



Consiglio di Stato



**Seminar organized by the Council of State of Italy and ACA-
Europe**

**“Law, Courts and guidelines for the public
administration”**

Fiesole (Firenze), Autumn 2021

Answers to questionnaire: Poland



Seminar co-funded by the «Justice » program of the European Union



ITALIAN PRESIDENCY ACA - EUROPE
FIESOLE (FIRENZE), 19 OCTOBER 2020

"LAW, COURTS AND GUIDELINES FOR PUBLIC ADMINISTRATIONS"

QUESTIONNAIRE

Answers of Poland

1. Introduction

1.1 The seminar to be held in Fiesole, on the 19th and 20th October 2020 at the European University Institute, is the first meeting organised by the Italian presidency.

As explained during the initial presentation of the programme for the upcoming Italian presidency, its leitmotiv will be to enhance and foster the value and the experience of “horizontal dialogue” among the highest administrative national Courts, aiming to create and develop a common culture and shared standards in judicial review of the activity of the public authorities.

This “horizontal dialogue”, more than “vertical dialogue”, aims to focus on examining and comparing modes of judicial decision making and judicial conduct, and the impact of judgments on the activities of public authorities.

Horizontal dialogue between Courts of Member States is the best way to achieve an effective European citizenship, that is to say a common standard of legal protection for citizens and companies living in Europe and dealing with public powers.

1.2 The purpose of this questionnaire and of the subsequent seminar is to provide a greater understanding of similarities and differences among our legal systems, especially regarding:

- a) the interpretation of law by judges;
- b) the binding effect of judgments both so as to ensure the judges’ compliance with the nomophylactic statements of the Supreme Administrative Courts (SACs) and to act as an instrument to address the future action of public administrations in similar cases;
- c) the effect of the administrative judgments on the activity of public administration and their enforcement;
- d) the consultative role of the SAC, if existing.

1.3. The seminar will cover the following topics:

- a) The method followed by administrative courts in the interpretation of the law, focusing on the criteria applied by judges (including reference to *ratio legis*, reference to preparatory work, reference to the advice of the SAC regarding the adoption of the law, if existing, etc.). A special focus will be placed on the tools for supporting judicial activity with regard to services for classifying and archiving judgments, e.g. databases and AI instruments.
- b) The application of the law by the Court, with specific reference to the nomophylactic pronouncements of the SAC. Jurisprudential stability and the predictability of decisions are important values related to the general principles affirmed by the European Court of Justice such as legal certainty, predictability for citizens and companies of the consequences of their behaviour and the protection of legitimate expectations. Therefore, there will be a special focus on the ways and the procedures, where they exist, through which SACs ensure compliance with the nomophylactic statements in the administrative system.
The “binding or steering effect” of the of Supreme Court judgments: this topic aims to foster mutual understanding of the capacity of administrative judgments to bind the public administration in the subsequent exercise of its power. It covers not only the binding effect on decided case, but it also aims to analyze judgments as instruments to orientate the future action of public administrations in similar cases (i.e. judgement as guidelines).
- c) The seminar will also examine the enforcement of the administrative judgment, in case the public administration fails to comply with it spontaneously and correctly, with special reference to judicial enforcement measures provided by each legal jurisdiction, if they exist.
- d) Finally, a brief session will be devoted to the consultative role of the SAC, if existing, and its impact on administrative action.

1.4 It is intended that the Seminar will provide each Supreme Administrative Court with a better understanding both of the decision making process underpinning the judgments of other SACs and of their impact on the activity of public authorities.

In a constitutional democracy, administrative courts are seen as performing a vital function in the interaction between law and administration.

The purpose, to reiterate, is to verify whether it is possible to find or develop a homogeneous method to scrutinize the way public administrations exercise their powers and to guarantee a common standard of legal protection for citizens and companies in all Member States.

The questionnaire which follows represents an initial information gathering exercise the purpose of which is to clarify the interaction of the administrative courts with the law, on the

one hand, and the administration, on the other, so as to ensure certainty, legality and quality of justice for citizens and public institutions.

