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FRENCH ADMINISTRATIVE LAW SEMINARS AT ROMA TRE LAW SCHOOL****

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1. *The activities of Professor Gregory Kalfèche visiting the Department of Law*

Grégory Kalfèche, Professor of Public Law at the Université Toulouse Capitole (France), visited the Department of Law of Roma Tre University from Monday 7th April until Sunday 20th April 2025. During his stay, Professor Kalfèche took part in the activities of the Department of Law contributing to its cultural and scientific development with his deep knowledge of Public, Administrative and Comparative Law and Health Law.

Professor Grégory Kalfèche was specifically invited by Professors Maria Alessandra Sandulli and Flaminia Aperio Bella to contribute to their respective courses – Administrative Justice and Health Law. Following Professor Sandulli's appointment to the Italian Constitutional Court in February 2025, both courses were subsequently conducted by Professor Aperio Bella.

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Professor Grégory Kalflèche opened the lecture series with an analysis of the historical development of administrative justice. He then critically examined the challenges that administrative justice poses to the effective protection of individual rights.

Professor Kalflèche gave also a lecture for PhD candidates in Legal Disciplines focusing on the distinctive features of the French urban planning law litigation. During his presentation Professor Grégory Kalflèche adopted a critical perspective to explore several key aspects: the classification of urban planning litigation as a special branch of law in France, the reasoning behind this specialized regime, and the specific procedural rules that apply to it. His contribution was significant, as it aimed to shed light on the need to strike a balance between, on the one hand, administrative efficiency, particularly the ability to enable rapid construction, and, on the other, the principles of the rule of law and effective access to justice.

As part of Professor Flaminia Aperio Bella's course on Health Law, the third lecture focused on the history of public health in France, the financial aspects of the healthcare system and the role played by the national, regional and local authorities in this field.

2. *The seminar on “historical evolution of French administrative justice”*

On April 9th, 2025, Professor Grégory Kalflèche gave a lecture focused on the historical and institutional evolution of French administrative justice. The lecture began with expressions of appreciation for Professors Flaminia Aperio Bella and Maria Alessandra Sandulli, who organized and supported the event. The presentation was structured around three key topics: the emergence of independent administrative courts, the institutional development of administrative justice, and the gradual transformation towards a more effective jurisdiction.

Professor Kalflèche began by outlining the context of the French Revolution, during which the need to separate ordinary justice from administrative justice became apparent. Under the “Ancien Régime”, the King together with the King's council had the authority to address administrative disputes. “Les Parlements” of that period, often composed of nobility of the robe, were distrusted by the revolutionaries, as they were perceived to be conservative, resistant to the public authority, and biased in favor of private individuals rather than the State. The enactment of the Law of 16 and 24 August 1790 prohibited judicial courts from interfering in administrative matters, thus affirming the autonomy of administrative action and laying the foundation for a distinct

jurisdictional order.

Within this framework, the “minister-judge” theory emerged, under which the disputes between citizens and the administration were resolved by the competent minister. There was no true judicial oversight of the administrative action. Only with the rise of Napoleon and the Constitution of Year VIII, administrative justice began, with the creation of the Council of State (*Conseil d'État*), which replaced the King's Council. This authority was entrusted with a dual function: assisting in the drafting of legislation and administrative regulations, and contributing to the resolution of administrative disputes. However, its rulings remained subject to approval by the Head of State: a system known as “*justice retenue*”

A genuine shift toward an independent judicial body occurred with the enactment of the Law of 24 May 1872, which granted the Council of State full judicial authority, thus marking the transition from “*justice retenue*” to “*justice déléguée*”, entrusting administrative adjudication to a specialized and independent judge. With the landmark *Cadot* decision of 1889, citizens gained direct access to the Council of State, effectively removing the ministerial filter. In parallel, the Tribunal of Conflicts (*Tribunal des Conflits*) was established to resolve jurisdictional disputes between ordinary and administrative courts.

In 1873, the Tribunal of Conflicts issued the historic Blanco decision, which became a cornerstone of administrative law. For the first time, it was recognized that when the State acts within the framework of a public service, the competent jurisdiction is administrative, which must apply autonomous legal rules. This ruling laid the groundwork for the recognition of administrative law as an autonomous field.

