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**Seminar organized by the Council of State of Italy and ACA-
Europe**

**“Techniques for the protection of private subjects in
contrast with public authorities: actions and remedies
– liability and compliance”**

Rome, 23 May 2022

Answers to questionnaire: Finland



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“TECHNIQUES FOR THE PROTECTION OF PRIVATE SUBJECTS IN CONTRAST WITH PUBLIC AUTHORITIES: ACTIONS AND REMEDIES - LIABILITY AND COMPLIANCE”.

INTRODUCTION

The seminar will analyse the types of actions that can be brought before the administrative judge: action of annulment, action of declaration and action of condemnation. With particular reference to the latter, the seminar will focus on compensatory measures, including damages for loss of opportunity and damages as a result of delay.

The seminar also intends to examine the possibility of any and eventual special or fast-track procedure, for introductory terms and methods which pertain to certain subjects under consideration, for example, for their economic or political relevance, such as those to be found in the sphere of public contracts (see also transversal analysis).

The aim of this questionnaire and of the subsequent seminar is to provide a wider comprehension of the similarities and differences that exist among the various legal systems of the member States insofar as they apply to the situations to be dealt with by the administrative court, paying particular attention to the content and subject matter of the relative rulings.

SESSION I

LEGAL PROCEEDINGS THAT CAN BE BROUGHT BEFORE THE ADMINISTRATIVE COURT

- 1. In your legal system, which judges are competent to pronounce on disputes in which one of the parties is the public administration?**
 - An ordinary judge
 - An administrative judge
 - A judge who deals with special areas
 - Others



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Italian reply

In the Italian legal system, the jurisdiction of the administrative court is defined by art. 103 of the Italian Constitution and by art. 7 of the administrative process code (hereafter to be referred to by the acronym a.p.c.)

The administrative court has jurisdiction with public law litigation in any disputes in which the Public Administration acts by implementing special powers and not according to the terms of common law.

Finland's reply: In Finland, the situation is very much similar to that in Italy. As a rule, the administrative court has jurisdiction when it concerns decisions by administrative authorities. The Market Court and Insurance Court are competent within their fields.

2. Which actions can be brought before the administrative court in view of the exercise of administrative powers?

- Annulment of administrative acts
- action of condemnation
- Other actions

If you have replied 'other actions', please clarify which.

Italian reply

The administrative process code highlights the following actions:

- Annulment actions of administrative provisions (art. 29 a.p.c.)
- Compensatory actions (art. 30 a.p.c.) and of a sentence to pay out sums of money in specific cases
- Compliance actions, intended as action of condemnation for the release of the requested provision (art. 34 of a.p.c.)
- Action against silence (art. 31 a.p.c.)
- Precautionary action (art 55 a.p.c.)
- Compliance action (art. 112 a.p.c. to be found under various headings of the a.p.c.)
- Any other action deemed suitable to comply with a specific protective measure (art. 34 a.p.c)

Finland's reply: According to section 6 of the Administrative Procedure Act (APA), a decision by which an authority has ruled on an administrative matter or ruled an administrative matter inadmissible is eligible for judicial review by appeal. Section 9 of



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the APA concerns appeals against decisions by a municipal authority (governed by the Local Government Act), the Government of Åland or an authority subordinate to it (governed by the Act on the Autonomy of Åland), as well as appeals against a decision by an authority of the church or a parish in accordance with the Evangelical Lutheran Church Act or the Act on the Orthodox Church.

According to section 81 of the APA an administrative court can:

- uphold the decision appealed against;
- reverse the decision appealed against;
- return the matter for renewed consideration;
- amend the decision appealed against; or
- transfer the appeal to the competent authority or court.

An administrative court can also dismiss an appeal as inadmissible.

In addition, an administrative court can, according to section 22 of the APA, consider matters of administrative litigation. Matters of administrative litigation are, according to section 20 of the APA, any dispute that:

- is provided by law for decision as a matter of administrative litigation;
- concerns a payment liability governed by public law;
- concerns some other interest, right or obligation arising from a legal relationship governed by public law; or
- concerns an administrative contract.

In the case of administrative litigations, an administrative court may reject or approve the claim submitted or rule it inadmissible in whole or in part.

In some cases, also appeals against general provisions can take place (e.g. municipal ordinances).