I SESSION

THE METHOD OF INTERPRETATION OF LAW AND ITS APPLICATION BY THE COURTS

1. The role of the Supreme Administrative Courts in the interpretation of law.

1.1. Does your legal system provide general rules for the interpretation of law?

No

Yes

1.2. What is the level of general rules for interpreting the law?

Law

Public authority regulations

Guidelines

Supreme Court rulings

Other

Please explain and give an example.

Italian answer: general rules regarding the interpretation of law are found in the provisions preceding the Civil Code, at level of law. As regards criminal law, interpretation criteria are provided for by the Constitution.

Polish answer: general rules regarding the interpretation of law are derived from general rules regarding the interpretation of law are derived from legal scholarship and case-law, especially of the supreme courts and tribunals (Supreme Court, Supreme Administrative Court, Constitutional Tribunal)

1.3 What are the criteria for interpretation of the law?

literal interpretation

reference to purpose of law (so-called *ratio legis*)

- consistency within the legal system
- reference to preparatory work
- reference to the advice of the SAC regarding the adoption of the law, if existing
- Other

Explain, if necessary.

Italian answer: according to art. 12 of the provisions preceding the Civil Code (Interpretation of the law): "In applying law, no other meaning can be attributed to it than that made clear by the proper meaning of the words, according to their connection and to the intention of legislator."

Thus, in the interpretation of law, it is possible to refer to preparatory work of the legislative procedure (in order to clarify the intention of legislator) or to the advice of the SAC regarding the adoption of the law, if existing.

Of course, any rules are to be interpreted according to the principle of consistency within the legal system.

1.4. What criteria do judges apply when there are gaps in the law?

- Analogy (reference to similar *ratio* of other rules)
- General principles of the legal system
- Other

Explain, if necessary.

Italian answer: According to art. 12 of the provisions preceding the Civil Code (Interpretation of the law): "If a dispute cannot be decided by applying a specific provision, it shall be decided in accordance with the provisions governing similar cases or similar matters; if the case is still in doubt, it shall be decided in accordance with the general principles of the State's legal system." This is not possible in criminal matters and in cases regarding administrative sanctions, in which respectively the Constitution (art. 25), the penal code and the law (l. 689/11981) prohibits the analogic interpretation.

Polish answer:

In criminal matters the application of analogy to interpret the law is forbidden. The rule in that regard is derived from the Article 42 (1) of the Constitution ("Only a person who has committed an act prohibited by a statute in force at the moment of commission thereof, and which is subject to a penalty, shall be held criminally responsible. This principle shall not prevent punishment of any act which, at the moment of its commission, constituted an offence within the meaning of international law.").

1.5. Does the SAC elaborate general interpretative *criteria*?

No

Yes

Please explain and give an example.

Not in general terms. Nevertheless, the SAC can specify - regarding a specific case - how the law applicable to the case should be interpreted.

Polish answer: Although the SAC does not elaborate general interpretative criteria, it determines the way of interpretation of law in specific pending case (especially if the SAC reverses the challenged judicial decision in whole or in part and remands the case for reexamination to the court which has issued the challenged decision or within its competence to adopt the "concrete" and "abstract" resolutions that aim to safeguard the unity of administrative court jurisprudence – see answer to Q. 3.).

1.6 In deciding the case, to what extent does the Court take the following into account and within which limits?

- EU law (Nice Charter, EU regulations, EU directives) and the judgments of the EU Courts;

never seldom sometimes often

- The European Convention of Human Rights and the general principles elaborated by the ECHR;

never seldom sometimes often

- The general clauses of proportionality and of reasonableness.

never seldom sometimes often

- The statements (or case law) of the Courts of other countries in similar cases;

never seldom sometimes often

- The general interests involved (i.e: order and public safety, environmental protection, consumer protection, the economic, financial and social effects on the labour market)

never seldom sometimes often

- The results of regulatory impact analysis (AIR), if applicable;

never seldom sometimes often

- The impact of the decision;

never seldom sometimes often

Other

Please specify.

