Tribunale Amministrativo Regionale del Lazio

"An experience at the administrative Court
Amid law and litigation""

Rome, January 2018

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[1] By cons. Paola Patatini, Tribunale Amministrativo Regionale per il Lazio.

Dear Guests,

Dear Colleagues,

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 which, for the nature of litigation and dimension of interests involved, have virtually come to represent the "Hub of the Administrative Justice" today; a place connoted with a hectic work schedule of the judicial and administrative staff in spite of its rarefied atmosphere, on account of the recent dematerialization and digitalization of the court proceedings.

We are elated to introduce you into the Italian legal system, a system 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 represent the focus of the law, while the task to apply the positive dispositions upon their correct interpretation rests with the Judiciary.

1. The Italian system of the Administrative Justice: the 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.

2. The 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.

3. 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 "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 trial (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 trial for awarding contracts for public works, supplies and services, competition law, electronic communications and, in general, independent authorities' acts (art. 133 of the Code).

4. Purpose of the review of administrative acts

The leading perspective on the relationship between the administration and the administrative judge is based on the constitutional principle of separation of powers: on one hand, the Administrative Jurisdiction is independent and separated from the Government, on the other hand, the judiciary cannot usually perform administrative power and therefore issue or rectify administrative decisions.

In other words, apart from some definite cases of "substantive" jurisdiction, as a general rule the jurisdiction of the administrative judge is a jurisdiction of legality, implying a verification of the legitimacy of the administrative act and not of the decision's substance so that the judge cannot interfere with the merit of the

discretionary choice made in the act and take a decision in the place of the administrative authority ([2]).

However, as from 2012 the administrative judge - on the pattern of the German *Verpflichtungsklage* set out by the *Verwaltungsgerichtsordnung* (VwGO) – has been given the power to order the administration to issue a certain act (as a substitute for the annulled act).

Moreover in some cases of "substantive" jurisdiction an Administrative Judge can substitute the Authority and replace the annulled act; the most relevant ones are represented by the "enforcement judgement" and the administrative election disputes, in these latter the administrative Courts having the power to rectify the result of the election.

The competence of the administrative judge currently protects individual rights and legal interests and does not 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.

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[2] As for the limits of the national judge's review of the acts of an administrative authority, it has been pointed out that the administrative judge can with a full cognition check the facts considered in the trial as well as the evaluation process through which the Authority has come to apply the very rule of law, undisputed being however that, where the legitimacy of the action and the correct use of the underlying technical rules have been ascertained, the jurisdictional review cannot go beyond so as to substitute the judge's evaluation to the one already effected by the Administration, who remains the sole subject in charge of the exercised powers (Ex multis: Cons. Stato, VI, 12.2.2007, n° 550; Cons. St., VI, 10.3.2006, n° 1271; TAR Lazio, Rome I, 24.8.2010, n° 31278; id., 29.12.2007, n° 14157; id., 30.3.2007, n° 2798; id., 13 March 2006, n° 1898.

In process of time, the national courts have definitely come to affirm the lawfulness of a stronger, more incisive review of the judge, even on acts of the national regulatory authorities (especially of antitrust authority, characterized by a high level of technical discretion as well as by the use of indeterminate juridical concepts having their roots in the economic science), oriented to a full and effective tutelage of the individual juridical situations deducted in litigation. This intrinsic review of the judge has lately been deemed as comprehensive of a re-examination of the technical evaluations made by the Authority as well as of the economic principles and the indeterminate juridical concepts applied (Cons. St., VI, 20.2.2008, n. 595; 8.2.2007, n° 515), and is to be conducted by the judge by having recourse to rules and technical knowledge belonging to the same disciplines applied by the Administration, also with the aid of experts (Cons. St., VI, 23.4.2002, n° 2199).

Also in the field of electronic communications the judge of appeal has finally relinquished its previous reluctant attitude towards the cognizance of the material issues underlying the highly technical matter at hand (which in a recent past had brought to the annulment of first instance decisions more open to the instances of a "bottom up" review of the contested acts of AgCom: Cons. St., III, 15.5.2010, n. 2802, quashing Tar Lazio, Rome, III ter, 14.12.2011, n. 9739), and reconsidered his own role by enriching his practise with the jurisprudential attainments already registered in the contiguous antitrust sector (Cons. St., III, 2.4.2013, n. 1856; 28.3:2013, n. 1837), so resulting more consistent with the trends emerged in the forum for national judges organized by the European Commission in order to elaborate and disseminate an acquis communautaire for the sector (see, for instance: "Seminar on predictable market regulation and effective right of appeal", November 26, 2012; "Implementing the revised regulatory framework in electronic communications", November 29, 2011).

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 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.

5. Actions available before administrative Courts

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

- an action for annulment of administrative decisions (see the next paragraph);
- 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.

