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French Yearbook *of* Public Law

Issue 1, 2023

Presentation

The objective of the "French Yearbook of Public Law" is to narrow the gap which has tended to develop between the French and the international debate on public law. The former remains too often isolated from the latter, for various reasons, ranging from the conviction of the French model's exemplary nature to an insufficient openness of French public lawyers to the international academic language, which English has undoubtedly become nowadays. This has two serious consequences. On the one hand French lawyers might often be unaware of developments in other legal systems, and on the other hand foreign lawyers face serious difficulties to follow French legal developments.

The French Yearbook of Public Law (FYPL) was created to mitigate precisely this mutual ignorance. This project has three main aims. On the one hand, it seeks to apprise English-speaking readers of important developments and scholarly debates in French public law. On the other hand, we wish to introduce French lawyers to key changes and academic discussions in foreign public laws. Lastly, it is our hope that the reciprocal information thus made available will foster international and comparative debates among legal scholars.

The FYPL is based at the Chair of French Public Law at Saarland University (Lehrstuhl für französisches öffentliches Recht - LFOER), headed by Professor Philippe Cossalter. Thus, the FYPL relies on the administrative and technical capacities of the LFOER without constituting a segment of it. Some of its researchers (Jasmin Hiry-Lesch, Enrico Buono, Sofia van der Reis, Lucca Kaltenecker) are especially involved.

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Contents

General 9
Foreword 11

The Future of the French Model of Public Law in Europe
Sabino Cassese 13

Conceptual and Linguistic «Surprises» in Comparative Administrative Law
Jean-Bernard Auby 19

Dossier: Climate Change and Public Law 23
Climate Change and Public Law Dossier: Introduction
Jean-Bernard Auby / Laurent Fonbaustier 25

Part I: A Global Approach
The Paris Agreement: A Renewed Form of States' Commitment?
Sandrine Maljean-Dubois 35

European Union law at the time of climate crisis: change through continuity
Emilie Chevalier 51

"Transnational" Climate Change Law A case for reimagining legal reasoning?
Yseult Marique 69

Part II: Climate Change in Constitutions
Analysis of constitutional provisions concerning climate change
Laurent Fonbaustier / Juliette Charreire 89

Part III: Climate Change Litigation
Increasing Climate Litigation: A Global Inventory
Ivano Alogna 101

Climate change litigation: efficiency
Christian Huglo / 125

Climate Change Litigation and Legitimacy of Judges towards a 'wicked problem': Empowerment, Discretion and Prudence
Marta Torre-Schaub 135

Could national judges do more? State deficiencies in climate litigations and actions of judges
Laurent Fonbaustier / Renaud Braillet 165

Part IV: Cities, States and Climate Change: Between Competition, Conflict and Cooperation
Global climate governance turning translocal
Delphine Misonne 181

America's Climate Change Policy: Federalism in Action
Daniel Esty 193

Local policies on climate change in a centralized State: The Example of France
Camille Mialot 217

Part V: Climate Change and Democracy
Subjective Rights in Relation to Climate Change
Alfredo Fioritto 233

Overcoming Short-Termism in Democratic Decision-Making in the Face of Climate Change: a Public Law Approach
Emmanuel Slautsky 253

The Citizens' Climate Convention : A new approach to participatory democracy, and how effective it was in terms of changing public policy?
Delphine Hedary 271

Conclusion
Jean-Bernard Auby / Laurent Fonbaustier 281

Comparative Section 293
France
Philippe Cossalter / Jean-Bernard Auby 295

Germany
Philippe Cossalter / Maria Kordeva 311

Italy
Francesca di Lascio / Elena d'Orlando 337

Spain
Patricia Calvo López / Teresa Pareja Sánchez 357

UK
Yseult Marique / Lee Marsons 379

Miscellaneous 405
Book review: Susan Rose-Ackerman, Democracy and Executive Power. Policymaking Accountability in the US, the UK, Germany and France
Giacinto della Cananea 407

A Comparative Research on the Common Core of Administrative Laws in Europe
Giacinto della Cananea 413

fypl french yearbook *of* public law
Issue 1, 2023

Italy

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1 Par. 1, par. 4 and focus 3.2 are written by Elena D'Orlando. Par. 2, par. 3 and focus 1, focus 2 and focus 3.1 are written by Francesca Di Lascio. Special thanks go to Federico Nassuato and Giulia Giusy Cusenza for their research assistance.

I. Historical background

The Italian administrative system emerged in the years following the political unification of the country (1861), through the extension of the law of the Kingdom of Sardinia – which had been the main actor of Italian unification – over the other Italian territories.[2] Sardinia's administrative system was deeply influenced by the French-Napoleonic model of *droit administratif*, under which administrative law constituted an autonomous and special branch of the law, separated from private law, and endowed public administration with a privileged status over citizens: *e.g.*, disputes between citizens and administrative authorities were mostly settled within the administration itself or by special judges, while the jurisdiction of ordinary courts was extremely limited.[3]

However, the transplant of the French model into the new-born Italian legal system was "neither immediate nor comprehensive".[4] The 1865 laws[5] unified public administration and generally emulated the French organizational model (ministries, prefects, Council of State), although to a lesser effect. For at least twenty years following unification, "administrative functions and public apparatuses continued to have limited size and sphere of influence":[6] public bodies were characterised by few civil servants and rudimentary structures, and they lacked both general coordination and enforcement powers.[7] Statutory law too was very limited and did not constitute a special and autonomous body of law, provided with distinct legal principles and concepts. Consequently, in these first decades "private law and especially contract law prevailed, while public law elements remained fragmented and secondary".[8] The activity of public bodies was not perceived as different from that of private citizens: administrative bodies had full private autonomy, public and private property were on an equal footing, civil servants were hired with private law contracts, expropriation was described as a purchase, and there were no statutory rules concerning administrative procedures (except for those established by public bodies through their internal self-organizational powers).[9]

The "private-law approach"[10] prevailed also with regards to administrative adjudication. The 1865 Law[11] opted for the Belgian model of an integrated judiciary, which in

2 Mattarella, B.G., "Evolution and *Gestalt* of the Italian State", in von Bogdandy, A., Huber, P.M. & Cassese, S. (eds.), *The Max Planck Handbooks in European Public Law*, 2017, vol. I, *The Administrative State*, Oxford, Oxford University Press, p. 329.

3 Cassese, S., "The Administrative State in Europe", in von Bogdandy, A., Huber, P.M. & Cassese, S. (eds.), *The Max Planck Handbooks*, 2017, op. cit., p. 62. See also D'Alberti, M., "Transformations of administrative law: Italy from a comparative perspective", in Rose-Ackerman, S., Lindseth, P.L. & Emerson, B. (eds.), *Comparative Administrative Law*, 2017, Cheltenham-Northampton, Elgar, p. 102 ff.