3. From which sources can actions be-brought before the administrative court?

- Law
- Public authority regulations
- Guidelines
- Supreme Court rulings
- Other

Italian reply



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In our legal system, actions that can be brought before the administrative judge are regulated by law, and specifically, by the a.p.c.

Finland's reply: Actions that can be brought before an administrative court are governed by the APA and the special legislation mentioned above in point 2.

4. Which administrative decisions can be challenged?

- Administrative acts which have a specific recipient
- General acts and regulations
- Acts inherent to the procedure
- Political acts

Italian reply

All implemented administrative decisions can be challenged, even those of a general nature, such as regulations. Political acts may not be challenged, namely “those acts or provisions issued by the government in the exercising of its political power” (art. 7, comma 1 a.p.c.). In administrative case law, the notion of a political act is restricted exclusively to those acts issued by constitutional bodies and which represent the exercise of supreme political choices. Endo-procedural acts cannot be challenged autonomously, unless they are not directly harmful.

Finland's reply: Decisions can be challenged by anyone who has a right, interest or obligation affected by the matter. Generally, the right to appeal requires that the person is affected in a direct and concrete way (sections 6.1 and 7.1 of the APA). Political acts cannot be challenged. In cases where a general act or regulation, without administrative enforcement measures, unlawfully directly affects the legal position of somebody, access to justice through either appeal or administrative litigation has in case law been secured (section 21 of the Constitution of Finland). Some municipal ordinances or byelaws may be challenged by inhabitants and other members of the municipality (property owners, companies) on legality grounds.

5. On the grounds of which defects can the annulment of an administrative act be requested?

- Breaches of the law
- Breaches of competence
- Technicalities and procedural defects
- Breaches of general principles
- Other



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Italian reply

In accordance with the provisions of art. 21 *octies* of Law 241/1990, breaches of the law, incompetence and misuse of powers are deducible defects. Misuse of power denotes an incorrect application of the administrative function compared to the intentions indicated by the law. The annulment may be requested even in cases of the breach of general principles of the administrative action, among which are the principles of reasonability and proportionality.

In the case of binding activity, the breach of formal rules and procedures (formal defects) cannot result in the annulment of the act, if the content of the acts could not have been any different.

Finland's reply: All of the above.

6. Can the judge partially annul the challenged administrative act?

- Yes
- No

If your reply is yes, please elaborate.

Italian reply

The administrative judge can partially annul an illegitimate act.

Finland's reply: Yes, an administrative decision can typically be annulled partially. In some cases, however, a partial annulment could change the totality of the decision in a manner which is not compatible with intended content of the decision. In such cases, a partial annulment is excluded. The court can in principle revoke and/or amend in part for example an environmental permit, but if a major change is required the case would be sent back to the authority for new examination. For example, the court cannot grant a permit or licence refused by an administrative authority. If the decision is against the law, the court can only revoke the decision and return the case back to the authority for new (affirmative) decision. The court cannot partially revoke and/or amend a decision in the fields of municipal and church self-government (on the measures possible for an administrative court according to section 81 of the APA, see above question 2.)

7. Can the judge substitute the Administration by modifying the content of the administrative act?

- Yes
- No



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If your reply is yes, please elaborate.

Italian reply

Art 7, comma 6 a.p.c. makes provisions for cases, exhaustively listed by law, in which the judge may reform the act, partially or wholly, by substituting it with another act (so-called extended jurisdiction on the merit).

For example, in electoral litigation, if the judge allows the appeal, he corrects the results of the election and replaces the illegitimately proclaimed candidates with those who are truly entitled (art 130, comma 9 a.p.c.). Other examples of extended jurisdiction on the merit are: a) a compliance proceedings (art 112 a.p.c.) in which the judge, if he allows the appeal, may order compliance by prescribing the procedure, including by means of the determination of the content of the administrative decision or the enactment of the same instead of the administration” (art 114, comma 4, letter a), a.p.c.); b) the judges dealing with financial penalties including those imposed by almost all independent administrative authorities, in which if the judge allows the appeal, may modify the amount of the financial penalty if he deems that the quantification of the amount does not comply with the parameters indicated by law.

Finland's reply: The court limits its examination to whether the authority's decision is lawful and does not substitute the authority's assessment with its own. As mentioned above, the court can amend the decision appealed against, however, not when it concerns the assessment of the appropriateness of the decision (which is within the competence of the administrative authority). See also above answer to question 6.