In the second part of the lecture, Professor Kalfèche addressed the institutional development of the system. Following the establishment of the Council of State, administrative justice gradually expanded at the local level. The Law of 28 “*Pluviôse*”, Year VIII (1800), established Prefectural Councils, which assisted prefects in resolving local administrative disputes concerning taxation, national property, public contracts, and public works. Only in the 20th century, with a decree in 1926, these councils became independent from the prefects; their presidents were appointed by decree, and their composition comprised autonomous judges. This process culminated in the 1953 reform, which replaced these bodies with Administrative Tribunals as courts of first instance, while the Council of State assumed primarily the role of court of second instance.

The establishment of the Administrative Courts of Appeal, in 1987, marked a decisive turning point. From that point onward, the Council of State assumed the role

of supreme administrative court. During the same period, administrative justice began to be vested with constitutional authority. The Constitutional Council's decision of 22 July 1980 affirmed the independence of the administrative courts. On 23 January 1987, the Council further recognized the duality of jurisdictions, administrative and judicial, as a fundamental principle recognized by the laws of the Republic (*PFRLR*). The 2008 constitutional reforms, introducing Priority Preliminary Rulings on Constitutionality (*QPC*), further strengthened the Council of State's authority. The decision of 3 December 2009 ultimately confirmed both the Council of State and the Court of Cassation as the highest authorities of their respective orders, as recognized by the Constitution.

In the final part of the seminar, Professor Kalflèche addressed more recent reforms aimed at enhancing the effectiveness of the administrative courts. Starting in the 1960s, growing criticism emerged – most notably through Jean Rivero's 1962 contribution "*Le Huron au Palais-Royal*" – challenging the practical efficacy of judicial protection provided by administrative judges. In the subsequent decades, several legislative reforms significantly expanded the powers of administrative judges. The Law of 8 February 1995 marked a turning point by granting administrative judges the authority to issue injunctions compelling the administration to comply with judicial decisions. Moreover, it introduced the possibility, at the claimant's request, of imposing financial penalties for non-compliance.

The Law of 30 June 2000 introduced emergency procedures, enabling judges to suspend administrative measures within hours in urgent cases, thereby ensuring swift and effective access to justice. Since 2018, claims may also be submitted online via the *Télérecours citoyens* platform, accessible 24/7.

Despite these significant advancements, Professor Kalflèche invited students to reflect on persisting challenges. The administrative judge is sometimes accused of hindering economic development and public investment, particularly in cases involving public procurement, urban planning, and immigration. Immigration litigation, in fact, accounts for nearly 50% of the administrative court's workload, although only 3% of expulsion orders are enforced. In conclusion, despite significant and ongoing reforms, the French system of administrative justice continues to face the intricate challenge of reconciling procedural efficiency with the protection of individual rights and the safeguarding of the public interest.

3. *The seminar on “The legal standing in French urban planning law”*

Professor Grégory Kalflèche on April 16th gave a lecture for PhD candidates in Legal Disciplines, titled “*The legal standing in French urban planning law*” focusing on the distinctive features of the French urban planning litigation. In particular, during his presentation Professor Grégory Kalflèche adopted a critical perspective to explore several key aspects: the classification of urban planning litigation as a special branch of law in France, the reasoning behind this specialized regime, and the specific procedural rules that apply to it.

The lecture was structured in two parts. The first part examined the justifications for treating urban planning litigation as a distinct legal category, followed by a critique of those justifications. The second part focused on four categories of procedural rules, assessing whether these rules protect citizens’ interests or, conversely, limit their rights to legal recourse and appeal.

Beginning with an overview of the major reforms in urban planning litigation, Professor Kalflèche noted that these reforms have progressively shaped a complex legal framework, one that increasingly tends to limit access to judicial review. Moreover, Professor Kalflèche described urban planning law as both a “*special law*” and a “*pioneer*.” On the one hand, it is designed to address issues specific to urban planning; on the other, the reforms introduced in this area of administrative law have, to some extent, served as a model for changes in other legal domains.