2. Tools for supporting judicial activity.

2.1. Are there any services established in the Supreme Administrative Court responsible for classifying the judgments and drafting their abstracts?

- No
- X X** Yes

Italian Answer: There is a special "department for training and studies of administrative justice" , composed of judges both from the lower administrative courts and from the SAC, selected by the Judicial Council of administrative jurisdiction (selection based on CVs and previous experience). It is responsible for classifying the most important judgments of the SAC and of other Supreme Courts (Constitutional Court, the Court of Cassation, etc.) and drafting their abstracts.

Polish Answer: There is a special organizational unit exists within the SAC – the Judicial Decisions Bureau. It's role is to give research support in the work of the SAC. It is divided into seven divisions (units). The divisions 1st to 5th are analysis and inspection divisions and are divided in terms of the subject matter. The other two divisions are: the 6th Division - Case-law Collection and Publication Division and the 7th Division – European Law Division. The research work of the Judicial Decisions Bureau – its studies, opinions and other publications are also available for administrative judges through internal database.

Besides the judicial assistants assigned individually to judges (and working in chambers and their divisions) provide both legal research assistance and administrative assistance to them.

2.2. What other activities do these Services perform?

- X X** preparation of useful material for the most important judgments of the SAC ;
- X X** comparative studies;
- X** information about new developments in the law and in the case law;
- X X** training of judges
- other activities.

Please specify.

2.3. Are administrative Court judgments stored on a searchable and free database?

- No
- X X** Yes

Please explain.

Italian answer: Italian administrative justice operates a free and open database, which includes the rulings of the Italian administrative judges, at both first and second instance.

Polish Answer:

The SAC maintains the Central Database of the Jurisprudence of Administrative Courts (<http://orzeczenia.nsa.gov.pl/>), consisting of anonymized versions of judgments and decisions of administrative judiciary, as well as an internal Central Database of Case-law and Information on cases, that is accessible i.a. for every administrative judge. In the internal database a selected case-law of the Court of Justice of the European Union and the European Court of Human Rights is also published.

2.4. What kind of database do the administrative judges consult in their daily work?

- public and free databases
- private databases, provided by their institution
- other

Please explain.

Italian answer: Italian administrative judges access to a full range of technical equipment (computers, laptops, mobile phones, etc.) and free access to public databases and to some private databases, provided by the Institution, which bears the cost.

Polish answer:

All administrative judges have access to commercial case-law databases: Lex (publishing house: Wolters Kluwer) or Legalis (publishing house: C.H. Beck). They also have (as every Polish citizen) access to several databases operated by different institutions, i.e. Ministry of Justice, Polish Parliament, Supreme Court and the SAC.

2.5. Are there projects implementing advanced artificial intelligence systems operating in the decision making process and/or for the preparation of decisions?

- No
- Yes

2.6 If yes, explain the role of the AI systems in the decision-making process (e.g. drafting final decisions, supporting judges for some significant aspects of the case, such as for example the calculation of damages, etc.)

Italian answer: There is, as yet, no project implementing AI systems for drafting the content of final decisions. Nevertheless, there are many free software products available on the internet useful for supporting judges in their judicial activity (for example in the calculation of damages or of the amount of remuneration to be paid to expert witnesses or lawyers etc.)

3. The application of law: the “nomophylactic” statements in the administrative judicial system.

3.1. Does the judgment of the SAC have binding effect on lower courts?

- No
- Yes
- Only if the SAC decides in special composition

Italian Answer: No. The judgment of the SAC has no “binding effect” because the principle of “stare decisis” is unknown to the Italian legal system, unlike common law jurisdictions. Therefore, the judgment of the SAC might only have a persuasive effect, since it provides guidelines for the interpretation activity of lower courts.

Polish Answer:

The judgment of the SAC has binding effect only inter partes in specific case, because (like in Italian case) the tradition and legal principle of “stare decisis” is unknown to the Polish legal order.