8. When the judge annuls the challenged act, can he dictate provisions which the P.A. must abide by in the review proceedings of the subject-matter of the litigation?

- Yes
- No

If your reply is affirmative, please elaborate.

Italian reply

One of the effects of the decision of the administrative court is the so called “conformity effect “: that is to say, the judge can dictate conditions which must be adhered to when the Administration makes new provisions after the annulment.

Finland's reply: If the court sends the case back to the administrative authority because of a procedural flaw, the court can dictate the procedure that the authority must follow (hearing of parties



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before decision-making, disclosure of documents etc.). In fact, a court decision to repeal the administrative decision and remand the case back to the authority, may often compel the authority to make the only lawful decision in the case, according to the directives in the court judgment.

9. When do the effects of the jurisdictional annulment of an administrative act become applicable?

- From the date of the adoption of the act (*ex tunc*)
- From the date on which the judgement becomes final (*ex nunc*)
- Other

Italian reply

The annulment of an act in the seat of jurisdiction produces retroactive effects, that is to say from the date of adoption of the act in question (“*ex tunc*”)

Finland’s reply: As a rule, the court’s judgment to annul a decision has effect *ex nunc*. E.g., if the election of a member of a municipal board or commission by a later court judgment is declared illegal, the decisions made by the board or commission do not become void retroactively. But, e.g., if a building permit has been granted and the applicant has been afforded the right to start the work before the decision has gained legal force, the revocation of the permit by a later court judgment will make the permit void so that the works done in the meantime must be demolished.

10. Can the judge modulate the effects over time of the ruling of annulment of an administrative act?

- Yes
- No
- Other

Italian reply

In certain specific precedents, in order to ensure effective protection, the Council of State limited itself to ascertaining the illegality of the act and to indicate conformance requirements (*pro future*) for the subsequent exercise of public function.

With regard to special procedure of public tenders, the judge who declares the contract to be ineffective establishes the starting date from which it becomes ineffective and this may be subsequent to the date of the sentence.



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Finland's reply: In principle, the court may give orders concerning the time when the judgment or parts of it shall gain legal effect. However, in Finland there are not specific doctrine on this issue.

11. Can the act of ordering payments for damages be proposed autonomously or must it always be proposed together with other kinds of actions?

- Yes
- No
- Only in certain cases

If your reply is yes, please elaborate

Italian reply

Art 30, comma 1, a.p.c. requires that the compensatory action must be proposed in two ways:

- a) at the same time as other actions (action of annulment, action against silence etc.); b) autonomously.

The autonomous compensation for damages action must be proposed within a time-limit of 120 days from the fact itself or from the awareness of the fact which caused the damage (art 30, comma 3, a.p.c.).

Finland's reply: In Finland, administrative courts are not entitled to order compensation for damages. An action for compensation based on the Tort Liability Act is lodged with the District Court, that is with a general court of first instance.

12. In the light of what kind of behaviour is the compensatory action for damages feasible when dealing with a Public Administration?

- Implementation of an illegal and detrimental administrative act
- Non-observance of the deadline of the procedure
- Lesion of good faith and trust
- Resultant behaviour of the public administration
- Other

Please elaborate

Italian reply



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In the Italian legal system, all detrimental conditions indicated above are relevant for compensatory damages

Finland's reply: Tort liability does not fall under the jurisdiction of administrative courts. Under the Constitution (section 118(3)) everyone who has suffered a violation of his or her rights or sustained loss through an unlawful act or omission by a civil servant or other person performing a public task must have the right to request that the civil servant or other person in charge of a public task be sentenced to a punishment and that the public organisation, official or other person in charge of a public task be held liable for damages, as provided in more detail by legislation. Under the Tort Liability Act (chapter 3, section 2) a public corporation shall be vicariously liable in damages for injury or damage caused through an error or negligence in the exercise of public authority. The same liability shall apply also to other corporations that perform a public task on the basis of an Act, a Decree or an authorisation given in an Act. However, the liability of the corporation referred to arises only if the performance of the activity or task, in view of its nature and purpose, has not met the reasonable requirements set for it. If a person who has suffered injury or damage owing to an erroneous decision by a state or municipal authority has without an acceptable reason failed to appeal against the said decision, he/she shall not be entitled to damages from the state or the municipality for injury or damage that could have been avoided by appealing. No action for damages can be brought for injury or damage caused by a decision of the Government, a Ministry, the Cabinet Office, a court of law or a judge, unless the decision has been amended or overturned or unless the person committing the error has been found guilty of misconduct or rendered personally liable in damages. Where a decision of an administrative authority has been appealed against in the Government or the Supreme Administrative Court, no action in damages can be brought for injury or damage caused by the decision in so far as it has been allowed to stand.

