Tribunale Amministrativo Regionale del Lazio

Incontro con il Presidente e i Delegati del Comitato per le Aspirazioni Popolari dell'Assemblea Nazionale del Vietnam

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Meeting with the President and the Delegates of the Committee for the Popular Instances of the National Assembly of Vietnam

Rome, June 28th, 2012

The Italian system of the Administrative Justice at a glance

Dear President,

dear Delegates,

Welcome to the Regional Administrative Tribunal of Rome, the organ of the administrative justice of 1st instance where the request for justice finds an immediate response in judicial decisions that, for the nature of litigations and the dimension of interests involved, have come to represent the "Hub of the Administrative Justice" today.

We are elated to introduce you into the Italian legal system which, considered as a whole, and despite the geographic remoteness, might turn out not so distant from your own system, having regard to the circumstance that both are systems of *Civil Law,* following the model introduced in France by the Napoleonic codification.

Civil Law systems basically establish themselves on the legislative sources of the law in such a way that the legislator and the codified rules substantiate the focus of the law, while the task to apply the positive dispositions upon their correct interpretation rests with the Judiciary.

Review of administrative acts

Administrative justice essentially pertains to litigations on administrative decisions.

In Italy, such litigations are brought before the administrative judges (namely the Administrative Judiciary), whose competences differ from those of the Ordinary Judiciary.

Originally, there was only one level of instance before the litigation sections of the Council of State, whose origins are very remote (it had been set up by an Act of king Carlo Alberto in 1831).

Afterwards, the Italian Constitution entered into force (as of January 1° 1948), providing that organs of administrative justice of 1st instance (i.e. Regional Administrative Tribunals, TARs) be set up in each Region of the territory of the Italian State.

In 1971, the Regional Administrative Tribunals were created and the Council of State became the administrative judge of second and last instance (i.e. the Supreme Administrative Court for appeals against the judgements of the TARs).

The Council of State is at the same time a consultative body of the Government and public administrations, delivering advisory opinions upon request.

Organization of the court system

The Administrative Judiciary includes:

1) twenty Regional Administrative Tribunals (one for each Region), as first instance

judges;

2) the Council of State, as second instance judge, which has four jurisdictional sections

in addition to three consultative sections;

3) the Council for administrative justice in Sicily, that is a special section of the Council

of State for administrative decisions adopted by Sicilian administrative authorities.

Scope of jurisdiction of the administrative Courts

According to the Italian Constitution (under article 103), administrative judges have jurisdiction over:

1) legally protected interests in matters regarding the administration (the so called "interessi legittimi");

2) individual rights (the so called diritti soggettivi) in the areas specified by the law (areas

of the so called exclusive jurisdiction).

Legally protected interests may be defined as the advantages granted to an individual who is subject to the administration's public power. Legally protected interests involve the attribution to an individual of the possibility of influencing the proper exercise of administrative power.

Accordingly, the Code of administrative proceedings (hereafter, the Code), provided by legislative decree nr. 104/2010, assigns the jurisdiction to the administrative judge by following the two criteria of "type of interest" or "matter". Under art. 7.1 of the Code the administrative courts have jurisdiction over the protection of legitimate interests before the public administration, and in particular matters laid down by the law, also over the protection of subjective rights concerning administrative deeds (namely decisions, acts, agreements and even behaviours) adopted by public administrations as long as they are related (even if indirectly) to the exercise of a public power.

The main cases of "exclusive jurisdiction" of the administrative judge concern public services, urban planning and construction, public proceedings for awarding contracts for public works, supplies and services, competition law, electronic communications and, in general, independent authorities' acts (art. 133 of the Code).

Purpose of the review of administrative acts and actions available before administrative Courts

The competence of the administrative judge currently protects individual rights and legal interests and doesn't include a general oversight of the administration's proper functioning.

As a result, a recourse against an administrative decision is examined by the judge within the limits of the complainant's interest.

That is to say, the judge examines whether the exercise of public power was legal, not in order to verify the administration's proper functioning but in order to determine whether the contested abuse of power possibly infringed on the petitioner's rights and thus whether or not his/her request may be received.

Article 29 CAP provides for the action for annulment of administrative decisions, due to breach of law, misuse or abuse of power, or lack of competence.

As a general rule, this action must be filed within sixty days from the date of the legal acknowledgement of the contested act.

In conclusion, three main actions can be filed against a public administration:

- an action for annulment of administrative decisions;
- an action for compensation for damages;
- an action against "the silence of a public administration", to oblige the administration to adopt a decision not rendered in due time; in this case the judge can order the administration to act, and, if it doesn't do so, can substitute the administration.

the enforcement action.

There is also an "enforcement action" which can be lodged within ten years starting from the "*res iudicata*".

If judgements are not spontaneously implemented, this particular enforcement procedure may be used to ensure that judicial decisions, including those rendered by civil judges, be carried out by the administration or similar entities (art. 112-115 of the Code).

The administrative Courts, therefore, have both the power to order the authority to enforce their rulings and judgements (power of injunction) and the power to appoint a representative who acts in place of the administration.

The judge can even directly substitute the administrative body, thus having substantive

powers.

Characters of the administrative proceedings

The Code of the administrative proceedings was meant to compound and encompass in a unique body all the rules and provisions applying to the administrative judicial procedure. It represents the need to make order in several laws coming to us from the beginning of the last century as well as in many sectorial disciplines contained in special laws, not always adequately coordinated.

