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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: Turkey



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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.

Turkish Reply

In the Turkish legal system, cases arising between the administrative agencies and individuals are, to the extent that they are governed by administrative law, reviewed by administrative courts, specialized in administrative law

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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Turkish Reply

In the Turkish legal system, the administrative case types which can be brought before the administrative court are defined by art.2 of the Procedure of Administrative Justice Act (hereafter to be referred to by the acronym PAJA)

An administrative court has jurisdiction with the case types below:

-Actions for annulment filed by those whose interests have been violated by the administrative procedures to repeal such procedures based on their illegality due to one of its aspects such as competence, form, reason, subject and purpose,

-Full remedy actions filed by those whose personal rights have been directly violated due to the administrative act and actions,

-Actions regarding disputes arising between the parties due to any kind of administrative contracts made for the performance of a public service except for disputes arising from the concession agreements and contracts for which arbitration is stipulated.

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.

Turkish Reply

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

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.

Turkish Reply

Pursuant to the article 125 of the Constitution, recourse to judicial review shall be available against all actions and acts of administration.

As a general principle, all administrative acts which are of a nature as directly to affect the rights, interests or legal status of private persons can be challenged before the courts. Not only administrative acts of an individual nature but also general acts and regulations can be subject to judicial review. The act in question can be an explicit rejection of an appeal made by the relevant persons or an implicit one.

The authority itself that enacts the challenged act is not decisive as regard the questionability of that act. What matters is the nature of the powers it exercises in acting the contested act. Accordingly, not only acts of administrative authorities but also acts of judicial and legislative organs, which are taken in their administrative capacity, can be subject to judicial review.

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.

Turkish Reply

Pursuant to art.2 of the PAJA, actions for annulment are filed by those whose interests have been violated by the administrative procedures to repeal such procedures based on their illegality due to one of its aspects such as competence, form, reason, subject and purpose.

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.

Turkish Reply

The administrative judge can partially annul an act.

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.

Turkish Reply

Pursuant to art.2 of the PAJA, the administrative jurisdiction is limited to the supervision of the compliance of the administrative actions and procedures with the law. The administrative courts cannot review the expediency of an action. No ruling can be made that has the characteristic of an administrative action and procedure, which restricts the performance of the executive function in accordance with the forms and principles prescribed by the laws and the decree laws of the Presidency of the Republic, or in a manner that will remove discretionary powers

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.

Turkish Reply

No.

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*”)



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Turkish reply

Decisions of annulment rendered by administrative courts produces retroactive effects and the annulment of the act takes effect not as of the date of court's decision, but with retroactive effect as of the date of the adoption of the act in question (“*ex tunc*”).

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.

Turkish reply

No. The judge has no power to fix the time from which the annulment operates.

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.



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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.).

Turkish reply

Pursuant to the art. 12 of the PAJA, the concerned persons can directly file a full remedy action to the Council of State, administrative and tax courts due to an administrative procedure that violates their rights or file the actions of annulment and the full remedy actions together. They can also file the action of annulment first, and, upon the resolution of the action for annulment, bring the full remedy action as of the notification of the decision on this matter or from the notification of the decision to be taken if an action against this decision is filed. A full remedy action can also be filed due to damages arising from the performance of a procedure, within the time limit for the action starting from the date of performance.

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

Turkish Reply

Full remedy action is available not only for administrative acts, but also for actions as well. In order to commence a full remedy action the plaintiff should have a concrete, personal, actual and direct damage arising from the act or action of the administration.

13. Which are the different kinds of reimbursable damages?

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



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Italian reply

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

Turkish Reply

In the Turkish administrative justice system, material damage and non-material damage are the kinds of reimbursable damages. There must be a certain harm that has occurred or will occur. Possible damages do not constitute liability for compensation.

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.).

Turkish Reply

No. In cases where an annulment action was not filed, if there is a damage, a full remedy action can be filed directly.

All of the incurred damage can be compensated in proportion to the fault of the administration.

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



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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.

Turkish Reply

In a full remedy action where the liability of the administration is reviewed; to decide in favour of the plaintiff, the court should either find a service fault committed by the Administration, or should base its judgment on the theory of liability without fault.

Case of service fault involve some defect of failure in the establishment or operation of the public service in question. In other words, there is either non-feasance, late-feasance or malfeasance. For the compensation liability of the administration arising from the service fault, it is necessary that the administration has a service fault, a damage has arisen as a result of the service fault, and there must be a causal link between the service fault and the damage.

According to the principle of liability without fault, an administrative act done in the general interest, even if done lawfully, may give rise to a right to compensation when exceptional burden falls on one particular person. Besides, the activities of state, even when conducted without fault, may in certain circumstances constitute a risk. The fundamental principle of equality in bearing public burdens and the principle of equity and social risk have been grounds for holding the administration liable for damages caused by its acts or actions without fault.

In accordance with the principle of *ex officio* investigation, it is the duty of the court to determine the responsibility and fault of service.

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.)

Turkish Reply

No. The judge can not convert *ex officio* one action into another.



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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.

