

ADMINISTRATIVE JUSTICE IN EUROPE

- Report for Italy -

INTRODUCTION

(History, purpose of the review and classification of administrative acts, definition of an administrative authority)

1. Main dates in the evolution of the review of administrative acts

The birth of the administrative justice in Italy was in 1889 with the creation of the fourth section of the Council of State, which had originally only advisory functions, with litigation functions. (Law 31 march 1889, n. 5992, so called law Crispi).

In the following years other two litigation sections of the Council of State were created (the fifth and the sixth one).

Before the creation of the fourth section of the Council of State, from 1865 to 1889, the only judge for disputes between citizens and public administration was the civil judge, according to a monistic model established by the law abolishing the administrative contentious (law 20 march 1865, n. 2248).

Hence only in 1889 the Italian system became a dualistic system, as it exists now. Originally, there was only one level of instance before the litigation sections of the Council of State.

The Constitution provided the creation of first instance administrative judges, on regional basis (art. 125 cost).

In 1971, the Regional administrative tribunals (*Tribunali amministrativi regionali - TAR*) were created as administrative judges of first instance and the Council of State became the administrative court of second and last instance.

The Regional administrative tribunals are 21, seated in each region of Italy. In eight regions, which are the biggest, there is also a separated section of the Regional Administrative Court.

In 2000, a legislative act provided the general competence of administrative courts with the power to order compensation (damages) for liability of the public administrations for its unlawful decisions.

In 2010 a Code of Administrative Process (CAP) was enacted.

2. Purpose of the review of administrative acts

The administrative jurisdiction aims at guaranteeing the respect by the Public administration of the principle of rule of law and to protect individual rights and legitimate interests in the relationship with public powers.

An appeal against an administrative decision is examined by the judge, within the limits of the complainant's interest and within the arguments presented to the Court by the claimant.

The judge cannot bring new arguments *ex officio* because the purpose of administrative justice is not to verify the administration's proper functioning in general, but to determine whether the contested abuse of power violated the complainant's rights or interests.

The administrative judge can only quash the challenged decision if affected by breach of law, misuse or abuses of power, or lack of competence (art. 29 CAP) and cannot substitute the administration in its discretionary powers, except in specific cases, such as the proceeding on enforcement of judgements (so called "giudizio di ottemperanza").

3. Definition of an administrative authority

Traditionally, the concept of the administration refers to State, regional administrations, municipalities, and other public bodies or independent agencies (for example the antitrust authority *ect.*).

The influences of European law led to broaden the concept of administration to include individuals or bodies of private law which perform public duties or have to comply with administrative rules, such as the so called "public law organism" in the field of public procurements .

This is the reason why article 7.2 CAP expressly provides that, for the purposes of the code, public administrations also include legal entities equated to them or in any case required to observe the principles of administrative proceedings.

4. Classification of administrative acts

Administrative acts can be classified from various points of view.

From the point of view of the content of the administrative decisions, there are favourable acts, which confer new utilities to the applicant (such as authorizations, licences, contributions, *ect.*) and negative acts, which limit rights or take away an utility to the addressee (such as expropriation acts, *ect.*).

From the point of view of the number of addressees of administrative acts, there are general acts with undetermined assignees or individual decisions targeting one or some identified assignees.

From the point of view of the function of the acts in the administrative procedure, there are administrative decisions (measures), advisory decisions (opinions) and oversight decisions, *ect.*.

There are also administrative decisions of second degree, which modify, revoke or confirm previous administrative decisions (such as revocations, annulments, confirmations, *ect.*)

Normally administrative decisions are unilateral acts of the administration.

Nevertheless, it is possible, in some cases, to substitute such a decision with an agreement between the private citizen and the administration (art. 11 law n. 241/1990).

Public contracts, instead, are not considered administrative acts.

I –ORGANIZATION AND ROLE OF THE BODIES, COMPETENT TO REVIEW ADMINISTRATIVE ACTS

A. COMPETENT BODIES

5. Non-judicial bodies competent to review administrative acts

The administrative acts can be reviewed by the Administration itself, on the initiative of the interested person.

According to the d.p.r. n. 1199/1971, there are three main different claims: in opposition, hierarchical and before the President of the Italian Republic.

The first is submitted to the same administrative body that issued the act, only in the cases provided by the law. The second is a general remedy and it is brought before the higher administrative body within 30 days from the knowledge of the disputed act: the hierarchically superior can annul or reform the act; if he does not decide within 90 days, the claim is considered rejected.

Both decisions can themselves be subject to judicial review by the administrative Courts.

The appeal before the President of the Republic is a parallel and alternative remedy to the jurisdictional proceeding. This means that, in principle, no judicial review is granted on the decision of the President of the Republic.

It can be filed within 120 days and it is decided according to the mandatory advice of the Council of State; the final decision is taken with a decree of the President of the Republic.

This last remedy has been recently considered by the case law a quasi-judicial remedy because of the participation of the Council of State to the procedure.

The Court of Justice of the European Communities, by a ruling dated 16 October 1997 on a group of related cases (C-69/96 to C- 79/96), judged as admissible a preliminary question referred to them by the Council of State, which had been asked to give an opinion regarding the exceptional appeal before the President of the Republic, thus recognizing that in its advisory capacity, the Council of State had the jurisdiction necessary to submit a preliminary question.

In accordance with article 69 of the Law of 18 June 2009 n. 69, in the proceedings for an extraordinary appeal before the President of the Republic, the consultative section of the Council of State can raise the question of constitutionality before the Constitutional Court. This rule has made this remedy even more similar to a jurisdictional remedy.

6. Organization of the court system and courts competent to hear disputes concerning acts of administration

In the Italian system there are ordinary courts (civil and criminal) and administrative courts, which are different judges and are specifically regulated by the Constitution. There is also another special judge,

the Court of Auditors (*Corte dei Conti*), whose competence covers public pensions and liability of public servants for damage to the public finances.

Civil and criminal ordinary courts are judges of peace (lay judges) and tribunals at the first instance; the appeal Courts at second instance and the Supreme Court (*Corte di Cassazione*) at third and last instance.

Administrative Courts of first instance are the Regional administrative tribunals, which work in each Region (see answer 1). The judge of second and last instance is the Council of State.

The Supreme Court has competence in matters of jurisdiction and, only regarding such questions, may represent a third instance judge in litigation with the public administration.

