

REPORT FROM ITALY

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ADMINISTRATIVE ACTIONS

1. In Italy all activity on the part of the Authorities must - as a rule - be considered either administrative, legislative, or judicial.

Legislation can be challenged in front of the Constitutional Court; judgments in front of a higher judge, if such a body exists, and all administrative activities in front of (non constitutional) judges.

What in England is called a quasi-judicial body would then be considered in Italy simply as an administrative body, although it applies some of the rules of procedure, and enjoys some of the independence, of a Court of Law. Its findings thus can be challenged in the Courts, not in the way of an appeal, but in the form of an action brought against an ordinary administrative decision.

It must then be taken into account that in Italy there are both civil and administrative Courts.

The former try litigation not only between private individuals, companies and societies of all sorts, but also between individuals and Authorities who have been making use of the Common (ie civil) Law. That is to say, when the authority's rights and obligations derive from a contract or from tortious acts, or in general from the Civil Code and complementary Statutes.

The administrative Courts try, as a rule, actions brought against Authorities acting as such, ie under statutory powers.

The ordinary Courts (which try civil and penal cases) are staffed, at their various levels, by some thousand judges or magistrates, these two terms being in Italy equivalent.

The administrative Courts are now staffed by perhaps 150 judges sitting in the Administrative Regional Tribunals, and by about 60 members of the Council of State who either chair these Tribunals or hear, in the Council of State, appeals brought against their judgments.

From now on this paper will as a rule omit, for brevity's sake, any express reference to Italy, it being understood that each statement refers only to Italian Law. Distinctions of minor or no relevance to the present subject are also avoided, and the existence of exceptions to principles here stated will pass unacknowledged.

2. Taking the expression "administrative action" to include all actions by or against public bodies, it can refer either to steps taken in front of an administrative judge against a public body, and complaining of the latter's activity (or lack of it) in a matter of statutory power, or to steps taken in front of a civil judge by or against a public body, when the matter in question is of civil Law.

Actions brought in front of an administrative judge are intended either to procure sentences which annul administrative decisions (orders, grants, expropriations, town planning, etc) or to pronounce the Authority's duty to reach a decision on a given subject.

The Italian administrative judge has comparatively little *contentieux de pleine juridiction* (- *giurisdizione esclusiva*), which he regards as concerning also matters of civil Law.

Hence, only in exceptional cases can one seek from the administrative judge a sentence which recognises the obligation of public bodies to make payments to other subjects, this being the sort of action which any individual can bring against another: the administrative Courts are essentially judges of the use of statutory powers.

On the contrary, actions brought before the civil judge, whether by private individuals or by public authorities, aim to obtain statements of invalidity or voidity of contracts, statements concerning the existence of rights (property, obligations, etc), and orders to act in certain ways, for instance to pay sums of money.

Thus, administrative Courts try administrative actions only, whereas civil Courts try mostly actions between private parties; and administrative Courts do not grant damages for tort; or for breach of contract, although they always decide on the cost of litigation, which are damages of a kind.

Contracts are deed of Common (- civil) Law, into which all parties can enter on an equal basis, and none under statutory powers; and torts are, again, activities which can be performed by anybody.

Only when the administrative decision is annulled by the administrative Court, can any activity carried on before the annulment by the Authorities, no more justified by the existence of the decision, and resulting in the violation of somebody's right, be considered as tort in civil Law, and damages can consequently be sought in a civil Court.

In fact, the annulment takes effect *ex tunc*, so that the administrative decision is by now to be considered as if it had never existed.

For instance, if an expropriation granted in favour of a borough is annulled, the tree-felling carried on by the borough in the private property becomes tortious. As one can see, all this may entail two different judgments.

Civil Law is then opposed to administrative Law. It is the Law common to all subjects except Authorities acting under statutory powers, based on equality, and in which no party has to perform duties of special collective importance.

Embodied in the civil code and in a few complementary Statutes, its main principle is perhaps that any person's will can create, in conformity to the latter's intent, new rights only by disposing of something the disposer owns already.

