

## INTERNSHIP REPORT AND SUMMARY

### Identification of the participant

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Country of exchange: Italia

### Identification of the exchange

Hosting jurisdiction/institution: Consejo de Estado de Italia

City: Roma

Country: Italia

Dates of the exchange: 7 — 11 November 2022

## SUMMARY

The report that is sent refers to the content of the stay in the Italian Council of State carried out between November 7 and 11, 2022.

Reference is made to the meetings held with various members of the Italian Council of State in order to delve into the peculiarities of the general Italian administrative justice system from different perspectives: structural and organizational; of control of the administrative action referred to the urbanism and the government of the territory, as well as to the public contracting; and the patrimonial responsibility of the administration. Also, to the characteristics of the Telematic Administrative Process (PAT) and the international activity of the Council of State.

Likewise, the strengths of the Italian system are highlighted in the report and a comparison is made between the Italian and Spanish systems.

**COURSE REPORT**  
**RUNNING 5 DAYS (7 - 11 NOVEMBER 2022)**  
**IN THE CONSIGLIO DI STATO DELLA REPUBBLICA ITALIANA**

**I. Course programme.**

The stay took place at the Italian Council of State headquarters, in Rome, between 7 and 11 November 2022.

The stay began with a welcome by the President of the Council of State's Diplomatic Adviser, whose knowledge, extraordinary kindness and availability throughout the stay in Rome deserve to be highlighted.

On that first day, the President of the Council of State's Diplomatic Adviser and the official of the General Secretariat, gave me the opportunity to take a close look up to the architectural, sculptural and pictorial wonders of Palazzo Spada, built between 1548 and 1550 according to an order of Cardinal Girolamo Capodiferro, which became the Italy's Council of State since 1889. On this matter, the Galleria Prospettica by Francesco Borromini is worth mentioning. Its configuration and forced perspective causes a really amazing and interesting optical illusion over the watcher.

After this warm welcome, the strictly legal activity content was developed in the following days, from Monday to Friday,

In this regard, the meetings held with State Councilors (President of the Seventh Section; President of the Third Section; President of the Fifth Section and Councilor) were very useful to know the peculiarities of the general Italian administrative justice system from different perspectives:

(i) In first place, from a structural and organizational level, of which -in what is now relevant- two aspects should be highlighted: on the one hand, the coexistence of the Regional Administrative Courts (acting as trial court bodies) with the Council of State (which, as a higher body, has the main function of resolving appeals lodged against the decisions of those courts); and, on the other hand, the normative provision of a cassation appeal against certain decisions of the Council of State, residing in the competence for its resolution in the Supreme Court of Cassation;

(ii) Secondly, from the perspective of control of administrative action related to urban planning and territory government and, also, related to public procurement, controls that are essential to achieve a proper working of the Administration, so it may be effective, besides according to the Law.

(iii) And, in the third place, from Administration's patrimonial liability perspective, settled up over the constitutional division of powers basis in order to protect subjective legal situations, standing out for this purpose between the "subjective right" and the "legitimate interest": generally, the subjective right is protected by the ordinary judge, while the legitimate interest is protected by the administrative judge, except for exclusive jurisdiction cases, expressly provided by law, when the inseparable relationship between subjective rights and legitimate interests is fully known by the administrative judge.

The meeting was extremely interesting too about the most notable characteristics of the important project known as PAT (Telematic Administrative Process), regarding the evolution experienced in this matter since the existing paper files in 1990 until achieving a completely digital storage in 2018, that currently has allowed the generation of a complete database. This project has been guided by the target of achieving a greater system efficiency, applying modern and consistent organizational criteria with technological advances, which gave rise to beneficial changes in work methods and dynamics.

Likewise, the meeting with the Councilor of State in relation to the international activity of the Council of State and, singularly, regarding the twinings developed with Tunisia and Morocco, was also extremely useful. In said meeting we had the opportunity to share the experiences of our respective institutions at an international level, delving into the analysis of one of the problems that most seriously affects our two countries, referred to illegal immigration from the African continent, noting the advisability of promoting cooperation in the judicial and administrative justice sphere not only with the African countries of origin of these immigrants, but also and fundamentally among all the countries of the Mediterranean arc most directly affected.

And, while all these interviews were extremely illustrative to understand the functioning of the Italian Council of State from a theoretical level, no less useful was, now from a practical perspective, the attendance at the indicated hearings in the Fourth and Seventh Sections, chaired respectively by the Directors. In the case of the Fourth Section, I must also highlight the valuable help provided by the Director, with whom I could hold the day before a preparatory session about the issues to be discussed in the hearing.

## II. The host institution.

The Council of State is an important body provided by the Italian Constitution, which has assigned consultative and judicial functions; that is, it acts as the supreme legal administrative consultative body of the Government and, at the same time, as an organ of

administrative jurisdiction, corresponding in this last aspect to the protection of legitimate interests and also, in the particular matters indicated by the law, the protection of the private subjective rights facing the Italian Public Administration.

The reason for this function's duality is largely linked to the particular history of this authority, born as a consultative body of the King of Piedmont Sardinia in 1831, before the unification of Italy. The later political and regulatory development determined its judicial function was strengthened, until 1948 when the Constitution definitively sanctioned this double character.

In this development, an important milestone that took place in the early 1970s must be highlighted when, under the 1034/1971 law, the Regional Administrative Courts (TARS) were established, setting up from this point a double degree in the administrative jurisdiction: the first one was attributed to the TARS and the second to the Council of State. Sicily Region's Administrative Justice Council deserves a special mention; created in 1946, it was assigned exactly with the same functions - advisory and jurisdictional - as the Council of State, but limited to administrative authorities acts of the Region of Sicily, Catania, and Palermo's TAR sections.