Administrative courts may, in certain circumstances, order administrative authorities to reimburse private individuals for the costs they have incurred in obtaining services which the public authorities should have provided them.

13. Which are the different kinds of reimbursable damages?

- Material damage
- Non-material damage
- Loss of opportunity

Italian reply

In the Italian legal system, all detrimental conditions indicated above are relevant for compensatory damages



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Finland's reply: Administrative courts do not have jurisdiction in matters concerning tort liability. Compensation for personal injury and damage to property can be awarded. Where the injury or damage has been caused by an act punishable by law or in the exercise of public authority, or in other cases, where there are especially weighty reasons for the same, damages shall also constitute compensation for economic loss that is not connected to personal injury or damage to property.

14. Does the omission of lodging an action of annulment result in elision or reduction of the compensatory damages?

- Yes
- No
- Other

Italian reply

On the occasion of quantifying the amount of damages, the administrative court must exclude all damages “which could have been avoided by due diligence, also through the use of the instruments of protection provided” (art 30, comma 3, a.p.c.).

Finland's reply: Damage that could have been avoided by appealing is not compensated.

15. In order to award compensatory damages, is proof of the responsibility of the public administration required? If your reply is affirmative, which party is obliged to provide said proof?

- Yes – the party with burden of proof is...
- No

Italian reply

The injured party must provide proof of the responsibility of the public administration. Case law, however, recognises only some less onerous burdens of proof, by admitting some presumption of liability. As far as tenders are concerned, in compliance with the Court of Justice case law, the injured party is instead exempted from providing proof of liability of the contracting authority.

Finland's reply: The injured party.

16. Can the judge convert *ex officio* one action into another?

- Yes



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- No

If the reply is yes, please elaborate

Italian reply

No. If all the requisite conditions exist, the judge can always provide for the conversion of the action (art 32, comma 2, a.p.c.)

Finland's reply: An administrative court can adjudicate a matter as an administrative litigation, even if the matter has been erroneously lodged as a normal administrative appeal.

17. Is there a time-limit for the proposition of the compensatory action?

- Yes
- No

If the reply is yes, please elaborate

Italian reply

See reply to question 10.

Finland's reply: Tort liability does not fall under administrative court jurisdiction. There is no definitive deadline for claiming compensation. However, issues regarding claims for compensation are subject to the legislation on expiry of debt. According to legislation, the right to compensation expires three years after the afflicted party found out or should have found out about the damage and the responsible party, unless the expiry has been interrupted. Interrupting the expiry refers to situations where a claim for compensation has been presented to the government, the government has been reminded of the liability for compensation, or a complaint has been filed against the government.

18. Can the judge rule that the Administration implement an administrative act? If your reply is affirmative, what are the prerequisites for implementation?

- Yes – explain
- No

Italian reply:



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The administrative judge can rule that the administration issue a provision which had been requested but illegitimately denied when it is in the realm of bound activity or when no investigations are required that have to be carried out by the administration” (art 34, comma 1, letter c).

Finland’s reply: Courts do not have a general remedy for passivity of administration in case an administrative authority delays decision-making or neglects to make a decision (see section II 4 below).

SESSION II – SPECIAL PROCEDURES

1. Does your administration have provisions for special procedures

- Yes
- No

If the reply is yes, please elaborate

Italian reply

The administrative process code has provisions for the following special procedures: the procedure regarding access to administrative documents ex art. 116 a.p.c.; appeals against silence ex art. 117 a.p.c.; injunction procedures ex art. 118 a.p.c.; ex art. 119 a.p.c. abbreviated trial with regard to specific matters for example, public tenders, tender procedure ex art. 120 a.p.c., electoral procedure ex art. 130 a.p.c.

Finland’s reply: Besides general rules of administrative procedure, there are numerous specific provisions in substantive acts in different fields of law. We can talk about tax procedure, environmental procedure, etc.

