

Subject-Matter Competences of Administrative Courts of the European Union Countries: A Comparative View of Legislation and Judicial Practice

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Also defined as the authority of a specific institution, subject-matter competence is the right and duty to decide on specific matters. In administrative justice, the competence refers to the legal “ability” of administrative courts to exert jurisdiction over specific issues as defined by the provisions of specific laws that regulate the administrative courts. The evolution of administrative justices in some countries, important members of European Union such as Italy, Greece, and Germany has been determinant on specifying clear subject-matter competences of the respective administrative courts. On the contrary, there are countries like Albania with a relatively new legislation on administrative courts, mostly influenced from the above mentioned countries with a long tradition. The study aims to juxtapose the subject-matter competences provided in the respective organic laws of countries like Italy, Greece (in Greece the administrative jurisdiction has been provided since 1833), and Albania (in Albania the law On Organization and functioning of Administrative Courts is from 2012) while analysing the judicial practices provided from administrative courts of these countries. This article aims to serve to the growing trend of the establishment of specialized courts in many countries or corresponding sections that will arrange the judicial review of administrative acts within ordinary courts. The countries working on the establishment of administrative courts while providing new administrative procedural rules, usually encounter difficulties on the interpretation and implementation of new legislation. This transitory state does not favour citizens who are the most affected group in the rule of law. Based on the achieved results, the article will present appropriate recommendations from the methodology of comparison and analysis of administrative courts’ subject-matter competences of above mentioned countries.

Keywords: administrative justice; subject-matter competences; administrative court; judicial practice.

*If we desire respect for the law, we
must first make the law respectable*
Louis D. Brandeis

Introduction

Background and the Purpose of the Study

The establishment and consolidation of European Union compels any member state or state that aspires to join the European Union to embrace the function and

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organizational knowledge of other countries. This prerequisite originates from the underlying concept of the rule of law having different meanings for different states. According to the administrative justice, there are different state attitudes concerning the judgment of administrative disputes.

Some countries count on the administrative disputes as to semi consultative and semi judicial bodies called Council of State. Several other countries, which constitute the large majority, have aimed at special courts specialized in administrative cases. The purpose of this study is to compare these different systems while examining the administrative body function and the administrative courts in order to understand the different experiences these countries have. The focus of the paper, are the subject matter competences of different countries administrative courts such as Albania, Italy, Greece, and France.

The first issue to be argued in this paper is the importance of specialized courts, in particular the administrative courts. The second issue will present a clear view of administrative justice history in different countries, the administrative courts actual situation, the subject matter competences by evaluating the organic law, and some aspects of judicial practice related to the subject matter competences. Being aware of the changes, the assessment of administrative justice difference is an issue of relative worth, despite the significance of comparison, not a goal in itself, but a method to better understand the authenticity of each system. In conclusion, the paper's aim is to show some recommendations that might be taken into consideration by countries and their legislative bodies, especially expert drafting law, considering all the strengths and weaknesses of others experience, at the moment their country will decide to establish specialized courts instead of administrative bodies.

Research Questions

The main research question that has guided this paper is: How are administrative courts subject-matter competences treated in the European Union countries and the aspiring membership countries to join the European Union?

Related questions that were also examined are:

1. How are defined the administrative courts subject-matter competences in specific laws of these countries?
2. Does the judicial practice point out any problem concerning applicability of the laws?

Methodology

Regarding the paper, certain methods are used for its fulfillment. Firstly, the structure arrangement of main issues, positioning the division into the study of legislation in different countries, as well as common denominators treatment between the states, the administrative courts, in particular their subject competences treatment.

This paper deals with the comparative aspect of the Administrative Courts competences so the following methods have been the priority:

The method of analysis and comparison of legislation has been essential in the body function; assessing the attributed competences to administrative courts by law enforcement, organic law function and organization. The aim of the paper is the dissection of several laws such as: Law No. 49/2012 “On the Organization and Functioning of Administrative Courts and Judgment of Administrative Disputes” (as amended by Law No. 100/2014) in force in the Republic of Albania.