According to Professor Kalflèche, one of the key reasons behind the specific nature of urban planning litigation lies in its “*triangular structure*.” This concept, introduced by President Labetoulle in 1995, refers to the presence of three distinct parties involved in such litigation: the author of the contested act; the addressee of the act, typically someone required to apply it but adversely affected by its consequences and therefore challenging it; and a third party, such as local residents, environmental associations, or real estate companies, who contest urban planning decisions that impact their interests. The proliferation of legal challenges in France can be attributed to the triangular nature of urban planning law, particularly in litigation concerning building permits. This structural characteristic contributes significantly to the housing crisis, as well as to the delays or even the abandonment of major development projects. Consequently, one of the main justifications for special litigation is therefore to counter the unfortunate consequences of such appeals.

At this point, Professor Kalflèche explained that according to the French legal doctrine, the main reason of the peculiarities of this special area of law lies in the need

to strike a balance between legal certainty and the principle of legality. To achieve this equilibrium, the legislator has sought, on the one hand, to narrow the pool of individuals who can legitimately challenge urban planning decisions, by tightening the requirements for standing and introducing procedural constraints, and, on the other hand, to limit the duration of potential litigation through stricter timeframes.

Professor Kalfèche pointed out that, in many cases, appellants seek to delay development projects by filing appeals, with the aim of creating such costly delays that the developer ultimately abandons the project. He also referred to the phenomenon of so-called “*dilatory recourses*”, appeals filed not to oppose the construction itself, but rather to pressure developers into financial settlements in exchange for withdrawing the appeal. The Professor further noted that, according to both the French Parliament and the administrative courts, the various legislative measures adopted to limit the number of appeals are justified by the need to prevent such manipulative practices. In their view, these restrictions enhance the overall efficiency of the judicial process in urban planning litigation.

On the contrary, Professor Kalfèche argued that these justifications cannot be fully accepted. Firstly, the so-called triangular nature of urban planning litigation is not as rare as often portrayed, and thus cannot, in itself, justify such significant restrictions on the right to appeal. Secondly, while it is indeed essential to strike a balance between legal certainty and the principle of legality, Professor Kalfèche emphasized that limiting access to legal remedies is not the proper way to achieve legal certainty. In his view, the appropriate solution lies in accelerating the adjudication process rather than restricting the right to appeal. Specifically, he suggested that enhancing the resources allocated to the judiciary would be a more effective approach to reconciling the need for both efficiency and meaningful access to justice.

The second part of Professor Kalfèche’s lecture focused on the various special procedures applicable to urban planning litigation. In particular, he examined the rules designed to limit access to the courts, reduce procedural delays, regulate the powers of judges, and promote transparency within the legal process. With regard to the procedural rules governing urban planning law, Professor Kalfèche first outlined the specific provisions that characterize this area of law. He then proceeded to analyze each rule individually, assessing whether it can be considered effective, namely, whether it successfully avoids delaying construction projects while minimizing infringements on the right to appeal.

One of these procedural rules concerns the requirement of *interest to act* in challenging town planning authorizations. Professor Kalfèche clarified that the French

legislator has established a strict framework regarding the notion of interest when contesting building, development, or demolition permits. Specifically, it is not sufficient simply to be a resident of the municipality; there must be a direct connection between the nature or scale of the project and the appellant's specific conditions of occupancy or use of the neighborhood. In other words, the appellant must demonstrate that the project has a real and personal impact on them. This restriction aims to prevent abusive appeals that unduly delay urban planning processes without legitimate grounds. However, according to Professor Kalfèche, this rule is often too stringent, particularly for neighbors who must concretely prove their interest. Moreover, since neighbors typically do not have access to the project documentation, it can be challenging for them to substantiate their interest, risking the inadmissibility of their appeal. Another example is the temporary removal of the right to appeal in legal actions that could delay housing construction in municipalities suffering from a housing shortage. This restriction applies exclusively to so-called zones tendues, areas with high housing demand. According to Professor Kalfèche, this measure represents a significant limitation on the fundamental right to a double level of jurisdiction.

On the contrary, according to the Professor, there are certain rules that are genuinely effective and beneficial. These include the ten-month maximum period for delivering a judgment, and, in urban planning law, unlike in administrative litigation, where judges typically apply the principle of "economy of means", the obligation for the judge to address all grounds raised in the petition. Other noteworthy rules include those promoting transparency in non-recourse transactions that lead to dispute resolution, as well as the provision allowing judges to issue a partial annulment of a planning permission, rather than a total one. Furthermore, the law allows the administration or the beneficiary of the authorization to regularize the permit during the course of litigation. In such cases, the judge suspends the decision on the merits until the competent authority either issues an amended permit or remedies the identified irregularity.