On the contrary, administrative Law is concerned with the special powers of administrative authorities. These powers must be specified by Statute, but produce the intended effect, or can be enforced, without the subjects' consent; and can be checked by the administrative judge only on the grounds of formal legality and reasonableness. The judge cannot try to establish what he should have done himself, were he in the position of the administrative public official or servant.

Besides, an illegal or unreasonable administrative decision is, with very rare exception, not void but voidable. It must be challenged by an interested party within a very short time, and it is effective until when, if ever, the administrative judge makes it void.

Pending litigation, the judge can grant a stay of execution. Whether an action is pending or not, the administrative authorities can - under certain rules - quash decisions they come to recognize as voidable.

It must be added that in Italy the term "administrative action" (- ricorso giurisdizionale amministrativo) applies to the action brought before the administrative judge only, and in which the authority acting under statutory powers is always defendant. An action brought before the civil judge, and in which a public body is either plaintiff or defendant, is simply a civil law suit (- causa civile, azione civile).

3. In front of the civil Courts, very few rules of procedure are altered by the fact that a public authority is a party to the law suit.

If this authority is a Department of the central Government, or is otherwise entitled to employ Counsel from the Government's Staff of Barristers (a body of barristers-civil servants, appearing in Court for public authorities), the competence *rationa loci* is, when necessary, moved to the Court in which area the local office of those barristers is situated.

Rules on evidence are also somewhat different regarding statements made by litigants who are not private individuals.

As already stated, Authorities can appear in civil Courts also as plaintiffs. But of course, when they act under statutory powers they do not enter into contracts.

It must also be said that the civil service is not regulated by contract, but organized under statutory powers (see later on Contracts). On the other hand, litigation between civil servants and their employers can also entail matters of civil Law, as is the case when failure to pay the full salary or other debts is alleged.

Anyway, the last type of litigation is the main province of the exclusive jurisdiction (= *plein contentieux* = *giurisdizione esclusiva*) of the administrative judge, who is then also the judge of civil Law.

Besides, litigation regarding liabilities of governmental civil servants to their Departments and rights of private individuals in matters of governmental pensions is reserved to the Court of Accounts (a special judge for such matters, who acts also as an administrative body checking governmental decisions and accounting.)

Rules of procedure in front of administrative Courts are quite different from those of the civil Courts.

Broadly, it can be said that all evidence must derive from papers deposited or issued by the Authorities, although the judge can order them to produce new documents and statements, or to verify certain facts in the presence of the interested parties. False documents or statements can then be denounced to the penal or civil judge, pending which action the administrative judgment must come to a standstill.

Taking the expression "quasi-judicial tribunal" in a different meaning than the one indicated in § 1-2, it is perhaps worthwhile to make reference to the arbitration boards. In contracts drawn up between public bodies and private contractors, concerning the building of public works, the purchase of various objects and the provision of services, there may be a clause stipulating that any future litigation must be settled by arbitrators.

Verdicts of the arbitrators (who are private persons, although at least their chairman is usually a judge, acting then as a private individual) must be registered by a civil Court, and may be attacked on certain grounds in the Court of Appeal or in the Court of Cassazione.

If registered and not attacked, or if the complaint before the judge has been dismissed, these verdicts are equivalent to the *res judicata* formed on a civil sentence.

LIABILITY OF PUBLIC AUTHORITIES AND THEIR SERVANTS OR AGENTS IN TORT

Tort (= fatto illecito) is a violation of somebody's right, which leads - through a chain of cause and effect - to damage for that subject, and is produced by voluntary conduct, either intended to bring about the eventual result, or not intended to do so but imprudent, incompetent, negligent, or contrary to established rules. This right must exist directly in Law, and not derive from a previous special connection freely established between the two parties. In the last case, any liability is said to derive from contract.

(a) Public authorities are in principle as liable in tort as any other company or society.

Liability in tort consists in the obligation to pay damages.

As any action or will originates of necessity from men, private and public bodies can be made by the Law to act only by considering the activity of such individuals as being that of those bodies.

This connection between agent (honorary official or public servant) and public body is in fact called "organic connection", and is understandably seen as closer than the agency of one person on behalf of another.

(b) It follows that public authorities are in fact liable to pay damages for torts committed by themselves, through the necessary channel of their officials and servants.

