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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: Sweden**



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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.

## The Supreme Administrative Court of Sweden's reply

Sweden has a parallel system with administrative courts and general courts. Almost all cases in the administrative courts concern disputes in which one of the parties is a government agency (or a municipal or regional agency). However, some cases in the general courts, e.g. tort cases, may also have a party representing the public administration.

### **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)



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### **The Supreme Administrative Court of Sweden's reply**

Swedish courts cannot annul any law or regulation. However, if a court finds that a provision conflicts with a rule of fundamental law or other superior statute, or finds that a procedure laid down in law has been disregarded in any important respect when the provision was made, the provision shall not be applied.

The Court is not familiar with the term condemnation. The administrative courts may revoke the appealed public administration decision or the lower-instance judgment and, where possible, put another decision in its place. In these cases, the court has the same competence as the public authority that took the decision under review. The Court may also remand the case for continued review by the public authority or the court below. Cases concerning damages are dealt with by the general courts.

#### **3. From which sources can actions be proposed brought before the administrative court?**

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

### **Italian reply**

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

### **The Supreme Administrative Court of Sweden's reply**

As a general rule, decisions by government bodies and lower-instance courts may only be challenged by an appeal. A decision may only be appealed when the applicable law or regulation explicitly states that appeal is possible. Additionally, in some situation a right to appeal may follow from Article 6 of the European Convention on Human Rights (ECHR). As the procedural rules on standing etc. are very general in Sweden, case-law from the Supreme Administrative Court are an important source of law.

#### **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



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## 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.

## The Supreme Administrative Court of Sweden’s reply

An administrative decision may, as a main rule, only be challenged by those who are affected by the decision in question. There are certain exceptions, e.g. decisions by a municipal body may be submitted for legality review by any resident in that municipality. Furthermore, some environmental organisations may appeal certain decisions in the field of environmental law. As stated above, acts cannot in themselves be challenged in court. Some decisions by the government pertaining to the rights under Article 6 of ECHR can be reviewed directly by the SAC, even if they may include some matter that is mainly an issue of political power. Most procedural decisions made during the handling of a case in court may only be challenged by appealing the ruling of the court itself, but there are exceptions as some act may directly affect a party before the court in a negative way that cannot be addressed or put right at a later stage.

### 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

## 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.



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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.

### **The Supreme Administrative Court of Sweden's reply**

All of the stated grounds may be used in a judgment as a reason to annul an administrative decision, as long as the decision is one that may be subject to appeal.

#### **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.

#### **The Supreme Administrative Court of Sweden's reply**

Yes. The procedural regulations do not contain any limitations in this regard.

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

- Yes
- No

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



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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.

### **The Supreme Administrative Court of Sweden's reply**

The judge may either annul the administrative decision and remand it for new consideration or put another, correct, decision one in its place. As for the latter, the judge may make his or her own assessment of what the legislation in question means in that concrete situation and substitute the administrative decision with the court's judgement. This is generally applicable in all administrative cases before an administrative court, with some exceptions such as the review of local government's decisions that are only subject to a legality-review.

#### **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.

### **The Supreme Administrative Court of Sweden's reply**

Yes. This is typically done in judgments where the administrative decision is annulled and the case is remanded to the public authority for further review. This can for example be done by declaring that the renewed consideration should be done in accordance with certain findings of the court as explained in its judgement.

#### **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



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### 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*”)

### The Supreme Administrative Court of Sweden’s reply

This depends on the contents of the decision itself. If it is a matter of a benign decision, e.g. welfare benefits, the annulment decision is enforceable *ex tunc*. If it is a matter of an adverse decision, e.g. mandatory psychiatric care, the annulment decision is enforceable *ex nunc*.

#### 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 conformative 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.

### The Supreme Administrative Court of Sweden’s reply

This is not something that is possible to do in Swedish administrative law.

#### 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



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### **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.).

### **The Supreme Administrative Court of Sweden's general reply to questions 11–17**

In Sweden, the administrative courts do not award payments for damages as described in these questions. Such cases are handled either by the general courts within the context of tort law, or, in certain cases, the Chancellor of Justice. Therefore, the Supreme Administrative Court cannot provide detailed answers to these questions.