The Constitutional Court is empowered to settle disputes not only concerning a law's constitutionality, but also concerning "conflicts of power" between the various State powers (legislative, jurisdictional, administrative), between the State and the Regions, and between the Regions. In this area, it may pass judgment regarding administrative decisions generated conflict.

B. RULES GOVERNING THE COMPETENT BODIES

7. Origin of rules delimiting the competence of ordinary courts in the review of administrative acts

As already said, the review of administrative decisions does not as a rule fall within the jurisdiction of the ordinary judge, but within that of the administrative judge (article 103 of the Constitution; article 7.1, CAP).

According to art. 5, l. 20 May 1865 no. 1048, the ordinary judge does not have any power to quash administrative decisions. This power belongs to administrative Courts only.

The Court may examine administrative acts only incidentally, within the framework of disputes lying within its competence concerning subjective rights, and disapply them, if unlawful, that is to say to declare them without effects in the specific case.

In specific matters, ordinary judges have jurisdiction on administrative decisions, for example in the case of administrative monetary sanctions (law no. 689/1981), and of denial of asylum and international protection where subjective rights are at stake.

8. Existence and origins of specific rules related to the competence and duties of the administrative courts or tribunals

According to article 103 of the Constitution, enacted in 1948, the administrative judge has jurisdiction over legally protected interests in matters regarding administration, and over individual rights in the specific areas laid down by the law (see articles 7.1 and 133 CAP enacted with legislative decree no. 104/2010).

The administrative judge has general competence regarding appeals of an administrative decision.

According to the Italian Constitution, (article 103, par. 1), the administrative judge has jurisdiction over legally protected interests in matters regarding the administration, and individual rights in the specific areas laid down by the law (areas of so-called “exclusive jurisdiction”).

Legally protected interests (so-called “*interessi legittimi*”) may be defined as the subjective situations granted to an individual who is subject to the exercise of the administration’s power. Legally protected interests involve the possibility of contesting the improper exercise of administrative power (or the possibility of influencing the proper exercise of administrative power) seeking the invalidity of the act and compensation for damages.

The CAP, provided by legislative decree no. 104/2010, which came into force on September 16, 2010, in order to assign jurisdiction to an administrative or ordinary judge, follows two criteria:

1. type of interest;
2. type of subject (secondary criterion).

In accordance with article 7, par. 1, CAP, the administrative courts have jurisdiction over the protection of legitimate interests against the public administration and, in particular matters laid down by law, including the protection of subjective rights concerning administrative decisions, acts, agreements or behaviours adopted by public administrations, as long as they are related (even indirectly) to the exercise of a public power.

The main cases of “exclusive jurisdiction” of the administrative judge concern public services, urban planning and construction, public proceedings for awarding contracts for public works, and supplies and services, competition law, and the actions of independent Authorities. The list of areas of exclusive jurisdiction is set out in article 133 CAP.

Article 30 CAP also lays down that the administrative judge can order the administration to compensate for damages suffered by an individual due to illegal administrative activity.

The administrative judge can quash an illegal or invalid administrative decision. The ordinary judge can only disapply an invalid administrative act.

The Code of administrative procedure (legislative decree no. 104/2010) regulates all the aspects of the competence and duties of administrative courts.

C. INTERNAL ORGANIZATION AND COMPOSITION OF THE COMPETENT BODIES

9. Internal organization of the ordinary courts competent to review administrative acts

N/A

10. Internal organization of the administrative courts

In Italy, jurisdictional oversight of the administration is carried out as follows:

In accordance with art. 103 of the Constitution, the Council of State (judge of second and last instance, article 6 CAP) and the other courts of first instance of the administrative order, called Regional

Administrative Tribunals (article 5 CAP) have jurisdiction over legally protected interests in matters involving the administration, and over individual rights in the specific fields laid down by the law. All of them work in a panel of judges, single judge not being envisaged in administrative courts. The panel is composed by three members in the TAR and by five members in the Consiglio di Stato.

The Council of State in its central head-office, is subdivided into four litigation sections (the Third Section of the Council of State was transformed from a consultative section into a jurisdictional section and it had its first hearings on 14 January 2011) and two advisory ones.

One litigation section of the Sicilian Council of Administrative Justice (article 100 CAP) has the power of reforming decisions reached by the TAR in this region (in addition to an advisory section with a jurisdiction limited to the regional territory).

The first instance administrative courts consist of twenty-one Regional Administrative Tribunals, operating in the regional capitals, and eight special separated sections.

D. JUDGES

11. Status of judges who review administrative acts

The status of the administrative judge is the same as that ordinary judge and magistrates as regards guarantees of independence and impartiality. There is a specific self-governing body for administrative judges (*Consiglio di Presidenza della giustizia amministrativa*) which has competence on appointment, transfer, promotion, disciplinary measure, etc.

12. Recruitment of judges in charge of review of administrative acts

The recruitment of administrative judges of first instance (TAR) is only through public competition, consisting of written and oral exams on juridical subjects.

Only ordinary judges, lawyers, lawyers of State and civil servants (if they have sufficient seniority for their category) can participate.

The recruitment of judges of the Council of State is provided partly by promotion from the TAR (50% of vacancies), partly by the Government's appointment (25% of vacancies) and partly by a direct public competition (25% of vacancies), which is reserved for judges of the TAR after completing one year of TAR duties, lawyers of State, ordinary judges, etc.

13. Professional training of judges

All administrative judges shall have previous experience as ordinary judges, lawyers, State lawyers or officials of the public administration. Hence, administrative judges assume their duties immediately, with no additional initial training period.

Professional training courses of a few days each are offered later on to update and integrate judicial skills and competences.

14. Promotion of judges

Promotion is on the basis of seniority, except in cases of misconduct.

TAR judges start their career as *Referendaires* (first appointment), then, after four years, *First Referendaires*, after four more years *Counsellors* of TAR, and after a further four years Presidents of Section.

judges of the Council of State start as Counsellors of State and may then become Presidents of Section of the Council of State, if they have sufficient seniority.

Appointment to the position of TAR president or to a section of the Council of State requires an assessment, which is generally on the basis of seniority.

15. Professional mobility of judges

The administrative judges may, in certain narrowly defined circumstances, assume responsibilities in public administrations or in high institutions (Constitutional Court, Presidency of the Republic), on prior authorization from the Council of Presidency of Administrative Justice (the self-governing body for administrative judges).