4 Cassese, S. (2017), "The Administrative State in Europe", op. cit., p. 66.

5 Law No. 2248/1865, Annex A-F.

6 Mattarella, B.G. (2017), "Evolution and Gestalt of the Italian State", op. cit., p. 332.

7 Cassese, S. (2017), "The Administrative State in Europe" (2017), op. cit., p. 66-67.

8 Ibid.

9 Mattarella, B.G. (2017), "Evolution and Gestalt of the Italian State", op. cit., p. 332-333, and D'Alberti, M. (2017), "Transformations of administrative law: Italy from a comparative perspective", op. cit., p. 104.

10 D'Alberti, M., *Diritto amministrativo comparato. Mutamenti dei sistemi nazionali e contesto globale*, 2019, Bologna, Il Mulino, p. 158.

11 Law No. 2248/1865, Annex E.

turn was influenced by the English common law system. All disputes between public administrations and citizens concerning civil or political rights were transferred to ordinary courts, whereas other cases involving public authorities were to be decided by the public administration itself, through internal administrative appeals (*ricorsi amministrativi*). Moreover, judicial review of administrative action was extremely limited: ordinary courts were not entitled to quash or modify administrative acts, but they could only disapply unlawful acts in single cases, in accordance with the principle of separation of powers;[12] the Italian Council of State (*Consiglio di Stato*), divided in three sections, had a purely advisory function, unlike its French counterpart. Thus, the early Italian administrative system appeared – in some respects – to be closer to the English common law system, but many changes soon occurred.[13]

At the end of 19th century, the need for more public intervention to promote economic and social development "prompted an increase in administrative tasks and a greater complexity in public administration's organization and policy making".[14] In the rising welfare state model, administrative duties expanded, public apparatuses grew exponentially and administrative legislation flourished. Administrative law finally emerged as an autonomous branch, freed from private law rules and institutions. It was based purely on public law and centred round the concept of the discretionary and authoritative 'administrative act', which expressed the supremacy of public bodies over citizens.[15] Italian legal scholarship, deeply influenced by the German legal science of public law, played a crucial role in the construction of the administrative legal system.[16]

As far as administrative adjudication is concerned, the case law demonstrated that the integrated model had failed to protect individual rights, due to the judicial deference towards administrative authoritative action.[17] In 1889, an Act of Parliament[18] instituted the Fourth Section of the Council of State and endowed it with jurisdiction over appeals against administrative acts, *i.e.* over all the disputes concerning 'legitimate expectations' (*interessi legittimi*), distinct from those concerning 'civil and political rights', which had already been attributed to ordinary courts since 1865. Thus, the 1889 Law established a new administrative court, separated from ordinary ones, and provided it with full powers of judicial review, such as the power to overturn unlawful administrative decisions.[19] Consequently, the Italian legal system "abandoned the path of unity in jurisdiction"[20] and established the so-called 'dualistic system'.

After the Fascist period, the 1948 Constitution of the Republic included a Bill of Rights and imposed limits on administrative action: in particular, the Constitution established

12 Mattarella, B.G. (2017), "Evolution and *Gestalt* of the Italian State", op. cit., p. 334, and D'Alberti, M. (2017), "Transformations of administrative law: Italy from a comparative perspective", op. cit., p. 104.

13 D'Alberti, M. (2017), "Transformations of administrative law: Italy from a comparative perspective", op. cit., p. 105.

14 Mattarella, B.G. (2017), "Evolution and *Gestalt* of the Italian State", op. cit., p. 333.

15 Ibid., p. 336 ff. See also D'Alberti, M. (2017), "Transformations of administrative law: Italy from a comparative perspective", op. cit., p. 105, and Napolitano, G., "I grandi sistemi del diritto amministrativo", in Napolitano, G. (ed.), *Diritto amministrativo comparato*, 2007, Milano, Giuffrè, p. 12 ff.

16 D'Alberti, M. (2017), "Transformations of administrative law: Italy from a comparative perspective", op. cit., p. 105.

17 Ibid., p. 104.

18 Law nº 5992/1889, also known as *Legge Crispi*.

19 Mattarella, B.G. (2017), "Evolution and *Gestalt* of the Italian State", op. cit., p. 337.

20 Ibid.

the principles of legality, efficiency and impartiality of the public administration (Article 97), and specifically provided for the civil, criminal and administrative liability of public bodies and civil servants (Article 28). Furthermore, the creation of Regions affected the distribution of administrative competences: since 2001, through a radical amendment of this allocation, Article 118 of the Constitution endows municipalities with all administrative tasks (according to the principle of subsidiarity), while higher levels of government can only act if the competence cannot be sufficiently accomplished by the municipality.[21]

Regarding administrative adjudication, the Constitution reaffirmed the dualistic system, establishing the full justiciability of both rights and legitimate expectations affected by administrative action (Articles 24 and 113). It also introduced regional-based administrative courts of first instance (*Tribunali amministrativi regionali* or *TAR*), whereas the judicial sections of the Council of State were converted into an administrative court of appeal (Article 125). Furthermore, the Constitution provided administrative courts with the same guarantees of impartiality and independence as the ordinary courts (Article 108) and established the principle of fair trial (Article 111, as amended in 1999).

In the new Constitutional framework, Italian administrative law became more egalitarian by being more oriented to the protection of individual rights and open to citizens' participation in administrative action, according to "the idea of service on behalf of citizens rather than the notion of the administration's supremacy".[22] The case law of administrative courts has also played a key role in implementing legal safeguards both in administrative procedure and in administrative litigation, and those achievements have subsequently been incorporated in major legislative acts, such as the 1990 General Administrative Procedure Act (APA)[23] and the 2010 Code of Administrative Trial (CAT).[24]

Finally, the development of the Italian administrative system has been strongly influenced by supra-national legal systems such as the European Union (EU) and the European Convention on Human Rights (ECHR). Indeed, today many fields of administrative law are now entirely regulated by EU law[25] and, as a result, this has encouraged the privatisation, liberalisation and simplification of administrative activities. Moreover, supra-national law has significantly affected administrative protection of individual expectations: under the influence of the EU Charter of Fundamental Rights, which provides for the right to good administration (Article 41), Italy has strengthened many legal safeguards related to due process, such as the right to be heard, the duty to state the reasons for taking certain administrative decisions, and the right of access to administrative documents.[26] Furthermore, following the case-law of the EU Court of Justice, national courts have increasingly applied new legal principles and criteria to review administrative decisions, such as proportionality, reasonableness, and the precautionary principle.[27]

The ECHR and the case law of the Strasbourg Court have also affected national ad-

21 Ibid., p. 346.

22 Ibid., p. 356. See also D'Alberti, M. (2017), "Transformations of administrative law: Italy from a comparative perspective", op. cit., p. 116.

23 Law nº 241/1990.

24 Legislative Decree nº 104/2010.

25 *E.g.*, public procurement, environment, telecommunications, energy, transportations, postal services, etc. On this point, see D'Alberti, M. (2017), "Transformations of administrative law: Italy from a comparative perspective", op. cit., p. 114.