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

The administrative authority is compelled to enforce the judgements and therefore rectify the flawed administrative act in compliance with the reasons of the judgement of the Court.

If the administrative body does not comply with the judgement, the claimant can lodge an "enforcement action" before the competent administrative Court, to begin an "enforcement trial" (in Italian: "giudizio di ottemperanza") for the execution of the judgement, in which the judge operates with the powers of a "substantive" jurisdiction ([3]).

In the enforcement trial the judge has the power not only to order the administration to comply within a deadline, but also to substitute the administrative body (and adopt or rectify an administrative decision) or to appoint an auxiliary of his (the "commissario ad acta"), who shall act in compliance with

[3] The enforcement judgement is considered compatible with the principle of separation of powers because the disobeying administration is compared to an authority that is not exercising any (real) public power.

the judicial instructions and in place of the administration, taking any measure required to enforce the judgement.

In the Italian judiciary praxis the second option (i.e. the appointment of an auxiliary) is more common than the first one (i.e. the direct substitution of the judge to the administration).

It must be noted that the enforcement action can be lodged in relation to any judgement (rendered by a civil or an administrative Court) which ascertains that an administrative decision is flawed or which directly annuls an administrative decision([4]).

5.1 The action for annulment

Traditionally, it has been the most relevant action to be brought before an administrative Court.

Article 29 of the Code 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.

The judge shall verify whether the issued act of the administrative authority was in accordance with the law and whether the administrative discretion ([5]) was used in adherence with the spirit of the law (control involving "détournement de povoir" and "excès de povoir") ([6]).

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4 Civil Courts can only ascertain that an administrative decision is flawed and declare it without effects ("tamquam non esset") but, as a general rule, cannot annul administrative decisions; by contrast, administrative Courts can annul all kinds of administrative decisions, including regulations.

5 In case of "administrative discretion" the Public Administration aims at a public purpose attributed to its care by law, by means of an activity of selection, acquisition, comparison and evaluation of public and private interests implied in its action.

6 According to the traditional and consolidated opinion the judge can verify whether the discretion has been used by the authority in adherence with the spirit of the law or instead the exercise of power has been affected by "détournement de povoir" and "excès de povoir" (of ancient French derivation), as it may be revealed by some signs or "symptoms" of the contested act, such as illogicality, unreasonableness, manifest injustice, inconsistency with previous acts of the same Administration or of the same procedure, disparity in treatment (Cons. St., III, 15.4.2013, n. 2032; V, 19.11.2009, n. 7259; Tar Lazio, Rome, III-ter, 11.2.2011, n. 1336; 14.12.2011, n. 9739; 11.7.2012, n. 6321).

In process of time, on the spur of the European case law, the Italian judge has lately departed from the absorbing paradigm of the "excés de pouvoir" and elaborated a series of criteria - like as many principles of law - to be followed in the examination of the relationship existing between the exercise of the administrative power and the

As a result, the administrative courts basically have the power to annul the disputed decision but not to replace it.
The check for legality of the contested act is performed on the basis of the factual and legal situation existing at the time of its adoption.
The judge seeks and knows ex officio the applicable law ("*iura novit curia*").
He can give a diverse interpretation or application of the law but cannot change the legal basis of an administrative act.
As for the facts and relevant policies concerning the challenged decision the Court is informed by the parties, namely by the claimant, who shall contest the flaws and mistakes of the decision.
In collecting proofs ([7]) the judge does not follow the inquisitorial model but a mixed one (dispositive-inquisitorial method): the claimant draws the framework of the proof and, if he/she does not manage to completely produce the evidence (mostly documents), the judge can order the authority its exhibition ([8]). The judge shall use his powers in the matter of proof within the scope of the claim and in the limits of the fact allegations of the parties, whereas he cannot investigate on facts not offered by the parties ([9]).
The effect of annulment generally operates ex tunc.
In public procurement controversies, however, the Italian code and the implemented Directive 2007/66/EC (improving the effectiveness of review procedures concerning the award of public contracts) provide that the

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protection of fundamental rights; these criteria are encompassed and summarized by the principle of proportionality, which expresses the suitability, adequacy and necessity of the administrative act for achieving the desired end (Tar Puglia, III, 13.2.2012, n. 347; Tar Lazio, Rome, III-ter, 11.7.2012, n. 6321; id, 11.7.2012, n. 6323).

[7] The proof of facts has a twofold profile, at the same time being a right of the party to demonstrate a favourable fact or situation and, in its procedural shadow, an onus incumbent on the interested party so that the failure to give the proof of the deducted facts brings the judge to disregard them.