E. ROLE OF THE COMPETENT BODIES

16. Available kinds of recourse against administrative acts

Traditionally, administrative judges could only quash unlawful and invalid administrative decisions. Since 2000, they also have the general power to condemn the administration to pay compensation for any damage caused.

When administrative judges annul an administrative decision, they do not expressly order the administration to do something or to abstain from doing something, but rather, in the arguments for their decisions, they indicate what the administration must do or must not do during the review process leading to a new administrative decision (e.g. they may assert that the administration must submit a particular document, or that it must take fresh action based on the criteria indicated in the decision).

It is a consolidated principle that judges cannot replace the administration but they can certainly direct the administration to ensure full compliance with the judgment.

Nevertheless, article 34.1.e CAP now lays down that the administrative court, as it annuls an act, can, within the limits of the request, specify suitable measures to ensure the implementation of the judgment including appointing a provisional administrator (*ad acta* commissioner), to implement that specific decision

The CAP, partly following some solutions already defined by jurisprudence, has increased the types of decisions that can be pronounced by the administrative judge.

Along with the traditional action of annulment, article 30 CAP regulates judgments ordering compensation for damage, payments of sums, and actions to be taken.

These actions can be filed at the same time as another action or, only in cases of exclusive jurisdiction, they can be filed autonomously.

Hence claimants can seek, at the same time, the annulment of the administrative act and the payment of compensation for damages or the restitution of wrongfully paid sums of money.

The annulment of an administrative decision (adjudication of public contracting) may have an indirect effect on a contract which the administration has entered into, leading to its nullity or its ineffectiveness (subsequently obligating the administration to either enter into another contract with the petitioner or restart the process) (articles 121-124 CAP).

17. Existence of mechanisms for the delivery of a preliminary ruling apart from the procedure under the Article 234 of the EC Treaty

When a judge has doubts about the constitutionality of a law, the question is referred to the Constitutional Court. Meanwhile, the proceeding must be suspended until the decision of the Constitutional Court, which is binding on the referring court.

The mechanism is similar, but not identical, to the preliminary ruling referred to the European Court of Justice, because, in this case, it is not a question of interpretation of law. The Constitutional Court can annul the law, if it is found to be in breach of a Constitutional provision.

18. Advisory functions of the competent bodies

According to the Constitution (art. 100), the Council of State also has an advisory role in administrative law and in upholding justice within the administration (there are in fact two advisory sections and one for normative decisions).

Administrative judges of first instance, however, have only litigation functions.

According to art. 17 of l. n. 400/1988, the Council of State is in charge of advising the Government and the Ministries regarding all the drafting of second-level regulations.

Moreover, specific laws may require advice of the Council of State for legislative decrees.

Very often, the Council of State contributes to the drafting of legislation which collects in a single text all the rules concerning a certain sector (the so-called "*testo unico*").

Moreover, the Council of State provides its binding advice in the procedure of recourse to the President of the Republic and gives its opinion regarding delegated acts of the Government, if the law of delegation states so.

Finally, the Council of State can be asked to give its opinion on legal questions by the Parliament, Regions, independent authorities, etc..

19. Organization of the judicial and advisory functions of the competent bodies

The dual nature of the powers vested in the Council of State (advisor and judge) entails a distinction between the consultative sections and the litigation sections, which are different in nature.

The judges belonging to the advisory sections of the Council of State cannot serve at the same time in the litigation sections. In all cases, a judge having assumed an advisory duty must disclaim competence with regard to litigation related to the same case.

F. ALLOCATION OF DUTIES AND RELATIONSHIP BETWEEN THE COMPETENT BODIES

20. Role of the supreme courts in ensuring the uniform application and interpretation of law

The Supreme Court in matter of jurisdiction and the Council of State shall ensure the uniform application and interpretation of the law.

To this end, a special role is played by the Plenary meeting of the Council of State.

According to art. 99 CAP, the section to which the appeal has been assigned may remit an application for examination by the plenary meeting of the Council of State with an order, issued at the request of the parties or *ex officio*, if it detects that the point of law submitted to it for examination has brought about, or might bring about conflicts with case law.

At the request of the parties or *ex officio*, the President of the Council of State may refer to the plenary meeting any application to resolve broad issues of particular importance or to settle disagreements within case law of the various sections.

The plenary meeting decides on the entire dispute, unless it decides to state the principle of law and return the judgment to the referring section for the rest.

If the plenary meeting considers the issue to be of particular importance, it may still determine the legal principle even when it declares the application inadmissible, unacceptable or estopped (that is, the proceedings extinguished). In such cases, the pronouncement of the plenary meeting has no effect on the specific contested measure but is binding on future matters.

If another Council of State section considers it does not subscribe to a principle of law enunciated by the plenary meeting, it has to send the determination of the appeal back to the latter with a motivated order, except in case of conflict with European law (see. CGEU, the Puligenica case).

As a rule, the Courts of first instance (TAR) do not have this option, e.g. of referring at case to the Plenary.

As a transitional measure for the uniform application of the electronic administrative trial, the CAP provides, for a period of three years from January, 1, 2017 that each TAR can submit a request for the application to be examined by the plenary meeting, but only when there is conflict in the case law concerning the application of the new electronic administrative trial.

II – JUDICIAL REVIEW OF ADMINISTRATIVE ACTS

A. ACCESS TO JUSTICE

21. Preconditions of access to the courts

The filing of a previous claim to the administrative authority is not a condition of admissibility for access to Court.

22. Right to bring a case before the court

Any physical person who is empowered to go to court may refer to the administrative judge. This capacity is assessed according to the rules of civil law.

Environmental and consumer protection organisations, NGOs and associations may also file appeals under the conditions provided for by the Law. Public administrations too may file a claim before the administrative court.

The right of access to the court is protected by Constitutional (art. 24) provisions and by the Charter of fundamental rights in EU law-related matters.

23. Admissibility conditions

Each petitioner must have a current interest related to the annulment of an administrative decision; this interest, whose existence is assessed at the time of the appeal and at the time of the delivering of the ruling, may be of various kinds: moral or material, individual or collective.

Claimants must also have the legal standing, which means they have to be entitled to the legally protected subjective situation affected by the challenged act.