This leads, in turn, to the necessity of establishing when the agent is acting as such, and when he is, on the contrary, acting in his own capacity as a private individual. The answer to this is probably that the agent's actions are his own or his employer's according to his known purpose or the reasonable conclusion which can be drawn from them.

The agent who inadvertently commits a penal offence (for instance, a public servant, being authorised to drive his own bicycle, runs over a pedestrian when on duty) is still acting as a part of the public organization (Cass. civ., III, 21 febbraio 1966, n.551). Although he cannot - if negligent, incompetent, etc - escape penal sanctions, which concern only individuals, and for which he receives no compensation from his employers, the civil liability for the damage to the third person rests thus only with the public body. The latter can, after payment of such damages, ask to be paid back by its agent.

That happens because there are "internal" obligations between a body and its agents, which in this particular case the servant has infringed.

Only when the agent, while appearing to act as such, commits deliberate crimes is this organic relationship between himself and the public body rescinded: a policeman who kills a personal enemy whilst on duty, or a customs officer who embezzles money received from importers, are solely responsible for damages inflicted on their victims. Even when in uniform or in the Department premises, they were not then acting as public agents. The answer to the last example would be different if the money had been regularly paid to the agent, and stolen by him when at the public body's disposal.

On the other hand, the activity of the agent must not be clearly private: if a public servant, when driving a car on duty, gives a lift to a pedestrian, and an accident follows caused by careless driving and leading to injuries to the latter, the public body bears no responsibility, as the giving of lifts could never be included in the tasks of Authorities (Cass. civ., III, 19 giugno 1958 n. 219).

(c) If then a human action is to be referred to a public body, and is still to be found illegal and tortious (that is to say, injurious to another's rights), it would follow that that public body only should be responsible in tort towards the injured third party.

As already said, the public body can in turn expect repayment by its servant.

With a few very improbable exceptions for judges, Court clerks and public registrars, this was in fact the Law in Italy till 1948, when the republican Constitution stated (art.28) that officials and public servants are personally responsible according to the penal, civil and administrative laws, whilst the civil liability is borne also by the public bodies.

This was no innovation in connection to penal responsibility, which can apply to individuals only, or to administrative responsibility towards the public body, subject to the jurisdiction of the Court of Accounts for Governmental agents, and to the jurisdiction of the ordinary Courts for other public agents.

The important change lay in the external civil liability not only of the public bodies, but of their agents as well. The latter's liability was obviously intended to galvanize and alert them; and in order to achieve this the Constitution paid little attention to previous legal theories.

Since then, a Statute enacted in 1957 and regulating the status of the government's servants had made it rather difficult to establish the responsibility of these agents towards members of the public. To start with, it would be necessary to decide which agent to sue, among the many concerned with a single issue; and it could finally be found that he had no private fortune, which the creditor could seize. Besides, this Statute considers the agent directly responsible to the injured person only if he has acted knowingly, or with gross negligence, imprudence or incompetence.

It cannot surprise then, that injured persons choose to sue the public body, whose liability is, according to the general rule, connected - apart from the case of deliberate will to inflict the damage - with *any degree* of negligence, imprudence or incompetence.

No can this be considered an evil, as immediate (= external) responsibility could intimidate the agents, and lead them to indecisiveness and procrastination.

When the Authority is solely responsible to the third person, the agent can hope that the public body will not bring forward an action for repayment against him. And even when an action is successfully brought forward, the Court of Accounts has discretion to reduce the amount to be repaid (art.52 t.u. 12 July 1934 n.1214).

This last provision, being limited to Government servants and officials, who alone are subject to that Court's jurisdiction, would seem to discriminate unfairly against other public agents, some of whom have now - with the very substantial broadening of the powers of local Government - tasks as difficult and large as those of the central Government's servants.

Of course, the injured person can get damages only once, although he can sue both the agent and the public body, and obtain judgment for the entire amount against both.

As to the exclusive responsibility of the public bodies existing prior to the 1947 Constitution, one must observe that the Law had in this context somewhat arbitrarily divided the position of public and private bodies.

The latter have been treated almost as individuals responsible for the actions of their servants (art.2049 of the civil code), whilst the servants themselves bear responsibility towards the injured parties for tortious acts performed on behalf of their masters.