8 The described powers of the judge cannot be seen as an absorbing faculty, apt to direct the trial apart from claims, grounds and facts alleged and uprooted from probation initiatives taken by the parties. Such an interpretation would recall a model of the trial, of inquisitorial nature, which is in contrast with the basic principles and the function of the administrative trial, whose nature is disposable and based on the claims of the parties

9 The matter of proofs is of direct derivation from the basic principles of the administrative trial: the principle of the claim (the judge cannot investigate on facts not indicated by the parties), the principle of the debate (the judge cannot assume proofs without giving the parties the possibility of counteracting and giving proofs to the contrary), the limit to the use of private science of the judge (the judge cannot assume initiatives on the basis of his personal private knowledge).

administrative judge – in spite of the annulment of the award of a public contract - can come to uphold the legal consequences of the award and keep the closed contract in force or reduce its duration, by declaring its ineffectiveness for the future ([10]).

In the jurisdiction of legality, when annulling the administrative decision, in the reasons of the judgement the Court indicates the flaws ascertained as well as the corrections and adjustments to be brought to the act on the part of the administration; as far as possible, courts don't rectify themselves the flawed decisions.

Where the discretionary power of the administrative body in taking a new decision after the judgment is absent or is otherwise reduced to nil and no further investigation is needed, the judge can go so far as to order the administration to issue a certain act (as a substitute for the annulled act).

In any case, the judge can establish the proper measures to ensure the execution of final or executing judgements, including the appointment of an auxiliary of his (the "commissario ad acta"; see above, paragraph 5), which can be effected even in the cognizance trial with effect as from the deadline established for the compliance with the judgment.

In the field of "substantive" jurisdiction the administrative Courts have the power to substitute public administrations, by issuing a new administrative decision or rectifying the contested decision ([11]).

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10 This rule, taken as a principle, has been deemed by the Council of State to be applicable also in other cases exceeding the ambit of public procurements, any time the application of the fundamental rule that the admission of the claim determines the full elimination of the effects produced by the prejudicial act, may turn out inadequate and manifestly unjust or contrary to the principle of effectiveness of the judicial protection (Counc. St., VI, 10.5.2011, n. 2755; 9.3.2011, n. 1488; Tar Abruzzo, Pescara, 3.7.2012, n. 336). In this perspective it has been stated that the judge can generally modulate the duration of the effects of the annulled act, taking into account not only the principle of certainty in law and the position of the winner in court but also any other relevant circumstance of the controversy, and so defer the effects of the annulment or not dispose at all of them and provide just for conforming effects of the judgement aimed at the replacement of the illegitimate act.

11 For example, in administrative election litigations, the judge can rectify the result of the elections; in litigations concerning administrative penalties (e.g. pecuniary penalties inflicted by Antitrust Authority or other independent Authorities), the penalty may be rectified with the final judgment.

On the basis of the proofs given by the party, the judge can substitute his own evaluation to the one of the Administration and reduce the amount of the sanction, but not increase it since, according to the principles of the claim and of the disposable nature of the trial, he cannot put the claimant in a worse position.
In all these cases the prohibition of reformation *in peius* of the challenged act is applicable and so the judge could not, on the basis of a different law or a different interpretation of the law applied by the Administration, determine a higher amount of the sanction due.

6. The administrative trial

Only the procedure for annulment of an administrative act (the typical commonest one) will be briefly described.
A plaintiff (through a lawyer) must serve his/her claim to the administration and (eventually) to private people, who have interest to maintain the challenged act, within 60 days from the date of individual communication of the act (to him/her) or from the legal knowledge of this one (e.g. from the date of publication in the official journal). He must file the served claim no later than the 30 following days.
The President fixes the date of public hearing.
While waiting for a final decision in the merit the plaintiff may obtain an interim measure that in the meantime better ensures effectiveness to the decision itself (see below, paragraph 6.1).
With a view of the public hearing the parties may submit documents up to forty clear days before the hearing, briefs up to thirty clear days and present replies up to twenty clear days.
Immediately after the public hearing the case is discussed and decided by the chamber and the decision (with all its grounds) shall be made official, through its publication, within the following 45 days.
In some cases (for examples, for public procurement cases) the deadlines - except for the term for serving claims – are halved.

Since the year 2000 some rules have been introduced to accelerate procedures (see below, paragraphs 7 ff.). One of the most effective is the possibility to decide immediately (by means of a concise explanation of the pertaining reasons) the dispute, in occasion of the discussion on interim measures. Such a possibility is allowed when the questions involved are very easy to solve or have already been solved in univocal way by jurisprudence or concern mere procedural aspects (for example, the claim was untimely, the administration has meanwhile revoked the challenged act or the plaintiff has otherwise no interest anymore in a decision of the case.

6.1 The precautionary phase of the trial

It is a functional phase aimed at ensuring effectiveness to the final decision through the granting of provisional measures under certain conditions (interim measures).