26 Ibid., p. 115.

27 Ibid., p. 110-11.

ministrative law, especially Article 6 on the right to a fair trial, which has pushed the safeguards of administrative court proceedings towards a more intense judicial review of administrative action, according to the concept of 'full jurisdiction'.[28] Furthermore, the safeguards for a fair trial established in Article 6 have also been applied to administrative procedures, particularly to those concerning administrative sanctions and penalties.

II. Administrative action: administrative proceedings, unilateral acts and agreements

There are many sectoral laws on administrative activities carried out in the form of proceedings (e.g., on tax, expropriation, or town planning), but only the APA provides for a general discipline in the Italian system.[29] Therefore, according to the general principle that *lex specialis derogat generali*, the APA supplements the content of sectoral laws in case of compatibility while, in case of conflict with sectoral laws, it cannot prevail.

Through the procedure, the administration adopts acts of a unilateral nature in which the content is not to be defined in an adversarial manner with the addressee. According to an established literature, procedure means a sequence of acts and facts, divided into typical stages, and aimed at the adoption of a single main act (*provvedimento amministrativo),* which expresses the decision taken by the administrative body.

The conduct of the procedure is the responsibility of the procedure officer (*responsabile del procedimento*). This officer, present in each organizational unit, has the task of taking care of all the steps leading to the adoption of the final decision and must ensure the effective and smooth conduct of administrative action, to the point of coordinating several offices when the procedure is of a complex type.[30]

There are three stages of the procedure: initiative stage, inquiry stage, and decision stage.

The initiative phase can be introduced by the administration (e.g., for a control procedure) or by the interested party (e.g., to obtain a business license).[31] In all cases, the procedure officer must give notice of the instatement of the activity to those who are obliged to intervene in the proceedings (the interested parties) but also to those who might be directly affected by the decision (the counter interested parties).[32] The initiation notice is an element of guarantee for the exercise of participation rights and can only be deferred in cases of urgency or be omitted for measures that have an unidentifiable number of addressees (in this case, it is replaced by the publication of the act in official venues).

During the preliminary stage, the procedure officer evaluates the admissibility of the application, the requirements of legitimacy and the relevant prerequisites for the issuance of the measure. If necessary, he requests supplementary documents and acquires

28 Comporti, G.D., "The Administrative Jurisdiction in Italy: The Path Toward a Speciality to Serve Full Protection of Rights Against Public Authority", in Sorace, D., Ferrara, L. & Piazza, I. (eds.), *The Changing Administrative Law of an EU Member State. The Italian Case*, 2021, Cham-Torino, Springer-Giappichelli, p. 100 ff.

29 della Cananea, G., "*Droit de la procédure administrative: le modèle italien*", in Auby, J.B. (ed.), *Droit comparé de la procédure administrative*, 2016, Bruxelles, Bruylant, p. 85 ff.

30 Article 4 and 5 APA.

31 Article 2 APA.

32 Article 7 and 8 APA.

opinions and technical assessments.[33] At this stage, therefore, the balancing of the different interests involved in the procedure takes place, and the administration exercises its discretion by identifying which interests are relevant.

The unilateral character of the administrative decision taken in the form of a measure is mitigated by the general principle of participation in the proceedings.[34] In concrete terms, participation can be exercised in two ways: through the submission of pleadings and documents by interested parties during the preliminary investigation[35] and through the exercise of the right of access to administrative records.[36] The administration is obliged to evaluate the documents submitted by private parties during the preliminary stage but not to accept their contents. However, the justification of the final decision must give an account of a rejection.

To ensure the proper exercise of discretion, all measures must be expressly formulated[37] and adequately motivated.[38] The statement of reasons indicates the legal reasons for the decision and shows the elements on which the discretionary assessment of the administration is based. Violation of the duty to state reasons may provide grounds for appeal and annulment of the measure before the administrative judge.[39]

Proceedings must be concluded within predetermined time limits. Beyond this interval, the APA qualifies the administration's silence as a failure to act, and the private party may challenge this inaction before the administrative judge. However, the APA also provides other meanings for silence, which can also count as denial and assent. In these cases, silence is seen rather as a means of simplifying administrative action and reducing the time of the procedure than as a means of protection.[40] In any case, silence is never allowed when the administrative decision concerns particularly important interests such as those of the environment, landscape, health or the protection of cultural heritage.[41]

As an alternative to administrative action, APA provides for the possibility of the administration and private parties to enter into agreements (*accordi*).[42] The idea behind this decision-making procedure is that prior consultation can reduce possible conflicts between administration and private parties. The provision of negotiated forms to replace unilateral acts is part of a broader evolutionary trend that affects the notion of *puissance*

33 Marzuoli, C., "*Evolution of the Principles and Rules on Administrative Activity*", in Sorace, D., Ferrara, L. & Piazza, I. (eds.), *The Changing Administrative Law of an EU Member State. The Italian Case*, 2021, Cham-Torino, Springer-Giappichelli, p. 27.

34 Article 9 APA.

35 Article 10 APA.

36 Article 22 ff. APA.

37 Article 2 APA.

38 Article 3 APA.

39 Cassatella, A., "*La motivation des actes administratifs en Italie*", in *Cahiers de la Recherche sur les Droits Fondamentaux*, 2019, nº 17, p. 99 ff.

40 Mattarella, B.G., "*Treatment of the silence of the administration and administrative inertia to Italy*", in Auby, J.B. (ed.), *Droit comparé de la procédure administrative*, 2016, Bruxelles, Bruylant, p. 692 ff.

41 Marzuoli, C., "*Evolution of the Principles and Rules on Administrative Activity*", in Sorace, D., Ferrara, L. & Piazza, I. (eds.), *The Changing Administrative Law of an EU Member State. The Italian Case*, 2021, Cham-Torino, Springer-Giappichelli, p. 34.

42 De Donno, M., "*L'accord comme issue de la procédure administrative*", in Auby, J.B. (ed.), *Droit comparé de la procédure administrative*, 2016, Bruxelles, Bruylant, pp. 607-609.

publique as the sole foundation of administrative law.[43]

Agreements can only be concluded if the administration has discretionary power in making the decision and can negotiate the contents with the interested parties. Therefore, they do not apply in cases of measures that enact a binding power.

The signing of an agreement can be requested by the private party during the preliminary stage, using the instruments of participation. But the administration is not obliged to accept the proposal and can still choose to adopt a unilateral decision. The provision of the possibility of making agreements, therefore, offers an additional possibility but does not reduce the authoritative power of the administration.

With respect to the stages of the procedure, agreements can be of two types. In the first case they serve to agree on the content of the measure that will later be adopted by the administration (supplementary agreements). In the second case they replace the measure altogether and produce direct effects without the need to adopt other administrative acts although, to be valid, they must be first preceded by an expression of will by the administration that with holds unilateral power (substitute agreements).