For public bodies only, had the so called organic theory made such a marked division between the actions performed by the agents in that capacity and in their private life, as to exonerate them from any liability whilst acting in their official position.

(d) When an Authority acts under statutory powers, its decisions, although possibly illegal, are - as a rule - never void. They have thus the effect of destroying any civil right they oppose; and if not attacked within a short time in an administrative Court, and quashed by it, cannot ever be considered tortious.

Thus an expropriation dissolves the property right of the previous owner, and gives an independent right of property to another party. For this reason an administrative decision, when it exists as such, and no matter if *ultra vires*, cannot imply liability. Only if the decision is quashed by the administrative Court, and the authority has meanwhile acted on its basis, can those actions be considered arbitrary and imprudent, and constitute torts.

These last statements have been very recently contradicted by some sentences, which admit responsibility without previous annulment of the administrative decision, in the fields of public health and safety, in view of air- or sea-pollution, and nuclear risks (Cass. civ., Sez.un., 9 March 1979 n.1463 and 6 October 1979 n.5172; Corte Conti, I giurisdiz., 8 October 1979 n.61).

(e)(f)(g)(h)(i) Authorities are, then, acting through the actions of their officials and servants.

These actions can come under consideration for the modifications they produce, or for what they fail to avoid by a proper intervention: fail to avoid completely, or till a certain time.

For instance, the destruction of a dyke in order to avoid the flooding of a town can lead to the submersion of other pieces of land; or the refusal to destroy that dyke, or again the delay in so doing, can lead to loss of goods in the town's dwellings.

From this point of view, there is no difference between torts committed by private individuals, by companies, or by Authorities (questions (e) and (f)).

Actions can also be considered from the point of view of the intent with which they were made.

As we have seen, the agent either intends or not to violate another person's right.

If he did not intend to do so, then his activity either was or was not incompetent, negligent, imprudent, or contrary to official rules.

Only when the violation is intentional, or the action is faulty, is tort established (question (g)). But whereas evidence of the illegal intent in the agent's mind can be sought for by the civil judge, the possibility of evaluating conduct in order to establish whether it has been faulty undergoes, in the case of public bodies, certain legal limitations, which do not exist when a private company's or an individual's conduct come under scrutiny.

Before coping with these limitations, let us state again that:

- conduct consisting in the exercise of statutory powers, later declared illegal by administrative Courts, does not necessarily lead to liability towards individuals who have suffered disadvantages from it.

In these cases, damages are due only when a civil right existed, of which the individual has been forbidden to make use, because of the Authority's behaviour (Cass. civ., Sez.un., 3 May 1966 n.1109, 28 April 1964 n.1019, 6 August 1962 n.214, 28 July 1962 n.2210).

Changes in the Statutes (chiefly concerning the faculty to build), and in the attitude of the judiciary, are taking place with regard to the existence of these rights;

conduct consisting in the non exercise of statutory powers is subject to the same treatment.

If, for instance, a small town chemist has heard stated by the administrative Court that the medical authority should long ago have closed down the other existing chemist shop, the plaintiff is entitled to no redress from the Authority. He has in fact no full civil right (but only a legitimate interest, actionable in the administrative Court) to the proper use of statutory powers towards a third person;

the same test applies to material conduct of public authorities, consisting in certain acts which lead to results unfavourable to the individual (for instance, the closing down of a road, the use of tear-gas in order to disperse a disorderly crowd), or in failure to act which led to similar effects. No doubt, at least that personal safety is a civil right, and not a mere interest for the individual.

To return to the power of the Courts to check the conduct of the Authorities, with a view to establishing if the rights of third parties have been taken into adequate consideration, it must be stated that these powers are limited by the principle of separation between legislative, administrative and judicial powers.

This principle has indeed been understood as forbidding the civil judge to make himself the discretionary choices which must remain with the administrative Authorities.

In fact, whereas the main decisions in the organization of public services are left to the discretion of the Authorities, the technicalities of their execution are considered to be - in case of infringement of other people's rights - within the province of the Courts, who must check the expediency and diligence of the conduct (Cass.civ.,Sez. un., 16 June 1955 n.1830 and 15 July 1950 n.1926).