Turkish reply

As to the Article 12- titled “Actions for annulment and full remedy actions”- of PAJA; the concerned persons can directly file a full remedy action to the Council of State, administrative and tax courts due to an administrative procedure that violates their rights or file the actions of annulment and the full remedy actions together. They can also file the action of annulment first, and, upon the resolution of the action for annulment, bring the full remedy action as of the notification of the decision on this matter or from the notification of the decision to be taken if an action against this decision is filed. A full remedy action can also be filed due to damages arising from the performance of a procedure, within the time limit for the action starting from the date of performance. In this case, the rights of the concerned persons to apply to the administration, pursuant to Article 11, shall be reserved.

As to the Article 13 – titled “Directly filing a full remedy action”- of PAJA; those whose rights have been violated by the administrative actions must request, before filing an administrative action, for the fulfilment of their rights by applying to the relevant administration within one year from the written notification or as of the date when they become aware of these actions by other means, and within five years as of the date of the action in all cases. If these requests are partially or wholly rejected, an action can be filed within the time limit for the action as of the day following the notification of the procedure on this matter, or if no answer is given within thirty days about the request, from the end of such period.

The condition to apply to the administration stipulated in the first paragraph shall not be sought for the actions that are filed to the administrative jurisdiction authorities if a full remedy action previously filed to the judicial authorities that are not competent was dismissed due to lack of jurisdiction.

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).

Turkish reply

Pursuant to art.2 of the PAJA, the administrative jurisdiction is limited to the supervision of the compliance of the administrative actions and procedures with the law. The administrative courts cannot review the expediency of an action. No ruling can be made that has the characteristic of an administrative action and procedure, which restricts the performance of the executive function in accordance with the forms and principles prescribed by the laws and the decree laws of the Presidency of the Republic, or in a manner that will remove discretionary powers

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.

Turkish Reply

The PAJA has provisions in this regard such as filing an administrative action against the silence of the Administration ex art.10, application to the senior authorities before filing an administrative action ex art.11.

Pursuant to the article 20/A, a summary procedure shall be applied to the disputes arising from i) Procurement proceedings except for the decisions for prohibition from procurement, ii) Urgent expropriation proceedings, iii) Decisions of the High Council for Privatisation, iv) Sale, allocation and lease of transactions carried out pursuant to the Tourism Incentive Law no. 2634, v) Decisions taken as a result of the environmental impact assessment pursuant to the Environmental Law no.



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2872, except for the administrative sanction decisions, vi) Decisions of the President of the Republic taken pursuant to the Law no. 6306 on Transformation of the Areas Under Disaster Risk.

There is a special procedure in the art. 20/B, which shall be applied to the actions filed about the central and common exams held by the Ministry of National Education and the Centre for Assessment, Selection and Placement , the proceedings and acts regarding these exams and the exam results.

The art.20/C also regulates procedures on disputes arising from administrative acts and actions related to military service.

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).

Turkish Reply

Special procedures provide for exceptional and accelerated procedures differing from ordinary regulations. It is aimed to simplify the procedures and to shorten the periods according to the general judicial procedure in cases of urgency.

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



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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.)

Turkish Reply

The special procedures provided for by the articles of PAJA regard both the subject of the administrative dispute and the procedure to be followed before an administrative lawsuit is filed.

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.

Turkish Reply

As per art.10 of the PAJA, the concerned persons can apply to the administrative authorities for the performance of a procedure or action that might be subject to administrative action. If no answer is given within thirty days, the request shall be deemed to have been dismissed. The concerned persons can file an action to the Council of State, administrative and tax courts according to its subject within the time limit for filing an action as of the date when the thirty-day period ends. If the answer given by the administration within the thirty-day period is not final, the concerned person can wait for the final answer or file an action by considering this answer as dismissal of their request. In this case, the time limit for filing an action shall not start. However, the period of waiting cannot exceed four months as of the date of application. In cases where no action is filed or the action is dismissed due to the time limit, if an answer is given by the competent administrative authorities after the expiration of the thirty-day period, an action can be filed within sixty days as of the notification of the answer.

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

- Yes, always
- No, never



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- 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.

Turkish Reply

Pursuant to art.138 of the Constitution, legislative and executive organs and the administration shall comply with court decisions; these organs and the administration shall neither alter them in any respect, nor delay their execution.

As per art.28 of the PAJA, the administration must establish a procedure or take an action, without delay, as required by the judgments and stay of execution decisions of the Council of State, regional administrative courts and administrative and tax courts. This period may not exceed thirty days starting from the notification of the decision to the administration under any circumstance.

In cases where no procedure is established or no action is taken in accordance with the decisions of the Council of State, regional administrative courts and administrative and tax courts, an action for pecuniary and non-pecuniary compensation can be filed in the Council of State and at the relevant administrative court against the administration. If the judgments of the court are not fulfilled by the public officials within the given period of time, an action for compensation can be filed only against the relevant administration.

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



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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.

