative judges integrate the severability doctrine of civil law into their judgements. Specifically, it investigates whether and how this integration occurs and the balance that judges maintain between adhering to administrative law's independence and applying civil law principles. This article particularly notes the consistent application of this doctrine in the examined jurisdictions of France and Egypt. Despite minor variations, the fundamental approach to the severability doctrine remains largely uniform across these two legal systems. By presenting detailed case studies from France and Egypt, this study fills a notable gap in the current literature by offering valuable insights for countries where administrative law is still evolving, by showing how civil law doctrines can be incorporated. This approach not only bridges a knowledge gap but also sheds light on the interaction between civil and administrative laws, paving the way for similar interdisciplinary legal studies.

1. Introduction

The formation of a contract requires the presence of several elements and fulfilment of certain conditions [1]. The lack of one or more of these elements and conditions can invoke severe consequences by nullifying the entire contract, effectively ending its legal existence [2–5]. This holds true for contracts declared either absolutely or relatively null[1] because both scenarios entail a retroactive effect that reverts the involved parties to their precontractual states [6].

Nevertheless, invoking full nullification can sometimes be an excessive penalty, potentially causing more harm than nullifying the individual illegal clause and could also contradict the parties' common intention to preserve the contract. Therefore, legal scholars and

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[1] Absolute nullity applies when a contract violates fundamental principles like law or public order, making it void from the outset and unratifiable. Any party or even a third party can challenge it, often with generous time limits. Meanwhile, relative nullity occurs when a defect, such as fraud or duress, affects one party's consent. In this case, only the aggrieved party can challenge it, usually within a limited time, and the defect can be ratified by that party.

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practitioners need to determine whether it is always appropriate to nullify a contract entirely or if limiting the nullity to the illegal clause is a more balanced approach.

In this context, private law scholars and judges have developed the severability doctrine to mitigate the negative effects of nullifying the entire contract. This doctrine permits the partial nullity of a contract by limiting nullity to illegal clauses as long as certain conditions are satisfied, as shown later in this article. Subsequently, legislators adopted this solution and codified the severability doctrine [7]. Indeed, the severability doctrine assumes that the remainder of a legal transaction should be maintained whenever possible.

Given the increasing complexity of administrative contracts and rising number of disputes, this study examines how administrative judges can resolve conflicts more effectively without causing undue harm to the parties involved. Specifically, this article focuses on an issue that is not sufficiently covered in the existing literature: the adoption of the civil law severability doctrine by the administrative judiciary and whether its application is mandatory or optional if its conditions are satisfied. Additionally, it investigates the balance that administrative judges have to strike between maintaining the autonomy and independence of administrative law and integrating civil law principles, that is, the severability doctrine. Notably, this article fills a significant gap in current research by extending the conventional analysis of the severability doctrine within national legislation. Further, in terms of practical implications, by presenting detailed case studies from France and Egypt, this article serves as a model for Arab countries, where administrative law is still evolving, demonstrating how administrative judges can uphold the autonomy of administrative law while applying doctrines borrowed from civil law. This approach not only bridges the knowledge gap in the existing literature but also provides a nuanced understanding of the relationship between civil and administrative law in applying legal doctrines.

France and Egypt were selected as focal points in this article because of their distinct roles in the evolution of administrative law. France was the first country with a civil law tradition to establish administrative law. Therefore, the practices adopted in France have significantly influenced many countries globally, highlighting the importance of understanding the stance of French jurisprudence and judiciary on applying the severability doctrine, which originated in private law, to administrative disputes. In particular, although Egyptian law was influenced by French law, it did not fully follow the path of French law, which is a matter worth studying. Egyptian law was also chosen as a case study because it serves as a useful reference for countries in which administrative law is still evolving, especially in Arab countries, which often follow the footsteps of Egyptian law.