It has been stated that in the field of administrative activity, the aims are left to the Authorities, whereas the means adopted can be checked by the judge, in order to establish whether the public agents have been competent and diligent enough in their choice (Cass. civ., Sez.un., 25 July 1966 n.2039).

So, the Courts could not dispute the complete discretion of the State Railways to choose which level crossing should be guarded or unguarded, but omission in signalling the existence of a dangerous level-crossing or usage of an inadequate mechanism (Cass. civ., III, 19 May 1964 n.1229 and Cass., Sez. un., 12 April 1940 n.1176) or - in a neighbouring matter - persistent omission in repairing a hidden hole in a town pavement or in a road surface, (eg Cass. civ., III, 9 July 1968 n.2379: there are a great number of such cases) can lead to damages in tort.

Again, the Authority can choose the area in which to carry on manoeuvres; but imprudent direction of gunfire can be constructed as tortious.

Of course, the seriousness of the situation which the Authorities have to tackle has an influence on the degree of diligence in the preservation of other peoples' rights, which can be required of public agents.

In a state of war fought inside the Country, nobody could contend that the army has unnecessarily gunned a certain spot; and in exceptional periods of public disorders, diligence of the Police in protecting private property can well be considered adequate when far below the normal standards.

Finally, the conceivable administrative discretion is slight with regard to the duty of custody existing for the Authorities in connection with certain given relationships, not deriving from contracts. Such is the case of students when within school premises.

LIABILITY OF PUBLIC AUTHORITIES IN CONTRACT

It must be repeated that public servants are not employed by contract. Although they almost always present a formal application, and as a rule sit for an exam, they are technically made civil servants by the use of Statutory powers.

Correspondingly, their resignation must lead to their dismissal under Statutory power. It is true that even if the public body should not accept their resignation, they can now in practice obtain more or less the same result - and still keep their pensions - by discontinuing their work.

In fact, they would then be dismissed for desertion of their post; but would be held responsible for any damage caused to their employer (the existence of which the latter must, of course, prove).

Rights of civil servants to their salary and to suitable tasks are enforced by the administrative Courts as judges of *contentieux de pleine juridiction*, and other positions connected with discretionary powers of the Authorities (which exclude the existence of a civil right on the part of the civil servant: for instance, choice of holiday-time, or for place of residence), by the same Courts, in their general capacity.

Trade-union negotiations are now allowed by the Law in most ranks of the civil service. But, in this case, any agreement resulting from those negotiations must be enacted by administrative decision.

These decisions can then be taken, within the usual short period, in front of the administrative Courts, also on the grounds of non-conformity to the collective agreement.

Likewise, failure to issue the decision can be attacked in front of the administrative judge; but any delay or misapplication of the agreement cannot lead to liability, as the whole civil service is organized in the main interest of the public, and the bargaining which precedes the decision (and which admittedly is much more than a previous hearing of the interested parties) does not still give rise to civil rights, but to legitimate interests only.

As to contracts with other parties, while many rules exist with regard to the kind of contracts allowed, to the possible contents of those contracts, and to the manner of selection of the private contractors, other such rules concern the public body's liability.

For instance, special Statutes or Decrees concern the State's liability:

- towards the users, in the fulfillment of the different Postal services: mail, parcels, telegraphs, telephones, postal checks, postal deposits (r.d. 27 February 1936 n.645, on the Postal and Telecommunication Code, with the various successive amendments);
- towards the passengers, in the fulfillment of the Railways' service (r.d. 11 October 1934 n.1948; 1. 5 April 1935 n.911; 1. 7 October 1977 n.754);
- towards the senders of goods, in the fulfillment of the same service (r.d. 25 January 1940 n.9; 1. 13 May 1940 n.674; 1. 22 December 1948 n.1456; 1. 27 February 1960 n.183; 1. 14 August 1974 n.377);
- towards the contractors, for delays in making payments (d.m. 28 May 1895).

In the case of contracts closed by Government Departments, the Minister has a right to approve or disapprove the contract after its signing by the other party and by a minor official.