Legal persons, associations and NGOs can lodge an appeal against the measures affecting their own interests but they may also go to court to defend the collective interest of those they represent, insofar as the disputed measure may affect this collective interest.

24. Time limits to apply to the courts

According to art. 41 CAP, where action is proposed for annulment, the application must be notified, under pain of forfeiture, to the public administration that issued the contested act. At least one of the counterparties must be identifiable within the act itself within the time limit required by law, commencing with notification, communication or full knowledge, or, for acts for which individual notification is not required, from the day on which the deadline expired for publication if this is required by law or on the basis of the law.

For disputes regarding the assignment of public contracts, the time limit for filing a complaint is thirty days (article 120.5 CAP).

Complaints regarding electoral matters should be filed within three days of the publication of the impugned act (article 129.1 CAP)

The time limit for the notification of the application is increased by thirty days, if all or some of the parties reside in another country in Europe, or ninety days if they reside outside Europe.

In its decisions, the administration must indicate the date by which appeals must be filed and the jurisdiction within which to file them; otherwise, a claim filed more than sixty days after the decision is issued may be deemed inadmissible.

According to art. 37 CAP, the court may, also ex officio, order that the time limit be waived because of excusable errors in the presence of objective reasons of uncertainty on matters of law or of serious obstacles in fact.

In accordance with Article 11 CAP, where the administrative court declines jurisdiction in favour of another national court or vice versa, without prejudice to the barring and forfeitures that have occurred, the procedural and substantive effects of the application are preserved if the trial is proposed again before the court indicated in the judgment declining jurisdiction, within a deadline of three months from its final decision. (so called *translatio iudicii*).

25. Administrative acts excluded from judicial review

All administrative decisions, including those issued by the highest levels of the administration, may be challenged before the administrative judge. Only political acts cannot be appealed (article 7 CAP).

26. Screening procedures

There is no any prior screening procedure before the Council of State and the administrative courts.

The law only provides that certain decisions (in the case of expiry of a time limit, withdrawal, conciliation of the parties or termination of the proceedings) can be rendered with decree by the President of the Section, instead of with a decision by the panel.

27. Form of application

The form of the appeal is free but it must be written in Italian.

According to art. 40 CAP, the petition must state clearly:

- a) the identifying particulars of the applicant, their lawyer and the parties against whom the petition is being made;
- b) the indication of the subject matter of the petition, including the act or provision that is being challenged, and the date of its notification, communication or knowledge;
- c) a brief account of the facts;
- d) the specific legal grounds on which the petition is based;
- e) a statement of the evidence;
- f) an indication of the measures requested to the court;
- g) the signature of the applicant, if they are present in court, or of their lawyer, indicating, in this case, the special power of attorney.

Reasons offered in contravention of paragraph 1, letter d), are inadmissible.

Recently, in accordance with the principle of conciseness in procedural acts, limits of number of pages for each act of the proceeding have been established.

Notification may also be made by PEC (certified email), or, with prior authorisation, in a simplified manner (for example via fax).

28. Possibility of bringing proceedings via information technologies

Starting from January 1st 2017, the Italian Administrative Justice system has been making use of telematic administrative proceedings. The newly adopted system provides for the elimination of conventional paper documents, which, however, may still be used by way of support or under emergency circumstances. Digitalization permeates every step of the proceedings, all the documents and the obligations complied with by the parties involved and by judges and courts, which can and must be carried out only by telematic means.

Accordingly, procedural documents are drafted, signed, notified and filed by telematic means, and this also applies to the drafting and publication of decisions.

Judges and other judicial officials have access in real time to all the digital documents contained in the case-files by means of remote connections. In addition, they can and must draft, sign with their digital signatures and deposit their judgments by telematic means.

Likewise, attorneys can handle their proceedings online. They can begin the proceedings and deposit all the necessary acts and instruments by means of computers. In addition, they have access to all the documents, or they can follow the different steps of the proceedings and fulfill all of their obligations with no need to physically go to court, unless they need to appear before it.

29. Court fees

There is a court fee in proportion with the dispute's value (e.g. public procurements disputes) or according to the rite (e.g. compliance or access to administrative documents).

30. Compulsory representation

According to art. 22 CAP in proceedings before the Regional Administrative Courts representation by a lawyer is mandatory. For proceedings before the Council of State representation by a lawyer admitted to plead before the higher courts is also required.

The parties may represent themselves in court without the assistance of a defender only in proceedings concerning administrative access and transparency, electoral matters and proceedings concerning the right of EU citizens and their family members to move and reside freely in the territory of Member States.

31. Legal aid

Petitioners whose revenues are below a certain threshold may be eligible for free legal assistance provided by the State.

Before administrative Courts, such eligibility is granted by a special Committee composed of 2 judges and a lawyer, under specific conditions established by the law. When legal aid is granted, the claimant can choose a lawyer to be paid by the State, according to special rates.

32. Fine for abusive or unjustified applications

In the presence of manifestly unfounded reasons, article 26.1 CAP provides that the court, also *ex officio*, may order the unsuccessful party to pay the counterparty, a sum of money determined equitably, but no more than twice the costs incurred.

Moreover, art. 26.2 CAP says that the court orders the unsuccessful party *ex officio* to pay a financial penalty, of not less than twice and no more than five times the court fees due for the application initiating proceedings, when the losing party has brought the legal action or resisted recklessly in court. In disputes concerning tenders, the amount of the sanction may be increased by up to one per cent of the value of the contract, if greater than the above abovementioned limit.

B. MAIN TRIAL

33. Fundamental principles of the main trial

The first part of the CAP provides the fundamental principles of the administrative trial.

According to art. 1, the administrative jurisdiction shall ensure full and effective protection in accordance with the principles of the Italian Constitution and European law.

The administrative trial implements the principles of the equal standing of the parties, adversary proceedings and due process (Art. 2, 1 par., CAP) in conformity with art. 111 of the Constitution and the case law of the ECtHR and CJEU

The administrative court and the parties will cooperate to achieve the reasonable duration of trials (Art. 2, 2 par., CAP).

Article 3 CAP establishes that the judge and the parties must write in a clear and concise manner.

Within the time limits of the various phases of the legal proceeding, each defendant has the right to conduct his or her defence.

Administrative legal proceedings are conducted essentially through written documents. The parties support their arguments by producing written statements. Only the most significant points are generally addressed verbally during the public hearing.