This study employs an analytical methodology to examine the relevant statutes and a comprehensive range of judgements issued by both civil law and administrative courts. This approach ensures a thorough and current understanding of the underpinnings of the severability doctrine. Additionally, it adopts a comparative methodology that involves a careful examination of the application of the severability doctrine across different jurisdictions, with special emphasis on France and Egypt. By doing so, the study not only reveals the nuances and variations in the application of this doctrine in these countries, but also provides a broader perspective on how different legal systems that uphold the civil law tradition apply the concept. This comparative analysis is crucial for understanding the global landscape of the severability doctrine, thus enriching the field of administrative law.

The remainder of this article is structured as follows. Section 2 analyses the legal foundations of the severability doctrine and its development in administrative law. Section 3 discusses the prerequisites of the doctrine and the extent to which administrative judges adhere to the doctrine. Section 4 considers whether administrative judges have the discretionary power to apply this doctrine when its conditions are fulfilled. Finally, Section 5 summarizes the main conclusions.

2. From civil law to administrative law: Tracing the development of the severability doctrine

The severability doctrine avoids the negative effects of nullifying an entire contract because of the illegality of a clause, allowing a judge to retain the enforceability of a contract between parties by limiting the nullity to illegal clauses—or even parts of clauses—despite their illegality [5,7].

Prior to the enactment of Ordinance No. 2016-131 of February 10, 2016, the French legislation lacked an explicit article allowing judges to restrict nullity to only the illegal clauses of a contract where feasible. The civil code included two potentially contradictory articles. Article 900 endorsed the nullification of specific illegal clauses in donation contracts and wills. If any clause in such contracts or wills was illegal, it was considered void; however, the contract or will remained valid. By contrast, Article 1172, which applies to all contracts, mandated the nullification of the entire contract if it contained any illegal clause.

The French judiciary ignored this potential contradiction and developed its own version of the severability doctrine. In doing so, it considered the importance of illegal clauses to the parties as a criterion for deciding whether to apply the doctrine. Judges were to consider the entire contract null and void if an illegal clause was the motive to contract [8]; however, in cases where the illegal clause was not a motivating factor in the formation of the contract, judges could limit the scope of nullity to that clause alone [9]. Accordingly, the French judiciary adopted the severability doctrine to limit the effects of the nullity of illegal clauses without a statutory basis.[2]

This situation changed after the reform of the French Civil Code in 2016. Article 1184, as amended, stipulates that:

> 'Where a ground of nullity affects only one or more clauses of the contract, it entails the nullity of the whole act only if this clause or these clauses constituted a decisive factor in the undertaking of the parties, or of one of them.

[2] Notably, the Belgian judiciary followed the same approach as its French counterpart before the reform of the French Civil Code.

> The contract is upheld where legislation deems a contract clause not written, or where the purposes of the rule not followed requires it to be upheld.'

The first paragraph of the article states that the contract remains valid, despite the nullity of one of its clauses, if this clause is not a decisive factor in the parties' desire to contract. In other words, if the parties conclude the contract without the illegal clause, the clause shall be null but the contract is valid. In the second paragraph, the article states that the contract also remains valid where the legislator stipulates that the illegal clause is considered to have never been written [10–13], or if the goal of the violated rule requires keeping the contract valid.

Similarly, Egyptian legislators adopted the severability doctrine. Article 143 of the Egyptian Civil Code states that "if one part of the contract is void or voidable, this part only shall be nullified unless it is clear that the contract would not be concluded without that part. In this last case, the entire contract shall be nullified."

In conclusion, judges deciding on civil cases can apply the severability doctrine based on the articles mentioned above. However, the issue is whether judges deciding on administrative cases can use the same doctrine if administrative law does not have a similar statutory basis.

Similar to the nature of administrative and civil disputes, the philosophies of administrative and civil laws differ, making each law independent. However, sometimes, when rules in administrative law are missing on a particular issue, judges refer to civil law for guidance. Hence, the administrative judiciary may apply a legal rule from civil law, provided that it does not conflict with the nature of the administrative dispute. Interestingly, unless administrative law explicitly refers to a particular article in civil law, administrative judges apply civil law rules on the basis that they embody the general legal principles, rather than statutory law. Accordingly, administrative judges adopt ideas from civil law and shape them to fit the special nature of administrative contracts.