The applicant, by alleging that the execution of the challenged act causes him a heavy and irreparable prejudice([12]), may ask for the adoption of interim measures which, under given circumstances, are likely to appear suitable to better ensure effectiveness to the final decision (art. 55, par. 1, of the Code). The legal requirements for such a provisional measure can be summarized in the Latin expressions "fumus boni iuris" and "periculum in mora", i.e. a prospective positive outcome of the proceedings and a heavy and irreparable prejudice ([13]) during the time necessary to come to a decision on the claim, which must be compared with the public interest involved in the case.

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[12] In the practical applications the reference to a "prejudice" has been considered comprehensive also of injuries other than property damages (i.e. damages of economic or patrimonial nature, bankruptcy for undertakings), such as the damage to reputation (as in the case of antitrust fines) or the violation to the right to express one's ideas (such as in cases concerning radio and video broadcasting: Tar Lazio, I, 4.7.2013, n. 2634; 21.6.2012, n. 2174).

13 The idea of the irreparability of the prejudice has been interpreted in different ways, sometimes as the attitude of the damage not to be refunded, in other cases as something further and different, not precluding the issue of an interim measure when the prejudice is refundable with the final decision.
Generally speaking, in the view of balancing the different interests involved in the case, the Judge shall consider all probable consequences of the act on all the interests invested by it and potentially apt to be injured, as well as on the public interest. As acute doctrine has underlined, the Judge should take into account also the effects that the interim measure might produce towards the Administration and towards the nominally opposed parties, by making a comparative evaluation of interests according to non-codified criteria, based on his own wise appraisal.

The judicial order, to be released upon a cursory examination of the case, must be grounded accordingly.

The Code confirms the atypical character of the interim measures identifying them as the measures, among them the injunction to pay a provisional sum of money, more suitable to ensure the effectiveness of the decision on the claim.

Crossing the legal requirements with the paradigm of the Administration's acts the judicial practice has identified the following models:

1) suspensive orders, which suspend the execution of the contested act, generally until the definition of the case on the merits: they are proper and useful when the claimant is interested in keeping his own juridical sphere unchanged and unaffected by the administrative act ([14]);

2) propulsive orders (remands), which urge the Administration to renew the procedure, with a new examination of the contested act, an implementation of the investigation or the evaluation of profiles, also substantial ones, previously disregarded ([15]).

3) positive orders (substitute orders), through which the Judge directly adopts the determinations necessary to avoid that the time required for the definition of the trial irreparably thwarts the interest of the claimant; they can be admitted as far as the Administration has no discretionary power to question the good result of the pending proceedings and are useful when the claimant is interested in modifying his own juridical sphere by means of an administrative act ([16]).

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[14] In the matter of right to health and scientific research ("The Stamina method", Tar Lazio, ord. n. 4728/2013); environmental law ("The lagoon of Venice", Tar Veneto, ord. n. 178/2014); state aid ("Airports of Milan", Tar Lombardia, III, ord. n. 553/2013; Counc. St, IV, ord. n. 3756/2013); competitive procedures (public tenders and procurements, selective procedures, Counc. St., IV, ord. n. 1680/2013; decr. n. 1590/2013; V, ord. n. 5207/201 and n. 4677/2011); VI, ord. n. 5810/2010).

15 In the matter of education ("National qualifying examinations for Senior Lecturer", Tar Lazio, ord. nn. 1113, 1332, 1351, 1347 and 1363 of 2014) and telecommunications ("The release of digital radio frequencies in Band 800 MHZ", Tar Lazio, ord. nn. 1978-1979/2012; nn. 2174/2012 and 3046/2012; Council of State, ord. n. 1296/2012).

16 In the matter of telecommunications ("The transition to the digital television", Tar Lazio, ord. nn. 266/2013, 546/2013, 547/2013, 1271/2013, 1559/2013, 5188/2013; Council of State, ord. nn. 1196/2013, 1620/2013, 2552/2013) and competitive procedures (public tenders and procurements, examinations, qualifying examinations: in these cases, the "admission with reservation" has become the ordinary way to protect the interest of the applicant any time he contests an act of exclusion from a tendering or a selective procedure or from examinations and qualifying procedures).

7. Characters of the administrative trial

The Code of the administrative trial was meant to compound and encompass in a unique body all the rules and provisions applying to the administrative judicial procedure. It expresses the need to make order in several laws coming to us from the beginning of the last century as well as in many sector 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 trial, applying the known principles of the other procedural codes: slenderness and simplification of the trial, "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.

Subsequent regulatory action has further implemented these distinctive characters; lastly, the complete dematerialization and digitalization of the court proceedings has considerably simplified and quickened all the procedural steps of the trial.

7.1 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 trial has provided for several measures to reach the goal of timeliness of the trials.