“Administrative procedures code” and the law no 2690 ratification of the administrative procedure and other provisions into the republic of Greece, 6 December 1971, No.1034, published in the Official Gazette 13 December 1974, no. 314. The comparative method in this paper assists the clarifying norms; their comparison pinpoints the differences between them, while the most efficient legislations generate examples and precedents for other countries.

The method of judicial practice analysis is mainly focused on Albanian and Italian practice, two states with distinctive and contrasting histories in the administrative justice evolution. The encountered difficulties through the implementation of concrete legal provisions are highlighted in the analysis of judicial practices. As a part of this paper, are selected the decisions of peculiar interest because of the issues they treat, ways of reasoning and legal interpretations.

The doctrinal research method has demonstrated an equal importance compared to the other methods of the paper. The literature selection has been extended to a considerable number of studies, manuals, foreign and domestic authors. The choice of literature involved the identification, collection and placement of publications of specialized bodies, concerning the interpretation of issues.

Findings and Results

The Importance of having Specialized Courts, in Particular that of Administrative Courts

Administrative law is part of public law, therefore is eventually related to the decisions of government institutions. The necessity of the administrative law is a by-product of the political, economic and social issues complexities that can turn into an object of conflicts between administrative bodies and citizens.¹

The judicial control requisite of administrative activity is drawn by the rule of law, principles directed by the subjective rights of citizens in protection against other people and public administration. Since the rule of law is acknowledged as the basis of state organization, the principle of separation of powers will result in

¹Dobjani (2008).

the judicial power while not extending its influence over administrative activity, which would interfere in the reserved area of executive power.²

Administrative courts are specialized courts that resolve issues concerning the exercise of public power. This is the classic definition of the justice system component organisms.

Administrative courts refer to state bodies established and authorized by law to review administrative law disputes between administrative authorities and private entities. These organs judicially review the lawfulness of an administrative act; suitability of the act or both. Many countries growing trends is to raise specialized courts which will deal with the judicial review of administrative acts. The encountered difficulties in the interpretation and implementation of new legislation do not favour private individuals seeking justice.

Their role is very important as they create opportunities to guarantee and ensure that officials are working in accordance with the law, in their daily duties. In these days, the debate does not focus on the existence or non-existence of administrative courts, but in terms of extending the scope and strength of trial review of courts administrative decisions. These days the administrative court debates are focused on the judge's role in these courts and the major decision-making power organization, to assist as much land, economy, business community and citizens.

The Administrative Court purpose is to guarantee the subjective rights protection and individuals' legitimate interest through a due process and within a reasonable and fast deadline. The specialized courts create the proper conditions for an effective review, establishing the rights violated by the administrative acts issued by public bodies. Equality is an important principle between public interest, on the one hand, and the subjective rights and legitimate interests of the person, on the other.

The aim is to strengthen the active role of administrative sector, within the administrative relationship, through public persons and bodies respecting the subjective rights of persons.

Efficient administrative courts also increase the transparency of administrative decisions while playing an important role in fighting the corruption. An important and interesting fact is the judicial control of public administrative actions by a well-functioning administrative judiciary; a stimulating force for the public administration modernization, improving the quality of its services and consequently raising the confidence of citizens for state institutions: Arguments in Favour of Specialized Courts are: judicial system efficiency, legal system efficiency, uniformity, expertise, improved case management, increased system flexibility³. In many countries, there has been controversial debate about the advantages and disadvantages of specialized administrative jurisdiction. In most of them the dualistic approach has won.

²Hoxha (2013).

³Zimmer (2009).