Agreements must be in writing. Otherwise, they are null and void and have no effect. In addition, they must be substantiated.

The nature of these agreements has been much discussed, partly because of this closeness to administrative measures. In fact, the principles and rules typical of civil law contracts apply to these acts, when compatible (but the legislature may decide to exclude some agreements from this rule).[44] This provision has led administrative scholarship to rule out the possibility that agreements can be qualified as "contracts": if that were the case, the Civil code would automatically apply and the APA would not need to invoke them. Moreover, the APA specifies that agreements cannot harm the rights of third parties. This, too, distinguishes them from contracts, which, according to civil law principles, have effect (and effects) only on the parties.[45] The impossibility of comparing procedural agreements and contracts is also confirmed by the provision that conflicts arising in the stages of formation, conclusion and execution of the former shall be resolved before the administrative judge and not the ordinary judge.

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43 D'Alberti, M., "*Transformations of administrative law: Italy from a comparative perspective*", in Rose-Ackerman, S., Lindseth, P.L. & Emerson, B. (eds.), *Comparative Administrative Law*, 2017, Cheltenham-Northampton, Elgar, p. 108 ff.

44 Article 11 APA.

45 Article 11, par. 1, APA.

Focus 1. Administrative simplification and administrative procedure.

The APA devotes Chapter IV to regulating instruments of administrative simplification, which allows for the concrete implementation of the constitutional principle of good performance. Simplification tools are located within broader policies of complexity reduction that have been under discussion for years in the Italian system. 46 Now more than ever, they are linked to the development of digitization processes in the public system, designated as a fundamental objective by the National Recovery and Resilience Plan.
In addition to silence-consent, mentioned above, there are two main simplification instruments: the services conference and the Certified Notice of Commencement of Activity (CRSA) (Segnalazione Certificata di Inizio Attività, SCIA).
The services conference is envisaged as the main tool for coordinating and speeding up administrative decision-making in complex procedures, such as those for environmental interests or for the localization of infrastructure measures.47 Thanks to the services conference, representatives of different administrations involved in the same procedure may decide together, through a joint assessment of the public interest and may admit, in a collaborative perspective, the participation of private parties without voting rights. It has the legal nature of an organizational form and not a collegial body as one might initially think. Indeed, the acts adopted in the conference remain charged to the relevant administration.
The use of the services conference has always posed the problem of how to reach a decision in case of disagreement. In the first version of APA, unanimous consent was required but this paralized decision-making. Through other amendments, some interests were expected to prevail over others (such as the environment or public health) but conflicts emerged nonetheless. Today, the APA requires the proceeding administration to adopt a motivated decision in order to conclude the conference on the basis of the "prevailing positions", expressed by the participating administrations through their respective representatives.The CRSA aims to promote the liberalization of private economic activities, also in accordance with EU Directive 2006/123.48 With this aim, the APA established that many activities, previously subject to an administrative authorization, can now be initiated with the submission of a report to the administration by the interested party, together with the certifications and other documents required by law for the specific activity. The administration has 60 days to verify the contents of the report and ascertain the presence and validity of the requirements presented by the private party. In case of deficiencies, it adopts a prohibition measure forbidding the continuation of the activity. If the prohibition measure is adopted after the 60 days prescribed by the APA, the measure is ineffective.

46 Lorenzoni, L., "*Complexity and Public Intervention in the Economy*", in De Donno, M. & Di Lascio, F. (eds.), *Public Authorities and Complexity. An Italian Overview*, 2022, Napoli, ESI, p. 165 ff.
47 Article 14 APA; Parisio, V., "*Italy: the nature of interests as a boundary to the simplification of the administrative procedure*", in Auby, J.B. (ed.), *Droit comparé de la procédure administrative*, 2016, Bruxelles, Bruylant, p. 406 ff.
48 Article 19 APA.

The SCIA encounters two constraints. It cannot be submitted if it relates to an activity that is permitted only for a limited number of operators or if it concerns activities for which there are environmental, cultural, or other constraints related to fundamental public interests, such as national defence.
One aspect of the SCIA that is hotly debated is the ways in which a person who wants to oppose the activity can be protected. It might happen, for example, that the initiation of the activity implies a damage to a third party.
The opposing party, in fact, cannot challenge a measure before the administrative court because there is no express authorization. The report, moreover, does not constitute a sort of a silent unilateral act. According to case law, the private party can therefore protect himself only by asking the administration to carry out the necessary checks and verifications and to adopt a prohibition measure if the checks result in a negative outcome. If the administration fails to respond, it can ask the court to compel it to act. When a private activity is prohibited after its beginning, there may be a damage to the legitimate expectations of the person who had filed the report.
The problem of third-party protection is thus not yet resolved.

III. Administrative organization

The Italian Constitution contains several provisions on the organization of the administrative system and its governance. Not all of them, however, are placed in Section II of Title III, which is explicitly dedicated to Public Administration and consists only of Articles 97 and 98.

The former states the constraints of budget balance, introduced by Constitutional Law No. 1/2012 to ensure that European objectives of public debt sustainability are met.[49] It then sets out the principles of legality, impartiality and good performance, the fundamental guiding criteria for the organization of public offices since the original formulation of the Constitution.[50] In particular, the rule of law, expressed indirectly in the formula "*public offices shall be organized according to provisions of law*", suggest a sort of "statutory reservation" on administrative organization, that is, requiring a regulation by law. This legal instrument must determine the number, functions and organizational structure of the ministries and offices of which the Presidency of the Council of Ministers is composed.[51] It must, in addition, ensure that the organization of offices is based on a clear identification of the spheres of competence of each administrative organ. Administrative bodies, when endowed with legal capacity and thus able to perform legally relevant acts towards third parties, are responsible only to the extent of their powers.[52]

The tight link that the Constitution imposes between the identification of functions, the definition of powers and the measure of the responsibility of administrative bodies

49 Article 97, par. 1, Constitution.
50 Article 97, par. 2, Constitution.
51 Article 95, par. 3, Constitution.
52 Article 97, par. 3, Constitution.

ensures legal certainty for the system as a whole and, at the same time, allows the organization to be characterized as instrumental to the action of public administrations. Instrumentality, in turn, has a twofold function: it enables the implementation of political direction by taking care of the interests that have been qualified as "public" at a given historical moment, but it is also a means of guaranteeing those private interests that are worthy of protection (think of fundamental rights), which can be affected (and damaged) by administrative action.