Only the resolutions of the SAC adopted in the formation of extended panel within SAC’s competence to adopt the “concrete” and “abstract” resolutions that aim to safeguard the unity of administrative court jurisprudence is binding for have general binding force upon judges of the administrative courts (SAC and the lower courts). Formally the scope of the binding force includes the operating part of the resolution and not its reasons (which of does not deprive the reasons/justification of its significance in determining the court's position on the subject matter). Resolutions are not judgments and do not resolve an individual case but interpret the law (substantial and procedural legal provisions) and express position of the SAC on a certain legal issues.

3.2. If the answer to question 3.1. above is no, what percentage of lower court cases comply with SAC decisions?

- less than 25%
- from 25% to 50%
- from 50% to 75%
- from 75% to 100%

3.3. If the answer to question 3.1. above is no, how is the consistency and predictability of court decisions ensured?

Please explain and give an example.

Italian answer: The Plenary Assembly of the Council of State is the body which ensures the nomophylactic statements.

Polish Answer: The consistency and predictability of court decisions is ensured by the Supreme Administrative Court within its competence to adopt resolutions in extended panels (formations).

3.4. When solving jurisprudential conflicts or stating principles of law, does the SAC work in a special composition (for example a Plenary Assembly or a larger panel)?

- No
- Yes

If the answer is yes, please explain.

Italian answer: The SAC, when stating a principle of law or solving a conflict of interpretation, sits in Plenary Assembly formed of 12 judges plus the President of Council of State who presides; while the normal composition for ordinary matters is four judges plus the President of the Section.

Polish Answer:

The Supreme Administrative Court in its “nomophylactic capacity” acts in following compositions: the panel of seven judges, the entire Chamber or the panel of all judges of the SAC. The decision on which panel (seven judges, the entire Chamber or the full panel of the SAC) shall be assigned to a particular case lies within the hands of the President of the SAC. However, each panel may refer a case to the next panel: the panel of seven judges may refer a question of law to be resolved by a panel of the entire Chamber and the Chamber is able to refer it to the full panel of the SAC.

In case of “ordinary” pending cases the rule is that the case should be examined by a panel of three judges hearing the case at trial (both in the administrative court of first and second instance). However an administrative court sitting in camera adjudicates by a single judge, unless otherwise provided by the statute. Therefore in certain cases (set out in the statute) administrative court adjudicates in panel of three judges, despite hearing the case in closed session (e. g. cases heard in accordance with the simplified procedure).

3.5. Is there a specific procedure for referring a question to the SAC working in special composition?

- No
- Yes

Italian Answer: There are specific procedural rules, provided for by art. 99 CAP, regarding the procedure for referring a question to the Plenary Assembly.

The power of referring a question to the Plenary Assembly belongs to a Section or to the President of the Council of State. The parties cannot appeal directly to the Plenary Assembly under any circumstances: they can only request that a matter be referred by the President or by the Section.

The administrative judges of first instance have no authority to refer questions to the Plenary Assembly.

Polish Answer:

As indicated above the provisions of the Law on the System of Administrative Courts and Law on Proceedings before Administrative Courts distinguish between two types of resolutions – resolutions in individual cases (“concrete resolutions”) and abstract resolutions.

Concrete resolutions are adopted in relation to pending cases. Each panel of the SAC (usually 3 judges, exceptionally 1 judge) before deciding a case may turn to enlarged panel of seven judges with a request to adopt a resolution. The grounds for asking a question should be serious doubts regarding legal issue arising from this particular case. The enlarged panel may adopt a resolution and explain the law - the specific legal provision that is relevant in the case. In such a situation the answer - the interpretation expressed in the resolution is directly binding in the given case. If the request for the resolution was made against particular administrative court case and taking into account that extended panel of the SAC is not bound by the request and may refuse to adopt a resolution if it finds that there is no need to do so (e.g. the answer is not relevant for the case), such extended panel of seven judges may decide to hear the particular pending case itself (this is the only example when a particular pending case can be resolved by an enlarged panel of seven judges).