7.2 Simplification of the trial

As a general rule, simplification of the proceeding means shorter time limits for the activities of the parties and 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).
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, administrative elections, competition law, the matter of public procurements, and so on.
As to the latter, starting from April, 19, 2016 even shorter time limits for the activities of the parties and the Courts apply; the judgement is in any case defined by a ruling in simplified form at a hearing fixed at officio to be held within forty-five days from the deadline for the constitution of the parties other than the plaintiff. Besides, measures which determine the exclusion from a public procurement procedure and the admissions to this of the assessment of the individual, economical-financial and technical–professional requirements have to be challenged within a period of thirty days and the case is immediately heard and defined in a session in chambers or, at the request of the parties, in public hearing.

The failure to challenge precludes the right to plead illegitimacy deriving from subsequent acts of the procurement procedures.

Generally speaking, in simplified court proceedings the duration of the trial is no more than one year in first instance and one year in appeal.

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

According to article 3, 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.

Up to recent times this principle had unfortunately not been respected: the excessive length of parties' acts could somehow be regarded as an "abuse of the process" and lead to the imposition of a pecuniary penalty charged by the Court, provided that the Court deemed that the litigation was "temerarious".

Following law decree n. 168/2016, the President of the Council of State has enacted decree 22 December 2016 containing specific indications on criteria for writing pleadings in a clear, understandable manner and within certain dimensional limits in relation to the different procedures; an exception to the limits, subject to a specific authorization from the President of the Court, is possible only in some limited cases (for instance, for difficult technical, legal or factual questions).

As a result, more cases could be tried by the Courts and the backlog would be somehow cut.

7.4 The "Telematic Administrative proceedings" ([17])

Starting from January 1st, 2017, the administrative court proceedings are totally digitalized, that means that the whole trial is managed paperless, from its first step – the notice of the application, to the last one, when the final judgment is signed and made public.

[17] Cons. Paola Patatini is the author of the present Paragraph.

This reform has left all the procedural rules unchanged and it has been made possible by recognizing legal value exclusively to digital acts, and no longer to paper documents.
Nowadays, therefore, the use of telematic tools is mandatory in the Italian administrative trial, with the exception of specifically regulated cases (such as, for example, confidential documents covered by State secret privileges; computer crashes; documents that are too heavy).
For trials started before January 2017, paper documents shall still be applicable until January, 1st 2018. After that date, however, the digital regime shall apply to all pending proceedings, both old and new.
Turning administrative process into a telematic one brings multiple significant benefits: cost savings, more transparency, more access to information.
Generally speaking, it makes the whole system quicker and more efficient.
Lawyers can fulfil all procedural obligations via internet, from any computer, with no need to go to court, except for hearings. In addition, they have access to all documents related to their cases and can follow the different steps of the proceedings remotely.
Likewise, judges shall have digital access to all the files and can draft, sign and send their decisions for publication just by telematic means, using their own digital signature.
Besides, all these benefits have a great institutional meaning, as long as they ensure a more effective implementation of such constitutional values as the right of defence and to a reasonable length of trials.

8. 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.

9. 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 this presentation we 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 of the judicial systems among the public.
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 necessary external 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 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 situation vis-à-vis national legislative and executive powers as well as European bodies could be jeopardized if too rigid and strict standards were to be introduced by external and distant authorities.

This possibility represents for us a strong impulse and a great challenge to improve the efficiency of our Courts, a challenge that we cannot help but face, even though the necessary effort may even frighten us.