34. Judicial impartiality

Judicial impartiality is closely linked to judicial independence. It is also correlated to the right to effective judicial protection. In order to grant judicial impartiality, the Court's members may spontaneously abstain from sitting and ask to be substituted, when he/she has a direct or indirect interest in the dispute, and when he/she has played an advisory role in the case or has prior knowledge of the case. In any event, he/she may withdraw if the proceeding is a serious source of conflict (article 17 CAP).

The party in the proceeding too may demand the magistrate's exclusion, by presenting a recusal application, if his or her withdrawal is necessary. Such a request is examined by a panel (article 18 CAP).

35. Possibility to rely on the new legal arguments in the course of proceedings

After filing his/her request, the petitioner may, with a claim for additional grounds, challenge new decisions or introduce new reasons in support of applications that have already been proposed, or new issues, so long as they are related to those already proposed. For additional grounds the rules for application apply, including that relating to the time limit (art. 43 CAP).

Additional grounds must be notified to the opposite party.

36. Persons allowed to intervene during the main hearing

During the proceeding, any party whose interests lie in the appeal's acceptance or dismissal may intervene (article 28 CAP). The court, also at the request of one of the parties, orders the intervention when it considers it appropriate that the trial be directed against a third party.

37. Existence and role of the representative of the State ("*ministère public*") in administrative cases

State prosecutors do not participate in proceedings before administrative Courts.

State lawyers intervene in the proceeding as defenders of State administrations (Ministers, for example) since they are responsible for representing the administrative party in the trial.

38. Existence of an institution or a person with a role analogous to the French «*Commissaire du gouvernement*»

Such an institution does not exist in Italy.

39. Termination of court proceedings before the final judgment

Should one party or its sole counsel die, the proceeding is interrupted and must be resumed by another notification process (article 79 and 80 CAP). In the event of termination of the proceeding, which does not require the opposite party's approval, the judge settles the dispute by a decision formalising the withdrawal.

Should either party fail to fulfil a procedural requirement within one year, the proceeding shall be deemed extinguished (perempted) (article 81 CAP).

The proceeding may also be terminated by formal conciliation between the parties or by the appeal's inadmissibility on the grounds that the decision sought is no longer in the interests of the petitioner (article 35 CAP).

40. Role of the court registry in serving procedural documents

The Court Registry sends to the parties some notice of the trial (e.g. the date of the hearing). Every notice from the Court Registry to the parties is filed by telematic means.

See answer n. 28

41. Duty to provide evidence

According to art. 64 CAP, the parties are responsible for providing the evidence that is available to them regarding the facts underlying the issues and pleas.

Except in cases provided for by law, the court must base its decision on the evidence offered by the parties as well as the facts not specifically challenged by the parties involved.

The administrative court may, *ex officio*, also arrange for the acquisition of information and documents available to the public administration for the purposes of reaching a decision . The court must use its discretion in weighing the evidence and can infer proof from the behaviour of the parties during the trial.

42. Form of the hearing

The administrative proceeding involves a public hearing (open to the parties and third parties) (article 87.1 CAP).

For requests for interim measures (and for certain other proceedings such as judgments on matters of silence, on matters relating to access to administrative documents, etc.), the oral discussion takes place in the judge's chambers (open to the parties' lawyers only) (article 87.2 CAP).

All lawyers representing those parties involved in the proceeding may intervene orally in the hearing. The parties can discuss the matter briefly at the hearing.

The parties may submit documents up to forty clear days before the hearing, briefs up to thirty clear days and present replies, to the new documents and new briefs lodged for the hearing, up to twenty clear days. (art. 73 CAP).

43. Judicial deliberation

At the end of the public hearing, in the court's chamber, the panel of judges decides the case. The decision shall be taken in chambers by a vote of the panel's members only (articles 75 and 76 CAP).

C. JUDGMENT

44. Grounds for the judgment

The judgment is delivered in the name of the Italian people and bears the heading “Repubblica italiana” (“Italian Republic”).

It must contain a concise statement of the reasons in fact and in law for the decision, with possible reference to the precedents it is intended to conform with.

The motivation of the judgment shall take into account all the arguments invoked by the parties.

Article 74 CAP lays down that in cases where the claim is clearly founded or not founded, filed after the time limit is expired, inadmissible or pursuable, the Court decides with a simplified judgment.

Since 2000, judges may give grounds for their decisions concisely, by referring to one precedent, to a clear reason for inadmissibility, or to an appeal’s merit or absence thereof.

However, the decisions on requests for interim measures shall also be briefly justified.

For certain types of litigation, the statement of justification is filed after the publication of the sole formal statement of the proceeding’s outcome.

45. Applicable national and international legal norms

Control of the legality of an administration’s act is made with reference to rules of domestic law (Constitution and rules of constitutional value, laws, administrative regulations) as well as rules of European law (treaties, secondary community legislation, general rules of EU law). If there is a conflict the judge can give a conforming interpretation, disapply and/or submit a preliminary reference to the CJEU.

Regarding international conventions, notably the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Italian Constitutional Court (judgment no. 348 and 349 of 2007) has stated that the Constitution prevails over international law and that, in order to check if a domestic law complies with the Convention, judges must refer a question to the Constitutional Court and cannot disapply it.

Hence, decentralized control is allowed for by EU law but not for potential conflicts between Italian and international law including the ECHR where reference to the Constitutional Court is mandatory.

46. Criteria and methods of judicial review

The right to judicial review is part of the right to effective judicial protection. The scope of judicial review is wide and its intensity varies according to the nature of the administrative power and the type of act. The administrative judge’s examination is, for the most, limited to a verification of legality: conformity or otherwise of the act with the rule of law. This means that the judge must ascertain whether the administration’s decision, even if within its power, met all the requirements provided by the law and obeyed the rules regulating the exercise of discretionary powers (proportionality,

knowledge of all the relevant facts, reasonability, consideration of all the public and private interests involved, etc.).

However, the judge cannot substitute his or her personal discretionary evaluation to that of the administration. Nevertheless, judicial review is not purely formal, insofar as the control of legality is currently quite deep. In fact, the judge can examine the administration's exercise of discretionary power and check its proportionality, reasonability, etc. thanks to the instrument of the excess of power.

47. Distribution of legal costs

Where it issues a decision, the court will also decide on the legal costs, and condemn, as a rule, the losing party (art. 26 CAP).

