Control of the activities of the administrative courts ([1])

(By Giuseppina Adamo and Rosa Perna, Italian Administrative Judges)

We eventually come to discuss the last part of the Section IV of the Questionnaire.

The fourth Section, considered as a whole, deals with a special aspect of efficiency, the efficiency regarded not as a result of the mere internal organisation of the justice but in its projection, we would say, towards third parties.

As we have just seen, the first part is focussed on the enclosure of the administrative jurisdiction system towards the parties of the proceedings, the third parties and the public in general, in order to measure and, at the same time, guarantee the degree of efficiency of the administrative jurisdiction.

The second part, which now I have the pleasure to present, recalls a meaning of the expression "efficiency in the relations towards third parties" which is more connected with the degree of confidence and satisfaction that the citizen can perceive when he is told about the work of judges.

The questionnaire actually draws our attention to two kinds of factors, that can influence the confidence in judicial system.

The first is a factor of "transparency", that is obtained when the courts carry out a systematic monitoring (and eventually an analysis and evaluation) of their activity and make the data and studies available to the public.

To this purpose the use of information and communication technology plays a decisive role, making it possible to register cases (both the stock and the flow of them) and decisions as

[1] Intervention in the Working Group « Jurisdiction » of the Association of the European Administrative Judges , Wuertzburg, April 2007.

well as to carry out the monitoring of case-load of judges and courts and of length of proceedings: this way figures can be easily known by users and public opinion, too.

The second factor that increases the confidence in the judicial systems is the capability of these systems to give an appropriate and ready reply to the (formal or informal) complaints of users: we could call it a factor of "reliability".

The complaints may be different: they can point out a disfunction objectively caused by a wrong rule or by a common, bad practise or they can specifically denounce a fault of the judge; the answers and reactions of the judicial systems can be likewise very different, too: a disciplinary proceeding regarding a judge; a compensation of the violation of the reasonable length of the proceedings; a compensation for unjust damages caused in the exercise of his/her functions or by denying justice as a result of malice, gross negligence or deny of justice; the adoption of measures for improving the organisation.

Going into details, this part of the questionnaire is centred on the control "from inside" of the activities of the administrative courts by means of statistical data, electronic systems measuring the stock and the flows of the affairs pending before the courts, the use of evaluation criteria of the quantity and quality of the work to be done by the courts, the sanctioning system which comes into consideration in case of misbehaviour or delay in exercising judicial functions and the compensative remedies to be applied to repair the damage suffered by the victims of judicial errors or delays. The last two questions respectively deal with the possibility of introducing complaints against the way the administrative courts work and, conversely, the possibility of receiving a feed-back of "customers" of administrative justice.

We'll expose now more in detail the results of the questionnaire, hoping that the necessary summarizing has not changed the sense of answers.

The first question, concerning the preparation by the administrative courts of statistics about affairs settled, pending or dealt with during the judicial year, got a general positive answer.

These statistics in Italy are part of the yearly report on the affairs entered, pending, settled during the previous year in each court; in France they are produced every year in form of multiple statistic tables on the affairs entered, settled, pending in relation to the various kind of procedure, field, judge, and they are regularly recalled to judges; in Latvia statistics concern, inter alia, entered, closed and pending affairs (in total and by individual judges), time required to settle different types of cases, parties and outcome (types of final decisions)

In Germany they are prepared in every court, whilst in Luxemburg are still very general and they mostly concentrate on the number of affairs dealt with by the chambers during the receding year, in consideration of the area of law the case is dealing with. Statistics in Poland are delivered to the President of the court and to the Supreme Administrative Court; in Greece they are not available to the public.

Also **the second question** regarding the existence in the administrative courts of electronic systems capable of ensuring the follow-up of the affairs pending (e.g. electronic file system…) has met positive reply.

Except for Luxembourg, where such electronic systems do not exist, and apart from Germany, where now they are being tested, we can state that all the interviewed countries do possess electronic systems generally operating in the administrative courts.