### **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**

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

### **The Supreme Administrative Court of Sweden's reply**

According to Swedish tort law, compensatory action for damages may be feasible for incorrect decisions as well as general advice if the advice is erroneous, has caused damage and was given while the government agency was exercising public authority. Apart from that, claims may arise due to certain provisions in the ECHR, e.g. when a government agency has failed to act within a reasonable amount of time, and under certain EU acts, such as the GDPR.



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Damages are awarded by a general court after an application by an individual. The Chancellor of Justice may also reach out of court settlements on behalf of the State in actions for damages (voluntary settlement of claim). Individuals may therefore turn directly to the Chancellor of Justice with a written application for compensation. If the application is rejected by the Chancellor, the right to initiate court proceedings remains.

**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

**The Supreme Administrative Court of Sweden's reply**

Both material and non-material damage is reimbursable. The Court does not recognise the phrase *loss of opportunity*. However, a loss of opportunity for financial gains due to a mistake by a government agency may be compensated as material damages.

**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.).

**The Supreme Administrative Court of Sweden's reply**

The same as in Italy applies in Sweden.

**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?**



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- 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.

### The Supreme Administrative Court of Sweden's reply

The burden of proof is on the applicant.

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

- Yes
- 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.)

### The Supreme Administrative Court of Sweden's reply

No. As damages are dealt with in general courts, the administrative judge can not do anything in that regard.

#### 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.



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### **The Supreme Administrative Court of Sweden's reply**

The general time-limits of claims apply, 10 years being the usual.

#### **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:**

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).

### **The Supreme Administrative Court of Sweden's reply**

Yes, if it is suitable, i.e. if no further investigation is needed and all requisites in the law are met.

## **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.

### **The Supreme Administrative Court of Sweden's reply**

Almost all cases in the administrative courts concern disputes in which one of the parties is a government agency (or a municipal or regional agency) and the other party is an individual. The cases



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range from coercive measures (e.g. forced care of children outside of their homes, mandatory psychiatric care, detention of migrants) to social benefits and cases regarding a person's licence to practice medicine.

The court procedure is regulated in the Administrative Court Procedure Act, which does not mention special procedures as such. The procedure in the administrative courts in Sweden is not heavily regulated, and much is left to the courts to decide on how to run its procedures. There are exceptions, such as the right to an oral hearing when requested (unless manifestly unnecessary), and the obligation to give parties the opportunity to challenge submitted materials (unless unnecessary). The Act also have some rules on interim measures. Furthermore, in the special legislation regulating all the different types of cases that administrative courts adjudicate, there are numerous procedural provisions. If a provision in another legislation deviates from a provision in the Administrative Court Procedure Act, the *lex specialis* provision is applied. From this follows that there a lot of "special procedures" (as we understand the question) in Swedish administrative law in many kinds of cases, from public procurement to forceful treatment of addicts.

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

### The Supreme Administrative Court of Sweden's reply

There are specific time-limits regulated in several laws, e.g. regarding compulsory care of children. Some special legislation also contains specific provisions regarding oral hearings, etc. The special procedures can be of any kind. Please see the previous answer.

## 3. The special rites are established:

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



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- 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.)

### **The Supreme Administrative Court of Sweden's reply**

The special procedures are established according to actions in the Administrative Court Procedure Act and according to subject in other laws. Please see the Court's answer to question 1 in this section.

#### **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.

### **The Supreme Administrative Court of Sweden's reply**

The Court is not familiar with the institution of “appeal against silence”, we interpret it to concern the inaction of a public administration. There is a rule in the Administrative Act in Sweden according to which an individual may turn to a lower-instance administrative court to redress delays or inactions in regard of an application made to an authority. If the court grants such a request, the court may order the government agency to make a decision within a set timeframe.



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**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.

**The Supreme Administrative Court of Sweden's reply**

Always or almost always. However, the courts do not oversee the implementation of their decisions. If public agencies do not comply with court decisions, individuals affected may seek remedies at a supervisory agency.

**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 “*astraintes*” for indirect execution. The remedy does not require the judgment to be final.

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.