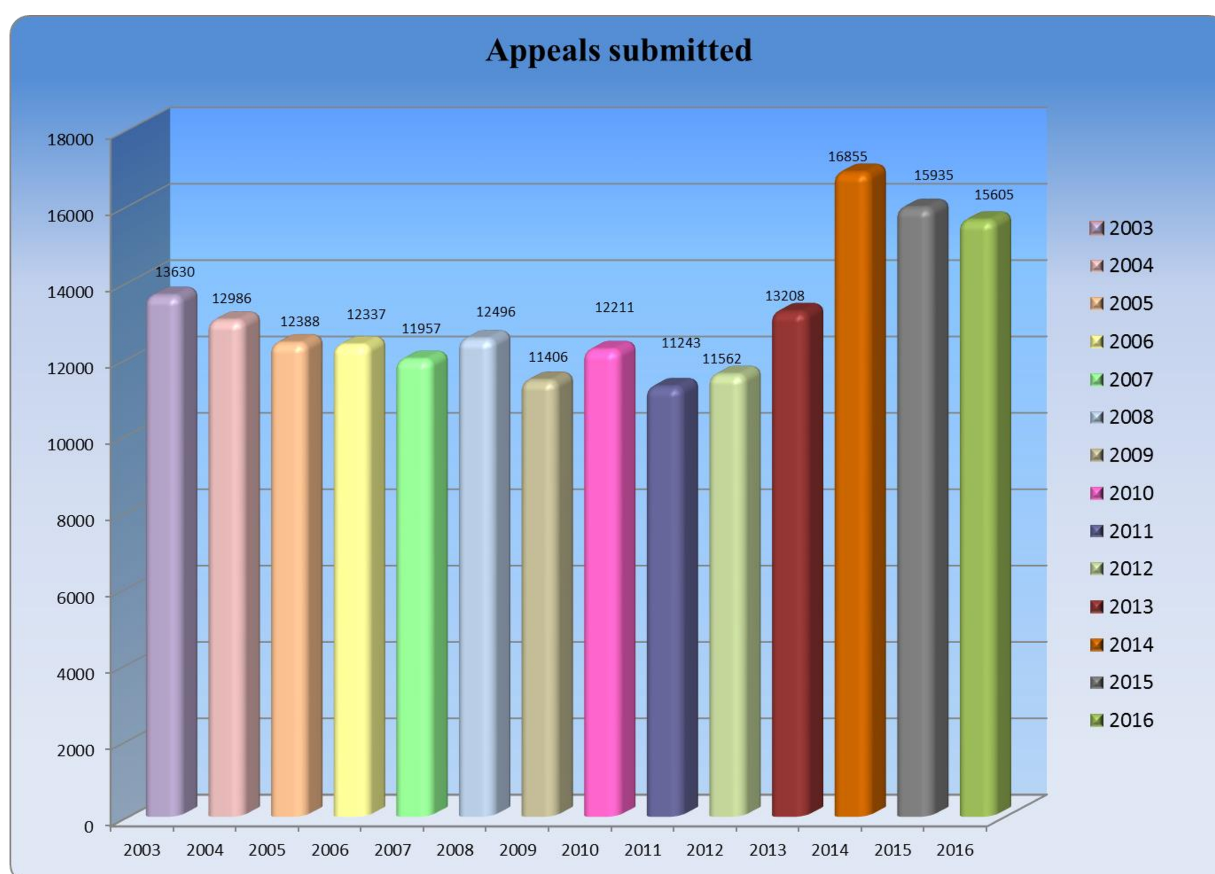
None the less it will be essential to proceed to target without sacrificing our identity and our speciality as judges.

Cons. Rosa Perna

Tribunale Amministrativo Regionale per il Lazio

Overview of appeals submitted to the Administrative Tribunal of Lazio – Rome from 2003 to 2016

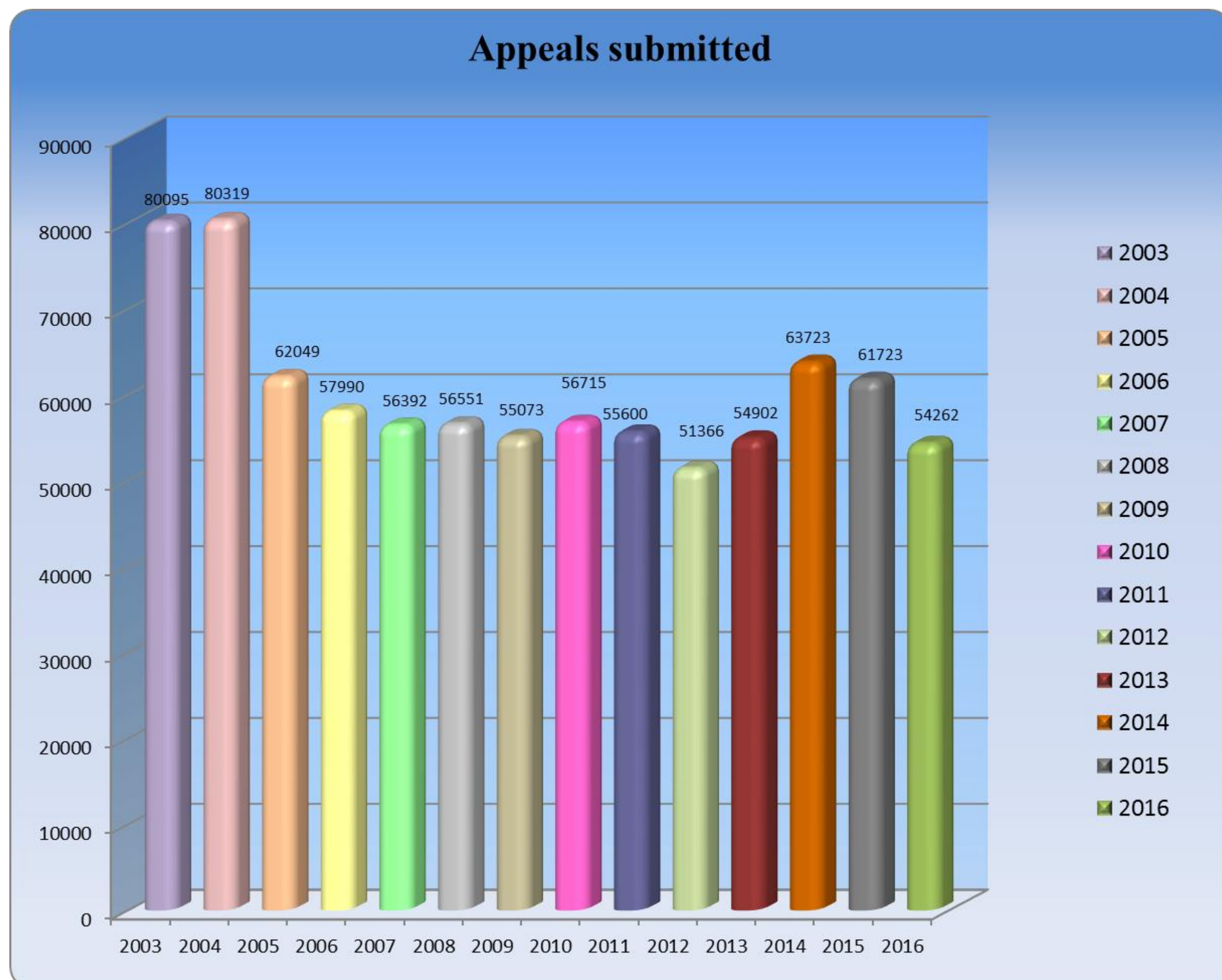
YEAR	2003	2004	2005	2006	2007	2008	2009	2010	2012	2012	2013	2014	2015	2016
Appeals submitted	13630	12986	12388	12337	11957	12496	11406	12211	11243	11562	13208	16855	15935	15605



