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ІТАЛІЙСЬКИЙ ДОСВІД ФУНКЦІОНУВАННЯ АДМІНІСТРАТИВНОЇ ЮСТИЦІЇ

Анотація. *Розвиток адміністративного судочинства України зумовлює пошук оптимальних шляхів для удосконалення системи. Кожна країна має свою стратегію функціонування адміністративної юстиції, що залежить від культурних, історичних, національних, інтеграційних процесів, а також поетапності становлення правової системи конкретної держави. Основна мета роботи полягає в аналізі італійського досвіду щодо функціонування адміністративної юстиції. Для досягнення поставленої мети використані різноманітні теоретичні методи. Метод правового прогнозування дозволив виявити напрями удосконалення адміністративної юстиції в Україні. У статті авторами наведено поняття та особливості функціонування адміністративної юстиції в Італії в питаннях захисту порушених прав, свобод та інтересів людини і громадянина рішеннями, діями та бездіяльністю суб'єктів владних повноважень, аналізується система та структура органів адміністративної юстиції Італії, їх спеціалізація, особливості розгляду деяких категорій публічно-правових спорів та розмежування юрисдикції адміністративних судів та загальних судів при вирішенні деяких категорій адміністративних справ, особливості їх розгляду в адміністративних судах Італії першої та апеляційної інстанції, повноваження Державної Ради Італії в частині вирішення публічно-правових спорів, а також повноваження квазісудових органів влади Італії, які виконують функції правосуддя в сфері адміністративної юстиції. Встановлено, що адміністративні суди Італії наділені повноваженнями оцінювати діяльність публічної адміністрації. Орієнтуючись на досвід інших країн, в тому числі Італії, можна зробити висновок, що якісно побудована система адміністративної юстиції може сприяти захисту прав громадян України, розвитку правової держави. Але важливо не лише орієнтуватися на зарубіжні країни, але й враховувати особливості правової системи України.*

Ключові слова: адміністративні суди, публічно-правові спори, публічний інтерес, адміністративний акт, суб'єкт владних повноважень, орган публічної адміністрації.

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ITALIAN EXPERIENCE OF THE ADMINISTRATIVE JUSTICE FUNCTIONING

Abstract. *The development of administrative legal proceedings in Ukraine determines the search for optimal ways to improve the system. Each country has its own strategy for the functioning of*

administrative justice, which depends on cultural, historical, national, integration processes, as well as the gradual formation of the legal system of a particular state. The main purpose of the study is to analyse the Italian experience of the administrative justice functioning. To achieve this goal, various theoretical methods are used. The method of legal forecasting allowed to identify areas for improvement of administrative justice in Ukraine. The author presents the concept and features of administrative justice operation in Italy in matters of protection of violated rights, freedoms and interests of individual and citizen by decisions, actions and omissions of the authorities; analyses the system and structure of administrative justice in Italy, its specialisation; features of some categories of public law disputes and delimitation of jurisdiction of administrative courts and general courts in resolving certain categories of administrative cases, features of their reading in administrative courts of Italy of first and appellate instance; powers of the Italian State Council in resolving public law disputes, and powers of quasi-judicial tribunals of Italy, which perform the functions of justice. It is revealed that the administrative courts of Italy are empowered with the rights to assess the activities of public administration. Based on the experience of other countries, including Italy, we can conclude that a well-built system of administrative justice can help protect the rights of Ukrainian citizens and the rule of law. But it is important not only to focus on foreign countries, but also to take into account the peculiarities of the legal system of Ukraine.

Keywords: administrative courts, public law disputes, public interest, administrative regulation, public authority, public administration body.

INTRODUCTION

The basic rights and freedoms of citizens were established in the constitutions of many Western European countries before the middle of 19th century. This was the most important achievement of legal thought at the time. One of the most important elements of the modern rule of law is the institution of judicial control over the subjects of power, as the nature of their public authority management functions in society has created the preconditions for such control by the judiciary. In modern EU countries, the institution of administrative justice has gone through quite complex and ambiguous stages of its establishment. As a result, each EU country has created its own institutions for the protection of citizens' rights, taking into account historical traditions and the needs of social development. Control over the activities of public administration is considered to be one of the most important elements of ensuring the rule of law, efficiency of public administration and justice in modern society. Of particular importance is the judicial protection of the rights, freedoms and interests of citizens from unlawful decisions, actions or omissions of the public authorities. In most EU countries, the task of protecting citizens from unlawful actions of the state and control over acts, actions or omissions of the public authorities (public administration) is entrusted to the administrative justice authorities. By interacting with citizens, bodies of authority may violate the rights, freedoms and interests of individuals by their decisions, actions or omissions. Under these circumstances, the administrative court is the mechanism of legal protection of the rights, freedoms and legitimate interests of citizens violated by the bodies of authority in all cases of power and authority abuse by the public bodies and their officials.

The study of the experience of the administrative justice of Italy is especially relevant for Ukraine, as it perform not only the function of judicial protection of the rights, freedoms and interests of citizens from wrongful decisions, actions or omissions of public

authorities, but directly have authority in the separation of powers, in particular, the administrative court of Italy participate in the development of draft regulations of the Government of Italy, the Parliament of Italy and the President of Italy, assist them in the exercise of their powers, perform coordinating functions, etc. The mechanisms of practical implementation of the principle of separation of powers with the direct participation of administrative court in Italy differ significantly from other EU countries, which have a classic model of administrative justice. The administrative court of Italy have passed a difficult historical path since their establishment, which preceded the creation of a united Italian state in the 19th century, and until their implementation in the system of government bodies established by the Republican Constitution of Italy in 1947.

The aim of the paper is to investigate the peculiarities of the functioning of administrative courts in Italy and resolve public law disputes in certain categories, which may be of considerable practical interest for domestic practice in the development and amendment of current legislation of Ukraine.

1. LITERATURE REVIEW

So, according to V. B. Averyanov, administrative justice is a system of judicial bodies (courts) that monitor compliance with the law in public administration by resolving in a separate procedural order of public disputes emerging in connection with appeals of individuals or legal entities to administrative authorities, local governments or their officials [1]. J.V. Lazur notes that administrative justice is a procedure for considering and resolving of public disputes arising in the field of administrative management between citizens or legal entities, on the one hand, and public authorities – on the other, carried out by judicial bodies specially created to resolve such disputes [2]. According to O. P. Ryabchenko, administrative proceedings are regulated by the rules of administrative law, the process of hearing by a special administrative court of a lawsuit in order to restore the violated rights and freedoms of participants in administrative relations, as well as to control the legality of acts and decisions of public authorities and local governments, as well as their officials [3].