But the non-acceptance must be grounded on the existence of some illegality, or on the existence of a serious reason of public interest; and the decision can be questioned in front of the administrative judge.

This system has been followed by some of the regional Statutes, the final decision resting there with the president of the regional Junta.

Many contracts have - as we already know - a clause by which any future litigation deriving from them must be solved by arbitrators, whose selection has to take place according to the rules specified by the contract itself.

But no immunity from actions is allowed by the Constitution, according to which everybody must be free to sue in defence of his own rights (art.23); and this freedom is especially guaranteed in regard to the administrative authorities (art.113).

This means that no preventive acceptance of future illegalities, or renouncement of future rights to damages can be made by the interested party.

Liability in contract normally falls on the public body, and not on the agent who has acted as such, although art. 28 of the Constitution does apply also to violations of rights which arise from the stipulation of a contract.

It follows that if the violation of such rights was caused by the fault of a particular civil servant, this public agent could be sued by his employer who has had to pay damages to that contractor. The same rules shown for torts apply also to contracts.

IMMUNITY OF PUBLIC AUTHORITIES FOR "ACTS OF STATE"

"Acts of State" being decisions, and not merely material actions, made by Authorities (eg, a dissolution of Parliament), these decisions could not give rise to responsibility in tort immediately adjudicated by the civil Courts.

Nor can these decisions be attacked in administrative Courts, as they cannot be classified as *administrative* decisions.

Within this limited field, the theory of the division of powers is disproved in that some most important acts of the higher Authorities cannot be classified as legislative, administrative, or judicial.

Litigation concerning the results of general elections, and in general membership of the two Houses of Parliament, is reserved to the latter by article 66 of the Constitution. Any other political or administrative public election falls in the province of the administrative judge.

This judge, who of course annuls decisions taken by ministers, or under the signature of the Head of State, considers outside his jurisdiction administrative decisions reserved by the Law to parliamentary committees, or by parliamentary rules to the president of a Chamber for instance, decisions taken by a parliamentary committee, under art.4 of the Statute 14 April 1975 n.103, on allotment of time on the radio and TV for political propaganda (TAR Lazio, I, 11 April 1979 n.377). Thus, the same result should be reached in the case of the hiring or dismissing of a typist by the Parliamentary authorities.

Also refusal to let Government decisions stand, interposed by the Court of Accounts in its non-jurisdictional capacity, is considered (Cass. civ., Sez. un., 23 November 1974 n.3806) outside the control of the administrative judge. This is the case, even when the Government cannot alter

that refusal, so that the individual has no means of protecting his interests in front of a judge.

The Statute on the powers and functions of the Council of State excludes annulment of acts of State (*atti politici - actes de gouvernement*); and what is outside the power of the Council of State cannot be within that of the lower administrative Courts. However, acts of State are very few indeed.

In any case, the more important the matter for the supreme interest of the State, the wider is the discretion of the public agent; so that the eventual judge will be concerned only with the respect, by the acting Authority of the rules on the competence and on the forms.

It is difficult in abstract to draw a line between acts of State and administrative decisions of important political consequence.

LIABILITY OF PUBLIC AUTHORITIES TO PAY DAMAGES OR COMPENSATION WHERE NO TORT OR BREACH OF CONTRACT HAS BEEN COMMITTED, AND WHERE ALL ACTS OR OMISSIONS ARE LAWFUL

Special Statutes allow compensation for particular events not dependent on the activities of single individuals or bodies, or connected with the loss incurred in time of war by the action of the enemy (eg indemnity to earthquake victims, indemnity for loss of property to refugees from former colonies).

But compensation is also foreseen by the Law on other occasions, when loss of property or of other rights derives from a legitimate action of the administrative authorities.

This activity can consist in a decision, reached under Statutory powers. Thus, any expropriation must be accompanied by the payment of an indemnity (articles 42 and 43 of the Constitution).

It can also consist in a material conduct.

It is with regard to the latter that the civil Law seems to have evolved. Civil Law judges tend now to affirm the existence of a general principle making public authorities liable to pay compensation for any loss inflicted to private property in the course of legitimate activity undertaken for the defence of other interests.