Abstract resolutions explain legal provisions if there is a contradiction in their interpretation in the case law. Such resolutions may only be adopted (by the panel of 7 judges, entire Chamber or full panel of SAC) on request of certain entities enumerated in the law: the President of the SAC, the Public Prosecutor General, the General Counsel to the Republic of Poland, the Commissioner for Human Rights (Ombudsman), the Commissioner for Small and Medium Entrepreneurs or the Commissioner for Children’s Rights. This kind of solution plays a significant role in striving for consistency of case law and - in the long run - for legal certainty.

3.6. If the answer to question 3.5 above is yes, if a judge of the SAC does not agree with the principle affirmed, what can he or she do?

- it is not possible to disagree
- it is possible to take a different decision, giving reasons

- X X a new referral to the Court is necessary

Italian Answer: If one Section of the SAC does not agree with the principle stated by the Plenary Assembly, it cannot judge in disagreement with it, but it must resubmit the matter to the Plenary Assembly to request a change in jurisprudence. In this case, the referral is mandatory (art. 99, paragraph 3, c.p.a.). In other words, only the Plenary Assembly has the authority to reverse its own previous decision. The only exception to this rule regards matters concerning European law: in this case the Section may refer the matter directly to the European Court of justice for a preliminary ruling (see the Puligenica case).

However, judges at first instance can disagree with a judgment of the Plenary Assembly, providing reasons for it.

Polish Answer: If any panel of the administrative courts (panel of the SAC or panel of the court of first instance) hearing the cases does not share the position taken in the resolution adopted by the seven judges, the panel of the entire Chamber or by the full panel of the SAC, they are obliged to submit the arising legal issue for “new” resolution by an appropriate panel.

3.7. In order to guarantee the consistency of jurisprudence among the various sections of the SAC or with another Supreme Court, if such exists, are there organizational mechanisms in place to promote this aim (for example, periodical meetings among judges or among presidents)?

- No
 X Yes

If the answer is yes, please explain.

Italian Answer: It is good practice to organize periodical meetings among judges and Presidents of the SAC or of any administrative court of first instance to promote discussion on questions of common interest. Nevertheless, this is done on a merely voluntary basis and it is not provided for by any specific regulations. Regarding the relationship with the Court of Cassation (the Supreme Court of the civil and penal judicial system), seminars or conferences are occasionally organized to stimulate debate on topics of common interest. The important joint contribution of the Studies and Training Departments of the administrative and civil justice (see questions n. 2.1 and 2.2.), in supporting the respective Courts, with specific research, when deciding questions of common interest, should also be mentioned.

Polish Answer: Yes, there are organizational informal mechanisms in place to promote the consistency of jurisprudence among the various divisions and chambers of the SAC or with voivodship administrative courts (lower courts of first instance) - there exists good practice of organizing meetings, seminars and conferences of judges of SAC (within divisions, chambers and the entire SAC)

and lower courts to stimulate debate and sharing opinions regarding current case-law challenges faced by administrative judiciary.

3.8. If your judicial system has administrative Courts separated from other Courts (civil ones), which body or Court is entitled to resolve conflicts of jurisdiction between administrative and ordinary courts? (e.g. *Tribunal des Conflits*).

Italian answer: the body entitled to solve conflicts between administrative and ordinary courts is the Court of Cassation, which sits in enlarged composition (United civil sections).

Polish Answer: No, currently there exists no such a body entitled to resolve jurisdictional conflicts between administrative and ordinary courts.

SESSION II.

THE IMPACT OF DECISIONS OF SUPREME ADMINISTRATIVE COURT ON THE FUTURE DEVELOPMENT OF ADMINISTRATIVE ACTIVITY

1. To what extent does the administrative judgment bind the public administration in the new exercise of its power?

Please explain.

Italian answer: In case of annulment of an administrative measure, the judgment generally provides, also indirectly, the administration some instructions regarding the new exercise of its power. This is called the “complying effect” of the judgment (so called “effetto conformativo”).

The extent to which the administrative judgment can bind the administration depends on the grounds on which the judgements is based. If the judgement has found only procedural infringements, the further activity of Public administration is free except for the procedural matter. If the Court has detected a substantial violation of law, the administration, in the specific case, is bound by the judgment not to repeat the same violation and to act accordingly. If no room for discretionary evaluation is left, it may happen that the judgment can bind the administration to adopt a favorable measure in order to comply with it.