2. What do the specialities consist of?

- Ways of introducing the appeal
- Procedural time-limits
- Jurisdiction of the court
- Other

Italian reply

Special procedures provide for a series of derogatory regulations compared to ordinary regulations. They generally comply with a fast-track logic by introducing reduced procedural time-limits,



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simplified procedures, types of decision which are different to the judgement (decree, a judgement in a simplified format).

Finland's reply: See the previous answer. All of these.

3. The special rites are established:

- According to subject (for example, tenders, procedures of expropriation, independent administration authorities)
- According to actions
- Both of the above

Please elaborate

Italian reply

Special procedure regard both specific subjects highlighted in detail in art 119, comma 1, a.p.c. of the administrative trial (for example, tenders, procedures of expropriation, independent administration authorities' actions) and appeals against the silence of the public administration (art. 117 a.p.c.), for access to documents (art. 116 a.p.c.), for compliance (art.112 e ss. a.p.c.), for injunction (art 118 a.p.c.)

Finland's reply: See the previous answer. All of these.

4. Does your system provide for appeals against the silence of the Administration at the request for an administrative provision presented by a private individual?

- Yes
- No

If the reply is yes, please elaborate

Italian reply

Art. 31 a.p.c. provides for a specific action adverse to the inertia of the public administration, the procedure of which follows special rules (ascertainment of the duty of the administration to provide). Upon completion, the judge may grant a time-limit within which the Administration must comply. He/she could order the Administration to implement the provision of the required act only if the content is restricted or if discretionary power has been fully exercised.

Finland's reply: No. Administrative courts can only react to decisions of administrative authorities, on the basis of appeals (e.g., if an authority decides that it will not oblige someone to do something, an administrative court can repeal the decision and remand the case back to the authority), but if the



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authority does not react, the court has no competence to issue any orders. In this case, the Chancellor of Justice or the Ombudsman as supervisors of legality may react.

If an administrative authority fails to comply with an obligation to act otherwise in a legal relationship under public law, the administrative court may, by an administrative litigation decision, impose an obligation on the authority to perform some measure based on such a legal relationship.

There is case law providing that, in order to ensure that inaction does not result in a loss of rights for an individual, the administrative court may refer the matter back to the administrative authority, expressly referring to the authority's obligation to take a decision.

5. Do the Administrations comply spontaneously with the decisions of the administrative courts?

- Yes, always
- No, never
- In the majority of cases, in any case more than in 50% of cases
- Hardly ever, in any case less than in 50% of cases

Italian reply

The enforcement remedy is used for the execution of about 15% of the SAC judgments.

Finland's reply: Yes, always.

6. In your legal system, is there a special procedure for ensuring the integral execution of the sentence?

- Yes
- No

If the reply is yes, please elaborate

Italian reply

In the Italian legal system a specific procedure for the execution of judgements is provided for (art. 112-114 a.p.c.). Moreover, it provides also for the remedy of the so-called “*astriintes*” for indirect execution. The remedy does not require the judgment to be final.



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Nevertheless, the powers of the judges of the execution are different in the event that the judgment to be enforced is final or not. In the first case, the judge of the execution can declare null the administrative acts eventually adopted in contrast with the judgment itself and can completely substitute the administration in the execution of the judgment. Instead, if the decision to be enforced is not final, the judge can only indicate to the administration how to give execution to the judgment, considering without effect the administrative acts eventually adopted in contrast with the judgment itself.

Finland's reply: No. The court is not involved in the execution of its decisions. In some situations, though, the administrative litigation procedure may be available to the person concerned, if an authority does not act in a way that a decision by an administrative authority or court requires.

7. Are the judge's decisions which are not of the last resort immediately enforceable?

- Yes
- No

If the reply is yes, please elaborate

Italian reply

The decisions of the Regional Administrative Tribunals are immediately enforceable. In compliance with art 98, para. 1, a.p.c., after challenging the decision, a suspension of the enforceability of the decision of the court of first instance and the implementation of other measures which are deemed necessary, can be requested.

Finland's reply: According to section 122 of the APA, a decision may not be enforced before it has become final. Appeal to the Supreme Administrative Court does nevertheless not prevent enforcement of a decision in a matter in which leave to appeal is required. Enforcement may nevertheless not be undertaken if it renders the appeal useless.