Administrative litigation always involves public interest and public welfare, the realization of which should not be dependent on the procedural skills of the parties. Thus, an inquisitorial procedure was necessary which in contrast to civil law authorized the judges to investigate the truth without being bound by the evidence presented by the litigants. In addition to that, in administrative law cases the plaintiff is most regularly a citizen who finds himself confronted with an especially powerful defendant - the state. This constellation required particular procedural provisions for the protection of the individual. Moreover, the founding fathers of the administrative jurisdiction noticed that in contrast to civil law litigation, the impact of rulings on the field of public law was often not limited to the case in question but could have far-reaching consequences for administrative action as such. Thus, experienced judges who could assess the effects of a ruling beyond the boundaries of the individual case were familiar with the functioning of the administration and knew the "tricks" which public authorities sometimes apply to conceal dubious acts. Finally, it was thought that the administration would accept the rulings of a specialized judiciary rather than the decisions of judges trained only in a general way. For all these reasons it is a fact that administrative jurisdiction is a revolutionary step.⁴

On the other hand, administrative justice plays a crucial role for the application of EU law.⁵

Most important developments are the Administrative Justice adaptation to meet the requirements of Art 6 ECHR⁶ and the EU *Acquits*. An administrative fact is that administrative courts seem to have judicial and executive powers. From a formal point of view administrative courts are part of the judicial branch, but their object of power and competencies closely connected to the executive branch. This special situation is reflected in the typical problems arising under it, for example the review in cases of administrative discretion or whether administrative courts may issue administrative acts in certain situations.⁷

⁴The Role of the Administrative Jurisdiction in Society and in the Development of the European Union Presentation by the President of the Federal Administrative Court in Helsinki on the occasion of the Finnish "Administrative Courts Day" on the 16th of November 2005

⁵Winkler (2007).

⁶Everyone has the right to be heard impartially, publicly and internally reasonable time by an independent and impartial tribunal, created by the law, which will decide how about disputes regarding his rights and obligations of the civil nature, as well as the merits of any criminal charge in its custody. The decision should be made publicly, but the presence in the courtroom may be prohibited press and public throughout the process or during a part of it, in the interests of morality, public order or national security in a democratic society when this is required from the interests of juveniles or the protection of the private life of the parties in the process or at the extent deemed necessary by the court when in special circumstances publicity would harm the interests of justice.

⁷Winkler (2007).

Administrative Courts in Albania, some Background Data, Subject Matter Competences and Functional Competences, some Aspects of Practice that have to do with the Subject Matter Competences⁸

1. The administrative courts were firstly introduced in Albania by law on 2012

To analyse administrative disputes, the legal reform aimed at reforming judicial procedures in terms of speed and quality through the establishment of an autonomous judicial system which specializes in administrative judges. In implementation of Law on Administrative Courts and in support of Decree no. 8349, dated 14.10.2013⁹ on November 4, 2013 started the administrative courts operation. As a consequence, the judicial practice needs to harmonize procedural acts in order to ensure a lasting jurisprudence. In accomplishing the procedural acts of the administrative adjudication, the litigants and the court should be inspired by the principles of administrative judgment sanctioned in Article 3 of Law on Administrative Courts.¹⁰ The principles related to the procedural acts of the trial process, especially the rapid trial aspect within reasonable time limits, as well as the principle of verbal adjudication and resolution of documents. Specifically, the principle of fair trial, known as the fundamental right of the individual¹¹ and Article 6 of the European Convent of Human Rights recounts to procedural acts in several respects, such as equality of arms, contradictions to the aspect of court decision reasoning. This principle requires that all courts at all levels take care of the proceedings they conduct to the Supreme Court. Similarly, a higher court can facilitate the lower court shortcomings, as well as the lower instance judge who is proceeding in a trial cannot act thinking that the highest court has the opportunity to correct his mistakes. The legal process is associated to the administrative judicial process with one main phase ‘Trial development within quick and reasonable deadlines’. The regular process particular aspect sets two tasks in the fulfilment of procedural acts: the deadline should be used effectively and must be handled in time. The use of deadlines should be reasonable regarding the nature of action required to be carried out in order to not harm the quality of justice, in particular, the right of the parties must be protected (the principle of legal certainty). The position of the parties in the trial against the deadlines is protected precisely from the other aspects of the due legal process.

2. Subject matter competence

The Administrative Courts in Albania, according the article 7 of Law No. 49/2012. “On Organization and Functioning of Administrative Courts and Judgment of Administrative Disputes” (amended by Law No. 100/2014) is competent to examine:

⁸Law No. 49/2012.