Polish Answer: When a complaint against an act or action has been granted, they do not produce legal effects until a judgment becomes legally binding, unless the court decides otherwise. A judgment of the court is legally binding, in no appellate measure lies against it and a legally binding judgment binds not only the parties and court which has issued it, but also other courts and state authorities.

According to the procedure before administrative courts the legal assessment and indications as to the further course of action presented in a decision rendered by a court shall be binding on the

authorities whose action, failure to act or excessive length of proceedings was the subject of the complaint as well as on courts, unless the provisions of law have been amended.

Failure to apply the legal assessment and indications of the court is incorrect enforcement of the judgment and may be ground for challenge an administrative decision before administrative court but cannot result in imposing a fine.

2. Can the decision of an administrative judge influence the work of public administrations even beyond the objective and subjective context of the case decided?

- No
- Yes

Please explain.

Italian answer: As a general principle, the effects of an administrative judgment are limited to the parties involved in the trial. Nevertheless, in some exceptional cases, the annulment of an administrative measure may produce effects also ultra partes. This happens when a regulation is quashed, or when the annulled administrative measure has an indivisible effect, involving many people.

An administrative judgment can have a persuasive effect on the work of public administrations even beyond the objective and subjective context of the case decided, when applied to similar cases. The administration must take the previous judgments of the SAC into account.

Polish Answer: The decision of an administrative judge can influence the work of public administrations even beyond the objective and subjective context of the case decided especially in similar cases, via ex auctoritate effect, in case when the annulment of challenged act (e.g. general normative act of local law) has indivisible effect involving many individuals and entities.

3. According to regulatory rules or practices, may the effects of an administrative judgment be extended by the administration itself beyond the case decided?

- No
- Yes

Please explain.

Italian Answer: in principle, the public administration has a discretionary power to extend the effects of an administrative judgment beyond the case decided. Nevertheless, this possibility has been excluded by law since 2004 for questions regarding public personnel due to considerations of public expenditure.

Polish Answer: not applicable.

SESSION III

IMPLEMENTATION AND ENFORCEMENT OF THE DECISIONS.

1. Is there a specific legal procedure in your system aimed at monitoring and pursuing the full and complete execution of the judgment?

No

Yes

Italian answer: yes, in the Italian legal system a specific procedure for the execution of judgments is foreseen (art. 112-114 c.a.p.). Moreover, so-called “astraintes” for the indirect execution are also provided for.

Polish answer:

The specific provision of the Law on Proceedings before Administrative Courts placed in Part VIII of the Law (entitled “Execution of court decisions”) provides that “After a decision of a court of the first instance concluding proceedings has become legally binding (final), the administrative files of the case, accompanied by a transcript of the decision with the declaration that it is legally binding, shall be returned to the public administration body.” (Article 286 para. 1 of the Law). The time limit for a case to be settled by a public administration body specified in the law or determined by the court is calculated from the date of service of the file on the body or service of a copy of the judgment.

The more specified procedure is connected with the lack of action or excessive length of administrative proceedings. When a judgment granting a complaint against the failure to act or excessive length of proceedings will be not fulfilled, the party shall have the right, after calling on the competent authority in writing to fulfil the judgment or handle the case, to lodge a complaint on the matter, requesting that a fine be imposed on the authority. The Court may additionally adjudicate on whether there exist or not a right or obligation, if this is allowed by the nature of the case and non-litigious circumstances of its factual and legal status. At the same time, the court shall find whether the failure to act or excessive length of proceedings by the authority have taken place in flagrant breach of law.

Additionally, a person, who has suffered injury because of a lack of compliance with the court decision, shall be entitled to compensation in accordance with principles specified in the Civil Code.

A compensation shall be paid by the authority which has failed to comply with the court decision. If the authority has not paid the compensation within 3 months from the filing of a claim for compensation, the entitled entity may bring action to a common court. When granting a complaint, the court may order that the authority pay the complainant a sum up to half the amount of the fine that can be imposed on authority.