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### **The Supreme Administrative Court of Sweden's reply**

There is no general provision for this in administrative law. There are only special provisions, e.g. when a municipality does not conform to a court decision on granting certain benefits to disabled persons, the Health and Social Care Inspectorate may apply at an administrative district court that the municipality shall be fined.

- 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.

### **The Supreme Administrative Court of Sweden's reply**

Not as a main rule, but only when it is explicitly stated in the law that the decisions are immediately enforceable. In some cases, the court may decide whether its decision shall be immediately enforceable.

- 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 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



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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 ).

### **The Supreme Administrative Court of Sweden’s reply**

There is no general mechanism for reducing the definition of the case to be tried by the court. In practice, the scope of the case is determined by the scope of the appealed decision. In most cases, this is not hard to define. From the perspective of the individual (or company) the whole decision of the administrative agency is challenged, but the legal argument can of course be focused on certain traits of that decision and not on others. As for appeals to SAC, leave to appeal can be granted for a specific part of a ruling from a court below and in this sense a reduction of the case can be made in order to have a precedence. This is however particular to SAC. There is also much case law regarding the question of when the adjustment of a claim is allowed after appeal and of what constitutes an unallowable adjustment of a claim.

## **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

#### **The Supreme Administrative Court of Sweden’s reply**

Yes, unless otherwise specified in the relevant legislation. In administrative law, such exceptions are common and most cases are actually immediately enforceable.

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

- Yes



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- No

### **Italian reply**

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.

### **The Supreme Administrative Court of Sweden's reply**

Yes. The appellant may request a precautionary decision (stay of execution), if he or she has appealed a decision which is immediately enforceable.

### **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.

### **The Supreme Administrative Court of Sweden's reply**

The suspension of the challenged act, and a positive measure which provisionally provides that which was requested in the application.

### **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
- Other prerequisites ( please specify )



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### **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.

### **The Supreme Administrative Court of Sweden's reply**

The condition is the probable validity of the action. The court must also consider any prevalent public or private interest weighing against the decision. In doing so, the court may consider how burdensome the adverse decision is for the private individual concerned by the decision. If the decision has consequences that may be burdensome, the bar for probability is set lower.

#### **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.

### **The Supreme Administrative Court of Sweden's reply**

There is no bail in Swedish administrative law.

#### **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.



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### **The Supreme Administrative Court of Sweden's reply**

A precautionary measure (stay of execution) may only be taken regarding a decision which is immediately enforceable. The decision is usually generic, but there are some special cases, e.g. in public procurement law, where other considerations must be taken into account and other rules of evidence apply. Furthermore, in some migration law cases, the court is obligated to rule on the question of precautionary measures.

#### **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.

### **The Supreme Administrative Court of Sweden's reply**

No, but the formal rules for appeal are very flexible, so a plea for a stay of a decision would generally be interpreted as an appeal of the same decision and the party would be invited to clarify its appeal within a certain time, while the question of a stay would be considered.

#### **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



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issue, after which, only those precautionary measures which have been confirmed or set out during the course of the litigation remain effective.

### **The Supreme Administrative Court of Sweden's reply**

Please see the previous answer.

#### **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**

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

### **The Supreme Administrative Court of Sweden's reply**

The decision must be taken quickly, usually within a week in the first instance. The decision is usually not given a lengthy motivation.

#### **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.

### **The Supreme Administrative Court of Sweden's reply**

The decision is taken unilaterally in all courts, except in special circumstances.

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

- Yes ( explain in which conditions )
- No



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### **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.

### **The Supreme Administrative Court of Sweden's reply**

The judge may rule on the case in its entirety if all parties have finished their submissions. In the vast majority of all cases in the Swedish administrative courts, no oral hearing is held.

### **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

### **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.

### **The Supreme Administrative Court of Sweden's reply**

Yes. Precautionary measure may be appealed to an administrative court of appeal and from it to the Supreme Administrative Court.

### **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.



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### **The Supreme Administrative Court of Sweden's reply**

Yes.

#### **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.

##### **The Supreme Administrative Court of Sweden's reply**

In 2020, 183 of the Court's 6,314 decisions were on precautionary measures. Most of these concerned public procurement or compulsory care cases. This figure does not include appealed decisions on precautionary measures from the administrative courts of appeal.



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