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

**“Techniques for the protection of private subjects in  
contrast with public authorities: actions and remedies  
– liability and compliance”**

Rome, 23 May 2022

**Answers to questionnaire: Croatia**



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## **“TECHNIQUES FOR THE PROTECTION OF PRIVATE SUBJECTS IN CONTRAST WITH PUBLIC AUTHORITIES: ACTIONS AND REMEDIES - LIABILITY AND COMPLIANCE”.**

### **INTRODUCTION**

The seminar will analyse the types of actions that can be brought before the administrative judge: action of annulment, action of declaration and action of condemnation. With particular reference to the latter, the seminar will focus on compensatory measures, including damages for loss of opportunity and damages as a result of delay.

The seminar also intends to examine the possibility of any and eventual special or fast-track procedure, for introductory terms and methods which pertain to certain subjects under consideration, for example, for their economic or political relevance, such as those to be found in the sphere of public contracts (see also transversal analysis).

The aim of this questionnaire and of the subsequent seminar is to provide a wider comprehension of the similarities and differences that exist among the various legal systems of the member States insofar as they apply to the situations to be dealt with by the administrative court, paying particular attention to the content and subject matter of the relative rulings.

### **SESSION I**

#### **LEGAL PROCEEDINGS THAT CAN BE BROUGHT BEFORE THE ADMINISTRATIVE COURT**

- 1. In your legal system, which judges are competent to pronounce on disputes in which one of the parties is the public administration?**
  - An ordinary judge
  - An administrative judge
  - A judge who deals with special areas
  - Others



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In the Croatian legal system, the jurisdiction of the administrative court is defined by art. 2. of the Act on administrative disputes.

Subject of the dispute brought upon administrative court can be:

-assessment of legality of any decision where public administration has ruled over a right, commitment or legal interest of a party in an administration matter with condition that such a decision can't be disputed in a regular administrative procedure.

- assessment of legality of an activity of public administration in an administrative matter if such an activity has caused damage to rights, obligations or legal interests of a party.

- assessment of legality of an omission of public administration to decide in an administrative matter within the prescribed period in matters where rights, obligations or legal interests of a party are concerned, or to decide on a regular remedy, or an omission to act accordingly to regulations.

- assessment of legality of concluding, terminating and executing an administrative contract

The subject of an administrative dispute is also the assessment of the legality of a general act of a unit of local and regional self-government, a legal person with public authority and a legal person performing public service.

Listed above are disputes conducted by administrative courts where decisions are made by administrative judges. In other disputes in which one of the parties is the public administration rulings are made by an ordinary judge or a judge who deals with special areas (for example: judges in commercial disputes).

## **2. Which actions can be brought before the administrative court in view of the exercise of administrative powers?**

- Annulment of administrative acts
- action of condemnation
- Other actions

Act on administrative disputes (Article 2.) highlights the following actions:

-assessment of legality of any decision where public administration has ruled over a right, commitment or legal interest of a party in an administration matter with condition that such a decision can't be disputed in a regular administrative procedure.

- assessment of legality of an activity of public administration in an administrative matter if such an activity has caused damage to rights, obligations or legal interests of a party.



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- assessment of legality of an omission of public administration to decide in an administrative matter within the prescribed period in matters where rights, obligations or legal interests of a party are concerned, or to decide on a regular remedy, or an omission to act accordingly to regulations.
- assessment of legality of concluding, terminating and executing an administrative contract (special type of contracts regulated in articles 150.-154. of General administrative procedure code).

The subject of an administrative dispute is also the assessment of the legality of a general act of a unit of local and regional self-government, a legal person with public authority and a legal person performing public service.

### **3. From which sources can actions be proposed brought before the administrative court?**

- Law
- Public authority regulations
- Guidelines
- Supreme Court rulings
- Other

In Croatian legal system, actions that can be brought before the administrative court are regulated by law, and specifically, by the Act on administrative disputes.

Lately, some decision of the Croatian Constitutional Court which have their foothold in the Croatian Constitution have expanded jurisdiction of administrative courts.

### **4. Which administrative decisions can be challenged?**

- Administrative acts which have a specific recipient
- General acts and regulations
- Acts inherent to the procedure
- Political acts

Any administrative act where public administration has ruled over a right, commitment or legal interest of a party in an administration matter can be disputed (with condition that such a decision can't be disputed in a regular administrative procedure).

The subject of an administrative dispute is also the assessment of the legality of a general act of a unit of local and regional self-government, a legal person with public authority and a legal person performing public service.



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Generally speaking, political acts can't be challenged in proceedings before the administrative courts.

Generally speaking, acts inherent to the procedure cannot be challenged autonomously.