Over time, the principles of impartiality and good performance, which are in an instrumental relationship with each other and sometimes in dialectical tension (protecting impartiality does not always allow for good performance and vice versa), have been specified in various corollaries now referred to in Article 1 of the APA, according to which "Administrative activity shall pursue the ends determined by law and shall be governed by criteria of economy, effectiveness, impartiality, publicity and transparency". As a result of this provision, these criteria are applicable not only to the organization but also to administrative activity and contribute to the good administration referred to in Article 8 of the ECHR.[53]

Impartiality is linked to the principle of non-discrimination enshrined in the Treaty on the Functioning of the European Union (TFEU) but also to the principles of publicity and transparency that underlie Legislative Decree No. 33/2013 (the so-called Transparency Code). In the Constitution, impartiality is then implemented in the rule of access to public employment through comparative procedures (*concorsi pubblici*)[54] and in the subjection of public employees to a regime of exclusivity in relation to the nation that may even justify limitations on the exercise of the right to join political parties.[55] Good performance, on the other hand, requires the use of the criteria of economy and effectiveness in the management of public resources. Also requires that administrative action not be unjustifiably onerous, unless this is necessary for extraordinary and justified needs. [56]The constitutional framework contains two additional provisions that are worth noting because they outline Italian administrative organization along original lines compared to other European systems. The first relates to the relationship between political and administrative bodies (or, rather, between politics and administration) and the second concerns the pluralism of levels of government.

The principle of ministerial responsibility, of Anglo-Saxon descent, has been accepted in the Constitution and implies that ministers are directly accountable to Parliament for all acts performed in the exercise of their powers.[57] They are, therefore, administratively responsible for the management of the ministry entrusted to them, while they retain political responsibility when they adopt collegial acts within the Council of Ministers.[58]

The distinction between politics and administration has, moreover, been further implemented at the regulatory level with reference to the relationship between ministers

53 Di Lascio, F., "*La bonne administration européenne dans le droit italien*" in Ascensio, H. & Gonod, P. (dir.), *Les principes communs de la procédure administrative: essai d'identification*, 2019, Mare & Martin, Paris, p. 145 ff.

54 Article 97, par. 4, Constitution.

55 Article 98, Constitution.

56 In this regards see also Article 1 (2) APA.

57 Scarciglia, R., *Diritto amministrativo comparato*, 2020, Torino, Giappichelli, p. 72.

58 Article 95, Constitution.

(or, in general, between political leadership of different administrative bodies) and managers to reduce the influences of politics on the management of public processes and resources. This criterion, introduced with regard to the local system by Law No. 142/1990 and then extended to all administrations by Legislative Decree No. 29/1993 (now merged into Legislative Decree No. 165/2001, *Unified Text on the Civil Service*, UTCS), entailing the strengthening of managerial autonomy, fostered the evolution of organizational relations from a hierarchical model, based on the power of order, to a model of "direction" in which a motivated deviation from the policy direction is permitted without automatic sanction.[59] This independence also entails special rules for the assignment and removal of executives from their roles,[60] to which the spoil system – providing for the automatic forfeiture of the executive relationship at the end of the political relationship – applies only in part. The political bodies, in fact, cannot under any circumstances adopt, modify or revoke such acts and, in case of failure of managers to perform their duties, have only the power to warn them to comply and, if the failure to perform their duties persists, to appoint a substitute (commissario *ad acta*) to act in place of the manager.[61]

Therefore, even though on a first reading of Art. 95 the model outlined by the Constitution seems to admit the subordination of the administration to executive power, a deeper analysis leads to a different direction. The most reasonable interpretation of Article 97 and of the value that the principle of legality takes on with respect to administrative organization is that the instrument through which most appropriate exercise of administrative functions is guaranteed is the Law, and not political direction.[62]

As for the pluralism of the levels of government, the Constitution recognizes local autonomies and decentralization in services that depend on the State.[63] The constitutional reform that took place in 2001, by strengthening the role of municipalities, also accentuated the polycentrism of the Italian system.[64] Municipal administrations, in fact, were expressly qualified (on a par with provinces, metropolitan cities and regions) as autonomous entities with their own statutes, powers and functions and were identified as the territorial level to which, in implementation of the principle of subsidiarity, all administrative functions are charged because they represent the level that is closest to the citizen.[65]

This criterion, of overarching significance, knows its sole exception when the fulfilment of interests related to a specific function requires the intervention of a higher level of government.[66] Thus, a "dynamic" application of the principle of subsidiarity occurs, involving the removal of administrative functions from municipalities to allow them to be exercised by other entities. However, this departure from the distribution of competences must be agreed between the levels of government involved and must be formal-

59 Articles 4, 14 and 15 UTCS; Pastori, G., *Recent Trends in Italian Public Administration*, Italian Journal of Public Law 2009, vol. 1, p. 10 ff.

60 Article 19 UTCS.

61 Articles 14, par. 3, UTCS.

62 Police, A., *Unity and Fragmentation: the Italian Public Administration*, in Sorace, D., Ferrara, L. & Piazza, I. (eds.), *The Changing Administrative Law of an EU Member State. The Italian Case*, 2021, Cham-Torino, Springer-Giappichelli, p. 47.

63 Article 5, Constitution.

64 Pastori, G. (2009), *Recent Trends in Italian Public Administration*, op. cit., p. 6 ff.

65 Article 114, Constitution.

66 Article 118, par. 1, Constitution.

ized in an act of understanding that demonstrates respect for the principle of loyal cooperation between the parties. The understanding represents, in fact, an instrument of co-decision that goes beyond the mere participation of municipalities in the process of allocating administrative functions and allows direct participation in the deliberations on matters of common interest.[67]

In concrete terms, therefore, the role of municipalities, defined in general terms by the Constitution, can be limited both by the specific area of interest (think, for example, of the construction of mobility infrastructure of regional importance) and by the ways in which the state and the regions exercise their legislative competence.[68]

The constitutional framework has been implemented in numerous laws adopted by the state that regulate the structure of the main organizational models in the Italian public system: ministries, public bodies and independent authorities. These, in turn, are divided among the state, regional and local levels of government.

At the state level, we find ministries and ministerial agencies, national public bodies, independent authorities and national public corporations. Only the first two categories are governed by a single regulatory act.[69] On the other hand, non-ministerial national bodies each have their own statute providing for their establishment and describing their functions, powers and articulation. The case of independent authorities, which have developed in Italy since the 1990s, is exemplary. These are bodies removed from political control (but not always from political direction) that operate in areas (in particular within free markets) where there is a need to ensure the protection of constitutionally guaranteed rights through the exercise of highly technical powers with independence. Although the authorities are governed by their own founding statute, they share some common features in terms of their faculties (they have organizational and regulatory autonomy and powers of regulation and sanction) and their legal regime include a strict system of incompatibility and of parliamentary appointments.

Focus 2. The National Anticorruption Authority (ANAC).

Among the independent authorities, the National Anticorruption Authority (ANAC) is worth noting, and represents an original model compared to the European context. The ANAC is responsible for exercising the functions of implementing national policies for the prevention of administrative corruption according to Law No. 190/2012.[70] Its establishment has followed several scandals arisen in the implementation of infrastructure and major works. Among those that have received the most attention in national and international news, it is enough to refer to EXPO 2015 in Milan and the construction of the Mose in Venice. ANAC has assumed the regulatory powers already vested in the previous Public Contracts Authority, but it has also been endowed with important supervisory and sanctioning powers.