In this case the indemnity is granted not as a sanction against the acting Authority, but as a way of sharing between the parties the burden which has to be borne (Cass. civ. I, 11 October 1958 n.3220; the difference has of course an effect on the measure of the payment due).

So, in the example already given, the destroying of a dyke in order to save a town from flood, although legitimate (as concerning a public good, and not infringing anybody's right) and thus not leading to responsibility in tort, has been considered the source of an obligation for the Ministry of Public Work to indemnify individuals who lost property as a result (Trib. sup. acque pubbl., 9 December 1975 n.28; but this sentence claims to put into effect art. 46 1. 25 June 1865 n.2359).

The case of manoeuvres taking place on private grounds is similar. Although legitimate without any need of the landowners' consent, they give rise to the latter's right to indemnity for any loss of crops, no matter how careful may have been the behaviour of the military corps (Cass. civ., Sez. un., 12 October 1960 n.2687).

Thus the express provision of the Statutes is now necessary to exclude the obligation to pay the indemnity. Such is the case considered in art. 4 of the Statute 18 June 1931 n.987. This rule excludes any indemnity for destruction, by order of the Authority or by the Authority itself, of contaminated plants or crops.

SPECIAL POSITION OF THE CROWN: LIABILITY OF PUBLIC AUTHORITIES TO PAY DAMAGES OR COMPENSATION WHERE THEIR ACTS OR OMISSIONS ARE BROUGHT BEFORE THE COURTS FOR JUDICIAL REVIEW.

See answer already given.

The special position of the Head of State can be traced to the existence of "acts of State" only.

IN THE EVENT OF PUBLIC AUTHORITIES BEING ORDERED BY THE COURTS TO PAY DAMAGES OR COMPENSATION, WHAT STEPS (IF ANY) CAN BE TAKEN TO COMPEL PAYMENT, IF NECESSARY.

When a pecuniary obligation of a public body towards another person is specified by a sentence, and the latter is executory or - better still - passed in *re iudicata*, it is difficult to conceive that the Authority should deny or delay payment for reasons other than the natural slowness of the public service, or - perhaps - difficulty of finding the necessary funds in the proper item of that body's budget for the current year.

Budgetary difficulties can prevent the public agent from paying immediately, but they would then compel him to change allocation of funds between the budget's items or, at the very least, to plan the next budget in a way that obligations stated in sentence can be met.

All these difficulties do not concern the creditor, who has the choice of suing the Authority, as any other debtor, in front of the civil judge, or to start an action in front of the administrative judge, for the implementation of the sentence by the public authority.

This last development is quite recent. The principle was affirmed by Cons. giust. Amm. reg. sic., 18 May 1972 n.337; was confirmed by Cons. St., Ad. Plen., 9 March 1973 n.1: and is now largely made use of.

The power of the administrative judge to order public authorities to honour debts resulting from civil sentences is now denied by a very important *obiter dictum* contained in Cass. civ., Sez. un., 13 July 1979 n.4071. It remains to be seen whether the Court of Cassazione will insist on such a line and, in this case, whether the administrative judge will resist the ruling.

The kind of public property which can be seized by the creditor under the guidance of the civil judge, and sold at auction is quite limited. No moveable goods or real estate directly utilized for specific public purposes can be in fact subject to a change of destination.

What remains to be impounded is then property held by the Authorities with the sole purpose of earning rent or selling products, or debts owed to the Authorities, exclusive of taxation.

This last exception is due to the fact that taxation is considered as immediately necessary for the day to day administration.

In the case of Departments it must be added that, as all of them are considered as constituting a single public body, property allotted to all Departments can be impounded for payment of debts incurred by any one of them.

In the case of an action brought in front of the administrative judge, the Court, after a hearing *in camera*, can order a specific official or servant to take action leading to the payment.

It can also appoint an agent from a different public body to substitute the other Authority, and so neutralise the effects of the letter's negligence or ill-will.

In extreme cases, it can order the costs of the action, or the damages which could eventually be due to the plaintiff, to be paid by a "certain" civil servant or official.

One must also remember that the agent who deliberately obstructs the payment can be considered personally responsible for damages (art. 28 Constitution).

Finally, such an action would be a crime, which implies the conviction to prison penalty, loss of employment, and again liability for damages.