O. Kuzmenko and T. Gurzhiy present their classification of views on the concept of "administrative justice". They point out that there are currently three main areas according to which it can be understood as [4]:

1) a special procedure for resolving administrative and legal disputes by courts and other authorised state bodies. Such position in the definition of "administrative justice" is shared, for example, by Yu. Shemshuchenko and V. Stefanyuk.

2) an independent branch of law, the purpose of which is to resolve disputes by courts between citizens and public authorities (administration) or between the governing bodies themselves (i.e. administrative proceedings). Such explanation of administrative justice is offered, for example, by G. Breban;

3) not only a special type of proceedings, but also a system of specialised courts or specialised litigation functions that carry out administrative proceedings.

V. R. Shchavinsky notes that administrative justice should be understood as a special procedure for resolving public law disputes through a system of administrative courts established to protect the rights, freedoms and interests of individuals, the rights and interests of legal entities in the field of public relations [5]. O. Sergeychuk characterises

administrative justice as a mandatory element of the system of external control over the legality of acts of public authorities and their officials in part of their acts or actions (omissions) that violate the statutory rights of individuals or legal entities provided by the system judicial authorities in the prescribed administrative procedure [6].

2. MATERIALS AND METHODS

To achieve this goal, general scientific approaches were used, the concepts and features of the administrative justice in Italy in the protection of violated rights, freedoms and interests of individuals and citizens by decisions, actions and omissions of the public authorities. The system and structure of the administrative court of Italy, its specialisation and features of hearing of some categories of public law disputes, etc. are analysed with the help of methods and ways of cognition of the object of research. To study this issue, it is necessary to use system analysis, the methodological basis of which is based on the dialectical method. The use of this method ensures a systematic approach to differentiation of the jurisdiction of administrative courts and general jurisdiction courts in resolving certain categories of administrative cases. The development of an effective theory for solving this is the task facing the doctrine of administrative law. In turn, the solution of this problem depends on the right goals and the right tools, which determine the complexity of the correctness of its description. Therefore, the analysis of the special aspects of the functioning of administrative justice in the administrative courts of Italy of the first and appellate instance, the powers of the State Council of Italy in resolving public disputes allows us to understand the relation between their components and their impact on the external environment. The comparative method was used to establish the contents of the powers of the quasi-judicial tribunals of Italy, which perform the functions of justice in the field of administrative justice. This made it possible to study the experience of the administrative court of Italy, which is especially relevant for modern realities of Ukraine. In addition, the comparative method was used not only to study the function of judicial protection of the rights, freedoms and interests of citizens from wrongful decisions, actions or omissions of the authorities, but also to substantiate that the Italian administrative court is involved in development of regulatory acts, and have direct authority in the system of separation of powers.

The use of the logical-dogmatic method together with the method of hermeneutics made it possible to determine the essence of administrative justice and some approaches to its functioning. Thanks to this approach, the scientific basis for the study of the legal basis of the organisation of administrative justice in Italy was determined. The outlined scientific visions are based on the principles of scientific unity of theory and practice, scientific objectivity, which includes the scientific results of the study, and does not make such results dependent on other subjective or objective approaches. Dominant, in the methodological sense, among all the above methods is the method of comparative law, which allowed to conduct research and compare the functioning of the administrative justice of Italy.

The method of legal forecasting provided an opportunity to identify possible areas for improving the functioning of administrative justice in Ukraine. With the help of the modelling method, proposals aimed at improving the functioning of Ukrainian legislation

in the functioning of justice were forecasted and developed. The comparative method allowed to conduct a comparative and analytical analysis of the norms of the Administrative Law of Italy and to conclude that it is necessary to introduce this institution in Ukraine. The method of analysis and synthesis helped to ensure the formation of basic concepts and categories of functioning of administrative justice. Consideration of the main approaches and various components should be based on system-structural, technological, functional and operational approaches, which are also the basis for creating the preconditions for the establishment of administrative justice operation. After all, the exercise of power and the implementation of the constitutional function of protecting the rights, freedoms and interests of citizens from wrongful decisions, actions or omissions of the state in the face of its public bodies is the main task of administrative justice.

Logical methods, in particular inductions, deductions, generalisations, etc. were the basis of the whole study. The use of the generalisation method allowed us to draw a general conclusion that the exercise of power and the constitutional function of protecting the rights, freedoms and interests of citizens from wrongful decisions, actions or omissions of the public authorities represented by its power entities is the main task of administrative justice, entrusted to the State Council of Italy, regional administrative tribunals and "quasi-judicial" authorities.

3. RESULTS AND DISCUSSION

3.1 Judicial system of Italy

The administrative courts in Italy as a tool to protect the rights, freedoms and interests of citizens from wrongful decisions, actions or omissions of public authorities and their officials appeared during the formation and development of administrative justice in Western Europe in early and second half of the 19th century. And in Italy, since the establishment of the State Council of the Kingdom of Sardinia in 1831, which later became the State Council of Italy. The administrative courts in Italy have gone through several stages of development, which allow us to speak about the significant role of Italy in the development of theoretical and practical approaches to the development of the institution of administrative justice. Currently, the institute of administrative justice in Italy is a well-developed system of legal and organisational norms and mechanisms designed to resolve public law disputes. Although the current Italian legislation does not contain a definition of administrative justice, this institution includes, in addition to administrative courts, a set of other governing institutions authorised by law to hear administrative cases to resolve various categories of public law disputes. Administrative courts play an important role in the system of governing institutions in Italy, as they are simultaneously at the junction of all three branches of government. First, they perform the functions of justice in administrative cases for appeals against acts of public administration under Italian law. Secondly, the State Council of Italy is an advisory body to the Government of Italy, which is the appellate court in appealing against decisions of the administrative court and within its advisory functions provides its opinion on the statutory list of bills and other regulations requiring its assessment as expert body in the field of law. Third, the Italian State Council participates in the exercise of legislative power, as it assists the Government in law-drafting activities.