Notably, French administrative judges used to differ in whether to mention the civil law article number they applied to administrative disputes, with some judgements being explicit [14] and others ignoring the number [15–17]. Later, the judges explicitly mentioned the article number to refer to the general principles embodied in the article [18–21]. Public law jurisprudence argues that administrative judges do not apply private law rules directly. Instead, they use the solutions provided in these rules and quote the parts they deem appropriate for deciding on administrative disputes after adapting them to the nature of public law[3] [22].

In this regard, the Egyptian judiciary has adopted an approach distinct from its French counterpart, as it is common for administrative judges to explicitly refer to the civil law articles they rely on in their judgements [23]. This is evident from judgements related to the nullity of administrative contracts as well as resolutions of the general assembly of the advisory and legislative departments at the Egyptian Council of State. It should be noted that explicit reference to civil law articles does not necessarily mean ignoring the special nature of administrative law. Egypt's Supreme Administrative Court has been keen to stress that the nature of administrative disputes requires that civil law provisions not be applied unless required by a legal article. If a legislator does not explicitly oblige judges to apply civil law provisions, they are not obligated to use civil law rules. However, judges are free to seek appropriate solutions for the legal relationships that arise in public law between administrations and individuals. Judges should apply civil law rules that are compatible with administrative law and ignore incompatible ones or modify them if necessary to achieve compatibility [24].

In conclusion, administrative judges do not use civil law rules unless they do not find appropriate rules in administrative law. Furthermore, to use civil law rules, judges ensure that they do not conflict with the peculiarity of administrative disputes. Finally, when they use the civil law rule, they refer to it as a general principle, rather than a statute. In doing so, they reconcile the application of civil law rules in administrative disputes with the independence of administrative law.

In particular, *Commissaire du gouvernement* (currently *rapporteur public*) played a crucial role in achieving this outcome by proposing solutions to disputes that enables administrative judges to develop administrative law. This is exemplified in the legal opinion prepared by Mr. Rivet on Olive's dispute, in which he addressed the court, stating that:

> "It could be helpful to examine how civil law judges apply the undue payment legal rules in civil law. However, you are deciding on a dispute to which the state is a party. Therefore, your decision should be based on different principles … You should issue your judgments without taking into consideration civil law rules except in cases you believe that applying these rules does not conflict with the nature of the administrative dispute" [25].

Furthermore, the legal opinion prepared by the state commissioner, Mr. Laurent, regarding the Chomat dispute is conclusive evidence of the independence of administrative law. He concluded that even if a criminal law judge finds the accused innocent because of a lack of evidence, an administrative judge may reach a different outcome. In other words, claim preclusion, or *res judicata*, does not apply in this case. Administrative judges do not abide by the investigation procedures or evidence on which a criminal law judge relies; rather, they are free to search for evidence in the way they deem appropriate [26].

Having addressed the legal basis of the severability doctrine, the following section covers its conditions and whether the administrative judiciary applies them.

[3] Professor Charles Eisenmann is one of the main proponents of this view. He stated that "Le code de procédure civile est applicable seulement entre individus. Le juge administratif, même dans les cas où il vise les articles du Code de procédure civile ou du Code civil, ne les applique pas directement car il applique des règles de contenu jurisprudentiel; en appliquant une règle, le Conseil d'Etat fait d'elle une règle de droit administratif".

3. Assessing the administrative Judiciary's commitment to civil law severability conditions

In most cases, declaring an entire contract null or void may cause greater harm to one or both contracting parties than simply invalidating an illegal clause. Nonetheless, there may be exceptional cases in which nullifying the entire contract is more appropriate, such as when the illegal clause is so central to the agreement that it undermines the contract's overall purpose or legality. In such cases, maintaining the remainder of the contract may be inappropriate. Nevertheless, in most instances, the general inclination of the parties is to preserve as much of the original agreement as possible by only nullifying the illegal clause.