**5. On the grounds of which defects can the annulment of an administrative act be requested?**

- Breaches of the law
- Breaches of competence
- Technicalities and procedural defects
- Breaches of general principles
- Other

Breaches of the law (which encompasses breaches of competence, technicalities and procedural defects and breaches of general principles) are defects that can result in annulment of an administrative act.

**6. Can the judge partially annul the challenged administrative act?**

- Yes
- No

The administrative judge can partially annul an illegitimate act.

**7. Can the judge substitute the Administration by modifying the content of the administrative act?**

- Yes
- No

If your reply is yes, please elaborate.

If the court finds that an individual decision of a public administration is illegal, it shall adopt the claim, annul the challenged decision and resolve the matter itself, except when it cannot do so due



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to the nature of the matter or when the public administration decision is based on an discretionary judgment (Article 58.)

**8. When the judge annuls the challenged act, can he dictate provisions which the P.A. must abide by in the review proceedings of the subject-matter of the litigation?**

- Yes
- No

If your reply is affirmative, please elaborate.

In cases where a court cannot annul the challenged decision and resolve the matter itself it can dictate conditions which must be adhered to when the Administration makes new provisions after the annulment.

**9. When do the effects of the jurisdictional annulment of an administrative act become applicable?**

- From the date of the adoption of the act (*ex tunc*)
- From the date on which the judgement becomes final (*ex nunc*)
- Other
- 

The annulment of an administrative act produces retroactive effects (from the date of adoption of the act in question - “*ex tunc*”).

The repealed general act shall cease to be valid, on the day of the publication of the judgment of the High Administrative Court in the Official Gazette (*ex nunc*).

**10. Can the judge modulate the effects over time of the ruling of annulment of an administrative act?**

- Yes
- No
- Other



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No.

**11. Can the act of ordering payments for damages be proposed autonomously or must it always be proposed together with other kinds of actions?**

- Yes
- No
- Only in certain cases

If your reply is yes, please elaborate

If the party seeks the return of property or compensation for damage, the request regarding the property and the amount of damage suffered must be contained in the lawsuit (Article 58., Subarticle 1.).

This regulation only applies when a party requests damages in administrative dispute. There is no limitation which prohibits party from seeking damages in a regular court proceedings before a court of general jurisdiction.

**12. In the light of what kind of behaviour is the compensatory action for damages feasible when dealing with a Public Administration?**

- Implementation of an illegal and detrimental administrative act
- Non-observance of the deadline of the procedure
- Lesion of good faith and trust
- Resultant behaviour of the public administration
- Other

In the Croatian legal system, all detrimental conditions indicated above are relevant for compensatory damages.

**13. Which are the different kinds of reimbursable damages?**

- Material damage



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- Non-material damage
- Loss of opportunity

In the Croatian legal system, all detrimental conditions indicated above are relevant for compensatory damages.

**14. Does the omission of lodging an action of annulment result in elision or reduction of the compensatory damages?**

- Yes
- No
- Other

No

**15. In order to award compensatory damages, is proof of the responsibility of the public administration required? If your reply is affirmative, which party is obliged to provide said proof?**

- Yes – the party with burden of proof is...
- No

The injured party must provide proof of the responsibility of the public administration. The illegality of an administrative act is a precondition for the compensatory damages.

**16. Can the judge convert *ex officio* one action into another?**

- Yes
- No

No.

**17. Is there a time-limit for the proposition of the compensatory action?**

- Yes
- No

If the proposition of the compensatory action is filed within an administrative dispute, the claim must be filed along with the lawsuit (within 30 days).



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**18. Can the judge rule that the Administration implement an administrative act? If your reply is affirmative, what are the prerequisites for implementation?**

- Yes –
- No

Yes, the administrative judge can rule that the administration implement an administrative act.

**SESSION II – SPECIAL PROCEDURES**

**1. Does your administration have provisions for special procedures**

- Yes
- No

Yes.

**2. What do the specialities consist of?**

- Ways of introducing the appeal
- Procedural time-limits
- Jurisdiction of the court
- Other

Special procedures provide for a series of derogatory regulations compared to ordinary regulations. The specialities consist of way of introducing the appeal, procedural time limits and jurisdiction of the court.

**3. The special rites are established:**

- According to subject (for example, tenders, procedures of expropriation, independent administration authorities)
- According to actions
- Both of the above

Both of the above



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**4. Does your system provide for appeals against the silence of the Administration at the request for an administrative provision presented by a private individual?**

- Yes
- No

Yes

Article 22. of the Act on administrative disputes provides for a action adverse to the inertia of the public administration. The judge may grant a time-limit within which the Administration must comply.

**5. Do the Administrations comply spontaneously with the decisions of the administrative courts?**

- Yes, always
- No, never
- In the majority of cases, in any case more than in 50% of cases
- Hardly ever, in any case less than in 50% of cases

Yes, in the majority of cases, in any case more than in 50% of cases.