Italian administrative justice has all the basic general features of administrative justice, but in structural terms it is carried out by established administrative and courts of general jurisdiction, individual statutory subjects of power, which will be discussed below. Such system has also been established in other European countries: France, Spain, Portugal. In addition, there are mixed forms where the functions of administrative justice are performed by both courts of general jurisdiction and special administrative courts (UK, Switzerland, Belgium). The Italian judicial system includes the Italian Constitutional Court, general and special courts, which include administrative courts. According to Article 102 of the Italian Constitution, justice is administered by courts of general jurisdiction, the activities of which are governed by the Judiciary Act; no new emergency or special courts may be established. Therefore, the administration of justice is entrusted exclusively to courts of general jurisdiction and special courts. The status of courts of general jurisdiction is established directly by the Constitution of Italy[1] and the Law "On the Judiciary" of January 30, 1941 No. 12[2]. Courts of general jurisdiction hear criminal and civil cases. The system of courts of general jurisdiction includes magistracy, tribunals, courts of appeal and cassation, juvenile courts, and supervisory courts. The system of general courts is headed by the Italian Court of Cassation (Corte di Cassazione), which is the highest court in civil and criminal cases and hears disputes over jurisdiction between general courts and administrative courts. A feature of the Italian judicial system is that public law disputes concerning appeals against acts, actions or omissions of public administration can be heard, depending on a certain category, by both administrative courts and general courts. The essence of the division of justice into general and administrative in public law disputes involving public administration is the specifics of the Italian legal system, and, above all, the existence of such concepts as legitimate interest (interesse legittimo) and subjective right (diritto soggettivo).

The distinction between the jurisdiction of general courts and administrative courts in appealing against acts, actions or omissions of the public administration is based on the division of public law disputes affecting subjective rights and legitimate interests. Italian administrative courts, including administrative courts, hear cases involving public disputes affecting the legitimate interests of individuals, and general courts deal with their subjective rights. Moreover, in certain cases defined by Italian law, the jurisdiction of administrative courts extends to disputes involving public administration, affecting the subjective rights of citizens (the so-called "exclusive jurisdiction"). At the same time, general jurisdiction court and administrative courts are endowed with different competence in hearing cases of appeal against acts of public administration. Courts of general jurisdiction may terminate acts of public administration bodies due to their inconsistency with the law. Administrative courts have the right to cancel and change them, extending the effect of previously adopted regulations to the legal relationship heard during the trial.

If it is impossible to determine the jurisdiction of a particular case of general courts or administrative courts, such jurisdiction is determined by the Court of Cassation of Italy. The existence of subjective rights and legitimate interests in Italy has historical roots, as

[1] Constitution of Italy. (1947, December). Retrieved from https://legalns.com/download/books/cons/italy.pdf.

[2] Italian Law No. 12 "On the Judiciary". (1941, January). Retrieved from https://rm.coe.int/168070098d.

the Law on Administrative Disputes of March 20, 1865 No. 2248[1] introduced the division of powers between the judiciary and the executive branches, when courts of general jurisdiction were empowered to hear disputes, related to the protection of civil and political rights, and public authorities were empowered to hear all other categories of administrative cases. The Constitution of Italy[2] mentions subjective rights and legitimate interests in three articles at once (Articles 24, 103 and 113), but does not define them or indicate the difference between them. Thus, in Italy, the legal doctrine has identified the differences between subjective law and legitimate interest, and law enforcement practice has attributed the specific circumstances of the case to a particular concept [7]. Subjective right belonging to an individual is absolute and subject to protection regardless of any factors. Subjective right is directly provided and protected by law, in respect of which all other subjects must adhere to the established behaviour [8]. The rights that are subject to absolute protection under Italian law include the right to life, the right to property, etc. The legitimate interest in Italy is not subject to absolute protection, it is the pursuit of some good and its implementation depends on another interest, the bearer of which is the public administration. The legitimate interest implies the obligation of the public body to act in accordance with the rules established by law and a person's right to demand compliance with it [9-11].

In the Italian legal literature, the following examples of legitimate interests are often cited. A citizen who participates in a public competition for a position in a public body has a legitimate interest. Interest in this case is the pursuit of good, which is a vacant position in this public body. The benefit in the form of a position is available to the public administration, and its transfer to the citizen depends on his professional qualities, level of training and other criteria on the basis of which the public administration makes a choice in favour of a particular candidate. The citizen, therefore, has not a subjective right, but a legitimate interest, which is at the disposal of the public administration [12]. Another example is Article 42 of the Constitution of Italy[3] which gives the public administration the right to forcibly confiscate privately owned objects in the public interest on condition of the payment of compensation (in particular, for the purpose of constructing certain objects for public use). The legislation in this case establishes the priority of public interests over the right of private property. In these circumstances, the legitimate interest of the owner, in respect of which the public administration has decided to forcibly seize the privately owned property, is for the expropriation procedure to take place in accordance with the law and for the public administration to fairly assess the property and pay compensation. In all other cases, the citizen's right to private property (for example, in relations with other citizens) is absolute, i.e. subjective right. Italian lawyers schematically reflect the subject of the differences between legitimate interests and subjective rights in terms of the level and form of legal protection. According to the level of protection, the subjective right is always protected, immediately and completely regardless of the behaviour of other subjects, and the protection of the legitimate interest is not carried out

[1] Italian Law No 2248 "On Administrative Disputes". (1865, March). Retrieved from http://www.aca-europe.eu/en/eurtour/i/countries/italy/italy_en.pdf.

[2] Constitution of Italy. (1947, December). Retrieved from https://legalns.com/download/books/cons/italy.pdf.

[3] *Ibidem*, 1947.

immediately and not in full, but in connection with the implementation of public interest by subjects of power that perform functions of public authority management [8]. The form of protection also differs. Subjective right is subject to protection by the enforcement or judicial authorities of compensatory or rehabilitative measures. The legitimate interest provides for the possibility of broader protection, which allows for the possibility of revoking a wrongful act, as well as obtaining compensation regarding the illegal actions of public administration bodies and their officials [8].

The possibility of obtaining compensation regarding the adoption of illegal acts by a public authority was provided for by Italian law relatively recently – after the adoption of the law "Regulations on Administrative Justice" of July 21, 2000 No. 205[1]. This law added to the jurisdiction of the administrative judiciary the power to hear all public disputes concerning damages caused by decisions, actions or omissions of the public administration, while previously all matters of damages were heard exclusively by general jurisdiction courts. An important characteristic of the Italian judicial system is that it distinguishes between proceedings in general courts and administrative courts according to the criteria of "jurisdiction over monitoring of legality" and "material jurisdiction". The difference is that the court, endowed with "jurisdiction over monitoring of legality", has the right to hear the case only from the standpoint of application of a rule of law within the circumstances of the case. "Material jurisdiction" provides an opportunity not only to assess the actions of the parties in the case in terms of compliance with the law, but also to assess the feasibility of such actions. The administrative courts of Italy, which are endowed with "substantive jurisdiction", in considering public law disputes between individuals and public administration have the right to decide on the case based on the expediency of the public administration in adopting the contested act in certain circumstances, while the courts of general jurisdictions do not have the right to go beyond the jurisdiction to verify legality when making a decision. And only the Italian Court of Cassation, which hears the case as a last resort, is endowed with "substantive jurisdiction" and has the right to be guided in its decision by the principle of the expediency of the parties' actions.