Invalidating an illegal clause is more appropriate when the following three requirements are satisfied: (1) severability must be possible, (2) it must be consistent with the common will of the parties, and (3) it must be legitimate.

3.1. Severability must be possible

This requirement states that if nullity is to be limited to the illegal clauses in a contract, it must be possible for the contract to be partially nullified [27]. That is, after the removal of illegal clauses, the remaining clauses must form a valid contract [1,3], assuming that the illegal clauses can be severed from the others [28,29]. Conversely, if the illegal clauses are inseverable or removing them will lead to the nullity of the entire contract, then partial nullity is impossible [30].

The French administrative judiciary has noted that nullity has a retroactive effect, in that the legal existence of the contract terminates from the moment of its conclusion rather than the date of judgement [2,31]. To overcome the adverse consequences of this retroactive effect, administrative judges, similar to their civil counterparts, are keen to maintain the legal existence of the contract by limiting nullity to the illegal clauses, assuming that they are indeed severable [32,33]. However, administrative judges differ in their approaches, with some explicitly declaring that illegal clauses are void without affecting the contract's validity, while others ignore the existence of illegal clauses, considering them inapplicable as if they had never been written [34,35]. Judges typically explain why illegal clauses are not applied. Regardless of whether the terminology judges use is void, null, inappropriate, or useless, its practical effect is that the clause is unenforceable, which is the plaintiff's goal.

Similarly, the Egyptian administrative judiciary's position does not differ from that of the French judiciary. Similar to French judges, Egyptian judges are keen to avoid declaring the nullity of the entire contract and instead limit nullity to the illegal clauses as long as they are severable, which is the primary requirement for applying the severability doctrine. However, as confirmed by many judgements issued by Egypt's State Council, if a judge finds that a contract would not have been concluded without the illegal clause, nullity will affect the entire contract and not only the illegal clause. For instance, in a case where a constructor failed to perform the obligation mentioned in one clause, the administrative court decided that the clause alone was null, after first ensuring that the clause was severable and that the contract could still be executed had the clause not existed [36].

Further, Egypt's Supreme Administrative Court confirmed the same position in a recent judgement in a case in which the state had entered into a contract with several parties. After finding that one of these parties lacked an essential requirement, the court nullified the contract for this party, verified that the other parties satisfied the requirement, and decided that the contract remained valid for all other parties [37]. It is evident that the court would not have made this decision unless the illegal clause was severable and thus partial nullity was possible.

Likewise, the State Council's General Assembly of Advisory and Legislative Departments adopted the same opinion. The assembly was asked to provide a legal opinion on an administrative contract that included a clause obligating the government to pay interest for delays in paying for construction work that exceed the limit set by Article 277 of the Civil Code. The legal question before the assembly was whether the entire contract should be nullified or only the illegal clauses. The assembly used the severability doctrine to limit nullity to illegal clauses without affecting the contract's validity and emphasised that nullifying the contract was unnecessary because the illegal clause was indeed severable [38]. This resolution is important, not only because it applied the doctrine of severability set by Article 143 of the civil code, but also because it applied Article 277 of the same, which sets the maximum limit for interest regarding delays. Finally, it is reasonable to conclude that the administrative judiciary adopted the same opinion as the civil judiciary regarding the requirement that partial nullity must be possible so that the severability doctrine can be applied.

3.2. Severability must be consistent with the parties' common intention

To apply the severability doctrine, judges must ascertain that the involved parties would be willing to maintain the remainder of a contract if its illegal clauses were nullified. If a judge finds that the parties consider the illegal clause as an integral part of the contract, then this illegal clause is inseverable and cannot be held void without nullifying the remainder of the contract [39].

The parties' common intention may be apparent from the inclusion of a clause explicitly stating that all contract clauses are inseverable. In this case, judges must abide by the parties' intention and refrain from applying the severability doctrine [40–42]. However, if the parties' common intention is unclear, judges must assess their implicit intentions on a case-by-case basis. If they cannot verify that the parties' intention is to consider the contract clauses severable, they are likely to refuse to apply the severability principle and hold the entire contract void [3,43].