67 Constitutional court, decision n° 303/2003.

68 Article 117, par. 2-3, Constitution.

69 Decree n° 300/1999.

70 Carloni, E., *Fighting Corruption Through Administrative Measures. The Italian Anti-Corruption Policies*, Italian Journal of Public Law 2017, vol. 2, p. 261 ff.

Through its action it has imposed a major redefinition of the ways in which public resources are used, particularly in public contracts.[71] The idea of an independent authority in the procurement market has not been unchallenged. The question was raised whether there was a need for independent regulation of the sector, which presents very different characteristics from those of other regulated markets, and whether the functions assigned to ANAC were not too numerous to allow it to act effectively. The question was posed especially with regards to the controls on public procurement, considered the main deterrent instrument for preventing corruptive and maladministration phenomena. In fact, the controls carried out by ANAC were regulated, between 2012 and 2016, in many legislative and regulatory acts that often overlapped and created uncertainty in the applicable rules. Regulatory instability, however, is a stimulating factor for the occurrence of pathological events and increases corruption risks.[72]

At the regional and local levels, the main institutional actors are territorial public bodies, which, unlike the national public bodies with a specific function, are endowed with general administrative competence with respect to their territory. In other words, the extent of the powers of territorial public bodies is given by a physical element (the territory) and, within the same level of government, is almost identical for all bodies. However, a distinction must be made between regions and other local authorities (municipalities, "provinces" and metropolitan cities). Many aspects of the organization and functioning of regions are defined by the Constitution. The regulation of local authorities is, on the other hand, contained in Legislative Decree No. 267/2000 (*Unified Text on Local Government*).

Regions may adopt laws in matters that are not of state competence (criterion of division related to subject matter), according to a division of competences that is contained in Article 117 of the Constitution, as reformed after 2001.[73] This provision indicates the matters upon which state laws can be adopted (exclusive state competence[74]), the matters upon which the state adopts general guidelines, while the regions adopt detailed laws (shared competence[75]) and, lastly, all other matters are left to regional competence (regional residual competence[76]).

The state and the regions also have the power to adopt regulations in the subjects assigned to them by the Constitution. Other local authorities may adopt regulations to organize the performance of their administrative functions.[77]

71 Article 213 of decree nº 50/2016 (Publics Contracts Code); Brigante, V., *Law enforcement against corruption in Italian public procurement, between hetero-imposed measures and procedural solutions*, Italian Journal of Public Law 2019, vol. 1, p. 334 ff.

72 Parisi, N. & Clementucci, F., *Assessment of the effectiveness of anti-corruption measures for the public sector and for private entities*, Italian Journal of Public Law 2019, vol. 1, p. 268 ff.

73 Calzolaio, S., *State and Regional Legislation in Italy in the decade after the Constitutional Reform*, in Italian Journal of Public Law 2012, vol. 2, p. 399 ff.; Benvenuti, M., *The Constitutional Distribution of Legislative Powers in Italy: Recent Judgements of the Constitutional Court*, Italian Journal of Public Law 2015, vol. 2, p. 390 ff.

74 Article 117, par. 2.

75 Ibid, par. 3.

76 Ibid, par. 4.

77 Ibid, par. 6.

IV. Administrative adjudication

As mentioned above, judicial review of administrative action is based on the 'dualistic system', which provides for two different jurisdictions concerning disputes between public administrations and citizens. The distribution of jurisdiction between ordinary and administrative courts is based on the legal position of the claimant (*causa petendi*): ordinary courts have jurisdiction for the protection of subjective rights (*diritti soggettivi*), while administrative courts have jurisdiction on cases involving legitimate expectations (*interessi legittimi*). An exception to this rule is the so-called exclusive jurisdiction (*giurisdizione esclusiva*), according to which administrative courts have jurisdiction in cases involving subjective rights, in relation to subject matters specifically established by law (pursuant to Article 103, par. 1 of the Constitution).[78]

The distinction between subjective rights and legitimate expectations is not specified by statutory law, thus several criteria have succeeded over time to distinguish them.[79] The main criterion currently followed by administrative courts is based on the existence of authoritative administrative powers, especially discretionary ones, which implies that the public administration and citizens are not on an equal footing (and hence, not subject to private law). In cases where authoritative powers are lacking – for example, when the administration acts *sine titulo* or applying private law (*e.g.* entering into agreements) –, citizens have subjective rights, and consequently they have the right to file an action before the ordinary courts. On the contrary, when public bodies wrongfully exercise authoritative powers, citizens' legal position is a legitimate expectation, which comes under the jurisdiction of the administrative courts.[80]

As far as disputes on subjective rights are concerned, the powers of ordinary courts are still limited according to the 1865 laws mentioned above. As a result, ordinary judges cannot overturn or modify the challenged acts, but only disapply them *inter partes*.[81] Moreover, they are not entitled to issue mandatory or prohibiting orders, if their implementation affects the exercises of authoritative powers by the administration; however, they can order the public administration to pay compensation for damages.

Administrative trials are held before administrative courts (Regional Administrative Courts and Council of State), the jurisdiction of which encompasses legitimate expectations (general jurisdiction on the ground of legality: *giurisdizione generale di legittimità*) and, in certain specific matters, also subjective rights (exclusive jurisdiction). The proceeding is regulated by the 2010 CAT, which establishes the principle of full and effective judicial protection, as well as the principle of fair hearing, equal treatment and due process of law, and the right to a trial within a reasonable time.[82]

78 Comba, M. & Caranta, R., "Administrative Appeals in the Italian Law: On the Brink of Extinction or Might They Be Saved (and Are They Worth Saving)?", in Dragos, D.C. & Neamtu, B. (eds.), *Alternative Dispute Resolution in European Administrative Law*, 2014, Berlin, Springer, p. 85-86. Article 133 CAT establishes the list of subject matters devolved to the exclusive jurisdiction of administrative courts. This list is extensive and includes very significant fields of administrative law, such as damages caused by delay in issuing administrative decisions, tacit consent, access to documents and transparency, concessions, public services, public procurement, city planning and construction, expropriation, decisions issued by several independent agencies, etc.

79 Mattarella, B.G. (2017), "Evolution and *Gestalt* of the Italian State", op. cit., p. 361.

80 Comporti, G.D. (2021), "The Administrative Jurisdiction in Italy", op. cit., p. 92. See also Marchetti, B., *Searching for the Fundamental of Administrative Law*, 2019, Torino, Giappichelli, p. 160.