In order for its proper working, the Council of State is divided into Sections and each year, under the 186/1982 law, the President of the Council of State, based on the new legislation on the matter, decrees the function of each Section (consultative or judicial), makes the distribution of subjects that will be attributed to the competence of each one of the Sections, and fixes the composition of all of them, as well as Plenary (organ that meets for special relevance reasons). At present, 120 Councilors belong to the Council of State.

Under 229/21 decree, the President of the Council of State resolved that, from October 1 2021 and until December 31, 2022, the First Section would perform consulting functions together with the Section of regulatory acts, while Second, Third, Fourth, Fifth, Sixth and Seventh Sections would have the jurisdictional functions assigned to the Council.

### III, The law of the host country.

The Italian legal system rules that mainly affect the Council of State working are the following:

- A) The Italian Constitution of 1948 and, singularly, the articles from 100 to 113.
- B) The Administrative Procedure Code, which became effective by virtue of the enactment of Legislative Decree no 104 of July 2, 2010.

C) The Decree of the President of the Republic of November 24, 1971, n ° 1199, on the simplification of administrative appeal procedures.

D) Law number 241, of August 7, 1990, relating to the new rules on administrative procedure and the right of access to administrative documents (modified on several occasions).

E) And Legislative Decrees 33/2013 and 97/2016, regarding the principle of administrative transparency as a pillar of the anti-corruption system.

Now for intents and purposes, special mention to the different attribution of powers made by the Italian Constitution in relation to the protection of subjective legal situations: in this way, as a general rule, in the Italian legal system, subjective right is protected by the ordinary judge, while the legitimate interest is protected by the administrative judge, except in cases of exclusive jurisdiction expressly provided by law, in which the inseparable relationship between subjective rights and legitimate interests is fully known by the administrative judge.

#### IV, Comparison between Italian and Spanish systems.

Exactly from this last subject stems the main differences that should be pointed out between Italian and Spanish administrative justice systems.

Thus, in Spain, the Council of State constitutes the highest advisory body of the Government of the Nation, but it lacks jurisdictional functions. And, as a regional level copy, there are in most of the Autonomous Communities the called Consultative Councils, with similar functions, although limited to their own territorial scope in each case.

However, the jurisdictional role is suitable to the bodies of the contentious administrative jurisdiction, served by members of the Judicial Career integrated into the Judiciary, and is developed on three levels: the Contentious-Administrative Courts and the Central Courts of the Contentious-Administrative; the Contentious-Administrative Chambers of the Superior Courts of Justice and the National Court; and the Contentious Administrative Chamber of the Supreme Court (known as the Third Chamber of the Supreme Court).

This recap determines in Spain the tack of conceptual difference setted up in Italy in order to the jurisdictional protection of subjective rights and legitimate interests; as said protection is attributed as a whole to the aforementioned judicial bodies of the contentious administrative jurisdiction, limiting the activity of the Council of State to merely advisory. This activity has, however, an undoubted relevance to ensure that the operation of the Administration is efficient and, at the same time, in compliance with the law, and it is

noticeable in this regard that the Council of State enjoys a recognized prestige in Spain, thanks to the indisputable legal quality of the judgments given.

## V. The European aspect.

The prescriptions of European Law and the doctrine established by the Court of Justice of the European Union -mainly in relation to the protection of the fundamental rights of people against acts of the Administration- are present in the daily work of the Council of State from Italy.

This is particularly appreciable in the area of patrimonial responsibility. In this matter, it can be said that the operated transformation in the Italian legal system by the legislator and the jurisprudence has been possible thanks to the early sown "seed" by Community Law and, especially, to the provided interpretation by the Court of Justice when judging the compatibility of the national legal systems, For this reason, probably, without the comparison with the subjective situations protected by Community Law, the Italian process of defining the category of legitimate interest as a subjective situation also worthy of protection, together with the subjective right, would not have started or would have been delayed in the time,

## VI. The good practices.

The exchange of information with the Councilors allowed me to conclude that the members of the Italian Council of State possess a high level of professional excellence, both theoretical and practical.

The huge practical sense with which the different Sections hold their public hearings is also standing out. These ones move away from all formal corseting through an accurate direction of the respective Section Presidents, who, with remarkable skill, manage to focus the nuclear issue that must be dealt with. In this way, without any reduction in the right of defense, the lawyers of the parties defend their respective interests precisely and concisely, limiting their arguments to the object of the controversy specified by the

President, which allows dispatching in the same session a high number of cases.

This is a very positive quality of the activity of the Council of State that deserves to be exported to other countries.

## VII. The beneficial aspects of the course.

At a personal level, I evaluate my stay at the Italian Council of State very positive for several reasons:

(i) I have been able to learn the most relevant theoretical and practical keys of a close administrative justice system, but different from the Spanish one, served by excellent lawyers who, moreover, have welcomed and treated me with great kindness.

(ii) I had the opportunity to deepen my learning of the Italian language.

(iii) And, furthermore, visiting the Council of State has also given me the opportunity to see some of the historical and artistic wonders of the city of Rome,

For all these reasons, through this report I want to express my most sincere gratitude to the members of the Council of State of Italy and, in particular, to the Diplomatic Adviser to the President of the Council of State.

## VIII. Suggestions.

It is difficult to make proposals or suggestions to improve a stay that has been particularly satisfactory in all the aforementioned aspects.

For this reason, I can only suggest that, in order to make the most of the stay and, at the same time, facilitate the preparation of the report that must be sent to the ACA, it would be useful for the host institution to provide the interested party, before to start the stay, the documentation corresponding to the meetings that are planned, as well as the information related to the host institution, including the regulations that affect its operation.