Notably, judges must assess the real intentions of the involved parties rather than relying on their fictitious agreement [44]. In addition, when the parties conclude several contracts, they may consider them inseverable. In this case, the nullification of one contract would also lead to the nullification of all related contracts [45–49]. However, even if the parties agree that the clauses of a contract are severable, the judge should not limit nullity to the illegal clause if they find it inseverable or an essential element of the contract [29].

Like their counterparts in civil courts, administrative judges consider the parties' common intention when invoking the severability doctrine. In administrative contracts, judges apply the severability doctrine only if they find that the parties intend to conclude the contract, even if the illegal clause is nullified. The French State Council affirmed this in several judgements. In *Pottier*, the court stated that it could not alter the contract; however, it could hold an illegal clause void if it was not the motive to contract, or the entire contract void if the illegal clause was the motive to contract [50]. Accordingly, judges assess the parties' common intention to determine whether a contract would have been concluded without the illegal clause. In this context, questionable clauses play a pivotal role in helping judges with their assessments. If they find that an illegal clause is a decisive factor in entering into the contract, they nullify the entire contract with all its clauses; otherwise, they only nullify the illegal clause [35].

In fact, administrative judges not only follow the same rationale as civil judges but also sometimes use the same exact phrases in their judgements. In some judgements, administrative judges have stated that an illegal clause is essential, and consequently, the validity of the contract depends on the validity of the clause [51]. In other judgements, administrative judges stated that the illegal clause is decisive in the minds of the parties [52].

When deciding on the validity of an administrative contract, the French Council of State has not only referred to the provisions of civil law, but also to the Court of Cassation judgements. This has been demonstrated by the legal opinions of *Commissaire du gouvernement* (currently *rapporteur public*) who have referred to many judgements by the Court of Cassation as well as to private law jurisprudence. A striking example is the legal opinion offered by Mr. Genevois, the *Commissaire du gouvernement,* regarding the Council of State's ruling of February 15, 1980. In his endeavour to convince the judge to sustain a contract despite the presence of an illegal clause, Mr. Genevois used terminology commonly found in civil law jurisprudence. When reading the legal opinion, one might think that it was written by a civil law author rather than one tasked with applying administrative law. For instance, Mr. Genevois argued that nullifying a contract clause should not lead to nullifying the remainder of the contract unless it is clear that the parties intend to consider this clause essential, without which they would not have concluded the contract [53].

The Council of State in Egypt adopted the same approach as its French counterpart. It has referred not only to the provisions of the civil law relating to nullity but also to the judgements issued by the Court of Cassation regarding the severability doctrine. This is clearly shown in a recent judgement issued by the Supreme Administrative Court in an appeal related to the invalidity of a contract, in which it ruled to partially invalidate the contract without affecting the remainder of the contract. The Court found that the conditions for severability were met and that they did not conflict with the will of the parties. Justifying its ruling, the Supreme Administrative Court did not refer to Article 143 of the Egyptian Civil Code but rather to several judgements issued by the Egyptian Court of Cassation, in which the court limited nullity to only the illegal part of the contract [54].[4]

Notably, the severability doctrine is usually applied in contracts that include clauses that conflict with public order. Although this is not a written rule, applying the decisive factor test leads to this conclusion. Therefore, judges usually limit nullity to clauses that violate public order and uphold the remainder of the contract. For example, when an administrative contract states that the parties cannot appeal a judgement or have to resolve disputes via arbitration, the judge shall nullify the clause alone if it violates public order [55]. French law prohibits arbitration in administrative contracts except in certain cases.[5] In cases where an administrative contract requires the resolution of disputes through arbitration, administrative judges apply the severability doctrine and limit nullity to the illegal arbitration clause without nullifying the entire contract. Hence, the arbitration clause is an important example in the current study. First, judges apply a civil law doctrine to nullify it. Second, judges limit nullity to the arbitration clause.