81 Articles 4-5 of Law n° 2248/1865.

82 Articles 1-2 CAT.

According to the principle of full protection, an administrative trial provides for a range of different actions in order to allow the claimant to choose the judicial remedy which appears the most adequate to protect and satisfy her/his substantive interest: a) annulment action (challenging voidable administrative acts on the grounds of violation of the law, lack of competence and abuse of power);[83] b) condemnatory action, including the claim for compensation for damage to legitimate expectations;[84] c) action against silence (aimed at obtaining an order for the administration to act, if it has failed to do so);[85] d) action for compliance (aimed at obtaining an order for the administration to specifically enact the requested favourable decision);[86] e) action for voidness (challenging administrative acts which are radically void, and not simply voidable).[87]

In accordance with the principle of fair trial, the CAT safeguards the chance of every interested party to access the process, to be heard in court, and to give evidence to support her/his claims.[88] During the administrative trial, a wide range of evidence can be acquired by the judge, upon request of a party or even *ex officio*, in order to achieve a comprehensive investigation.

In their judgments, administrative courts can issue quashing orders, mandatory and prohibiting orders, orders to pay compensation for damages, declarations and, more generally, all useful measures to protect the alleged right.[89] Overall, in their reviewing powers, administrative courts are subject to some limits, as "they cannot substitute discretionary administrative determinations with their evaluations, but only decide whether administrative decisions are invalid because adopted not in accordance with the law".[90] Thus, administrative action is generally reviewable only on grounds of legality (*giurisdizone generale di legittimità*) and is not subject to a merit review. Consequently, the court can overrule the unlawful act, but then only the administrative authority is allowed to issue a new decision, which shall take into account the reasoning of the judgment but will not necessarily have the outcome requested by the claimant.[91] However, in certain cases which are specifically determined by law, administrative courts are exceptionally entitled to review the appropriateness of discretionary decisions, and to directly issue new acts, or amend the ones challenged (jurisdiction on merits, *giurisdizione di merito*).[92]

One may appeal against the judgments of the Regional Administrative Courts before the Council of State, whose judgments, in turn, may be challenged before the Court of Cassation (*Corte di cassazione*, the supreme court on civil and criminal matters), but only on the ground of violation of the rules concerning the distribution of jurisdiction, *i.e.* when the claimant argues that the Council of State has overstepped the boundaries of

83 Article 29 CAT.

84 Article 30 CAT. Compensation for damage to legitimate expectations, derived from unlawful administrative acts, was first admitted by a milestone judgment issued by the Joint Sections of the Court of Cassation, nº 500/1999.

85 Article 31, par. 1-2.

86 Article 31, par. 3, and Article 31, par. 1, letter c) CAT. This particular claim is allowed only in the case of non-discretionary administrative powers and when the investigation conducted by the public administration has been completed.

87 Article 31, par. 4 CAT.

88 Comporti, G. D. (2021), "The Administrative Jurisdiction in Italy", op. cit., p. 97.

89 Article 34, par. 1 CAT.

90 Marchetti, B. (2019), *Searching for the Fundamental of Administrative Law*, op. cit., p. 163.

91 Ibid., p. 176-177.

92 The matters of jurisdiction on merits are enumerated by Article 134 CAT.

administrative jurisdiction.[93]

The principle of effective protection within the administrative trial is implemented by the rules concerning precautionary measures, which aim at provisionally safeguarding the substantive interest of the claimant, whenever the duration of the process may cause serious and irreparable damage.[94] The CAT has extended provisional measures to atypical remedies, which the courts can issue even before the claim for judicial review has been lodged, in cases of exceptional gravity and urgency.[95] The main *interim* relief issued by the courts still consists in the suspension of the executive effects of the challenged act;[96] however, the judges are allowed to issue any kind of *interim* measure which, under the circumstances, appears most likely to temporarily ensure the effects of the judgement.

The effectiveness of the administrative trial emerges in the enforcement phase too. The CAT provides for a specific enforcement procedure before administrative courts (*giudizio di ottemperanza*) in order to compel public authorities to fulfil the obligations arising from judgments issued by ordinary courts, administrative courts and arbitrators. This judicial remedy "is able to ensure, through the special substitutive powers attributed to the court, a replacement of the non-compliant administration",[97] also through the appointment of an *ad acta* commissioner: for this reason, the enforcement procedure represents the most relevant case of administrative jurisdiction on merits. The effectiveness of this remedy is increased also by the judge's power to inflict periodic penalty payments (*astreintes*) on the non-compliant administration for any violation or delay in fulfilling the obligations arising from the judgment.

All these features reflect the concept of administrative adjudication in a subjective sense, focused on the full and effective protection of rights and expectations of private individuals, rather than the pursuing of the mere public interest in restoring the lawfulness of administrative action.[98]

Focus 3. The National Recovery and Resilience Plan.

3.1. The Reform of Public Administration

The Report "Doing business in the European Union 2020: Italy" points out that in recent years several reforms have been adopted in order to improve regulations dedicated to business: modelling authorizations related to business activity have been introduced to facilitate the issuance of permits, and there have been advances in the digitization of the Public Administration, for example through the implementation of the Public Digital Identity System (SPID).[99] Yet the environment in

93 Comba, M. & Caranta, R. (2014), "Administrative Appeals in the Italian Law", op. cit., p. 85.
94 Article 55 CAT.
95 Article 61 CAT.
96 Marchetti, B. (2019), *Searching for the Fundamental of Administrative Law*, op. cit., p. 176.
97 Ibid., p. 177-178.
98 Comporti, G.D. (2021), "The Administrative Jurisdiction in Italy", op. cit., p. 110-111.
99 The report can be found here: https://subnational.doingbusiness.org/it/reports/subnational-reports/italy

which private businesses operate remains complex, and Italy ranks below the European average in terms of ease of doing business. For example, it occupies the second-to-last position among EU countries in relation to the responsive administration indicator, which, according to the European Commission, measures the efficiency with which the public administration responds to the needs of small and medium-sized enterprises.
The need for change in the Italian administrative system is one of the guidelines of the National Recovery and Resilience Plan (NRRP). This document presents a strategy of reforms that are fundamental to the implementation of the interventions funded by the EU Next Generation Plan. [100]
The reforms aim at the enhancement of Italy's equity, efficiency and competitiveness and are fundamental to the implementation of EU-funded interventions.
Among the planned reforms is the Public Administration reform that will take place between 2021 and 2026 and will focus on reorganizing the recruitment system. The aim is to simplify selection procedures and encourage generational turnover through simplification and digitization. It also envisages the hiring of temporary staff and the granting of collaboration assignments by public administrations that own projects envisaged in the NRRP. Special attention is paid to municipalities that provide for the implementation of the interventions envisaged in the NRRP and can now hire staff with technical expertise on fixed-term contracts to support the implementation of projects. New job profiles will also be redefined, together with public sector unions, with updated knowledge and skills needed at the present time and a new assessment of skills in many different areas (public sector staff in Italy are largely equipped only with legal skills). Finally, selection procedures will focus no longer on knowledge only, but also on the technical and managerial skills and abilities needed to fill the position.