In particular, in Italy administrative courts are equipped with personal computers connected to the "administrative justice" intranet; the intranet has a complex structure containing, inter alia, a web-site which makes it possible to check the situation of a trial, the dates of hearings and the briefs and documents deposited by the parties.

Moreover, administrative clerks are in charge of electronic file systems in order to manage and check the follow-up of the affairs pending.

The French electronic system registers all the entering affairs, thus enabling the listing of the affairs according to the date of their instruction, the field and so on; this system, however, may present some elements of rigidity owing to its not recent origin.

In Latvia the system allows to register the information about the affair and about the actions executed by the court or by the parties as well to upload the electronic files of the decisions (several types, including judgments) announced by the court.

A peculiar case is represented by Greece, where only the big courts of Athens and Thessaloniki have these systems; but a program is being developed by the Ministry of Justice to create such databases in the provincial courts, too.

The answers to the **third question**, on the evaluation of the quantity and quality of the work of the courts and the competence to evaluate and verify the judicial work, led to diversified conclusions, which can be summarized as follows.

Apart from Finland and Luxembourg, where no institutions or arrangements for evaluation of judicial work are established, in the other countries we find different forms and grades of control.

A first form of control, although under different conditions, is performed by means of the annual report of the judiciary activity in Austria, France, Greece, Italy, Latvia, Slovenia, Croazia.

In Greece the annual reports, which are submitted to the Ministry of Justice by the General Commissioner of the Administrative Courts, substantiate the only procedure for the evaluation of the judicial work of the whole court.

In the other countries, on the contrary, there are also internal control mechanisms, like in Austria, Italy, France, Poland, Slovenia, Sweden, Estonia.

In Latvia the quantity and quality of the work of the court can be demonstrated by way of the statistical data.

In Italy the Council of Presidency for Administrative Justice predetermines guide-lines on the quantity of work to be done by the administrative judges on a monthly basis and on the time of delivery and supervises the accomplishment of such guide-lines.

In Sweden both internal and external evaluations are made on the quantity of the work to be done by the courts, not by individuals, on the basis of the yearly goals set up by the Government.

It is interesting to notice that in Poland the internal control is exercised by the President of the Supreme Administrative Court, the president of the regional administrative court and other persons appointed, by way of the right of accessing to acts of the court, attending a trial held in camera and demanding explanation and elimination of irregularities, in addiction to powers of inspection.

In France a control on the well functioning of the different administrative jurisdictions is effected by a Permanent Inspective Mission of Administrative Judges, chaired and composed of members of the Conseil d'Etat, by means of periodical inspections of courts.

In Slovenia individual evaluations of the judges are prepared every 3 years by the Personnel Panels and evaluated by the Judicial Council.

In Estonia only young judges during the first three years of their career are periodically supervised in evaluation procedure by Judges Examination Committee. Other judges are supervised by chairman of the court where the judge works and by chairmen of the higher courts.

Lastly, in Germany there are no periodical evaluations or control procedures concerning the activity of administrative courts. As for the quantity of work to be done in relation to the number of judges necessary, a study has been made during the last years, whose results are

actually being implemented by the departments in charge in the different states (usually the department of justice) in cooperation with the presidents of the upper administrative courts.

As for the **fourth question**, pertaining the kind of sanctions applicable to individual judges in case of misbehaviour or delay in the exercise of their functions, we can state that in all the relevant countries a judge may undergo a disciplinary procedure leading to the application of a disciplinary sanction, generally ranging from a reprimand (in the faintest cases), a reduction in salary up to the removal from office (in the most serious cases).

In some countries disciplinary measures are taken against a judge only in case of important faults in the execution of his functions (Luxembourg) or in very serious cases (Poland).

In Italy a judge is subject to sanctions not only when he fails to do his own duty but also if he behaves, in office or outside, in a way that makes him unworthy of trust or of esteem that he must be held in, or prejudices the prestige of the judicial body.