Exceptionally, the judge may decide that there are fair grounds to compensate legal costs, which means that the losing party shall not be condemned to pay the winner party's expenses (i.e. each party pays their own costs).

With the order that decides on the application, the court provides for the costs of the interim phase.

48. Composition of the court (single judge or a panel)

The Regional Administrative Court of first instance reaches a decision with the participation of three judges, including the president.

In the exercise of its judicial function, the Council of State decides with the participation of five judges, including a president of the division and four councillors (except for the Plenary Assembly, made up of thirteen members).

The Administrative Courts (and the Council of State) can render decisions as a sole judge only in exceptional cases. This happens, for example, in the case of extinction and estoppel under Article 35 CAP, which can be pronounced by decree by the president of the Section or by a judge whom the president has delegated (article 85 CAP). Within a period of sixty days from the communication, each of the interested parties may challenge it to the panel, with an act notified to all the other parties.

Moreover, before the treatment of the interim measure application by the panel, in cases of extreme gravity and urgency, so as not to allow even a delay until the date the court meets in chambers, the applicant may request the President of the Regional Administrative Court or of the Section to provide for interim precautionary monocratic measures. (art. 56 CAP). This decision is given by decree. The decree loses its efficacy if the panel does not confirm it at the chamber hearing a few days later.

49. Dissenting opinions

A public dissenting opinion by one judge is not authorised because the deliberation of the panel is secret.

However, if the reporting judge does not agree with the decision taken by the majority, she/he may ask the president not to write the judgment. In this case, another judge of the panel will write the decision.

50. Public pronouncement and notification of the judgment

The judgment must be drafted no later than the forty-fifth day from the decision of the case and it is immediately made public by being lodged with the secretariat of the court which delivered it.

In certain proceedings, parties, during the hearing, can ask the early publication of the ruling . In these cases, the ruling is published by being lodged with the secretariat no later than seven or two days from the decision in the case (article 119.par. 5, 120. par. 9, CAP); the full judgment is published thereafter.

For electoral complaints, specific proceedings are established. In this case, article 129.par. 6, CAP lays down that the case be decided at the conclusion of the hearings, with a simplified decision to be published on the same day.

D. EFFECTS AND EXECUTION OF JUDGMENT

51. Authority of the judgment. *Res judicata, stare decisis*

Once it can no longer be appealed, the judgment becomes *res judicata* and is binding for the parties involved in the proceeding.

In certain cases, the final judgment may have effects *ultra partes*, in the case, for example, of judgments pronouncing the annulment of a regulatory act, whose effects are not limited to the parties in the dispute, but affect everyone because the cancelled rule no longer exists .

In Italian law, e case law has no binding effects for other judges (except in the case of the decision of the Plenary meeting of the Council of State under the condition of art. 99 CAP. see answer no. 20) and the principle of *stare decisis* does not apply.

Case law, however, shall be taken into consideration by judges in order to guarantee the uniformity of jurisprudence.

52. Powers of the court in limiting the effects of judgment in time

The annulment of an administrative decision has, as a rule, a retroactive effect. This means that the quashed act shall be considered as never enacted.

Nevertheless, the Council of State stated, in a 2011 decision that the judge may decide to make an exception to this rule: in exceptional cases, where the retroactive cancellation of the act would lead to consequences, on public and private interests, going far beyond that which justifies respect for the principle of legality, no retroactive effects occur.

Judges may then decide that the cancellation will only take effect from the time of the decision or even that it will come into force at a later date to allow time for the administration to adopt the measures required to avoid a legal vacuum.

53. Right to the execution of judgment

If decisions are not spontaneously executed by the administration, a specific procedure may be used to ensure that judges' decisions are enforced (articles 112-115 CAP). This procedure is applied to the administration or similar entities (for example public-law institutions) for various decisions, including those rendered by ordinary judges.

This procedure is particularly effective insofar as the judge does not merely order the administration to comply within a specific time; the judges may also declare null and void any acts in violation or circumvention of the judgment and appoint a Commissioner (*Commissario ad acta*), who acts in place of the administration and takes any measures required to enforce the decision. This is one of the rare cases where the administrative judge also has substantive powers.

Unless this is manifestly unfair, and if there are no other reasons for impediment, the judge may also determine, at the request of one party, the sum of money payable by the defendant for each violation or subsequent non-compliance, or for any delay in the carrying out of the *res judicata*; that ruling is enforceable.

54. Recent efforts to reduce the length of court proceedings

In 2000, legislative reform introduced an accelerated procedure for disputes in sensitive sectors (for example in the field of public contracts, independent authorities, expropriation, etc.) and the possibility to handle other proceedings in a simplified manner. For example, when deciding on the interim measure, the panel, after hearing from all the parties, can issue, in chambers, the final judgment in a simplified form (art. 60 CAP).

The coming into force of the administrative digital trial, since the 1st of January 2017, may also help in reducing the length of proceedings.

Recently, Parliament has increased the number of administrative judges. These measures are all useful for reducing the time required for delivering judgments.

E. REMEDIES

55. Sharing out of competencies between the lower courts and the supreme courts

The Courts of first instance and the Council of State have the same competence. These courts perform the same type of overseeing and there are no particular disputes which only the Council of State may adjudicate.

56. Recourse against judgments

All the judgments rendered by the Administrative Courts of first instance may be appealed before the Council of State. The Council of Administrative Justice for the Region of Sicily is competent for appeals brought against judgments of the Regional Administrative Courts of Sicily.

The appeal transfers all issues of fact and law to the latter court: the Council of State may both re-examine the facts and provide the proper interpretation of the law.

Appeal to the Supreme Court of Cassation (United Chambers) is allowed against the decisions of the Council of State only for reasons relating to jurisdiction.

F. EMERGENCY AND SUMMARY PROCEEDINGS / APPLICATIONS FOR INTERIM RELIEF

57. Existence of emergency and/or summary proceedings

In all cases and at any stage of administrative legal proceedings, the parties may file a request for an emergency measure. This request is handled through a very rapid procedure, in a chamber hearing where lawyers can orally discuss the case (articles 55-62 CAP). The panel rules on the interlocutory application in the first meeting in chambers following the twentieth day from the notification and, likewise, the tenth day from the depositing of the application. The parties may submit briefs and documents up to two clear days before the meeting in chambers.