**6. In your legal system, is there a special procedure for ensuring the integral execution of the sentence?**

- Yes
- No

If the reply is yes, please elaborate

In the Croatian legal system a specific procedure for the execution of judgements is provided for. In the situation when a judgment nullifies an administrative act and the matter is not resolved, the administration shall comply with the dispositive part of the judgment, at the latest within the time limit of 30 days of the delivery of the judgment. The administration is bound by the legal standpoint and comments of the court.

**7. Are the judge's decisions which are not of the last resort immediately enforceable?**

- Yes



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- No

No.

**8. Following the annulment of a decision characterized by discretionary power, the interested party is forced to challenge each of the ulterior negative decisions which have been deemed illegitimate by dint of defects which are different to those identified by the judge or, in alternative, are there certain mechanisms of “reduction” of the aforesaid discretionary power which ensure the definition of the litigation once and for all?**

- Yes
- No

The sentence of the annulment of a decision characterized by discretionary power binds the Administration only when dealing with the illegitimacy identified by the sentence.

### **SESSION III – PRECAUTIONARY MEASURES**

**1. Does the proposition of an appeal automatically suspend the effectiveness of the administrative act?**

- Yes
- No

In administrative proceedings, an appeal against an administrative act, in general, suspends the effectiveness of the administrative act, unless the law provides that the appeal does not delay enforcement.

In administrative dispute, an appeal delays the enforcement of the appealed judgment.

**2. In your legal system, are precautionary measures provided for?**

- Yes
- No



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In the Croatian legal system, the petitioner can request the issuance of precautionary measures to avoid serious and irreparable damage.

**3. What kinds of decisions can the judge apply as a precautionary measure?**

- The suspension of the challenged act;
- ( if the subject of the challenge is the refusal of an application) a positive measure which provisionally anticipates the effects of the administrative act being contested;
- The order to the administration to re-examine the application on the strength of indications contextually provided by the judge;
- Whatever measure necessary to satisfy, in each case, the precautionary requests presented by both parties

The suspension of the challenged act.

**4. What are the conditions for the acceptance of a precautionary request?**

- The probable validity of the action
- The probable validity of the action together with a serious prejudice
- The prevalence of public or private interest, based on the results of the equilibrium/assessment
- The required prerequisites of trial law to accord precautionary measures vary according to the different types of litigation
- Other prerequisites ( please specify )

The court shall accept a proposition of a precautionary request if it is necessary to avoid severe and irreparable damage.

**5. Can the judge force the petitioner to pay bail?**

- Yes
- No
- If yes, in which cases?



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No.

**6. Are precautionary measures generic?**

- Yes
- No – are there some subjects in which precautionary measures are not admitted? Which?

In the Croatian legal system, precautionary measures do have general applications as they can be applied to all types of litigation.

**7. Can a precautionary request be introduced autonomously before the presentation of the main trial proceedings ( *ante causam* )?**

- Yes
- No

No.

**8. In the event of cautionary request *ante causam*, does the precautionary decision of the judge lose effectiveness?**

- Yes, in the event that the interested party does not initiate main trial proceedings within the mandatory time-limit
- No, its effectiveness remains intact even if the main trial proceedings have not been initiated within the mandatory time-limit or even if the time-limit has expired

n/a

**9. When dealing with the precautionary request, does your legal system provide for specific procedure?**

- Yes (give details of the main characteristics with regard to : trial deadlines, type of decision, motivational burden, ways for establishing debate)
- No

No.



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**10. Is the precautionary decision taken unilaterally or collegiately?**

- Unilaterally;
- Collegiately;
- Collegiately, but in the event of extreme urgency, the precautionary decision can be taken temporarily by means of a simple unilateral decree;

When the court of first instance decides on the proposal for the precautionary decision, single judge makes a decision. When the High Administrative Court decides on the proposal for a precautionary decision, the decision is taken collegiately.

**11. During the discussion of the precautionary request, can the judge directly define the judgement on the merit?**

- Yes ( explain in which conditions )
- No

No

**12. Can precautionary measures be challenged before the Supreme Court /Council of State?**

- Yes
- Yes, but only if they pass a test of eligibility
- No

Yes, an appeal may be filed against the decision of precautionary measures

**13. Can the Supreme Administrative Court / Council of State, as a precautionary measure, suspend the judgements on the merit of a judge of a lower level?**

- Yes
- No

In the Croatian legal system, an appeal against the judgment always delays the enforcement of the appealed judgment.



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**14. On average, how many precautionary decisions are taken every year by the Supreme Court/ Council of State in comparison to the overall number of decisions taken?**

In the 2019 the average number of precautionary rulings was 11. They account for about 0,11% of total judgments.

In the 2020 the average number of precautionary rulings was 23. They account for about 0,36% of total judgments.



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