3.2 The system of administrative courts in Italy

The system of administrative justice includes both judicial and "quasi-judicial" authorities. The judicial bodies of administrative justice of Italy include: 1) regional administrative tribunals; 2) The State Council of Italy (heads the system of administrative justice); 3) Council of Administrative Justice of Sicily. The "quasi-judicial" bodies of administrative justice in Italy are the Accounting Chamber, which has certain powers to hear public disputes in its field; provincial and regional tax commissions, which consider cases of taxpayers to appeal the decisions of tax authorities; patent litigation commissions; public water tribunals; regional commissioners for the liquidation of public facilities. For example, provincial tax commissions hear cases as a first instance, which can be reviewed by regional tax commissions. Decisions of tax commissions can be appealed in cassation to the Court of Cassation of Italy.

The system of judicial bodies of administrative justice includes the Court of

[1]Italian Law No 205 "Regulations on Administrative Justice". (2000, July). Retrieved from https://eu-ua.org/sites/default/files/inline/files/review-of-the-case-law-of-the-eu-court-of-justice-fields-covered-by-the-association-agreement-2018.1.1.eng.pdf

Cassation of Italy. Although the Court of Cassation heads the system of general jurisdiction courts, it has the right to set aside decisions of administrative courts on the grounds that the administrative court has no jurisdiction regarding the decision in the case. The system of administrative courts also includes the Presidium of Administrative Justice, a coordinating body of judicial self-government that takes care of the status of judges of administrative courts. In this paper special attention will be paid to the analysis of the peculiarities of the functioning of administrative courts. Italy has a two-tier system of administrative courts. The regional administrative tribunals are the courts of first instance, and the Italian State Council is the body that hears appeals against decisions of the regional administrative tribunals, which will be discussed below. In total, in Italy, twenty regional administrative tribunals, the jurisdiction of each of them extends to the respective region, provinces and communes within the structure of the region. The tribunals are located in the administrative centres of the regions. In nine regions, departments have been established outside the administrative centres of the region, which allow to consider cases in other largest cities of the region as well. In addition, in the administrative centre of each region several departments can operate at once, for example, in the administrative centre of Lazio – the city of Rome – there are three departments. Despite the existence of several departments within one regional administrative tribunal, the structure of tribunals remains the same. All divisions of regional administrative tribunals have equal powers, and cases are referred to them on the basis of an internal distribution, which is carried out by the chairman of each tribunal. Each tribunal must have at least five judges in addition to the chairman. Of all the regional administrative tribunals, only the Trentino-Alto Adige Tribunal has a special status. An autonomous division was established in Bolzano within the framework of this tribunal. The peculiarity of this department is that it hears all cases of appeals against acts of public administration related to the violation of the principle of equality of ethnolinguistic groups in the region – Italian and German. In addition, there is a special procedure for selecting judges for this autonomous department – it must be staffed by judges who speak both Italian and German, are attached to the autonomous department of the city of Bolzano for the entire term of office and cannot be later transferred to other tribunals.

The status of the State Council of Italy is that this body is not only the highest court in the field of administrative justice, an advisory body to the Government of Italy, but also a body that assists the President in out-of-court appeals against public administration. The exercise of judicial and extrajudicial functions by the Italian State Council is reflected directly in the structure of this authority. It has three judicial and three advisory departments. Each advisory department have two heads of the department and at least nine judges, who shall be called counsellors of state in the exercise of their powers in the State Council, and each judicial department shall have two heads and at least twelve counsellors of state. Councillors of the State Council and judges of regional administrative tribunals belong to a single system of judges of administrative justice, in which counsellors of state are the most authoritative judges with appropriate qualifications and long experience in administrative justice. The status of administrative judges, their appointment, rights and responsibilities are established by the law "On the structure of administrative jurisdiction and staff of the Chancellery and subsidiary bodies of the State Council and regional

administrative tribunals" of April 27, 1982 No.186[1], which establishes an exhaustive list of administrative judges have the right to participate in the administration of justice in appealing against acts of public administrations: 1) the Chairman of the State Council; 2) heads of departments of the State Council, heads of regional administrative tribunals; 3) counsellors of state; 4) advisers of regional administrative tribunals, first referents, referents.

The Judicial Bodies of Administrative Justice also include the Council of Administrative Justice of the Region of Sicily. The existence of this body is mainly due to historical reasons. The Statute of the Region of Sicily, approved by Legislative Decree of May 15, 1946 No. 455, was adopted a year before the Constitution of Italy[2], Article 23 of which provides that the central judicial authorities of the state must have their own special departments in the regions to address regional issues. The statute established the Council of Administrative Justice of the Region of Sicily. After the entry into force of the Italian Constitution in 1947, national and regional legislators decided not to abolish the Council, but to preserve it and subsequently adapt it to the provisions of the Constitution of Italy.

Today, the Council of Administrative Justice of the Region of Sicily performs advisory and judicial functions similar to the State Council. As an advisory body to the Government of the Region of Sicily, the Council provides its opinion on the draft regulations of the Government of the region. As a judicial body, the Council is a court of appeal regarding review of the decision of the Regional Administrative Tribunal of the Region of Sicily. Also, the Council of Administrative Justice has the right to send the case to the State Council only in cases where there is a possibility of disagreement between the judicial authorities of Sicily and the previously formed legal position of the State Council, which may deviate from the previously adopted legal position. Italian doctrine and jurisprudence treat the Council in two ways. On the one hand, it is perceived as a division of the State Council, located outside the location of its other branches – the city of Rome – but, on the other hand, it is an independent judiciary for the reason that judges of the State Council are appointed. Council of Administrative Justice of Sicily, removed from the State Council of Italy [13]. A special place in the system of administrative justice is occupied by the Presidium of Administrative Justice, whose status is established by the Law "On the structure of administrative jurisdiction and staff of the office and subsidiary bodies of the State Council and regional administrative tribunals"[3] and is the coordinating body of the entire administrative justice system in Italy. The Presidium of Administrative Justice coordinates the activities of the State Council of Italy and the regional administrative tribunals. The status of the Presidium of Administrative Justice is similar to the status of the High Council of Magistracy, enshrined in Articles 104 and 105 of the Constitution of Italy. In particular, the High Council of Magistracy considers issues related to the appointment of judges to positions in general jurisdiction courts, their transfer and

[1] Italian Law No 186 "On the structure of administrative jurisdiction and staff of the office and subsidiary bodies of the Council of State and regional administrative tribunals" of 27 April 1982. Retrieved from https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/STATEFILES/ITA.htm.

[2] Constitution of Italy. (1947, December). Retrieved from https://legalns.com/download/books/cons/italy.pdf.