In conclusion, similar to civil law judges, administrative judges do not apply the severability doctrine unless it is consistent with the parties' common intention. If judges find that the parties' common intention is not to execute the contract without the illegal clause, they nullify the contract entirely.

3.3. Severability must be legitimate

To hold the contract partially null, the legislator must not prohibit the severability doctrine. The legislators may determine certain legal consequences if a contract includes an illegal clause. In such cases, the judge must apply these legal consequences, rather than the severability doctrine. On the one hand, if the legislators determine that the entire contract is null if a particular clause is illegal, the judge has no option but to declare the entire contract null. On the other hand, if the law does not determine the legal consequences of illegal clauses, the judge must assess the rationale behind the illegality of the clause to determine whether the severability doctrine is in line with it [3]. The judge applies the severability doctrine if it serves the policy behind the illegality of the clause, and vice versa.

The French administrative judiciary adopted the same view as its civil counterparts. If the legislators determine that the illegality of a particular clause results in the nullity of the entire contract, administrative judges will not apply the severability doctrine. Additionally, they will nullify the entire contract in certain other cases [31–33,56], for example, if the doctrine of the administration's

[4] In this judgement, the Court referred to several judgements issued by the Court of Cassation, such as the Court of Cassation judgment in case no. 11975 of the judicial year no. 85 issued on 21 December 2016, the Court of Cassation judgement in case no. 540 of judicial year no. 42 issued on 31 December 1975, the Court of Cassation judgement in case no.8240 of judicial year no. 75 issued on 23 June 1997, and the Court of Cassation judgement in case no. 11 of judicial year no. 37 issued on 21 April 1973.

[5] Article 2060 of the French Civil Code and Article L432-1 of the Code of Relations between the Public and the Administration prohibit arbitration in disputes concerning public authorities and establishments, and generally in all matters concerning public order. However, the same articles stated that a decree may authorize public establishments of an industrial and commercial nature to use arbitration. Notably, Article L311-6 of the Code of Administrative Justice provides several exceptions where arbitration can be used in such disputes.

impartiality is violated [57,58], if a non-competent authority has concluded the contract [59], or if vices of consent are present [60, 61].

The Egyptian Administrative Judiciary followed the same approach, with the Supreme Administrative Court affirming that the entire contract shall be null if its object is illegal. The Court stated that "the object of any contract must be something within the scope of dealing, meaning that it must not be illegal or against public order. Therefore, a contract is null if its object is outside the scope of dealing, and a stakeholder may request a court to nullify it. The court may even declare that it is void by its own initiative. In both cases, the contracting parties shall be returned to the states before concluding the contract." [62].

4. Judicial discretion in the application of the severability doctrine

The central question posed in this section concerns the discretionary power bestowed upon judges in applying the severability doctrine. In the event that all conditions discussed in the previous section are satisfied, the issue is whether judges are compelled to apply the severability doctrine whenever its conditions are fulfilled or whether they have discretionary power over its application. Scholars are divided on this issue. On the one hand, some scholars suggest that judges remain the ultimate authority in ruling on the severability doctrine if its conditions are met. On the other hand, others propose that judges' authority in enforcing the severability doctrine, when its conditions are met, is restricted and not discretionary.

In contemporary jurisprudence, the former viewpoint stipulates that fulfilling the conditions for partial nullification does not simply mean that the judge is obligated to rule in favour of partial contract nullification. Instead, a judge can decide to nullify the entire contract even if the conditions for the severability doctrine are met [4,7]. This view is in line with the first paragraph of Article 1184 of the French Civil Code, which allows the judge to avoid nullifying the entire contract if the cause of nullity pertains to only one or more of the contract's conditions, provided that the conditions tainted by nullity are not crucial to the contract for either or both parties.