In Latvia, the Judicial Disciplinary Board is authorized to administer disciplinary punishments like reproof, reprimand and cut of salary; it can also forward the file to the Judicial Qualification Board to decide against judge's skill degree (affecting his possible promotion) or to suggest judge's suspension (national parliament can decide the matter).

In Germany, in case of misbehaviour or inactivity of a judge the president of the court can induce disciplinary proceedings.

Lastly, in Finland Parliamentary ombudsman can give an official admonition.

Coming to face the issue, raised with the **fifth question**, concerning the compensation procedures in case of error or delays of the courts or of individual judges, we observe the following.

In Slovenia, Croazia and Latvia, no special compensation procedures are provided for: the usual civil procedure has to be used.

Neither in Finland a compensation procedure exists, though a proposal has been made in order to establish one, in which a board would make a decision on compensation.

In Estonia and in Sweden compensations of judicial errors are possible only if a judge has committed a criminal offence through actions taken in the judicial capacity, in which case he also can be sued for damages.

Both Italian and Greek systems contemplate a responsibility of the judge for unjust damages caused in the exercise of their functions as a result of malice, gross negligence or of deny of justice. The complaint has to be introduced against the Prime Minister in Italy, before a special Supreme Court in Greece.

The described system does not apply also to judicial delays in Greece.

The Italian system, instead, provides for a remedy in the form of a fair compensation for property or non property damages unduly suffered by the parties as a result of the violation of the reasonable length of the proceedings; it may result in the payment of a just satisfaction. The dispute is decided by the civil judge (Appeal Court) and, for administrative proceedings, the complaint has to be introduced against the Prime Minister.

In France too there is the possibility of a compensation for the abnormal delay of the proceedings.

In Luxembourg the victim of a decision may introduce proceedings at the civil courts in order to get compensation in case it can prove that there was a malfunctioning of the court directly causing the damage.

In Germany in case of judicial errors, the party affected can register a remonstration, which is regarded as an informal legal remedy and is to be decided on by the judge in question; in case of inactivity, there is not yet a special type of complaint but a regulation is being prepared.

In Austria a judge of the independent Tribunals in case of heavy faults is liable for damages suffered by the parties of the procedure; the claim for compensation is dealt before civil courts and, in serious cases, the Land can have recourse to the respective judge.

For proceedings before the Administrative Court, instead, it is not possible to get compensation for mistakes concerning the application of national law; only for heavy faults in the application of community law the state can be made liable according to the jurisdiction of the European Court of Justice, and the procedure will fall within the competence of the Constitutional Court.

In Poland parties can sue the State for damages caused by judicial acts. Besides, there is a special complaint against a prolixity of the procedure lodged to the court of the higher instance, so in case of the regional administrative court to the Supreme Administrative Court; one of the results of this remedy may be the payment of just satisfaction.

As for the **sixth question**, concerning the possibility for the public or the parties to introduce complaints against the way the administrative courts work, we find the following situation.

Apart from Germany, Luxembourg and France, where no possibilities other than the examined legal remedies are given, in the other countries the remedy of a complaint is provided for in the cases in question.

It is simply an internal complaint to the President of the court in Austria, Slovenia and Croazia; in these two latter, however, the complaint can be introduced also to the Ministry of Justice.

A complaint to parliamentary ombudsman or chancellor of justice is provided for in Finland and in Sweden.

The Greek, the Italian and Latvian systems are alike: the parties can introduce a complaint (respectively: to the Minister of Justice, the President of the Council of State, the General

Commissioner of the Administrative Courts, the Presidents of the Courts of Appeal in Greece; to the Council of Presidency for administrative Justice, to the President of the Council of State or to the Prime Minister in Italy; to the Court Administration, the Ministry of Justice, the President of the Supreme Court in Latvia) in order to get a disciplinary proceeding initiated or, more generally, measures taken for improving the organisation; if the complaints are found to be grounded, disciplinary action may be initiated.