⁹Decree no. 8349 date 14.10.2013 of the President of the Republic “On the beginning of the functioning of the Administrative Court”,

¹⁰Law No. 49/2012.

¹¹Article 42 of the Constitution of Republic of Albania

- Disputes arising from individual administrative acts, normative by-laws and public administrative contracts issued during the exercise of administrative activity by the public body;
- Disputes arising from the unlawful interference or omission of a public body;
- Competency disagreements between different administrative bodies in cases provided by the Code of Administrative Procedures;
- Disagreements in the field of labour relations, when the employer is a body of public administration;
- The requests submitted by the administrative bodies in order to review administrative offenses, in which the law provides up to 30 days administrative punishment for the deprivation of liberty of the offender;
- Submitted requests of the administrative penalty replacement of up to 30 days of imprisonment with a fine.

3. Acts of Functional Competence¹²

Functional competence includes the right of a court in a vertical line, to review and make a valid decision on an issue submitted at the request of the subjects provided by law. In other words, functional competence divides the boundaries of issue's examination between the first and second instance administrative courts.¹³

According to point 1 of Article 10 of Law on Administrative Courts, the functional competence of first instance court to consider disputes over individual administrative acts and public administrative contracts, issued during the exercise of administrative activity by the public body; on the unlawful interference or inactivity of a public body, on the competence conflict between administrative bodies, on labour relations, when the employer is a public administration body, on administrative offenses, punishable by imprisonment of up to 30 days and on the replacement of administrative punishment imprisonment of up to 20 days fine. Disputes arising from normative acts are expressly excluded from the functional competence of the court of first instance.

The Administrative Court of Appeal has in its functional jurisdiction two sets of different types of cases. The first group includes appeals against decisions of the first instance court of law; in this case the function is a reviewer after adjudicating these cases in the second instance. The second group of cases comprises cases of initial jurisdiction of the Administrative Court of Appeals, including disagreements over normative acts and other cases provided by law. The latter also include a first instance trial of special requirements, which the law permits to surface at any stage of the trial (claims to challenge judicial jurisdiction).

¹²Article 10 Law No. 49/2012 "On Organization and Functioning of Administrative Courts and Judgment of Administrative Disputes" (amended by Law No. 100/2014) in force in the Republic of Albania.

¹³Manual on Procedural Acts for Administrative Trials, OSCE Presence in Albania Dea Print ISBN: 978-92-9235-263-9

In terms of the process validity, functional competence presents the same importance as the subject matter competence. Therefore, the procedural acts configured in the case of functional competence discussion follow the same legal regime, the time of drafting and legal power. These acts are the same as those of subject competence:

1. The request of the parties to challenge the functional competence;
 2. Judicial decision on functional competence;
 3. The parties' request of the dispute establishment on functional competence;
 4. A court decision to proceed with the dispute over functional competence.
- Consequently, the given explanations of subject matter acts are valid also in this case.

4. Case Study

The administrative courts competence in Albania is to solve disputes arising from individual administrative acts, normative by-laws and public acts. Administrative contracts issued during the exercise of administrative activity by the public body; several specific laws excluded from jurisdiction the Administrative Court.

The case study examines the Property Treaty Law, Law no. 133/2015 which regulates a sensitive area of Albanian society.

Referring to the provisions of Law no. 133/2015, despite the Property Treatment Agency (a public body) decisions issued by an administrative body are considered acts and as such should be judged by the First Instance Administrative Court; only the Civil Court of Appeal, the court with competences to review litigations concerning the right of property, has the right to appeal against agencies quasi-judicial decisions.

In principle, the appeal of PTA's decisions to the Court of Appeal may enable the extensive procedure of property's right to recognition as one of the main objectives of Law no. 133/2015, which several issues concerning the right to appeal against ATP's non-foundation decisions, are causing a conflict of competences between the courts, still unsolved today by the judicial practice of judiciary highest instances. It's worth to mention that civil and administrative courts' non-competence decisions to review non-core PTA (Property Treatment Agency) decisions are the by-product of factual erroneous assessment which generates a harmful practice of PTA trials regular development, as well as the economic judgment all together. The unification of judicial practice through a unifying court decision will ensure a fair balance of power between the administrative judiciary and the civilian judiciary, to avoid continuing similar cases of substantive incompetence between administrative and civil courts.