Upon examining the wording of the aforementioned paragraph, it is evident that it does not obligate the judge to enforce partial nullity when its conditions are met. Instead, it provides a means of allowing the judge to avoid nullifying the contract in such cases. Similarly, Article 143 of the Egyptian Civil Code does not impose an obligation on the judge to enforce the severability doctrine when its conditions are met, supporting the idea that the judge has discretionary authority in this matter.

Moreover, judgements are not definitive in obligating the judge to enforce partial nullity when its conditions are realised. On the contrary, it can be deduced from judgements that a judge's authority regarding a ruling on partial nullity, when its conditions are present, is discretionary and not restricted. This becomes unequivocally clear through the terminology used in the judgements. Examining these judgements reveals a consistent assertion that the judge can enforce the severability doctrine when its conditions are met. The term "can" in the judgements undoubtedly signifies that applying the severability doctrine falls within the judge's discretionary authority [23,63–65].

The opinion above aligns with accepted rulings regarding contract nullity, especially those asserting that ruling in favour of complete nullity when one of the contract's clauses is null is the general rule. Hence, the ruling on partial nullity is an exception to this rule and is based on the judge's discretion and not as an obligation [29].

Conversely, the latter viewpoint asserts that applying the severability doctrine depends on the agreement between the parties. If the contract includes a severability clause, judges must apply it. Failure to apply the severability doctrine in such a case would be against the parties' common intention. By contrast, judges should not apply the severability doctrine in the absence of a severability clause [66].

Other scholars claim that judges' power is restricted, and that they must apply the severability doctrine as long as its conditions are fulfilled [3,5,7]. These scholars point out that if judges are entitled to apply this doctrine at their discretion, they might misuse their power and apply it against the parties' common intention [67].

This study aligns with the proponents of mandatory application. Indeed, if the severability doctrine conditions are fulfilled and its application does not contradict the parties' common intention, nullifying the entire contract seems to defy logic. In conclusion, while jurisprudence scholars remain divided regarding the application of the severability doctrine, this article leans towards a mandatory application of the severability doctrine, thus respecting the parties' common intention while safeguarding against the potential misuse of judicial discretion.

5. Conclusion

This article points out that the administrative judiciary in France and Egypt has been influenced by civil law provisions related to the severability doctrine, with the goal of mitigating the negative effects of nullifying the entire contract in the event of the presence of an illegal clause. Administrative judges are committed to the civil law severability conditions of the possibility of severability, consistency with the parties' common intention, and legitimacy of severability. Additionally, while jurisprudence scholars are divided on whether the application of the severability doctrine is mandatory or optional for administrative judges when its conditions are satisfied, the authors support the mandatory application because the severability doctrine is consistent with the unique nature of administrative law.

Notably, this influence and mandatory application of the severability doctrine do not affect the autonomy and independence of administrative law. Administrative judges can always choose whether to apply civil law doctrines or develop them as appropriate for administrative disputes [24]. They borrowed the doctrine of severability from civil law after ensuring that it does not conflict with the peculiarities of administrative disputes. Moreover, the application of the severability doctrine in the context of administrative disputes is regarded as the application of a general legal principle rather than a civil law statute. As such, the independence of administrative

law does not prevent its collaboration with civil law, as the relationship between the two laws is complementary rather than contradictory.

Importantly, the severability doctrine is anticipated to play a significant role in resolving administrative disputes, even in the absence of formal codification, which is the norm of administrative law. In particular, countries in which administrative law is still evolving are likely to adopt this doctrine. Moreover, the success and efficacy of this doctrine could encourage the broader transplantation of doctrines from civil law into the administrative judiciary.

Finally, this article focuses on the application of the civil law severability doctrine to administrative disputes with its scope restricted to the contexts of France and Egypt, both of which uphold the civil law tradition. Consequently, future research should include a wider array of jurisdictions encompassing both civil and common law traditions. Additionally, future studies could explore other useful civil law doctrines that administrative judges might integrate into their practice. Such research would not only complement this study but also contribute to a more comprehensive understanding of the relationship between civil and administrative law across diverse legal systems.

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