Source: NSIGA

Overview of appeals submitted to all Administrative Tribunals from 2003 to 2016

YEAR	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Incoming Cases	80095	80319	62049	57990	56392	56551	55073	56715	55600	51366	54902	63723	61723	54262



Source: NSIGA

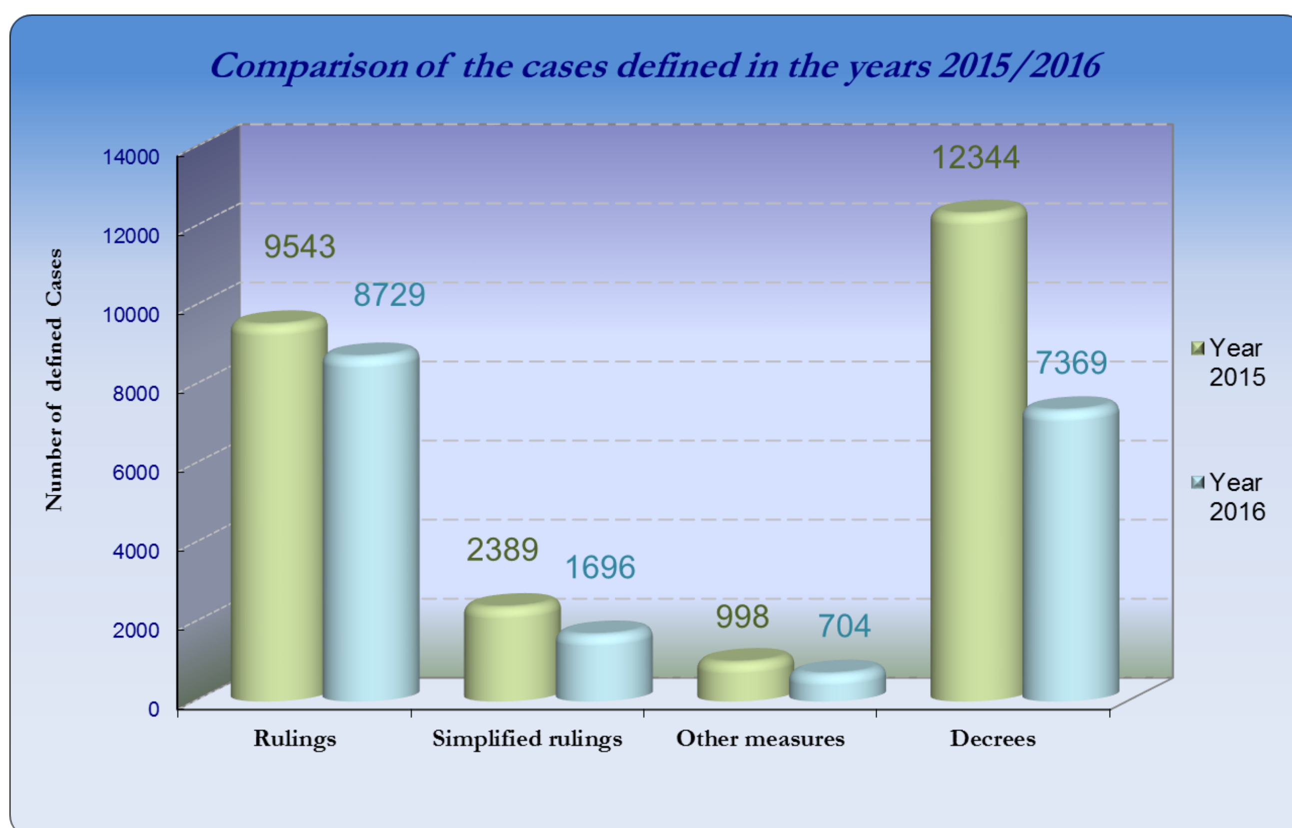
Appeals submitted to each Administrative Tribunal in 2016 and percentage change compared to 2015