[3] Italian Law No 186 "On the structure of administrative jurisdiction and staff of the office and subsidiary bodies of the Council of State and regional administrative tribunals", op. cit.

promotion, as well as the disciplinary liability of judges of general jurisdiction courts. The Presidium of Administrative Justice exercises similar powers to the High Council of Magistracy, but in relation to judges of administrative courts of Italy.

Among the wide range of functions of the Presidium of Administrative Justice are the development and adoption of proposals to improve the work of the State Council of Italy and regional administrative tribunals, inspection of offices and subsidiary bodies of administrative courts, consideration of dismissal of administrative court judges. The Presidium of Administrative Justice consists of the Chairman and six members of the Italian State Council, eight judges of regional administrative tribunals and four Italian citizens appointed by both chambers of the Italian Parliament: two members appointed by the Chamber of Deputies and two by the Senate. These citizens must belong to the university faculty and hold the positions of professors in the field of law or must be lawyers with twenty years of experience.

3.3 Jurisdiction of the administrative courts of Italy

Depending on the specifics of its own legal system, each state gives the courts a certain competence to hear cases in terms of appealing against wrongful decisions, actions or omissions of the public authorities. The jurisdiction of courts in most European countries is limited to the hearing of cases of compliance of public authorities' actions with national law. As a rule, the powers of administrative courts are limited to the possibility of recognising an act of public administration as inconsistent with applicable law. Thus, in France, the State Council acts as the first and last instance court on complaints about the repeal of decrees and regulations adopted by the Prime Minister, the President of the Republic and ministers. Article 184 of the Constitution of the Republic of Poland[1] stipulates that administrative courts are created to make decisions on compliance with the laws of public administration, decisions of local governments and regulations of local authorities. In Italy, the jurisdiction of administrative courts provides for the invalidation of acts of public administration, as in most European countries. At the same time, the peculiarity of the administrative courts of Italy is that they are endowed with broader powers, in particular, have the right to assess the appropriateness of public administration's actions, extend regulations to legal proceedings and rule all property issues when assessing acts of public administration for their compliance with applicable law. In addition, in some cases, administrative courts are endowed with powers that go beyond the protection of citizens' rights against wrongful acts of the power entities and are aimed at the effective functioning of the judiciary as a whole.

3.3.1 Types of jurisdiction of administrative courts

In general, the jurisdiction of the administrative courts of Italy is defined as the hearing of public law disputes related to the legality of acts of public administrations that violate the legitimate interests of citizens, the right to repeal this act and compensation for decisions, actions or omissions of public administration [12]. Such competence is called "jurisdiction to verify legality". Its characteristic features are the general nature of hearing of all public-law disputes concerning the protection of legitimate interests, the power to repeal acts and

[1] Constitution of the Republic of Poland. (1997, April). Retrieved from https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm.

resolve all issues related to compensation and restoration of property rights. In addition, there is "exclusive jurisdiction" under which administrative courts have the right to hear cases of violation of subjective rights by acts of public administration. "Exclusive jurisdiction" and "substantive jurisdiction" are an exception to the statutory order of division of cases between administrative and courts of general jurisdiction. In general, when challenging acts of public administration, there is a "jurisdiction over monitoring of legality", and other types of jurisdictions occur only in cases expressly provided by law. In addition, "exclusive jurisdiction" and "substantive jurisdiction" are characterised by the fact that they are used only in the protection of certain legitimate interests or subjective rights.

"Material jurisdiction" is the endowment of the administrative court with broader powers, within which the judge has the right not only to revoke the act, but also to "replace" it, as well as to take the necessary precautionary measures. By "replacing" an act, Italian law implies the power of a court to extend the limits of another existing legal act of public administration to legal relations that are the subject of legal proceedings. The legislator does not specify what other specific measures a judge may take, which allows him to conclude that the powers of a judge of a regional administrative tribunal and the Italian State Council are very wide when considering a case within "material jurisdiction", as evidenced by many years of practice. However, it should be borne in mind that "material jurisdiction" applies to a very limited number of administrative cases in Italy.

Three types of jurisdiction extend their effect to different legal relationships. Let us take a closer look at each of the three types of jurisdictions. The main categories of cases heard in the administrative courts of Italy fall under the "jurisdiction over monitoring of legality", under which the courts verify the legality of an act of public administration. For administrative courts, there is no single piece of legislation that defines the list of cases that courts hear under "jurisdiction to verify legality". The list of issues heard by administrative courts in the order of "jurisdiction over monitoring of legality" is contained in a large number of regulations, many rules are referenced, and often on regulations that are outdated and do not reflect the current state of legal relations. Thus, Article 2 of the Law "On the Establishment of Regional Administrative Tribunals"[1], deals with the competence of these judicial authorities, which contains a reference to the Royal Decree "Adoption of a single text of laws on provincial administrative junta in the exercise of judicial functions" of June 26, 1924 No. 1058. The provincial administrative junta has ceased to exist since 1968. Regional administrative tribunals were created instead of junta, but the legislator in the text of the new law only made reference to a de facto invalid act, assigning junta powers to tribunals. In addition, since 1924, the nature of legal relations has changed radically, and in the 21st century it is not so easy to apply the law of 1924, adopted at a time when Italy was a monarchy and was already burdened by the fascist dictatorship.

In this regard, courts often refer not to outdated provisions of law, but to the general rules according to which the administrative court has the right to accept for hearing a

[1] Italian Law No 186 "On the structure of administrative jurisdiction and staff of the office and subsidiary bodies of the Council of State and regional administrative tribunals" of 27 April 1982. Retrieved from https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/STATEFILES/ITA.htm.

statement of claim to appeal against an act of public administration if it violates the legitimate interest. The administrative court is not entitled to accept the statement of claim for hearing only if the case is under the jurisdiction of general courts or "quasi-judicial" authorities. The text of the laws on the State Council lists the main bodies of public administration, whose acts can be heard in the administrative courts of Italy to verify their legality in connection with the filing of an administrative lawsuit. Regional administrative tribunals in Italy consider as the first instance claims for appeals against acts of power entities: 1) community councils; 2) provincial boards; 3) mayors of communes; 3) presidents of regions; 4) interregional public authorities (public authorities include regional authorities, provinces, communes, any state organisations that provide medical benefits, pension and other public services to the population); 5) territorial public authorities of the region; 6) central public authorities. The above list does not include the legislative bodies of the Republic and regions. Administrative courts do not have the right to hear cases as a court of appeal against the provisions of the laws of the Republic and regions. This follows directly from the provisions of the Constitution of Italy[1]. So, in accordance with Art. 134 of the Constitution of Italy, the Constitutional Court has jurisdiction over all disputes over the constitutionality of the laws of the Republic and regions, which may be declared unconstitutional by a decision of the Constitutional Court. This category of public law disputes is not subject to other types of judicial control.