As a matter of fact, a complex work of reform has been done to refurbish the administrative proceedings, applying the known principles of the other procedural codes: slenderness and simplification of the proceedings, "conciseness" of the acts of the parties and of the decisions of the Courts, reasonable time of the process, concentration and effectiveness, full implementation of the debate in particular with specific regard to the interim (precautionary) phase.

The fair trial within a reasonable time

The fair trial within a reasonable time is a basic principle of the Italian Code of administrative judicial procedure, provided by article 2, par. 2 ("*The judge and the parties cooperate to reach the goal of the reasonable duration of the trial*"). It replicates a fundamental principle set by article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (signed in Rome on November 4th 1950) .

As a matter of fact, it must be underlined that in the last 15 years the Italian Parliament has increased the competences of the administrative judges but the increase of competences has not been followed by an increase in the number of judges.

As a result, the workload of the judges is heavier than in the past, and this situation can affect the timeliness of the trials.

Nevertheless, according to statistical data, in recent years the backlog of Administrative

Judiciary as a whole has been reduced significantly, rather than increased.

To this aim the Code of administrative proceedings has provided for several measures to reach the goal of timeliness of the trials.

Simplification of the proceedings

As a general rule, simplification of the proceeding means shorter time limits for the activities of the parties and of the Courts, namely for the delivering of the final judgements.

A large number of simplified procedures are provided for in the Code, which are faster than the ordinary procedure.

First of all, during the interim phase, if the Court deems that the adversarial principle has been respected, no more evidence is needed and the case can be easily decided, it may inform the parties that it intends to render a summary decision which will end the dispute (article 60 CAP).

In addition to the interim procedure, simplified and faster procedures are provided for litigations regarding the right to access public documents, the "silence of a public body" (when a public body fails to reply to a request of a decision), the enforcement of previous judgements, the matters of public procurements, administrative elections, competition law, and so on.

In simplified proceedings the duration of the trial is no more than one year in first instance and one year in appeal.

The principle of "conciseness" of the acts of the parties and of the decisions of the Courts

According to article 3 CPA, the Courts and the parties shall draw up the acts in a clear and concise way.

The conciseness is a basic principle, and a fundamental one, in order to speed up the duration of trials and to ensure timeliness of final decisions.

Unfortunately so far this principle has not been respected: the excessive length of parties' acts could somehow be regarded as "abuse of the process" and lead to the imposition of a pecuniary penalty charged by the Court, provided that the Court deems that the litigation was "temerarious".

A possible amendment of the Code could be the introduction of new rules in order to get more concise acts from the parties; as a result, more cases could be tried by the Courts and the backlog would be somehow cut.

Alternative dispute resolutions

Alternative dispute resolutions (hereinafter ADR) should in theory represent a proper way to close a controversy without accessing the system of administrative justice but making recourse to out-of-court-settlements; it would also help achieve a reduction of caseloads.

But currently in Italy general ADR instruments in administrative litigations don't exist.

Some instruments that can be regarded as ADR are provided for litigation in the field of public contracts but their application is limited to the sector and cannot help to significantly reduce the number of cases pending before administrative Courts.

In a perspective of judicial reform, studies should be undertaken in order to verify the possibility of introducing out-of-court-settlements as an efficient alternative to administrative litigations before Courts.

The administrative judicial system as a public service

Today, people seeking justice constantly intermingle their expectations of fairness and impartiality with those of effectives and promptness.

At the end of my presentation I would like to hint at a related topic concerning the satisfaction of "customers" with the functioning of the courts.

Apart from some episodic studies in Italy as well as in Europe quite nobody has organised systematic procedures and methods for assessing and measuring the degree of acceptance among the public of the judicial systems.

This lack of monitoring can be understood as the obvious result of practical and also financial difficulties possibly hindering the organization of punctual and, as such, necessarily pervasive forms of check.

This lack of monitoring, however, could not be accepted, in our opinion, if it should be the heritage of some rearguard ideological position which, on considering the administration of justice solely in its inner nature of public function, encompassed by its inalienable guarantees, would depress its external necessary expression as a "public service", a service rendered to customers in order to satisfy their demand of a sure, prompt, just and accessible justice.

In order to qualify a judicial system with the characters of transparency and reliability, and to increase, respectively, the efficiency of the jurisdiction and the confidence and the satisfaction of the customers with the judicial systems, it would be of great utility to rely on periodical reports on the "feed-back" of customers,

thus assessing the dysfunctions more suffered by the public and identifying the best way to intervene.

In a European dimension we should monitor and follow a trend toward efficiency of the judicial systems with utmost attention.

The Council of Europe namely draws attention to the frequent violation of article 6 of European Convention for the Protection on Human Rights, that guarantees a fair trial within a reasonable time, thus highlighting the issues concerning the whole efficiency of the justice.

Generally speaking, it is difficult to find a balance between efficiency and impartiality in the judicial work, between quantity and quality of decisions to be rendered; and it is even more difficult to define appropriate standards which can be at the same time homogeneous and suitable for all the kind of litigations and matters falling within the competences of the administrative Courts.

Of course, we are well aware of the fact that the core of our mission is conditioned by our independence and that our present situation vis-à-vis national legislative and executive powers as well as European bodies could be jeopardized by the introduction of too rigid and strict standards by external and distant authorities.

That represent for us at the same time a strong impulse to improve efficiency of the activity of the Courts and at the same time a great challenge and a chance to broaden our cultural horizons, that we cannot but seize, even though the necessary effort may also frighten us.

This occasion will be precious for seizing these chances without sacrificing our identity and our speciality as judges.

By this mention I finish my intervention and I thank you all for your courteous attention.

Cons. Rosa Perna

Tribunale Amministrativo Regionale per il Lazio