1.1 If the answer to question 1 above is yes, in what percentage of cases are such remedies used?

Italian answer: The enforcement remedy is used in about 15% of SAC judgments.

Polish Answer: We do not dispose statistic data concerning practice of administrative authorities in that field.

2. If there is no specific procedure, how does your system ensure the full compliance of the judgment?

Italian answer: Not applicable.

Polish Answer: not applicable.

3. If there is such a judicial remedy, does it require the judgment to become final?

No

Yes

Please explain.

Italian answer: No. The remedy does not require the judgment to be final.

Nevertheless, the powers of the judges to ensure execution are different depending on whether the judgment to be enforced is final or not. In the first case, judges can only indicate to the administration how to give execution to the judgment, considering without effect the possible administrative acts adopted in conflict with the judgment itself. Instead, if the decision to be enforced is final, the judge can annul any administrative acts adopted in conflict with the judgment itself and can completely substitute the administration in the execution of the judgment.

Polish Answer: the special remedy described above regarding judgments granting a complaint against the failure to act or excessive length of proceedings requires the judgment to be final.

4. Do judges have the power of substitution, directly or through Commissioners *ad acta*, in the case of *inertia* or incorrect execution of judgments?

No

Yes

Please specify.

Italian answer: in case of inertia or incorrect execution of a (civil or administrative) judgement, the judge has the power to act in place of the administration, substituting it, or,

alternatively, can appoint an ad-hoc representative (Commissario ad acta), selected by the judge itself from among civil servants. This second option is generally more commonly used.

Polish Answer: The general idea of the Polish administrative judiciary and the power of judges that administrative courts do not replace the public administration in its decision-making process. The decisions of public authorities cannot be supersede by court judgments. For this reason proceedings before administrative courts are dominated by cassation-appeal-based adjudicating.

Since 2015 administrative courts have been given - in exceptional situations - powers to determine the actual way of handling the case by the relevant body. According to the new provision of law, when the circumstances of the case so justify, the court shall oblige the authority to render a decision or order within a specified time limit, indicating the manner in which the case should be handled or determined, unless the determination was left to the discretion of the authority. The competent authority shall notify the court of the issuing of the decision or order within seven days from the date on which they were issued. In the event of failure to notify the court, it may decide to impose a fine on the authority in the amount specified by the statute. Should the decision or order not be rendered within the time limit specified by the court, the party may lodge a complaint, requesting that a decision be rendered whereby it is declared whether or not the right or obligation exists. The court shall render a decision on this matter if the circumstances of the case allow. As a result of the examination of a complaint, the court shall state whether or not the failure to issue a decision or order took place in blatant violation of law and may also, on its own authority or at the request of the party, impose a fine on the authority in the amount specified in the statute or order that the authority pay the complainant a sum up to half the amount of the fine that can be imposed on authority.

5. Is the administration (and/or the official) liable for damages due to non-execution or incorrect execution of the judgment?

- No
 Yes

5.1. If the answer above is yes, is it within the jurisdiction of the administrative judge to decide on the action for damages?

Please explain and give an example.

Italian answer: The administrative judge is only entitled to decide about an action for compensation against the administration itself. According to art. 112, par. 3, of the c.a.p., it is possible to request the same judge to issue an order for payment of sums by way of appreciation and interest accrued after the res judicata court judgment, as well as compensation stemming from the inability or failure to execute the res judicata in a specific form, in whole or in part, or its violation or circumvention”.

In contrast, if the party wants to act against the official in person, the case must be brought through the civil courts.

Polish Answer: It is not within the jurisdiction of the administrative judge to decide on the action for damages.

SESSION IV

THE CONSULTATIVE ROLE OF THE SAC (IF EXISTING) AND ITS IMPACT ON ADMINISTRATIVE ACTION.

1. Does the SAC play advisory functions for the government or for the public administration?

X X No

X Yes

Italian Answer: Yes, the Italian Council of State has a consultative section (the first one) and a special section giving advice on regulatory acts.