With regard to the laws of the regions, the Italian Constitution provides for a special procedure for their appealing. According to Article 127 of the Constitution, if the Government of the Republic considers that a law passed by a regional council is outside the competence of the region, it may raise the issue of constitutionality before the Constitutional Court of Italy within sixty days of its publication. The provisions of Article 127 of the Italian Constitution have been developed in the legal positions of the Italian Constitutional Court. Thus, in one of the decisions of the Constitutional Court it was noted that the State Council has no right to consider the constitutionality of regional law in accordance with the legislation of the Republic and thus violate the regional right to protect its laws exclusively in the Constitutional Court. Outside the jurisdiction of administrative courts are acts of the President of the Republic, which in their legal force are equated to laws (legislative decrees) and which can be appealed only in the constitutional proceedings. Other acts of the President of the Republic that require countersignature of the competent minister or the Prime Minister are heard by administrative courts in the same manner as acts of the Government or individual ministers, as they are responsible for countersigned acts of the President of Italy. In addition to the list of public administration bodies whose acts can be challenged in administrative courts, Italian law distinguishes three other categories of cases covered by "jurisdiction over monitoring of legality": 1) admission of citizens to the civil service, its passage, dismissal from the civil service; 2) in cases related to the election process – elections to communal, provincial and regional councils; 3) in cases of refusals to issue passports.

This selective approach of the legislator, according to one of the Italian scholars A. Trava, is caused by the importance of these cases and the specifics of the functioning of

[1] Constitution of Italy. (1947, December). Retrieved from https://legalns.com/download/books/cons/italy.pdf.

administrative courts, where the judiciary understands much better the nature of these relationships, the nature of disputes than judges of general courts [14]. In addition, these areas of legal relations are regulated in detail by law, there are a number of special laws on these issues. The Law "On the Establishment of Regional Administrative Tribunals"[1] in relation to these categories of cases contains a reference to the fact that regional administrative tribunals when considering these disputes should be guided, first of all, by special legislation governing these issues. When exercising "jurisdiction over monitoring of legality", regional administrative tribunals may hear cases concerning acts of public administration that contradict the current legislation, as well as those acts adopted by a subject of power that does not have the competence to adopt them. In the first case, the tribunal revokes the contested act in whole or in part. In the second case, the administrative regional tribunal is empowered to revoke the contested act altogether and to indicate to the plaintiff another public body empowered to consider such matters. This is the main difference between administrative and courts of general jurisdiction. The latter – in case of violation of subjective rights – only have the right to invalidate the regulation and suspend its effect. The procedure for determining "exclusive jurisdiction" is fundamentally different from "jurisdiction over monitoring of legality". "Exclusive jurisdiction" of administrative courts is considered to be all categories of administrative cases that do not fall within the competence of courts of general jurisdiction over monitoring of legality of public administration's acts. Administrative courts are empowered to monitor the legality of public administration's acts that violate the subjective rights of citizens, in accordance with the law. Among the regulations that have given administrative courts the competence to monitor the legality of acts that violate subjective rights, we can mention the Legislative Decree "On new provisions on the organisation of labour and labour relations in public administrations, jurisdiction in labour disputes, administrative jurisdiction, issued pursuant to Article 4 of the Law of 15 March 1997 No. 59 of 31 March 1998 No. 80, Legislative Decree "On New Provisions on the Organisation of Labour and Labour Relations in Public Administrations, Jurisdiction in Labour Disputes, Administrative Jurisdiction" of March 30, 2001 No. 165, as well as the Law "Regulations in the field of administrative justice" of July 21, 2000 No. 205[2].

Among the objectives of "exclusive jurisdiction" of administrative courts, the most important are:

1) hearing of cases on appealing against acts of public administration regarding vacancy filling and passing of civil service;

2) monitoring of the legality of acts of public administration on the provision of public services, the list of which includes state lending and insurance, state property, provision of medicine, transport services, telecommunications, electricity, gas services.

3) hearing of all cases related to acts of public administration in the field of

[1] Italian Law No 186 "On the structure of administrative jurisdiction and staff of the office and subsidiary bodies of the Council of State and regional administrative tribunals" of 27 April 1982. Retrieved from https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/STATEFILES/ITA.htm.

[2] Legislative Decree "On New Provisions on the Organization of Labor and Labor Relations in Public Administrations, Jurisdiction in Labor Disputes, Administrative Jurisdiction, Issued pursuant to Article 4 of the Law of March 15, 1997 No. 59". (1998, March). Retrieved from https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/STATEFILES/ITA.htm.

construction and urban planning.

The "exclusive jurisdiction" of administrative courts is primarily determined by Article 27 of the Unified Text of Laws on the State Council, which contains a list of cases that should generally be heard in courts of general jurisdiction, but due to their specifics were removed from their jurisdiction and transferred to administrative courts. This category of administrative cases includes, in particular, cases of appeals against acts: 1) the establishment of the boundaries of communes or provinces; 2) in respect of road consortia, the activities of which affect the territory of several provinces; 3) on the refusal of the public administration to protect the rights of legal entities; 4) on the functioning of companies engaged in hydraulic works, the activities of which are provided by the state with the assistance of provincial authorities and interested organisations; 5) on the classification of provincial and municipal roads.

In contrast to "exclusive jurisdiction", "material jurisdiction", which allows the court to proceed from the expediency of a decision made by a public administration, tends to lose its significance over the years. In fact, the list of issues decided by administrative courts "on the merits" is reduced to a few articles of the Unified Text of Laws on the State Council and the Law "On the Establishment of Regional Administrative Tribunals". Cases that have retained significance and are heard by administrative courts in the order of "material jurisdiction" include appeals against regulations:

1) on allowing or prohibiting the creation of public charitable and educational institutions;

2) on merger, division, transformation, creation of consortia or other business associations with the participation of public administration, public institutions, as well as institutions equated to them;

3) on hospitalisation of disabled people;

4) regarding support of the mentally ill;

5) the prefect to take measures to regulate or prohibit the activities of harmful industries.

"Material jurisdiction" also extends to the hearing of regulations issued by the mayors of communes on public safety, construction, local police and hygiene. According to the law "On the establishment of regional administrative tribunals", the administrative court may: cancel the act due to its inconsistency with the law; replace it in whole or in part with another act; oblige the public administration to reimburse the damage or pay the debt incurred before the plaintiff in connection with the adoption of a legal act, which was invalidated by a court of law. The possibility of "changing" the contested legal act is the possibility of the administrative court to extend the application of a similar existing act of public administration to the disputed legal relationship. The administrative court also has the right to invalidate the part of the contested regulation and to indicate the special conditions of validity of the uncanceled part of the same act. "Material jurisdiction" is considered in Italian doctrine as a restriction on the power of public administration [15].