3.2. A new path for Italian administrative adjudication?

In 2021 the Italian Government presented the National Recovery and Resilience Plan (in short, Recovery Plan or NRRP) to revive the economy after the COVID-19 pandemic. The NRRP provides several interventions in the field of justice and, in particular, of administrative adjudication, called to give a fundamental contribution to the national economic recovery.
The main impact on Italian administrative adjudication can be identified in the provisions aimed at "speeding up" the delivery of administrative decisions (from the procedure for granting interim measures to the introduction of new procedural time limits) and in the provisions set forth to reduce the backlog of cases. These provisions raise the question of the correct balance between these reforms and the procedural safeguards to preserve.
Let's start with the measures introduced to "speed up" the process: Law No. 108/2022 has modified CAT with the explicit aim of speeding up all proceedings related to the NRRP. More specifically, the new rules must be applied to all trials (either before the Regional Administrative Courts or the Council of State) in which

100 Di Lascio, F. & Lorenzoni, L., "*Obiettivi, struttura e governance dei piani di rilancio nei sistemi europei: un confronto fra cinque Paesi*" in Istituzioni del Federalismo 2022, nº 2, p. 325 ff.

the claim relates to any administrative proceeding concerning interventions financed in whole or in part with the resources provided for by the NRRP. The main amendments can be summarized as follows.
(a) The first innovation concerns the procedure for granting interim measures by the Regional Administrative Courts or by the Council of State. In such cases, in order to release an interim measure, administrative judges have to expressly justify the compatibility of the provisional remedy (usually a suspensive temporary order) with the NRRP targets and the consistency of the date of the scheduled hearing with the timeline for NRPP implementation.[101] Furthermore, in delivering the decision the judge is also required to take into account the potential consequences resulting from granting of a provisional remedy, with specific regard to the protection of the preeminent national interest which lies in the completion of the project financed by the NRRP. This specific provision was already included in Article 125 of the CAT for some specific cases, but now it is extended to all the administrative trials related with investments or projects financed by the NRRP.
To fully understand the aforementioned changes, one must consider that in the traditional Italian administrative adjudication system the claimant who wants to obtain an interim measure has the onus of demonstrating two elements: the risk of serious and irreparable damage that may occur due to the length of the process (periculum in mora) and the fact that the claim is based on reasonable grounds (fumus boni iuris). In this regard, the above-mentioned reform has therefore introduced additional parameters of assessment, basically linked to the preeminent national interest to achieve the NRRP targeted milestones, regardless of the potential presence of administrative misconducts. This new balance of interests could undermine the Courts' independence and autonomy while posing additional burdens on the claimants.
(b) The second and most interesting innovation involves the introduction of strict time limits to conclude trials when the Court has issued an interim measure. In these cases, the formal hearing for discussing the merits has to be set immediately during the first Court session after the expiry of the term of thirty days from the date on which the order was filed. In addition, the whole judgement has to be delivered within the following fifteen days.[102] However, the most significant aspect of this provision is the automatic expiry of the interim measure if the maximum time limit provided for the conclusion of the trial is not observed. In this circumstance, political targets and economic goals related to NRRP are considered more relevant than suspending potential illegal acts and protecting individuals. Consequently, the claimant could suffer a significant violation of the safeguards related to due process, such as the constitutional rights to defense and to effective judicial protection.
(c) The third change is linked to the roll-out of a new provision that shortens the term for challenging any administrative act involving public investments or projects financed under the NRRP. The Italian legal system already provided for this case, but it was limited to trials relating to the public procurement's field; instead,

101 Law Decree nº 68/2022, Article 12 *bis*, par. 2, as amended by Law nº 108/2022.
102 Ibid, par. 1.

now this provision applies to a much larger number of trials.[103] In short, in all these cases the claimant has only a thirty-days term to challenge unlawful administrative acts before an administrative judge, all procedural time limits are halved (i.e., for introducing evidences or setting a hearing date) and the Court has to deliver a simplified judgement (sentenza in forma semplificata) within the fifteen days following the hearing.

These provisions, taken together, show the intent to reduce trials' duration and limit the grant of interim measures before administrative courts as much as possible.

Furthermore, the above-mentioned reform sets other rules, which are aimed at boosting administrative justice and reducing the backlog of cases (arretrato giudiziario), as expressly required by the NRRP (Mission 1/Component 1).

In this regard, the Council of State's Presidential Decree No. 172/2021, which established the Council of State's 7th Section is of utmost importance. The new Section has already been operational since January 2022, with the specific purpose of reducing the backlog. In addition, Law Decree No. 80/2021 set forth urgent measures to strengthen efficiency, so as to ensure an effective implementation of NRRP.[104] In particular, the Decree set out the scheduling of extraordinary court hearings, all conducted remotely so as to reduce the backlog. Therefore, remote hearings, which were exceptionally implemented during the pandemic emergency, have become the standard way of conducting this type of hearing.[105] In relation to this specific provision, one could question whether the sacrifice of the constitutional principle of a public trial (set out in ECHR Article 6) to reduce the backlog is justified. Undoubtedly, remote hearings were an unavoidable choice during the pandemic to ensure the functionality of administrative adjudication, without any health risk for judges or litigants. However, one may question whether, under normal circumstances, this lack of transparency is justifiable.

Drawing some conclusions, one of the main trends that emerges from this recent reform is a general shift towards an Italian administrative adjudication system centered mainly on swiftness. Furthermore, it seems that the Italian law maker is also attempting to limit judicial review on public administrations in order to avoid slowdowns related to the reaching of the NRRP milestones.

From a certain point of view, any solution aimed at speeding up and simplifying administrative trials should be warmly welcomed, because the length of the trials and the systemic incapacity to deliver the judgement within the set time frame risk jeopardizing the judicial remedies and the procedural rights of the claimants. Likewise, the introduction of special procedures for dealing with peculiar subjects (such as public procurement or NRRP) is certainly a positive innovation.

From another perspective, however, due process must be preserved, together with procedural fairness and the general effectiveness of the judicial system.

In a nutshell, the main goal of the reform should be the achievement of a proper balance between the following opposing interests: (i) settling disputes between the public administration and citizens in crucial sectors as fast as possible and (ii) en-

103 Ibid, par. 5.

104 Law Decree nº 80/2021 converted into Law nº 113/2021.

105 Article 87, par. 4 *bis* CAT.

suring the protection of the right to defense and the effectiveness and completeness of the adversarial proceedings.

The objective of reaching an appropriate balance with the public interest of achieving the NRRP milestones is appreciable; however, the automatic expiry of the interim measure due to the excessive duration of the trials, as well as the lack of time to properly examine the case and hand down acceptable judgements, are questionable.

In brief, the search for the right balance between upholding procedural safeguards and reaching the economic targets that have been set is, without any doubt, the new challenge the Italian administrative justice system is faced with.