Administrative Courts in Greece: Some Background Data, Subject Matter Competences and Functional Competences

1. As part of civil law countries Greece has established specialized administrative courts. The establishment of administrative courts has originated from the Constitution of the Hellenic Republic, as defined in article 94:

- The administrative hearing of substantive disputes belongs to the jurisdiction of existing ordinary administrative courts. Not within the jurisdiction of the court, such disputes must compulsorily be subjected to this jurisdiction within five years from the date this Constitution shall enter into force; this time-limit may be extended by law.
- Until the remaining substantive administrative disputes come under the jurisdiction of ordinary administrative courts, either as a whole or by category, they shall continue to fall under the jurisdiction of civil courts, with the exception of those for which special administrative courts have been established under special statutes; these courts shall adhere to the provisions of paragraphs 2 to 4 of article 93.
- Specific laws may assign other competences of an administrative nature to the administrative courts.
- Only the ordinary taxation courts established by virtue of legislative decree 3845/1958 are considered as ordinary administrative courts.

2. There is a distinction between the administrative jurisdictions on one hand and the civil and penal jurisdictions on the other hand (art. 93 par. 1 of the Constitution).

Administrative courts are composed from district Courts of First Instance, district Courts of Appeal and a Supreme Administrative Court (called Council of State).

The primary administrative courts (first instance) are the One- and the Three-Member Administrative Court. The secondary administrative courts (Courts of Appeal) are the Three- and Five-Member Administrative Appeals Court.

The Supreme Administrative Court is the Council of State. The Council of State shall assume no judicial responsibilities as an administrative court in 1929. Various administrative courts were subsequently generated, such as the fiscal courts in 1958, with jurisdiction over certain administrative proceedings. The regular administrative courts were established in 1977, with broad administrative power of substance. Administrative Courts include the Court of Auditors, as a special Supreme Administrative Court.

The third Supreme Court, the Controller and Auditor General has competency, without appeal, regarding certain specific administrative disputes (listed in art. 98 of the Constitution). Conflict of Authority is settled by a Special Superior Court (art. 100 of the Constitution)¹⁴.

¹⁴Androulakis (2017).

3. Subject matter and functional competences

The Administrative Courts in Greece are competent for disputes arising from:

- Municipal and Community tax
- mines and quarries,
- signs,
- The validity of municipal and community elections; administrative instruments elections of public entities,
- The liability of the government, the local government and public entities for compensation,
- Any type of staff remunerations in government agencies and local public entities in general,
- Administrative contracts,
- Public revenue collection,
- The granting and revoking of licenses for establishment, operation and sanctions during the operation of catering stores and workshops, and the temporary closure of the stores, offices, factories, workshops and in general professional facilities of traders, the issue of permits for the installation and operation of service stations, garages, car washes - car lubricating facilities and administrative sanctions for violation of the relevant laws.
- Legislation Implementation on granting, revocation or withdrawal of vehicle circulation licenses; related sanctions enforcement, including those imposed by the Highway Code,
- The determination of the operating conditions of public use vehicles (buses, trucks, passenger ships, tankers and others), the change of their seat, and any other relevant change,
- the imposition of disciplinary sanctions on members of professional associations that operate as public entities,
- the imposition of administrative sanctions on violation of the rules and regulations of labour law and the legislation on health and safety at work,
- The breach of law on tourism enterprises,
- The breach of law on consumer protection,
- The refusal to grant certificates or proofs of being debt-free toward State or social security for any reason,
- Tax offences, or being a debtor to the State for any reason, the refusal to certify tax books and records, due to the non-payment of outstanding and due debt,
- Actions issued based on Community and national provisions concerning the payment of the Community aid provided for by the above provisions, subsidies and other cash benefits or the imposition of any relevant measure or sanction,
- Deeds for the concession of public spaces to the store operators for serving their operation, the permit issue for outdoor trade and public markets,
- The objections of third country residents to the decisions governing their stay in Greece,

