



Consiglio di Stato



**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: Spain



**Co-funded by
the European Union**



Consiglio di Stato



Italian Presidency of ACA-Europe 2021-2023
Présidence italienne de l'ACA-Europe 2021-2023
Presidenza italiana dell' ACA-Europe 2021-2023

“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

ANSWER: The judge competent to pronounce on disputes in which one of the parties is the public administration is always an ordinary judge, because the contentious-administrative judges are part of the judicial career. However, the lawsuits in which the Administration is a



**Co-funded by
the European Union**



Consiglio di Stato



Italian Presidency of ACA-Europe 2021-2023
Présidence italienne de l'ACA-Europe 2021-2023
Presidenza italiana dell' ACA-Europe 2021-2023

party may correspond to civil or administrative jurisdiction, depending on whether it is private relationships or governed by public law

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

If you have replied 'other actions', please clarify which.

ANSWER: Before the administrative court can be brought actions of annulment of administrative acts, an also can be brought actions of reestablishment of the appellant's individual situation, v.gr., with compensation for damage caused as a consequence of the act. The appeal can also be filed against administrative silence (lack of response from the Administration in time). Finally, precautionary measures can be requested in any appeal

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

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

Italian reply

ANSWER: Actions before the administrative court are only regulated by law, specifically the law 29/1998, of the contentious-administrative jurisdiction.

4. Which administrative decisions can be challenged?

- Administrative acts which have a specific recipient



**Co-funded by
the European Union**



Consiglio di Stato



Italian Presidency of ACA-Europe 2021-2023
Présidence italienne de l'ACA-Europe 2021-2023
Presidenza italiana dell' ACA-Europe 2021-2023

- General acts and regulations
- Acts inherent to the procedure
- Political acts

ANSWER: before the administrative court can be challenged administrative acts, and also general acts and regulations with rank below the law. Control of political acts is also possible, with regard to their regulated elements, or when they affect affect fundamental rights guaranteed by the Spanish Constitution of 1978. The appeal can be filed against procedural acts when they determine the inability to continue the procedure, or cause helplessness

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

ANSWER: the annulment of an administrative act be requested for any infringement of the national legal system (law and also the general principles of law), concerning substance or procedure, including the misuse of powers

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

- Yes
- No

If your reply is yes, please elaborate.

ANSWER: Certainly, the administrative judge can partially annul an illegitimate act, when the act forms only a partial ground for invalidity, because the defect of nullity doesn't affect the totality of the act, so that a part of the act can be kept



Co-funded by
the European Union



Consiglio di Stato



Italian Presidency of ACA-Europe 2021-2023
Présidence italienne de l'ACA-Europe 2021-2023
Presidenza italiana dell' ACA-Europe 2021-2023

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

- Yes
- No

If your reply is yes, please elaborate.

ANSWER: Yes, unless appeal is filed against discretionary powers. If so, the judge may override the act, but can't replace the Administración in the establishment of the act's discretionary element

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.

ANSWER: The judge can annulate the act, and also may above measures for compensation of losses caused by the act declared void. Public Administration is obliged to respect all measures prescribed by the judge.

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

ANSWER: the effects of the jurisdictional annulment of an administrative act become applicable when the court judgement becomes final. The annulment of an act in the seat of



Co-funded by
the European Union



Consiglio di Stato



Italian Presidency of ACA-Europe 2021-2023
Présidence italienne de l'ACA-Europe 2021-2023
Presidenza italiana dell' ACA-Europe 2021-2023

jurisdiction produces retroactive effects from the date of adoption of the act in question -ex tunc- when it constitutes grounds of incurably void

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

- Yes
- No
- Other

ANSWER: In certain procedures, the judge may dictate “prospective judgment”, in order to dilate in time the effects of the sentence, to avoid damages while the new regulation -which replaces the previous one- is approved (v.gr., environmental lawsuits)

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

ANSWER: the act of ordering payments for damages must be always proposed together with the action of annulment

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



**Co-funded by
the European Union**



Consiglio di Stato



Italian Presidency of ACA-Europe 2021-2023
Présidence italienne de l'ACA-Europe 2021-2023
Presidenza italiana dell' ACA-Europe 2021-2023