In Estonia, in addition to the ordinary legal remedies against the court decisions or orders, everybody can file an application to the chairman of the same or a higher court or to the Chancellor of Justice, asking to decide, if there is need for a supervisory or a disciplinary procedure.

And now we arrive at the very end of the fourth Section. The **last question**, concerning the existence of studies on the feed-back of "customers" of administrative justice, on the bases of inquiries made among the public, the parties or their lawyers, about the functioning of the court, mostly got a negative answer.

Only Finland, Germany, Sweden, Estonia and France seem to have taken positive action under this respect.

In Finland some inquiries have been made; also in Sweden some courts have made surveys among their "customers" to get feed-back.

In Germany several upper courts have ordered studies about the feed-back of "customers" (persons affected by the activity of administrative courts), in the context of a debate about quality labelled "Interior Modernisation", which is going on at the level of the different states of the German federation.

In the last years, some studies about the image of the courts in Estonia have been carried out and several conferences have been held about the relationships between the media and the courts.

In France, an inquiry on the quality of the acceptance in different public services of the state has been made among the public for a period of six months ("La Charte Marianne"); to this purpose a questionnaire and a box have been placed at public's disposal at the entrance of tribunals but the results are not yet known.

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At the end of my intervention I would like to mention, in order to stimulate a debate on this issue, that apart from some episodic studies and occasional inquiries that in some countries have been recently conducted, quite no member state has organised systematic procedures and methods for assessing and measuring the degree of acceptance among the public of the judicial systems, namely in terms of satisfaction of "customers" with the functioning of the courts.

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.

Let us consider that the different forms of control that we have examined so far are of substantial relevance in order to qualify a judicial system with the characters of transparency and reliability, and to increase, respectively, the efficiency of the jurisdiction towards third parties and the confidence and the satisfaction of the customers with the judicial systems.

Periodical reports on the “feed-back” of customers could be of great utility, we think, in the different countries, in order to assess the dysfunctions more suffered by the public and to identify the best way to intervene, thus approaching the target of efficiency in a more effective way.

Before terminating my intervention, I would like to hint also at another side of the issue which we think of primary and actual interest for us all, for its consequences at a European level.

Needless to say that quite no member state has organised systematic and official exchanges of information or experience with other national or international courts on the issue of the confidence and satisfaction of customers with the judicial systems.

In our opinion, on the spur of the European Union and of the Council of Europe, at the moment bent on strengthening their actions in the field of justice, we ought to take positive action.

Particularly we should monitor and follow that 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 on Human Rights, that guarantees a fair trial within a reasonable time, thus highlighting the issues concerning the whole efficiency of the justice.

This attitude certainly represents a hanging risk because, 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 a series of different, diversified judicial systems, that are globally considered.

From this point of view our task as a professional organisation of European judges is of utmost importance because 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 could be jeopardized by the introduction of too rigid and strict standards by external and distant authorities, as the European bodies are .

Many answers to the questionnaire in fact have stressed the role of associations of administrative judges in this field.

Their role is important for the exchange of information or experience among administrative judges of different countries but it becomes fundamental when it comes to relations at a European level.

At the moment indeed only the jointed associations of us can be a guide and a support vis-à-vis the more and more organic actions of EU and Council of Europe, that represent for us at the same time

- a strong impulse to improve efficiency of the activity of courts;
- a testing ground for the actual and concrete protection of independency and dignity as judges;
- 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.

To this purpose I will mention the European Union's actions on judicial training organised by the European Judicial Training Network. For the first time this year the Exchange Programme for European judges expressly includes the administrative judges.

In this perspective the activity of the Association of European Administrative Judges as well as that of the Association of German, French and Italian administrative judges is precious for seizing these chances without sacrificing our identity and our speciality as judges.