- The recognition, assignment or award of any right or privilege, or any other benefit under the legislation on social security,
- Disputes pertaining to the insurance coverage and any kind of benefits for the disabled, war victims, national resistance fighters, earthquake victims and victims of natural disasters,
- The admission and general situation of productive graduates, future employees and changes in the reverse officers status,
- Staff promotion,
- The professor's general conditions of service; fellows of higher education, the implementation of educational legislation for university students, scholars and postgraduate students,
- The revocation of urban planning expropriations, the revocation of urban planning restrictions, the regulation, ratification and discounting of property compensation, the designation of buildings or structures as illegal constructions and their exemption from demolition, the issuing of building permits and permits for cutting trees, the connection of buildings with all kinds of networks.
- The issuing of permits for outdoor advertising, signs and the removal of illegal outdoor advertisements, signs and the imposition of fines,
- The fines imposed by the Greek Independent Authorities for any reason, in particular by the Securities and Exchange Commission, the National Broadcasting

The Council of State is competent at first and last instance for disputes arising from:

- Annulment of enforceable administrative acts application by someone who has a lawful interest that might terminate the act or reject the annulment application. Mainly, cases concerning the protection of the natural environment, forests and woodlands, waters, flora and wildlife; the protection of the cultural environment, antiquities and archaeological sites, monuments, listed buildings and traditional settlements, mines and quarries, the sea and beaches, zoning issues as well as issues on the approval; amendment and extension of city plans, general urban plans and planning studies; the imposition of conditions and restrictions for construction, the determination of active urban planning zones and urban land re-allotment, zones receiving special support and providing special incentives and residential control zones, other than those concerning building permits and deeds for the designation of constructions as illegal; issues relating to the establishment and operation of industries, factories and hotels in general and engineering facilities; the organization and functioning of the administration, legal persons under public law, the local government and higher education establishments.
- The recourse of civil, military, municipal, etc. officials against decisions of Official Councils on their promotion, dismissal, demotion, etc.
- The Council of State requests, at second instance: Appeals against final decisions of the Administrative Appeals Court, issued as defined in Article

1 of Law 702/1977, in the event of an application for annulment or opposition.

The CS demands, while functioning as a Supreme Administrative Court, appeals against regular courts administrative decisions, in which a citizen exercises their right to recourse against an administrative act.

Administrative Justice in France, some Background Data, Subject Matter Competences of Administrative Courts

1. In general, France has practiced the centralization, while Napoleon the energetic centralization. The will to have a powerful state was based on France Unification Principal, as well as the necessity of a uniform administration throughout the territory.

During the restoration of the monarchy, the setting up of decentralization had initiated on a small-scale. As viewed from the Third Republic, the laws of 1873's confer an important power to the General Council, also a permanent representation of the prefect. The latter remains in power until 1982, as the head of central administration and as the executive of local district authority (which is divided by the state). The municipal council was given the right to make crucial decisions and to elect the commune executive within it. However, for municipalities and districts, the state through the prefect or sub-prefect, continued to exercise harsh control on every decision carried out by the elected body; this control held the name of tutees. The local authorities were considered as minority on which a tutee was exercised, like the one with the children.

By not facing difficulties in the 19th century, the authoritarian system was doing quite well. At this period of time, the French public administration was considered to be the best. Step by step, it could be viewed an enhancement of the level of life and the democratization of society.

2. The Council of France: Even today, the Council of State is legally an administrative body, part of the executive process. Firstly, its members are not recruited as judges as they are appointed by the President of the Republic or the Prime Minister by the pupils (so they call it), the National School of Administration (and not the National School of Magistrates), or discretely by external personalities (less than one third).

Secondly, the Council of State members do not hold the judge's position; consequently they do not enjoy the judge's guarantees, whether they are in ministerial cabinets, administration or in private companies (also an issue of the French administration called "pantouflage").