The decision on interim relief is taken by the panel in the form of ordinance, which may be appealed before the Council of State.

For extremely urgent requests, the President of the section can provide for interim precautionary monocratic measures. (art. 56 CAP). This decision is rendered by decree. The decree loses its efficacy if the college does not confirm it at the chamber hearing.

58. Requests eligible for the emergency and/or summary proceedings

According to art. 55 CAP, the party asking for interim relief has to demonstrate that it will suffer a serious and irreparable harm during the time necessary to reach a decision on the claim (*periculum in mora*) and that the claim is expected to be founded (*fumus boni iuris*).

Interim measures can have different contents.

The traditional precautionary measure was the suspension of the effects of the challenged act; in addition, the judge may order the administration to re-examine the case which has already been decided. Moreover, the judge may enact an injunction to pay a compensatory sum provisionally or another measure which appears, in the circumstances, most likely to temporarily ensure the implementation of the measure.

Finally, if it considers that the applicant's claim is well grounded and adequately protectable with the prompt definition of the judgment of merits, the Court may set the date of the hearing to discuss the merits.

Where a decision on the precautionary application has irreversible effects, the panel may order the provision of security, also by a guarantor, to which the granting or denial of the injunction is to be subject .

59. Kinds of summary proceedings

Regarding other summary proceedings, the procedure for the injunction of payment of a sum of money (art. 118 CAP) should also be mentioned. This procedure concerns disputes within the exclusive jurisdiction of the administrative courts, concerning individual rights of a proprietary nature.

There are also other accelerated proceedings, which are handled in a chamber hearing, such as a proceeding against the silence of the administration (art. 117 CAP); a proceeding to access administrative documents (art. 116 CAP); and a proceeding for the enforcement of judgments (112 CAP).

III – NON-JUDICIAL SETTLEMENT OF ADMINISTRATIVE DISPUTES

60. Role of administrative authorities in the settlement of administrative disputes

See topic 5.

61. Role of independent non-judicial bodies in the settlement of administrative disputes

A "civic defence counsel" may act as a mediator between an individual and the administration. However civic defence counsels have no decision-making powers except in limited cases (the right to access administrative documents) and in any event such mediation does not prohibit filling an appeal with the court.

An alternative to the appeal before the administrative court is the exceptional appeal before the President of the Republic. See topic n. 5

62. Alternative dispute resolution

In disputes between an individual and the administration, an arbitrator may take the place of the administrative court, but only in disputes concerning individual rights (where the individual's situation is similar to that of the administration) and therefore not for disputes related to abuse of administrative power.

Mediation is not provided in administrative law.

Conciliation and settlements can be made by parties, without the intervention of the judge, and presented to the judge who will declare the lack of interest of the parties in the decision.

IV – ADMINISTRATION OF JUSTICE AND STATISTIC DATA

A. FINANCIAL RESOURCES MADE AVAILABLE FOR THE REVIEW OF ADMINISTRATIVE ACTS

63. Proportion of the State budget allocated to the administration of justice

YEARS	CURRENT EXPENDITURE			CAPITAL EXPENDITURE	INTERVENTIONS	INVESTMENT	TOTAL ADMINISTRATIVE JUSTICE BUDGET	STATE BUDGET ALLOCATED TO THE ADMINISTRATION OF ADMINISTRATIVE JUSTICE	TOTAL STATE BUDGET *
	FONCTIONING			COMMON CHARGES					
	STAFF	GOOD AND SERVICES	Information and Communication Technologies (ICT)						
2016	€ 162.196.240,00	€ 28.905.590,00	€ 6.839.525,00	€ 29.925.315,00	€ 5.883,00	€ 2.635.457,00	€ 230.508.010,00	€ 171.994.495,00	€ 824.312.751.553,00
	70,36%	12,54%	2,97%	12,98%	0,003%	1,14%		0,021%	
2015	€ 166.332.818,00	€ 28.739.367,00	€ 6.996.525,00	€ 31.202.107,00	€ 45.467,00	€ 2.427.482,00	€ 235.743.766,00	€ 177.928.065,00	€ 847.307.874.201,00
	70,56%	12,19%	2,97%	13,24%	0,02%	1,03%		0,021%	

*State Provisional budget (L. 23 dec. 2014 n. 191-L.28 dec. 2015 n. 209)

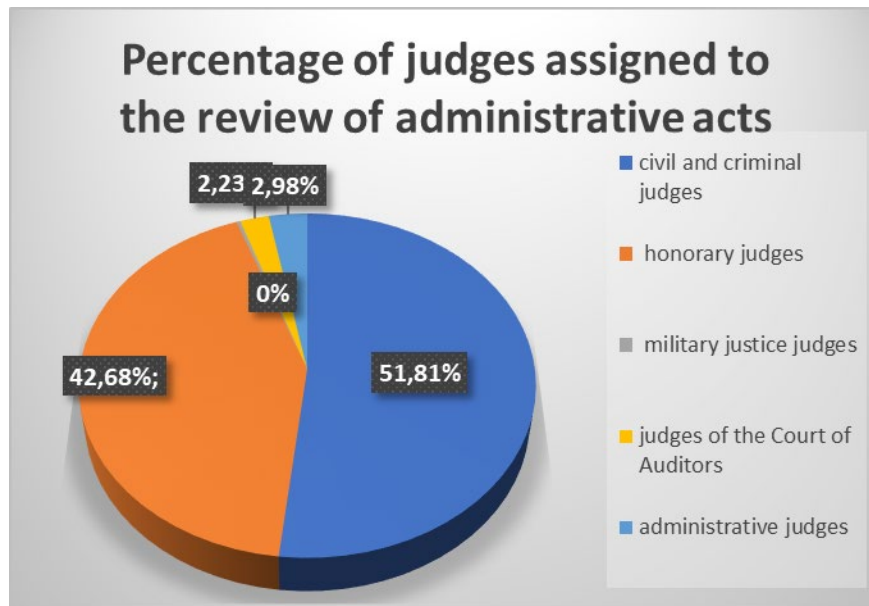
TOTAL ADMINISTRATIVE JUSTICE BUDGET 2016

Category	Percentage
STAFF	70%
COMMON CHARGES	13%
GOOD AND SERVICES	13%
INTERVENTIONS	1%
Information and Communication Technologies (ICT)	3%

64. Total number of magistrates and judges

civil and criminal judges	honorary judges	military justice judges	judges of the Court of Auditors	administrative judges	TOTAL
8838	7280	50	381	508	17057
51,81%	42,68%	0,29%	2,23%	2,98%	

65. Percentage of judges assigned to the review of administrative acts



66. Number of assistants of judges

The position of assistant judge does not exist in Italy.