3.3.2 Hearing of cases in the administrative courts of Italy of the first and appellate instances

The legal rules governing the procedure of administrative trial in the administrative courts of Italy are fragmented, as they are contained in a number of legislative acts. Hearing of

cases in administrative courts is regulated primarily by the Italian Code of Civil Procedure. All special norms that establish the peculiarities of the procedure for hearing of administrative cases in administrative courts are contained in the Unified text of the laws on the State Council and the law "On the establishment of regional administrative tribunals". Many provisions of the Unified Text of Laws on the State Council extend their effect not only to the procedure of hearing of cases in the State Council, but also to the administrative procedures that exist within the process in the regional administrative tribunals. These regulations contain a large number of procedural rules. More than half of the norms of the law "On the Establishment of Regional Administrative Tribunals" are procedural norms. The regulation of procedural issues is thus not fully systematic, but at the same time very detailed, which certainly contributes to the lawful, fair and impartial judicial protection of human and civil rights.

When hearing cases of appeal against an act of public administration, the administrative court determines the existence of conditions under which it has the right to accept the statement of claim for proceedings. First, it is permissible only to appeal against acts of public administration that establish or terminate certain legal relations. In the absence of an indication of a specific act in the statement of claim, the court refuses to accept the statement of claim because the subject of the appeal is missing. The act of public administration can be expressed in its omission or so-called "silence". Thus, according to Article 21 of the Law "On the Establishment of Regional Administrative Tribunals"[1] a statement of claim aimed at challenging the "silence" of the public administration at the request of the applicant must be heard in court within 30 days (so-called "claims against omission of the public administration"). Such claims are heard by the court in a simplified manner within a reduced period of thirty days. Second, the act of public administration must be an expression of the will of the public administration. Finally, both final and non-final decisions of the public administration can be appealed in administrative courts. A decision that has been appealed by a person out of court to a higher instance and in the order of which a higher instance has not yet made a decision is considered incomplete. The parties to the case by the administrative court are, as a rule, the public administration and a natural or legal person as a bearer of a legitimate interest. A body of public administration has the right to appeal in court an act of another body of public administration, if this act, in the opinion of its officials, limits its powers or otherwise violates the law. The defendant is always a body of public administration.

The legislation provides for the possibility of involving in the trial of third parties directly interested in the results of the administrative case. These include those who make and do not make independent claims on the subject matter of the dispute, if the court finds that the judgment may affect the rights and obligations of those who are not parties to the case. As an example of an interested person, we can cite the winner of a public competition, when the final decision of the public administration on the results of the competition is appealed by the person who lost it. In addition, any person interested in the process may take part in it if the court also finds that the review procedure affects the interests of the

[1] Italian Law No 186 "On the structure of administrative jurisdiction and staff of the office and subsidiary bodies of the Council of State and regional administrative tribunals" of 27 April 1982. Retrieved from https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/STATEFILES/ITA.htm.

person. In the first instance, the administrative case of appealing the act of public administration is considered in the regional administrative tribunal. The Law "On the Establishment of Regional Administrative Tribunals" regulates in detail the jurisdiction of cases and their distribution between regional administrative tribunals.

There are three criteria for delimitation of jurisdiction: 1) according to the location of the public administration that issued the contested act; 2) within the scope of the act of public administration; 3) at the place of civil service by a civil servant in regarding whom the contested act was issued. According to the criterion of location of the body of public administration that issued the act, the administrative case is considered in the regional tribunal of the region in whose territory such body of public administration exercises its powers. If the act extends its effect to more than one area, the competent tribunal is the tribunal in whose territory the body of public administration that issued the act is located. In the event that the act extends to the entire territory of Italy, the competent court is the regional administrative tribunal of the region of Lazio, located in the city of Rome. According to the scope of the act, there are two possibilities for determining jurisdiction. The court of a particular region may be considered competent when the act extends its effect only to the territory of that region; if the act extends to two or more regions, the regional administrative court of Lazio will be competent. The third criterion for distinguishing administrative cases applies only to public law disputes involving civil servants who defend their legitimate interests in court. A statement of claim may be filed by civil servants in the court of the region in whose territory the public administration body is located. In cases with inter-region or central bodies of public administration, the administrative case will be subject to the regional administrative tribunal of the Lazio region. At the same time, the defendant or any other participant in the proceedings has the right to demand recognition of the jurisdiction of the court. In this case, the person submits a request for consideration of the issue of jurisdiction to the State Council, and must reasonably indicate in which court, in his opinion, the case should be considered. The petition shall be filed no later than twenty days from the beginning of the proceedings or may be filed at a later date, when the territorial jurisdiction of the case will be revealed as a result of the submitted documents, of which the party filing was unaware. The petition cannot be submitted at the stage of decision-making by the court in an administrative case.

If all parties agree to the request to transfer the administrative case to another regional administrative tribunal, the chairman of the tribunal shall refer the case to another court and notify the parties, who shall apply to that court within twenty days of receiving notice of the transfer to another court. In other cases, the court makes a decision to deny the petition or to transfer the case to the State Council for further determination of jurisdiction. The decision of the Italian State Council regarding the jurisdiction of an administrative case is binding on the regional administrative tribunals. If the State Council satisfies the request to postpone the case in another court, the plaintiff may send a statement of claim to the territorially competent regional administrative tribunal within thirty days from the date of the request satisfaction.

The Law "On the Establishment of Regional Administrative Tribunals"[1] pays special

[1] Italian Law No 186 "On the structure of administrative jurisdiction and staff of the office and subsidiary bodies of the Council of State and regional administrative tribunals" of 27 April 1982. Retrieved from https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/STATEFILES/ITA.htm.

attention to the issue of distribution of cases between departments of one regional administrative tribunal, which has already accepted the claim. The chairman of the tribunal distributes cases between departments located both in the administrative centre of the region and in other cities of the region. The party to the case, considering that the statement of claim should be considered by the regional administrative tribunal located in the administrative centre of the region, should submit to the court in this case its objections.