Seat	Appeals received 2015	Appeals received 2016	Δ(2016/2015) (%)	Single Tribunal/ Total (%)
TAR ABRUZZO L'AQUILA	674	624	-7,42	1,15
TAR ABRUZZO PESCARA - separate Section	385	418	+8,57	0,77
TAR BASILICATA POTENZA	1082	623	-42,42	1,15
TAR CALABRIA CATANZARO	2224	1644	-26,08	3,03
TAR CALABRIA REGGIO CALABRIA - separate Section	1049	935	-10,87	1,72
TAR CAMPANIA NAPOLI	6638	6047	-8,90	11,14
TAR CAMPANIA SALERNO - separate Section	2908	2200	-24,35	4,05
TAR EMILIA ROMAGNA BOLOGNA	1122	1047	-6,68	1,93
TAR EMILIA ROMAGNA PARMA - separate Section	396	324	-18,18	0,60
TAR FRIULI VENEZIA GIULIA TRIESTE	503	497	-1,19	0,92
TAR LAZIO LATINA - separate Section	780	918	+17,69	1,69
TAR LAZIO ROMA	15935	15605	-2,07	28,76
TAR LIGURIA GENOVA	1148	1034	-9,93	1,91
TAR LOMBARDIA BRESCIA - separate Section	2537	1476	-41,82	2,72
TAR LOMBARDIA MILANO	3023	3080	+1,89	5,68
TAR MARCHE ANCONA	814	764	-6,14	1,41
TAR MOLISE CAMPOBASSO	472	426	-9,75	0,79
TAR PIEMONTE TORINO	1454	1317	-9,42	2,43
TAR PUGLIA BARI	1701	1570	-7,70	2,89
TAR PUGLIA LECCE - separate Section	3214	1899	-40,91	3,50
TAR SARDEGNA CAGLIARI	1020	1058	+3,73	1,95
TAR SICILIA CATANIA - separate Section	2911	2622	-9,93	4,83
TAR SICILIA PALERMO	3966	3547	-10,56	6,54
TAR TOSCANA FIRENZE	2087	1765	-15,43	3,25
TAR TRENTINO ALTO ADIGE BOLZANO - Aut. Sect.	305	333	+9,18	0,61
TAR TRENTINO ALTO ADIGE TRENTO	471	337	-28,45	0,62
TAR UMBRIA PERUGIA	1004	485	-51,69	0,89
TAR VALLE D'AOSTA AOSTA	65	67	+3,08	0,12
TAR VENETO VENEZIA	1835	1600	-12,81	2,95
Total	**61723**	**54262**		100,0

Source: Administrative Justice website

Appeals defined in 2016 in comparison with those of 2015

	Year 2015	Year 2016
Rulings	9543	8729
Simplified rulings	2389	1696
Rulings Subtotal	**11932**	**10425**
Other measures	998	704
Decrees	12344	7369
TOTAL	**25274**	**18498**



Source: NSIGA

Administrative Tribunal of Lazio — Rome

Appeals pending from 2004 to 2016

YEAR	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Appeals Pending	168060	165639	162290	160315	168652	172782	143254	129693	107671	84709	70629	63178	59777
Percentage change in appeals pending	-2,36%	-1,44%	-2,03%	-1,22%	5,20%	2,45%	-17,09%	-9,47%	-16,99%	-21,33%	-16,62%	-10,55%	-5,38%

Comparison between appeals submitted and appeals defined from 2003 to 2016

YEAR	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Appeals submitted	13630	12986	12388	12337	11957	12496	11406	12211	11243	11562	13208	16855	15935	15605
Appeals defined	14026	17668	15327	16518	14223	12187	14029	39187	20108	32243	35094	31977	24276	17794