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The use of class action and functional equivalents protecting super-individual interests in Italian law.[1]

1. Legal protection of super individual interests and legal standing of associations, NGOs, and municipalities. 2.Class actions in Italian law: the one for consumer protection and the other for the efficiency of public administration and public services. 3. Conditions, legal standing, content of the judgment in the " public class action". 4. Final remarks.

1. According to Italian doctrine, super individual interests need to be distinguished in "**collective interests**", **belonging to a specific group of individuals** and represented by an NGO (such as workers' interests represented by a Union), and **diffusive interests**, **belonging to the general community** (such as health or environmental interests).

Legal protection of both these interests has been assured - by the jurisprudence and by some legislative acts - **conferring the legal standing to NGOs and associations** for environmental protection, for consumer protection, for anti discrimination, ect. As a consequence, they can challenge an administrative act if it affects interests protected by the association and act for damages compensation before civil, criminal or administrative courts.

[1] (Italian contribution in the workshop organized by the centre for judicial cooperation, department of law, of European university institute: "*The role of the courts in controlling the public administration: challenging state authority through collective remedies?*"17-18 may 2013, villa La Fonte, Firenze, Italy).

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It is to notice that legal standing of environmental protection associations was provided by law a long time ago, in 1986; for consumer protection associations, in 1998 (art. 3, law 30.7.1998, n. 281); for anti discrimination associations in 2003 (art. 5 d.lgs. 9.7.2003 n. 215), ect.

In many judicial decisions, legal standing is also granted to associations and NGOs, even if there is no specific provision of law that states so, whenever - according to their statute - they have been created to protect the same interests affected by the challenged act.

Even **municipalities, on behalf of the local community**, are entitled to challenge an administrative decision before a Court, if it affects the interests of the local community.

Associations, NGOs and municipalities can, for example, appeal the decision to allocate a waste disposal site (landfill), or an urban plan, or plans and programs relating to the environment, or the regulation of hunting, ect. ect.

Examples are very numerous in case law and legal standing is very wide.

On the contrary, **individuals** can raise a claim against an administrative decision only when **their personal rights or legitimate interests**, which may only **sometimes be coincident with super individual interests**, **are directly injured** (for example, according to the criterion of "vicinitas", the owner of a house, affected by a building permit obtained by a neighbour, can challenge this administrative act and complain even that there is a violation of a provision for environmental protection).

Nevertheless, if many private persons have homogeneous interests, **they can challenge collectively an administrative act** which affects all of them, but it is important to underline that **this is not a class action**.

It is also provided, actually very seldom, **an "actio popularis**", which means that a simple citizen can challenge an administrative act before a Court, for the protection of public interests. It happens mainly in electoral matters.

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Nevertheless it is to point out that also the law on municipalities provides (art. 9) that any citizen can substitute the local government in taking action against third parties in place of a not acting municipality.

In this framework, according to the Italian administrative procedural code, individuals, NGOs and municipalities can act:

- for the annulment of an administrative decision;
- in case of omission, for issuing an administrative decision with the special "silence proceeding";
- for the enforcement of a judgment of an administrative or civil Court;
- for compensation of damages.

2. Only recently, **two class actions** have been introduced in Italian law: one for the consumers' protection (in 2007) and the other against public administrations and concessionaries of public services(in 2009).

The first one is very **similar to the US class actions**, since it is an action for damages compensation undertaken by large numbers of consumers with common interests.
It aims to concentrate in only one proceeding all the claims for damages in order to simplify and fasten the procedure and to reduce legal costs: as a consequence, people can protect their own rights more easily, even in case of small damages, and with minor expenses.

The second one, the so called "**public class action**", instead, aims to guarantee **efficiency and high quality standards** in the activity of public administration and in public services by granting a sort of **objective control**. This means that the public class action protects public interest more than the interest of single claimants, that receive only an **indirect benefit**, together with the whole Community.
For this reason **it is not possible to sue** public administrations or concessionaries **for damages compensation**.

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It is only possible:

1) to act against **violation of terms**;
2) to act **for issuing a general act** (like a plan or a program) - but not a normative regulation - if the law has provided strict terms of issuing it;
3) to obtain the **respect of quality standards** of administrative functions and of public services.

The remedy, consequently, is not general but specific since it is not available in other cases except those provided by the law.

The third kind of action (concerning the respect of quality standards) is temporarily not available, since Government regulation on quality standards of public administration has not yet been adopted.

The other actions, as the Administrative Court of Rome has recently stated, are immediately applicable (tar Lazio, 20.1.2011, n. 552).

The case concerned the adoption of a general plan for school buildings, with the aim to avoid overcrowded classrooms. The Court has condemned the Minister to adopt that plan in 120 days.

In a similar case, concerning the omission in issuing a plan in favour of persons affected by autism, the administrative Court of Palermo has condemned the administration to adopted the plan in 60 days. (Tar Sicilia, 14 .3.2012, n.559).

Legal standing for public class action belongs:

- to individuals, if their interest is **homogenous** to the one of the class of consumers or users of public services
- to associations or NGOs representative of consumers' or users' interests.

The Administrative Tribunal of Rome has recently denied legal standing to an association for protection of consumers and users (Codacons) in a case concerning the omission in the implementation of an organization measure (the creation of a special role of vice public management) in public administration. (Tar Lazio, I, 18.4.2012, 3496)

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The Court has affirmed that there was no link between internal organization affairs of a public administration and the interests of users and consumers represented by the association.

More over, the law states that **the judge has to take into consideration the amount of human, economic and structural resources** of the public administration (and the concessioner), before deciding on the claim.
For this reason, the Administrative Court of Rome (13.2.2012, n.1416) has reject a class action undertaken by the Union of Lawyers complying with the **malfunctioning of justice services** in the Tribunal of Reggio Emilia. The Court has pointed out the structural lack of resources in Italian justice service and has noticed that in the Tribunal of Reggio Emilia the lack of personnel was even less that in the rest of Italy.

In seems anyway that **the judge can not adopt any decision which can interfere with the discretionary power of public administration**.
The judicial decision can only consist in an **injunction** to the public administration or to the concessioner of public services **to enact the general act or to adopt any measure** that could be useful to grant a remedy to malfunctioning.
Only in case of persistent omission, it is possible to act with the enforcement proceeding of administrative judgements, in which judges are entitled to substitute completely the public administration and even to enact an administrative decision on behalf of it.
The judge has also to specify that those measure do not have to cause any further expenses. It means that the administration (and the concessioner) has to find a solution by using its previous resources with **no increase of expenditure**.

4. This last provision, regarding the limitation of expenditure, that could be easily understood in this period of economic crisis and of spending review, shows clearly also **the limit of the public class action**.

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For this reason, this action might give good results only in promoting a **better use and organization of resources** but it is clearly quite difficult to expect big improvements **without any increase of resources**.

Another limit to point out is that **often public action is not admissible** for **lack of legal standing** or because **there is no** a strict **connection with consumers' or users' interests** while the remedy is set up on consumer and user interests.

For example, for this reason the remedy can not probably be used for protection of environmental interests (while in US and in other countries this is the mayor aim of class actions).

However, conclusively, we can say that the public class action, even within these limits, might be a useful new instrument **to allow also individuals** (and not just associations anymore) to take action against public administration and public services concessioners act for protection of consumer and user interests, in order to ensure a **general improvement of efficacy and efficiency in public services**.

Maria Laura Maddalena