- Lesion of good faith and trust
- Resultant behaviour of the public administration
- Other

Please elaborate

ANSWER: In the spanish legal system, all detrimental conditions indicated above are potentially relevant for compensatory damages

13. Which are the different kinds of reimbursable damages?

- Material damage
- Non-material damage
- Loss of opportunity

ANSWER: In the spanish legal system, all detrimental conditions indicated above are potentially 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

ANSWER: when the damage is precisaly attributed to the nullity of the administrative act, in relation of causality, so that compensation is claimed just because of the nullity of the act, the claimant must challenge the act. If he doesn't, the act is understood consented, and there is no compensable damage as a consequence of a nullity that has not been declared

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



**Co-funded by
the European Union**



Consiglio di Stato



Italian Presidency of ACA-Europe 2021-2023
Présidence italienne de l'ACA-Europe 2021-2023
Presidenza italiana dell' ACA-Europe 2021-2023

ANSWER: The injured party must provide proof of the responsibility of the public administration

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

- Yes
- No.

If the reply is yes, please elaborate

ANSWER: No. The judge can't convert *ex officio* one action into another, to the detriment of the defendant. The principle of party disposition is a general principle of Spanish law

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

- Yes
- No

If the reply is yes, please elaborate

ANSWER: The compensatory action, linked to the request for annulment of an administrative act, is subject to the timelimit for challenge the act. That timelimit is a period of two months.

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

- Yes – explain
- No

ANSWER: the judge, once void the contested act, may rule that the Administration implement an administrative act which replaces the annulled, if it's necessary for giving an effective judicial protection

SESSION II – SPECIAL PROCEDURES



Co-funded by
the European Union



Consiglio di Stato



Italian Presidency of ACA-Europe 2021-2023
Présidence italienne de l'ACA-Europe 2021-2023
Presidenza italiana dell' ACA-Europe 2021-2023

1. Does your administration have provisions for special procedures

- Yes
- No

If the reply is yes, please elaborate

ANSWER: The administrative process code (Law 29/1998) has provisions for several special procedures. The most important procedures are the procedures of protection of fundamental rights; market unity guarantee; or judicial declaration of political parties extinction.

Procedure of protection of fundamental rights includes subjects such as prohibition of public meetings, judicial authorization of interruption of information society services; and judicial authorization of measures about public health protection that involve restriction of fundamental rights.

2. What do the specialities consist of?

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

ANSWER: Special procedures provide for a series of derogatory regulations compared to ordinary regulations. Generally consist in introducing reduced procedural time-limits, simplified procedures, and decisions adequate to the object of the lawsuit

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

Please elaborate

ANSWER: the most common special rites are established according to actions, but some are established according to actions and also according to subject (v.gr., the procedure for judicial



**Co-funded by
the European Union**



Consiglio di Stato



Italian Presidency of ACA-Europe 2021-2023
Présidence italienne de l'ACA-Europe 2021-2023
Presidenza italiana dell' ACA-Europe 2021-2023

authorization of measures about public health protection that involve restriction of fundamental rights).

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

If the reply is yes, please elaborate

ANSWER: appeals against the silence of the Administration are processed under the regular procedure.

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

ANSWER: - In the majority of cases they do so. However, the court may order the execution of the judgment, if Administration doesn't comply spontaneously, and the appellant claims for it.

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



**Co-funded by
the European Union**



Consiglio di Stato



Italian Presidency of ACA-Europe 2021-2023
Présidence italienne de l'ACA-Europe 2021-2023
Presidenza italiana dell' ACA-Europe 2021-2023

ANSWER. Certainly, there a procedure for ensuring the integral execution of the sentence. if Administration doesn't comply spontaneously, the appellant may claims for the execution before the Court, and the Court can order the execution of the sentence. In such a way, the Court can order to the administration how to give execution to the judgment, and also can declare null the administrative acts eventually adopted in contrast with the judgment

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

- Yes
- No

If the reply is yes, please elaborate

ANSWER: The decisions of the Court are immediately enforceable. However, if Administration indicates that it is unwilling or unable to enforce the decision, must advise the Court, which will make the appropriate decision to ensure that the judgment is complied

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 – elaborate
- No

ANSWER: In the Spanish legal system, generally speaking, the sentence of the annulment of a decision, characterized by discretionary power, must be enforced in terms of the judgement. As before said, if appeal is filed against discretionary powers, the judge may override the act, but can't replace the Administración in the establishment of the act's discretionary element . Of course, the Court can order to make a new act replacing the annulled.