In conclusion, Professor Grégory Kalfèche highlighted that French urban planning law is an example of a legal field designed to limit the right to legal recourse. He invited students to reflect on the need to strike a balance between efficiency (or the administration's ability to facilitate rapid construction), on one hand, and, on the other, the rule of law and access to remedies.

This question is particularly important because, if planning law serves as a "pathfinder," the new balance achieved could potentially be extended to all administrative litigation.

4. *Healthcare in France: historical and organizational overview*

As outlined in the introduction, Professor Grégory Kalflèche gave a lecture on April 15, 2025, entitled ‘*Healthcare in France: historical and organizational overview*’, as part of Professor Flaminia Aperio Bella’s course on Health Law at Roma Tre University.

Professor Flaminia Aperio Bella emphasized the importance of comparison in the healthcare field and, particularly, the comparison between a healthcare system based on a universal model, such as the Italian one, and a model characterized by a strong component of compulsory health insurance integrated with public services, such as the French one (a model more oriented towards a social insurance system).

Professor Kalflèche’s presentation was divided into four parts: the first part concerned the history of public health in France, while the second part focused on the financial aspects of the healthcare system. The third part provided an overview of the national and regional authorities of the French healthcare system, and the fourth part dealt with the role played by local authorities in this field.

Starting with an illustration of historical profiles, Professor Kalflèche pointed out that, until the 20th century, the French healthcare system was characterized by a clear separation between curative medicine, focused on the treatment of the sick, and preventive medicine, focused on hygiene and vaccination.

During the First World War, the State temporarily took control of the healthcare system, implementing health surveillance and vaccination measures in order to maintain a population capable of “producing and fighting”.

Subsequently, in the 1930s, the laws of 1928 and 1930 created a health insurance system aiming at preventing illness to avoid absences from work. However, private practice remained dominant, consolidated by the 1927 charter defending the independence of doctors.

During the Vichy government, a Medical Association was created, maternal and child protection was organized, and the National Institute of Hygiene was founded.

After the Liberation, the program of the National Council of Resistance inspired major reforms: social security became the pillar of the new system, the Ministry of Public Health was strengthened, medical research was consolidated, and prevention became the main target. In addition, the General Directorate of Health, the National School of Public Health, and centers for screening, vaccination, and health education were created.

Professor Kalflèche then highlighted the importance of the establishment, in 1953, of the public health code, which was reformulated by ordinance in 2000 and by

five decrees between 2003 and 2005. Its publication is one of the symbols of the renewal of French codification since 1989 (which has led to more than 60 new codes). It has more than 10,000 articles, concretely determining the field of public health law.

The second topic dealt with by Professor Kalflèche concerned the financing of healthcare in France, which takes the form of a system for financing all the social actions of the State: the National Health Insurance Fund (CNAM); the National Old Age Insurance Fund (CNAV), which manages pensions in particular; the National Family Allowance Fund (CNAF), which provides childcare assistance through family allowances, nurseries or parental leave; the National Solidarity Fund for Autonomy (CNSA), for old age and disability.

Specifically, Professor Kalflèche pointed out that social security is not financed, in the strictest sense, by taxation, but by social contributions, i.e. sums deducted from employers and employees. Furthermore, the social security budget is part of the State budget. Therefore, it is a system with three characteristics: it is a public system that is not profit-oriented; it is a “benefit-defined scheme” rather than a “capitalisation” system. This means that working people are paying for all those who need it: the elderly, the sick, children and the unemployed; it is a system in which people do not save for themselves, but “socialise” the risk.

Since 1996, the “social security financing law” has been added to the traditional “State finance law” (approximately €500 billion, for a French GDP of £2,300 billion). However, this system is not completely socialised: in order to try to maintain the system, part of it must be reimbursed by the private sector (mutual insurance companies or insurance companies). Thus, it is a system of solidarity but limited to members, specifying that all employees are obliged to have one.