The head of the regional administrative tribunal investigates the objections, hears the parties to the case and issues an order that is not subject to appeal. In any case, the fact that the decision was made by a regional administrative tribunal located in the administrative centre of the region or located in another city may not be grounds for reconsideration of the administrative case. One of the key powers of the administrative court in handling the case is the ability to take measures to secure the claim. The administrative court, as well as the court of general jurisdiction, has the right to apply such measures to secure the claim as, for example, prohibiting the defendant or other persons to take certain actions in relation to the subject matter of the dispute. In addition, the administrative court is empowered to suspend the contested act of the public administration body until the moment of its decision in the administrative case and the closure of the proceedings. The plaintiff has the right to demand that measures be taken to secure the claim in connection with great damage and/or irreparable negative consequences caused by the adoption of an action or omission of a public administration body at the time of court proceedings, such as a court decision prohibiting payment. Measures to secure the claim are regulated in detail by the Law "On the Establishment of Regional Administrative Tribunals"[1]. Italian law also regulates the application of temporary precautionary measures by a court. These are the cases when, in case of extreme necessity, at the request of the plaintiff, the administrative court decides on the immediate entry into force of measures to ensure a temporary claim. After hearing the motions of one of the parties to the case to take measures to secure the claim, the regional administrative tribunal may order hearing of the administrative case on the merits. If the public administration body does not implement the preventive measures established by the court or partially implements them, the interested party may submit a request to the regional administrative tribunal to take action by the tribunal to implement preventive measures. The regional administrative tribunal has the right to intervene in the implementation of preventive measures to ensure the claim, indicating the procedure for their implementation. Italian law also regulates in sufficient detail and clearly the submission of evidence by the parties in an administrative case. They shall be filed within twenty days following the filing of the statement of claim, by the body that issued the contested act, and by other interested persons. The main evidence is documentary. The Italian doctrine assumes that individuals cannot be required to present evidence which they are unable to do. Documents, explanations of public authorities, etc. are recognised by law as admissible evidence in Italy. The procedure of hearing of the case in the administrative court provides for the possibility of cancellation by the public administration of the contested act during the trial before the beginning of consideration of the administrative

[1] Italian Law No 186 "On the structure of administrative jurisdiction and staff of the office and subsidiary bodies of the Council of State and regional administrative tribunals" of 27 April 1982. Retrieved from https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/STATEFILES/ITA.htm.

case. If during this period the public administration body cancels the contested act or brings it in line with the requirements of current legislation, the regional administrative tribunal closes the proceedings and distributes the costs between the parties in the administrative process. It is necessary to stipulate separately the terms of hearing of the case of claim by the administrative court. One of the main problems of the Italian judicial system is the unreasonable length of proceedings in court, which goes beyond reasonable time limits for hearing [16]. Italian law does not set a deadline for hearing of the case of claim and decision-making on it. Only the deadline for the beginning of the discussion of the statement of claim in court is set – two years from the moment of filing the statement of claim in court. The court itself may, at its discretion, postpone the commencement of proceedings within the specified period [17]. It is considered that the plaintiff withdraws his claim in the event that no proceedings take place within two years. Thus, only the agreement of the date of hearing can take two years, and the process itself can be stretched even longer. Shortened terms of hearing of the statement of claim are established only for a certain category of administrative cases. In this case, all procedural deadlines are reduced by half, including the appointment of the start date of the administrative case [18-20]. This category includes administrative cases related to decisions on the formation and operation of local governments, surety procedures for the design of buildings, distribution and execution of works of public importance, as well as decisions on the forcible seizure of land for public use.

The State Council is the appellate instance when considering administrative cases on appeals against acts of public administration. In exceptional cases, the State Council hears cases as the first and only instance. This occurs when appealing against acts of public administration related to the enforcement of decisions of general courts, when the execution of a court decision is entrusted to the central or public administration bodies of an interregional nature. The State Council also hears cases of special importance as the first instance, which are sent from the regional administrative tribunals to the State Council on the initiative of the Italian Government and with the consent of the parties to the proceedings. The procedure for hearing of administrative cases by the State Council as a first instance is similar to the procedure for hearing of administrative cases by regional administrative tribunals.

The main function of the State Council of Italy is to investigate appeals against decisions of regional administrative tribunals. An appeal against a court decision shall be filed within sixty days from the date of this decision by the regional administrative tribunal, and in disputes in cases related to the election process – within twenty days. Filing an appeal does not suspend the decision of the regional administrative tribunal, as the latter comes into force from the moment of adoption. Only upon hearing of the appeal may the decision of the regional administrative tribunal be reconsidered. However, in the presence of a petition and in case of possible serious consequences in connection with the execution of the decision of the regional administrative tribunal, the Italian State Council has the right to suspend the decision of the court of first instance until the end of the appeal. The process of reviewing an appeal by the State Council against a court decision is as simplified as possible. On the appointed date for the discussion of the appeal, the responsible counsellor of state shall publicly announce the prepared report on the administrative case. Decisions of the State Council are made by approving them by an absolute majority of

votes of state advisers of the department that investigates the administrative case. Advisers who have previously expressed their position regarding the advisory department on an issue that forms the subject of an appeal in an administrative case may not participate in decision-making and voting. Thus, counsellors of state who took part in the procedure of discussion by the State Council of the government bill, which was later adopted and became the subject of appeal in the State Council of Italy, are excluded from participation in the process.

The State Council of Italy may, by its decision on the outcome of the appeal, satisfy the appeal or refuse to satisfy it. Upon satisfaction of the appeal, the State Council may act of the public administration or return the administrative case for a new examination to the regional administrative tribunal. The case may be remanded only if the Italian State Council overturns the decision due to a violation of procedural law committed by the court of first instance, or if the regional administrative tribunal erroneously found no powers to investigate an administrative case.

CONCLUSIONS

The jurisdiction of administrative justice bodies is complex. The delimitation of competence between different bodies of administrative justice directly by the norms of the Constitution of Italy has avoided jurisdictional disputes between these authorities. In addition, the determination of the jurisdiction of public-law disputes by the bodies of administrative justice is determined by a number of legal acts of Italy. The main criterion for determining the jurisdiction of administrative courts is to appeal the act of public administration in violation of the legitimate interest. However, the current legislation of Italy establishes numerous exceptions to this rule, in many areas of legal relations there is a specificity of determining the jurisdiction of administrative cases.

The system of judicial bodies of administrative justice, the procedure of hearing of administrative cases of different categories, the legal status of "quasi-judicial" bodies of administrative justice, which are endowed by law with certain functions of justice, but which are not judicial authorities, were also defined. Exercise of power and fulfilment of the constitutional function of protection of rights, freedoms and interests of citizens from illegal decisions, actions or omissions of the state represented by its power entities is the main task of administrative justice, which is entrusted to the Italian State Council, regional administrative tribunals and "quasi-judicial" authorities. The division of jurisdiction between "quasi-judicial" bodies of administrative justice, administrative and courts of general jurisdiction was also determined, which allowed to clearly delineate the competence of different courts in order to most effectively protect the rights, freedoms and interests of individual and citizen.

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