A decision that is not final may also be enforced if: 1) the law so provides; 2) the nature of the decision is such that it must be enforced immediately; 3) enforcement of the decision cannot be postponed due to a public interest.

8. Following the annulment of a decision characterized by discretionary power, the interested party is forced to challenge each of the ulterior negative decisions which have been deemed illegitimate by dint of defects which are different to those identified by the



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judge or, in alternative, are there certain mechanisms of “reduction” of the aforesaid discretionary power which ensure the definition of the litigation once and for all?

- Yes – elaborate

- No

Italian reply

In the Italian legal system, generally speaking, the sentence of the annulment of a decision characterized by discretionary power binds the Administration only when dealing with the illegitimacy identified by the sentence (the so-called “deduction”). The Council of State maintains that, in certain cases, the discretionary power can be “reduced” substantially, both for the effect of an auto-obligation placed by the same public administration, and for the effect of the specific trial outcome (when, for example, the investigation found that there were no other alternative reliable techniques).

Finland’s reply: No (if we have understood the question correctly)



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SESSION III – PRECAUTIONARY MEASURES

1. Does the proposition of an appeal automatically suspend the effectiveness of the administrative act?

- Yes
- No

Italian reply

In the Italian legal system, the proposition of appeal does not entail suspensive effects

Finland's reply: As a rule, yes. Under the Administrative Judicial Procedure Act (Section 122) a decision may not be enforced before it has become final. Appeal to the Supreme Administrative Court shall nevertheless not prevent enforcement of a decision in a matter in which leave to appeal is required. Enforcement may nevertheless not be undertaken if it renders the appeal useless. A decision that is not final may also be enforced if: 1) the law so provides; 2) the nature of the decision is such that it must be enforced immediately; 3) enforcement of the decision cannot be postponed due to a public interest. When separately appealing against an interim decision made by an administrative court, the appeal shall not prevent enforcement of the said decision unless otherwise ordered by the administrative court that issued the decision or by the administrative court considering the said appeal. In the field of municipal appeals, the rule is the opposite: an appeal does not suspend the implementation of an administrative act.

2. In your legal system, are precautionary measures provided for?

- Yes
- No

Italian reply



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In the Italian legal system, the petitioner can request the issuance of all those precautionary measures which are most suited to avoiding having to undergo serious and irremediable prejudice during the time required to reach a decision on the appeal.

Finland's reply: Yes. The appellant can request precautionary measures. The court can also decide to stay execution of its own motion.

3. What kinds of decisions can the judge apply as a precautionary measure?

- The suspension of the challenged act;
- (if the subject of the challenge is the refusal of an application) a positive measure which provisionally anticipates the effects of the administrative act being contested;
- The order to the administration to re-examine the application on the strength of indications contextually provided by the judge;
- Whatever measure necessary to satisfy, in each case, the precautionary requests presented by both parties

Italian reply

In the Italian legal system, the judge can take any of the measures indicated above. **There is, in effect, a principle of atypicality of the kinds of protection, including precautionary**

Finland's reply: The Administrative Procedure Act (section 123) reads: While an appeal is pending, an administrative court may prohibit enforcement of a decision, order suspension of enforcement, or issue some other order concerning enforcement of a decision. An enforcement order may also apply to part of a decision. An administrative court may also issue an interim order safeguarding the exercise of the rights or interests of a party in an administrative judicial matter that the court is considering other than an appeal. The court may impose a conditional fine to enforce compliance with an order. The motion for an order shall be submitted to the court that is competent to consider the principal matter. The motion must be considered as a matter of urgency.

4. What are the conditions for the acceptance of a precautionary request?

- The probable validity of the action
- The probable validity of the action together with a serious prejudice
- The prevalence of public or private interest, based on the results of the equilibrium/assessment
- The required prerequisites of trial law to accord precautionary measures vary according to the different types of litigation



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- Other prerequisites (please specify)

Italian reply

The precautionary order must motivate on the basis of the assessment of the appended prejudice and indicate the outlines, which, after brief examination, would lead to a reasonable forecast of a positive result for the application.

Finland's reply: The idea is to ensure that the right of appeal against a decision is not made useless. Formally, the pre-assessed validity of the action is not a prerequisite, but in practice it may have an effect on the court's consideration on whether a precautionary request shall be met.