Thirdly, a part of the Council of State members have the opportunity have a sense of graduation (especially the French administration's idea of grades) being part of a trial and advisory formation involved in the law preparation and other government acts or give its opinion on draft declarations and any other draft text prepared by the government (Article L.112-1 of the Code of Administrative Justice)

Otherwise the Administrative Courts, part of the Council of State authority, have a closer organization compared to the other conventional courts. The members hold the status, the capacity to judge and have the opportunity to be free, given by the law (articles L.231-1 until L.236-3 of the code of administrative law) although a part is still recruited among the students of National School of Administration. Their functions are almost exclusively judicial; the advisory ones are much reduced.

France in accordance with practice sustained in a series of notable decisions, arising in connection with the operation of a public service are withdrawn from the cognizance of the ordinary courts and subjected to the exclusive jurisdiction of the so-called administrative courts (jurisdictions administrative), composed of officers belonging to the administrative organization. Nevertheless it is hard to find a country in which the individual is offered more protection than in France, against the arbitrary administrative action. Consequently the liberality of the Council of State admits complaints against *ultra vires* acts and the extent to which it insists on the importance of juristic person responsibility of the public law, the individual enjoys, in France, a higher degree of protection against illegal, improper or imprudent acts of the administration, and even against injury which he may suffer as a consequence of the public service normal operation. The foregoing statements may seem paradoxical, to foreigners, particularly Anglo-Saxons, inclined to assume that the individual can be protected only by being granted substantial competence against the administration; as well as a strong organization of the ordinary courts of justice. The French system is the product of a peculiar and rather complex development, determined by the action of various factors. I am indebted to the editors of this Quarterly for the opportunity to sketch the main lines of this development and to indicate the protection afforded to individuals by the French administrative court.

Administrative Justice in Italy

1. The Italian system was established only with the Italian unification, that is, with the newly created kingdom of Italy in 1861.

The French system had a major impact in the Italian Kingdom not only for the prestige enjoyed at that time, also because of the strong relations of the royal residence of Savoy with France. Since the newly created Italian Kingdom (which existed until 1947) a highly centralized administration system was implemented according to the French model. It was in its process to become a unitary state with a unique legislation, a common administrative organization, and a strong central government represented in the province by the prefect. To achieve this goal, on March 20, 1865, five major laws were passed, respectively on municipalities and provinces, on public safety, public health, state council, administrative disputes, and public affairs. From the late 19th century has initiated the structural change of the administration that made a positive contribution to economic growth. There were more than mere boosters, state economic development agencies and economic society (the creation of large public companies in the rail sector, the

telephone, etc.). Moreover, in the province, the prefect lost much of its importance and power (which it was never that great as that of France); in particular, he lost the authority of state services which were not under the power of Ministry of Order. On the other hand, municipalities developed their own economic and social areas. The two wars and fascist ideology contributed to the development of this increasingly dispersed and less uniform administration, as well as to a more and less protected state administration. Step by step, the Italian state transitioned from the bourgeois to the providential state; recalling the Italian terminology signifies it progressed from the mono-class to the plural state. The Republic was proclaimed in 1848, leading to the first changes, which established the principle of creating autonomous circles. However the major transformations, such as in France have happened only later, as there have been many difficulties in the aftermath of war and the connection of citizens with traditional solutions. Since the middle of 1970's initiated the advancement of administrative system. On the one hand, it can be noticed the strengthening of territorial decentralization movement. Italy established regionalism, which failed to keep its promises due to the tradition of centralization but continued to be a priority of Italian evolution, as demonstrated by ongoing reforms, such as those of 1990 and 2001, which transformed Italy almost to a federal state.

2. Italian Council State

The state council is an advisory body to the government and a joint appeal court for all Italy. It is regulated mainly by law no. 186 of 27 April 1982. It consists of about 100 members, one chairman and 18 section chairmen (3 per section)

After the approval of Presidency of Council administrative law one fourth of the members are appointed in a discrete way by the government. One-fourth is appointed by competition, the middle depending on their seniority and the merit among the councillors of the regional administrative Court. The state Council is divided in three advisory and judicial sections. Law no. 127/1997 has created another advisory section.