Polish Answer:

The Polish SAC has no advisory functions for the government or the public administration comparable with advisory functions of Council of State of Italy (or France, Belgium or Netherlands).

In the legislative process, the SAC is treated on the same basis as other specific public entities that should be consulted in the general process of drafting legislation. The legal grounds for the SAC's participation in the legislative process are the provisions of the resolution of the Council of Ministers No 190 of 29 October 2013 – the Council of Ministers' Rules of Procedure, as well as the provisions of the resolution of the Sejm of the Republic of Poland of 30 July 1992 – Standing Orders of the Sejm of the Republic of Poland and the resolution of the Senate of the Republic of Poland of 23 November 1990 – Standing Orders of the Senate of the Republic of Poland. The Council of Ministers' Rules of Procedure introduce the division of the consultations into two separate processes: 1) as part of the public consultations, the draft act is presented to social organisations or other interested entities or institutions whose opinion is welcomed due to the subject matter of the draft act; 2) as part of an opinion soliciting process, the draft act is sent to specific entities, if such a requirement arises under separate legal regulations or if the draft act applies to the functioning of such entities (it is sent, for instance, to the Supreme Administrative Court, Supreme Court of the Republic of Poland, National Council of the Judiciary).

The SAC is able to express its views in legislative process related to issues of status and the organisation of the judiciary, procedural laws, etc. It usually takes the form of a written opinion on draft law, issued by the President of the Court.

1.1 Where the answer to the above question is yes, please specify the kind of acts to which the advisory functions apply.

(More options are possible)

- primary legislative acts (of parliament or of government)
- governmental and ministerial regulatory acts
- resolution of specific questions on request of a public administration, on the interpretation of a law or in the definition of a specific matter.
- Other

Please specify.

Italian Answer: The advisory function performed by the Council of State concerns primary and all the secondary legislation; governmental and ministerial regulations, projects of codification and consolidation.

The President of the Council of Ministers can also submit to the Council of State drafts of laws and regulatory acts, especially in relation to the implementation of EU legislation.

Finally, the advice of the SAC can also be requested by the regions or by independent agencies.

2. The SAC's advice in its consultative role is:

- optional and non binding
- mandatory and binding
- mandatory but not binding
- optional and, once required, binding
- it depends on circumstances (please clarify)

Italian answer: the following acts are subject to the mandatory, but non-binding, advice of the Council of State:

-governmental and ministerial regulations;

-drafts of codification or consolidation of the legislative and regulatory norms;

-acts of Parliament, if advice is required by law, also in general terms.

-The SAC can give advice on the interpretation of a law if requested by the administration concerned.

Additionally, there is a particular remedy, alternative to the judicial remedy (namely, extraordinary appeal to the President of the Republic), which is substantially decided by a mandatory and binding “advice” of the Council of State.

3. In exercising its advisory functions, can the SAC consult experts in economics or statistics in order to assess the economic and social impact of regulations?

- No
- Yes
- In certain circumstances only (please specify)

Italian Answer: Normally no. However, in the event that the Council of State is directly responsible for drawing up consolidated texts of legislation and regulation it is allowed to consult experts in non-legal disciplines.

4. Are there forms of collaboration of administrative judges in the activity of the Government or of public administrations? (for example, secondment of individual magistrates to head legislative boards of a Ministry or as members of an independent authority, participation in study commissions, etc.).

- No
- Yes

Italian Answer: Administrative judges can be allowed, to hold, for no longer than 10 years in their career, senior positions in Ministries including the legislative boards, or in independent authorities. They can also participate in study commissions while continuing to carry out their own judicial functions, or work in the staff supporting a judge of the Constitutional Court.

5. Can the advisory function of the SAC also consist in the resolution of a specific dispute working as an ADR (alternative dispute resolution)?

- No
- Yes

Italian Answer: In Italy the so called "extraordinary appeal to the President of the Republic", mentioned above, is a particular extra ordinem remedy, alternative to the judicial remedy, which takes the form of mandatory and binding advice of the Council of State, implemented in

a decree of the Head of the State. It is promoted at request of a private party for the annulment of an administrative decision.