Turkish Reply

In the Turkish legal system, it is an absolute obligation for the administration to comply with the court decisions, and the administration has no discretionary power regarding this matter. Therefore, the non-execution of the court decisions causes the fault liability of the administration. Non-compliance with the court decisions is described, by the doctrine and the jurisprudence of the Council of State, as a heavy service fault. The deficient or delayed execution of the annulment decisions rendered by administrative courts is also regarded as heavy service fault; administration is held liable for damages arisen from deficient or late execution. The duty of implementation of court decisions is imposed on the administration under Turkish legal system. No other legislation exists, other than mentioned above, to a judge to compel the administration to enforce court decisions.

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.

Turkish Reply

As per art.28 of the PAJA, the administration must establish a procedure or take an action, without delay, as required by the judgments and stay of execution decisions of the Council of State, regional administrative courts and administrative and tax courts. This period may not exceed thirty days starting from the notification of the decision to the administration under any circumstance.

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).

Turkish Reply

The decision regarding the annulment of an administrative act established by exercising discretionary power is binding on the administration in terms of illegality determined. The administration can establish a new administrative act by eliminating the illegality.

However, it is a generally accepted principle that an administrative authority cannot be judicially forced to exercise a discretionary power. Nevertheless, judicial control over the acts implemented in the exercise of discretionary power ensures that, when an administrative authority exercise a discretionary power, it does so within the limits and purposes for which, under the law, it enjoys discretion.

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



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Turkish reply

In the Turkish administrative justice system, proposition of an appeal does not automatically suspend the effectiveness of the administrative act.

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

- Yes
- 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.

Turkish Reply

In Turkish administrative justice system, pursuant to art 27 of the PAJA, filing an action in the Council of State or the administrative courts shall not prevent the execution of the administrative procedure which is the subject of the action. The Council of State or the administrative courts can decide to suspend the execution by showing justification after the plea of the defendant administration is taken or after the end of the time limit for the plea if the implementation of the administrative act both results in damage that are hard to recover or impossible to recover from and if the administrative act is expressly in contradiction to the law. In the decisions for the stay of execution, it is mandatory to specify on which grounds the administrative procedure is expressly in contradiction to the law and what damages that are hard to recover or impossible to recover will arise if the procedure is applied.

Filing actions arising from tax disputes at the tax courts shall suspend the collection procedures of the part of the levied taxes, duties, charges and similar financial liabilities and the increases and penalties thereof which is the subject of the action.

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



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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.**

Turkish Reply

In the Turkish administrative justice system, the Council of State or the administrative courts can decide to suspend the execution if the implementation of the administrative act both results in damage that are hard to recover or impossible to recover from and if the administrative act is expressly in contradiction to the law.

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)

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.

Turkish Reply

See replies to questions 2 and 3.

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



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precautionary measure cannot be subordinated to bail where the interlocutory application relates to fundamental human rights or other assets of constitutional relevance.

Turkish Reply

No

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.

Turkish Reply

Yes

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.

Turkish Reply

No, in the Turkish administrative justice system, a request to suspend the execution can only be introduced in the course of the proceedings.

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



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- 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.

Turkish Reply

See reply to question 7.

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.

Turkish reply

Pursuant to art 27 of the PAJA, in the actions where the stay of execution is requested, the periods for notification and response can be shortened. The decisions for the stay of execution shall be taken in return for a guarantee; however, the guarantee might not be required depending on the conditions. The disputes arising between the parties with respect to the guarantee shall be settled by the chamber, court or judge taking the decision about the stay of execution. No guarantee shall be taken from the administration and the persons who enjoy judiciary assistance. An objection to the stay of execution can be made, for once, only within seven days as of the day following the notification of the judgment. The authorities to which an objection has been made must decide within seven days as of the receipt of the file by these authorities. The decisions rendered upon the objection shall be deemed final. The action files about which the decision for the stay of execution has been taken shall be principally examined and finalised. The decisions taken for the stay of execution shall be written and signed within fifteen days. The stay of execution cannot be requested for a second time based on the same grounds.



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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.

Turkish reply

The decision of stay of execution can be rendered by a single judge or a panel.

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.

Turkish reply

In the decision of stay of execution, the Chamber states its verdict regarding whether the implementation of the administrative act both results in damage that are hard to recover or impossible to recover from and whether the administrative act is expressly in contradiction to the law.

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.

Turkish Reply

Pursuant to art 27 of the PAJA, an objection can be made to the Boards of Administrative or Tax Law Chambers of Council of State according to the subject against the decisions taken regarding requests for the stay of execution, if they have been taken by the law chambers of the Council of State; to the nearest regional administrative court against the decisions of the regional administrative court; to the regional administrative court against the decisions taken by administrative and tax courts and single judge, for once only, within seven days as of the day following the notification of the judgment.

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.

Turkish Reply

In the Turkish administrative justice system, the Council of State can, with a decision of stay of execution, suspend the judgments of a judge of a lower level.

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.



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Turkish Reply

Statistical information on the number of stay of execution decisions given by the Council of State in 2019 and 2020 is as follows:

	The stay of execution decisions given by the Council of State in the capacity of the court of first instance	The stay of execution decisions given by the Council of State in the capacity of the appeal court
2019	2062	6733
2020	2143	4677



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