The third topic dealt with by Professor Kalflèche concerned the main players in the French healthcare system at national, regional and local level, which is very complex: in 2021, there were more than 1,850 nursing homes, over 1,350 public healthcare facilities and 135 hospital groups (GHT).

At a national level, the two main ministries that play a central role in healthcare organization are the Ministry of Public Health and the Ministry of Public Action and Accounts. In particular, the ministry ensures the guidance and implementation of public health and health safety policies, aiming at preserving and improving the health of the population through the prevention of chronic diseases and the fight against infectious or environmental risks. To achieve these objectives, the ministries rely on health agencies (*Santé publique France, Agence nationale d'appui à la performance des établissements de santé et médico-sociaux*), which are public operators under the supervision of the

ministries, as well as independent partners, such as the *Haute Autorité de Santé* (HAS). Furthermore, the ministry frames health finances. Each year, parliament votes on the social security financing law. This law defines the national spending target for health insurance, which covers all care: city doctors, hospitals and medico-social facilities (places for people with disabilities and the elderly). Based on these amounts and in accordance with government guidelines, the ministries develop their policies for implementation.

At a regional level, the ARS (*Agence Régionale de Santé*), or regional health agencies, established by Law No. 2009-879 of 21 July 2009 known as “Hospital, Patients, Health and Territory” (HPST), have great relevance in a context of “new public management” to improve the effectiveness of the system.

They operate in the “regions”: 18 in mainland France and 5 overseas. They are administered by a General Manager and have a board of directors, headed by the Prefect of the region (as the representative of the State in the region). Furthermore, these structures perform important functions in the field of prevention, implementing health policy at a regional level with other authorities responsible for occupational health, school and university health, and maternal and child protection. In terms of care, the ARS regulate, guide and organize the provision of health services, authorizing health institutions, facilities and medical-social services; ensuring a territorial distribution of prevention and care services; and ensuring that people in cases of precariousness or exclusion also have access to prevention and care in order to fight inequality and improve the local distribution of care and medical-social services.

There are also the State agencies and institutions. In particular, the Biomedicine Agency is a national public body that carries out its tasks in the fields of organ, tissue and cell removal and transplantation, as well as in the fields of human reproduction, embryology and genetics. Its tasks include, among others, monitoring therapeutic and biological activities on the human body, ensuring the transparency of activities and participating in the development of regulations on “biomedicine”; issuing authorizations for embryo research (in vitro embryo research, embryonic cell research and issues relating to the storage of stem cells for research purposes). Furthermore, there is the French Blood Establishment (EFS, *Etablissement Français du Sang*), which is the sole civil operator in the field of blood transfusions.

The fourth part of Professor Kalfèche’s lecture concerned the description and analysis of the role played by local authorities in the field of health. At a municipal level, prevention structures implement national public health guidelines, in particular occupational health services, school medical services, vaccination services, maternal and

child protection services (PMI) that provide prenatal or postnatal care, and screening facilities for non-communicable diseases (cancer) or communicable diseases (AIDS, hepatitis).

Professor Kalflèche went on to point out that, in France, there are different types of care: outpatient care (or urban care), hospital care and home care. Outpatient care is provided in city clinics, dispensaries, during “outpatient consultations” in public or private hospitals, i.e. in cases where hospital doctors use the hospital for private practice. Hospital care is provided in hospital facilities, which are divided into several categories: public institutions; private institutions of collective interest under agreement (such as private hospitals, cancer centers or dialysis centers); private for-profit institutions. There are also regional hospital associations (GHTs), which are groups of hospitals linked by contract, whose aim is to ensure better access to care for all patients by strengthening cooperation between public hospitals. Finally, home care is mainly provided by doctors and nurses. To a lesser extent, it is provided by home nursing services (SSIAD), which provide nursing care or nursing procedures (dressing, distribution of medication, injections). This care is financed by health insurance or by home care and support services (SAAD) as part of social assistance. In general, the assessment of the person’s needs leads to the development of an individualized plan for assistance, support and care.

Professor Kalflèche concluded by pointing out that, despite reforms aimed at simplifying this sector, healthcare continues to be one of the most complex and articulated areas of French administrative law, especially in terms of multi-level governance between different levels of government.