On cases related to Sicily it exist a special appeal administrative court. The Council of administrative courts for the region of Sicily is the body equipped with advisory and judicial functions. The regional administrative courts are established by the law no. 1034, on 6December 1971, and are organized by the law no. 205 of 21 July 2000. There are twenty or only one per region. For any case there are the first instance administrate judges.

The independence of administrative magistrate is guaranteed by the Council of Presidency of administrative law, created by law no. 186/1982 (as amended by law no. 205/2000). This body is composed of: President of the Council of State, in charge with the day-to-day management of the Council, four professor or lawyers who shall have more than twenty years' experience and must be elected by the MP chamber, four state councillors elected by their colleagues and six councillors of the regional administrative courts, also elected by their colleagues. This Council is equipped with very important competencies. Firstly, the management of funds for the function of different administrative courts ensures a financial autonomy of

these courts. Secondly, the decision of court organization and the career management of the administrative magistrates while carrying out their disciplinary acts. This institution is the logical consequence of the fact that in Italy administrative courts are part of the judicial power and not of executive power administrate.

3. Establishment and expertise of regional administrative courts.

Regional administrative courts are established, such as organs of administrative justice at first instance. Their regional constituencies include the provinces which belong to the individual regions. They are based in the regional capitals. In the regions of Lombardy, Emilia-Romagna, Lazio, Abruzzi, Campania, Puglia, Calabria and Sicily, are established separate sections, whose offices and circumscriptions will be established in the regulations that implement this law as defined in article 52. A special section is also established in the Trentino-Alto Adige region, based in Bolzano and regulated by another law. The regional administrative court of Lazio, besides a detached section, has three sections based in Rome:

I. The regional administrative court decides:¹⁵

- a) On the assigned appeals by articles 1 and 4 of the consolidated text approved by royal decree 26 June 1924, n. 1058, as amended, to the provincial government administration in the courts;
- b) On appeals for lack of competence, for power excess or for law violations against issued acts and measures:

II. From the peripheral organs of the State and the ultra-regional public bodies, established in the circumscription of the regional administrative court;

- a) By non-territorial public bodies based in the regional administrative court district within the same limits their activity is being exercised;
- b) By the local public bodies included in the district of the regional administrative court.

4. Appeals for incompetence, excess of power or law violation against acts and measures issued by the central organs of the State and public bodies of an ultra-regional character are devolved to the jurisdiction of the regional administrative courts.

For acts of ultra-regional public bodies issued by central state organs, whose effectiveness is territorially limited to the regional administrative court district; and for those relating to public employees in service, at the date the deed was issued, in offices based in the regional administrative court district, the competence is of the same regional administrative court.

In other cases, the jurisdiction for the state acts belongs to regional administrative court with headquarters in Rome; for acts of public bodies of an ultra-regional nature, it belongs to the regional administrative court in whose constituency the institution is based.

¹⁵Law of 6 December 1971, n. 1034 Establishment of regional administrative tribunals /

The regional administrative court is competent to decide on appeals concerning dispute operations for municipal, provincial and regional council elections. With the decision of the appeals, the regional administrative court exercises the powers and adopts the provisions of article 84 of the consolidated text approved by decree of the President of the Republic 16 May 1960, n. 570, modified by the law of 23 December 1966, n. 1147. The norms of the article 7 as defined by the law number 23 remain reserved for the popular actions and the appeals allowed to the voters.

Conclusions and Recommendations

The legislation analysis of some countries, with highly developed administrative justice, leads to some examples of other countries aiming to create specialized administrative courts:

- The administrative courts competences must be precisely defined at each level;
- A clear overview list of organic law competences;
- At the hierarchical level the Supreme Courts with competence control on other courts should be specialized in administrative justice. This division guarantees efficiency of justice and respect of the human rights.
- Administrative Courts must be completely independent, belonging only to the judicial system rather than being part of the executive system. The principle of Separation of Power must be respected so that the justice being served is intact.

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