5. Can the judge force the petitioner to pay bail?

- Yes
- No
- If yes, in which cases?

Italian reply

In the Italian legal system, in the event that as a result of the decision of a precautionary application irreversible effects result, the chamber can require the payment of bail, to which the concession or rejection of a precautionary measure can be subordinated. The concession or rejection of a precautionary measure cannot be subordinated to bail where the interlocutory application relates to fundamental human rights or other assets of constitutional relevance.

Finland's reply: We do not have a bail system.

6. Are precautionary measures generic?

- Yes
- No – are there some subjects in which precautionary measures are not admitted?
Which?

Italian reply

In the Italian legal system, precautionary measures do have general applications insofar as they can be applied to all types of litigation.

Finland's reply: Yes.



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7. Can a precautionary request be introduced autonomously before the presentation of the main trial proceedings (*ante causam*)?

- Yes
- No

Italian reply

In the event of exceptional gravity and urgency, the party entitled to apply, even before the prior declaration of the appeal, may request the adoption of urgent, temporary measures which appear indispensable during the time required to bring an action on the merit and the precautionary request in the course of the proceedings.

Finland's reply: No.

8. In the event of cautionary request *ante causam*, does the precautionary decision of the judge lose effectiveness?

- Yes, in the event that the interested party does not initiate main trial proceedings within the mandatory time-limit
- No, its effectiveness remains intact even if the main trial proceedings have not been initiated within the mandatory time-limit or even if the time-limit has expired

Italian reply

In the Italian legal system, the provision of *ante causam* acceptance, however, loses effectiveness when, within fifteen days from issuance, the appeal with a precautionary request has not been notified. In all events, the measure conceded loses effectiveness after sixty days from the date of issue, after which, only those precautionary measures which have been confirmed or set out during the course of the litigation remain effective.

Finland's reply: N/A

9. When dealing with the precautionary request, does your legal system provide for specific procedure?

- Yes (give details of the main characteristics with regard to : trial deadlines, type of decision, motivational burden, ways for establishing debate)
- No

Italian reply



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In the Italian legal system, provisions have been made for a fast-track procedure in closed session.

Finland's reply: No.

10. Is the precautionary decision taken unilaterally or collegiately?

- Unilaterally;
- Collegiately;
- Collegiately, but in the event of extreme urgency, the precautionary decision can be taken temporarily by means of a simple unilateral decree;

Italian reply

The decision is taken collegiately. In the event of extreme urgency, the precautionary decision can be made, as a temporary measure, by means of a simple unilateral decree.

Finland's reply: In the Supreme Administrative Court (SAC), the decision can be made by one judge e.g. according to the Aliens Act, but more often a three judges' panel is necessary. In lower courts one judge is typically competent.

11. During the discussion of the precautionary request, can the judge directly define the judgement on the merit?

- Yes (explain in which conditions)
- No

Italian reply

During the discussion of the precautionary request, the chamber, having verified the comprehensiveness of the hearing and the investigation and having heard representations from both parties, may define the judgement on merit with a sentence in a simplified form, in closed session.

Finland's reply: No.

12. Can precautionary measures be challenged before the Supreme Court /Council of State?

- Yes
- Yes, but only if they pass a test of eligibility
- No



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Italian reply

Going against the injunctions of the Regional Administrative Tribunals, appeal can be made to the Council of State, to be put forward within a time-limit of thirty days from the notification of the decree, or within sixty days after its publication.

Finland's reply: Not as such. However, the legality of a precautionary measure by the administrative court can be challenged when appealing to the SAC against the administrative court's decision on the merits.

13. Can the Supreme Administrative Court / Council of State, as a precautionary measure, suspend the judgements on the merit of a judge of a lower level?

- Yes
- No

Italian reply

In the Italian legal system, the Council of State can, as a precautionary measure, suspend the judgements on the merit of a judge of a lower level.

Finland's reply: Yes if an appeal is pending before the Supreme Administrative Court.

14. On average, how many precautionary decisions are taken every year by the Supreme Court/ Council of State in comparison to the overall number of decisions taken?

Italian reply

In the last two-year period (2019/2020), the average number of precautionary rulings was 6,953. They account for about 39% of total judgments.

Finland's reply: Statistics are not compiled on this subject. However, aside from matters concerning international protection, precautionary decisions are relatively rare.



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