Recently, the “Office for the trial”, originally established only for ordinary courts, has also been created also in the administrative Courts. (see Law decree 31 August 2016, no. 168, converted in law 25 October 2016, no. 197.

It is composed of officials working at the Courts and trainees, who help judges in their daily job with regard to researching case –law, pieces of regulations and academic studies, necessary for the study of files. They also should help the organization of the court work, by finding similar cases which can be solved together with a leading decision, by the elaboration of statistics, and by the use of technologies, etc.

67. Documentary resources

In addition to electronic documentation, the Council of State has a valuable and exhaustive library, which contains legal publications (official bulletins of laws and statutes, law reports, law commentaries, manuals and monographic publications, as well as specialised legal periodicals and other periodicals) and many volumes.

It is also a library of historical interest, now that it has an estimated collection of about 85,000 volumes, of which 25,000 belong to the ancient foundation from 1400 to 1899, including incunabula, manuscripts, and editions of the sixteenth and seventeenth centuries of literary and cultural interest. The library holds the only complete collection in Italy of the laws of the pre-Union states.

The library was initially formed as a collection of Casa Sabauda's royalties, laws, communal history and gift disputes starting from 1831, the year of establishment of the State Council.

The book collection is characterized by the specificity of the subjects dealt with by the institute over the years, which since 1859 had the judicial function in examining administrative disputes as well as its previous consultative activity.

There is also a library in each TAR , where books and law reviews may be consulted.

68. Access to information technologies

Administrative courts in Italy are all computerized and have Internet access. Each judicial official has a fixed IT workstation and every judge has at least one laptop. They are all connected both to the internal network and to the Internet.

Each judge can access with wireless network various databases regarding case law of administrative courts and other courts, legislative regulations, all legal acts of the European Union and ECJ case law, international conventions, etc.

69. Websites of courts and other competent bodies

Italian administrative justice has its own website, www.giustizia-amministrativa.it.

According to privacy standards, the judgments of administrative courts are all published on the website of the Council of State.

Access is free and anyone may use a search engine to consult all the decisions published.

The website also contains all the general information about the administrative judicial system, documentation, etc.

B. OTHER STATISTICS

70. Number of new applications registered every year

	Council of the State - appeal		TAR - first instance
	Jurisdictional	Advisory	
2015	10.823	2.355	61.723
2016	10.100	2.416	54.565
2017	9.343	2.403	48.555

71. Number of cases heard every year by the courts or other competent bodies

Decided cases			
	Council of State		TAR - first instance
	Jurisdictional	Advisory	
2015	9.604	2.682	87.594
2016	9.858	2.188	83.736
2017	9.990	2.207	75.856

72. Number of pending cases

Pending cases			
	Council of State		TAR - first instance
	Jurisdictional	Advisory	
2015	26.381	4.084	241.865
2016	26.634	4.343	212.095
2017	26.015	4.423	184.410

73. Average time taken between the lodging of a claim and a judgment

The average time taken between the lodging of an appeal against a first instance decision and the definitive judgment of the Italian Consiglio di Stato¹ would not be very relevant because of the significant differences among different categories of cases.

Some cases, considered of great importance for their impact on the national economy (such as public procurements, disputes about decisions of the Antitrust authority or of other independent authorities, expropriations, ect.) have, according to the law, a faster procedure.

For example, in the field of public procurements, the average time regarding disputes about admissions or exclusions of an enterprise to a public tender is the following:

Consiglio di Stato Admissions or exclusions to public tenders (ex. Art. 120 co. 2 bis c.p.a.) ²	appeals	days
2016	1	69
2017	82	144

¹ All the following data refer to the litigation sections of the Consiglio di Stato.

² A special procedure for such cases has been introduced by a recent law, entered into force in April 2016.

For disputes on public procurements in general, except those of the previous table, the average time is the following:

Consiglio di Stato Public procurements (ex. Art. 120 c.p.a.)	appeals	days
2015	785	349
2016	736	308
2017	857	391

It is also to take into consideration that the Italian Consiglio di Stato is the organ of second and last instance and no filter is provided for lodging an appeal with it.

Anyway, the average time between the lodging of an appeal against a first instance decision and the definitive decision of the Consiglio di Stato, taking into consideration all kinds of disputes, is the following:

Consiglio di Stato All kind of disputes ³	appeals	days
2015	7936	550
2016	8022	487
2017	8282	689

Moreover, it is to be underlined the great workload of the judges of the Consiglio di Stato in the field of interim measures. All the decisions on interim reliefs taken by the first instance judge (TAR) can be appealed before the Consiglio di Stato. Moreover, after the first instance judgement, the loser, while lodging the appeal, may ask the suspension of effects of the first instance decision to the Consiglio di Stato.

The procedure in this matter, of course, is very fast.

Consiglio di Stato Interim decisions	appeals	days
2015	2517	44
2016	2739	74
2017	2532	63

³ These data do not consider the decisions of “perenzione”, which means the decisions taken by presidential decree to declare a claim extinguished for prolonged inactivity of the claimant.

74. Percentage and rate of the annulment of administrative acts decisions by the lower courts

Council of State - rate of annulment
2017
40%

75. The volume of litigation per field

FIELD	2016	2017
Housing and urban development	1.691	1.778
Public employment	960	1.192
Public procurement	1.177	1.172
Permits and public authorization	505	556
Foreigneirs	544	471
Public security	338	374
Regions and provinces	217	288
<i>res judicata</i>	532	283
University	310	253
National Health Service	273	244
Public services	214	238
Armed Forces	251	219
Environment	227	206
Independent authorities	192	190
State police	188	157
Trade and Craftsmanship	203	143
Crafts and Professions	116	141
Access to documents	169	137
Agriculture and forests	85	122
Expropriation for public utility	109	119
Public bodies	152	111
Education	75	111

C. ECONOMICS OF ADMINISTRATIVE JUSTICE

76. Studies or works concerning the influence of judicial decisions against the administrative authorities on public budgets

At the moment there is no study concerning the influence of judicial decisions against the administrative authorities on public budgets