Co-funded by
the European Union



Consiglio di Stato



Italian Presidency of ACA-Europe 2021-2023
Présidence italienne de l'ACA-Europe 2021-2023
Presidenza italiana dell' ACA-Europe 2021-2023

SESSION III – PRECAUTIONARY MEASURES

- 1. Does the proposition of an appeal automatically suspend the effectiveness of the administrative act?**
 - Yes
 - No

ANSWER. In the Spanish legal system, the proposition of appeal does not entail suspensive effects. The appellant must request the suspension, if is interested

- 2. In your legal system, are precautionary measures provided for?**
 - Yes
 - No

ANSWER: In the Spanish legal system, the petitioner can request the issuance of any measures appropriate to ensure the effectiveness of the judgement

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



**Co-funded by
the European Union**



Consiglio di Stato



Italian Presidency of ACA-Europe 2021-2023
Présidence italienne de l'ACA-Europe 2021-2023
Presidenza italiana dell' ACA-Europe 2021-2023

- 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

ANSWER: the judge can apply any precautionary measure considered appropriate to ensure the effectiveness of the judgement, including, of course, 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)

ANSWER: Principally, the possibility of serious prejudice for the appellant; and also the prevalence of public or private interest, based on the results of the equilibrium/assessment

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

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

ANSWER: In the spanish legal system, in the event that as a result of the execution of a decision concerning to a precautionary application, result damages of any nature, the chamber can require the payment of bail, to which the concession or rejection of a precautionary measure can be subordinated



**Co-funded by
the European Union**



Consiglio di Stato



Italian Presidency of ACA-Europe 2021-2023
Présidence italienne de l'ACA-Europe 2021-2023
Presidenza italiana dell' ACA-Europe 2021-2023

6. Are precautionary measures generic?

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

ANSWER: In the Spanish legal system, precautionary measures do have general applications insofar 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

ANSWER: In the Spanish legal system, in the event of special urgency, the party entitled to apply, even before filing the appeal, may request the adoption of urgent provisional measures, when they appear indispensable during the time needed to file the appeal

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

ANSWER: In the Spanish legal system, the provision of *ante causam* acceptance, however, loses effectiveness if the judge does not confirm them once the appeal is filed

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)



Co-funded by
the European Union



Consiglio di Stato



Italian Presidency of ACA-Europe 2021-2023
Présidence italienne de l'ACA-Europe 2021-2023
Presidenza italiana dell' ACA-Europe 2021-2023

- No

ANSWER: There is a specific fast-track procedure, hearing the defendant, followed by the decision of the court.

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;

ANSWER: When the precautionary is requested to a collegiate Tribunal, decision about it is also collegiate

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

- Yes (explain in which conditions)
- No

ANSWER: During the discussion of the precautionary request, the chamber, having heard representations from both parties, will give its decision by reasoned order, with an appropriate response, consistent with the request of the appellant.

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

ANSWER: precautionary measures may be challenged before the Spanish Supreme Court when a direct appeal before the Court has been filed. However, precautionary measures can't be challenged in the cassation appeal.



**Co-funded by
the European Union**



Consiglio di Stato



Italian Presidency of ACA-Europe 2021-2023
Présidence italienne de l'ACA-Europe 2021-2023
Presidenza italiana dell' ACA-Europe 2021-2023

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

ANSWER: In the Spanish legal system, the Supreme Court can, in a cassation appeal, suspend the acts challenged before a Judge or Tribunal of a lower level.

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?

ANSWER: There are no statistics in the Spanish Supreme Court on that question



**Co-funded by
the European Union**