

General report

presented by

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INTRODUCTION

1. Scope of the present report

In this report we'll try to present in a concise way the result of the comparative analysis taken from the different national reports (except that of

Spain which wasn't received hitherto), as well as to specify the different points about some subjects concerning the execution of administrative act and its jurisdictional control, systematized in the questionnaire.

Unfortunately the comparative work was made difficult by the fact that some national reports, in spite of their high quality, didn't follow the established systematization or elucidate certain points of the questionnaire. This report reveals that, and explains, concerning some matters, the omission about some national solutions and even some misunderstandings.

2. The executory act

This matter concerns the administrative decision that stating unilaterally external legal effects (to do, to refrain from doing or to permit), imposes itself to the individuals, having the administration the power to enforce it. It is in this sense we mention executory acts or decisions.

The acts that concern the verification of situations, authorizations, permits, attestations and identical are excluded.

By administration we mean administrative bodies and authorities.

a) The issue of the executory act

All national reports express the existence of a power of the administration to act in a different way of the contracts, issuing, within legal competence and in the observance of certain rules, executory decisions.

This power proceeds either from a general rule of law (Germany, Belgium, Greece, France and Portugal) or from specific ones inserted into the law or regulation.

b) Competent authorities

In the Community countries the power to issue executory decisions is conferred on the central administration (that is to say on the State executive bodies), and also on the local or regional one. In Germany, a federal country, the Ministries and the regional and local bodies of the Länder have also this power.

Institutional administration (decentralized public services granted with personality of public law) holds also this power, which, according to the Belgian report can be conferred to private entities when they are granted with rights of public authority. In Greece, on the contrary, private entities,

even the bodies with public purpose and public enterprises that belong either to the State or to entities of public law, only exceptionally and in the performance of the aims of the administration (for instance, the Bank of Greece in control of exchanges) can be granted the power to issue executory acts.

3. The activity of administration concerning the enforcement of the act.

a) Power execution in lieu of the individual (exécution d'office)

The normal is the voluntary execution of the decision by the concerned individual. However, when this doesn't happen, the administration can order the execution d'office in lieu of the individual, taking the necessary and adequate measures. Except in Denmark and Ireland, the administration doesn't have to obtain, at least in respect to certain decision, the authorization of a judge or a court. France and Belgium call it «*privilège du préalable*» (the exercise of power without intervention of the Court).

However in the United Kingdom this power can not be used if the execution may result in an attempt to the constitutional rights, when it concerns, for instance, a warrant of arrest or a seizure of a property.

Denmark has an inverse rule: in principle administration doesn't dispose the power to execute its mandatory orders. Indeed, execution «*d'office*» measures must be previously granted by the court, unless evident public security requires from administration an immediate execution. That does not mean that some status do not require a judicial decision. However, even without a legal imposition, the execution «*d'office*» is usually preceded by a warning about the delay of the enforceable measure.

In Ireland the administration has no general power to enforce without restriction, in lieu of the individuals, the decisions that impose obligations or grant rights. What the administration can do is to demand the judge an injunction to oblige the individuals to obey.

b) Power of execution against the individuals, (exécution forcée)

National regimes are deeply different when administration can't assure the execution of the act and when it has to use public force against the recalcitrant individuals. That will be drawn next.

Denmark and Ireland belong to the countries where the most restrict rules exist.

In the former, the administration can not use the force, unless the law allows it expressly and only if other compulsory measures seem not to be sufficient. Only the police has the right to use physical force without special limits. Anyway, it must do it in a reasonably graded way, and in proportion to the concerned interest.

In Ireland forcible execution isn't allowed, in principle. But the law allows it in certain restrict cases (for instance in the fields of children's protection and of insane patients), and in case of urgency. Public force must be exercised with adequate and not excessive means.

French regime is less rigid, but normally forcible execution can only be granted by law. However forcible execution can be used in urgent cases and in exceptional circumstances, or in the absence of a legal sanction which supports the execution if four rules taken out from the doctrine (Romieu) are observed: the act which enforcement is necessary must have its origin in a legal text; the act mustn't be enforced if the individuals resist; there must be no adequate sanction; and the execution measures must only tend, as an immediate objective, towards the enforcement of the act.

Belgium tries to approach this system. If it's true that administration can always appeal to the public force, in cases where the legislator has foreseen compulsory measures, it can also make such appeal even if don't exist express rules, on the terms of french theory, in accordance with part of the doctrine (there aren't judicial decisions on this matter).

Belgium report underlines, however, that there are no rules foreseeing the possibility of an individual to be constrained to fulfil positive acts. Administration must only use indirect means or take an action for damages. Legal texts only allow the administration to prevent, if necessary with the use of force, the individuals from performing certain acts or even to continue performing them.

The principles of express legality, that is the requirement of an express legal rule, allowing physical force, is also in force in the Netherlands, Greece, and United Kingdom.

Greek report mentions that the use of force can only be carried out in the cases where no other proceedings can assure the enforcement of the act and, generally, after a warning addressed to the concerned individual.

Also in the Netherlands, except in urgent cases, the warning precedes the administrative compulsory measures. This warning has to fulfil certain conditions: necessity to describe the situation under which the administrative compulsory measures (administrative constraint) are foreseen; existence of a concret injunction giving the individual the means to prevent the

enforcement of compulsory measures; and existence of a reasonable delay allowing the individual to proceed with an injunction.

From the Italian report one can conclude that administration may proceed «*manu militari*» whenever forcible compulsory measures are foreseen by legal rules, within bounds of reasonableness and fairness.

German regime is more liberal, in what concerns the activity of the administration. In order to act against the individuals, the administration has the power to choose the means of execution foreseen by law, among which the forcible execution. It still has special proceedings towards the enforcement of financial obligations, with the privilege to recover public credits. Anyway, as it happens in the mentioned countries, the means chosen must present an adequate relation suitable to the public aim. The constraint must be preceded by a warning, with a previous statement of the means which will be applied.

In Portugal, where forcible execution isn't yet legally ruled, and where are no judicial decisions on this matter, the administration appeals the public force to remove the opposition of the individuals and private citizens concerned with the carrying out of the decision. It acts as having a general power of physical coercion. Anyway, the tendency of doctrine is not to consider forcible execution as a general principle, but as being performed only when it is expressly authorized by law.

c) Grounds for or reasoning of the existence of the power to enforce measures before the judge's intervention

Most of the reports which deal with this matter point out, as an essential legal element on which this power supports itself, the presumption of legality of the act connected to all the decisions of the authorities, acting in the general interest (Belgium, France, Portugal and the United Kingdom). The Italian report justifies the existence of this power by the fact that decisions aren't, in general, illegal and also by the fact that the administrative bodies and authorities do need it to perform their duties.

This pragmatic purpose («assures to the action of the administration a certain continuity and regularity»; «the desire to speed up the action power of administrative authorities»; make possible «the protection of the interests put by law in charge of the administration») is underlined by the reports from Belgium, France and Portugal.

According to the German report the important aim is neither a presumption of the legality of the act, nor the protection of general interest, but

the fact that the administration may ask the administrative judge to verify the legality of the execution measures.

4. Means of obliging the individuals, submitted to the act, to obey

When the enforcement of the effects of a decision obliges the concerned person to a certain behaviour, the administration, besides the forcible execution, appeals to several compulsory measures. On the other hand, the individual who disregarded the act can be administratively sanctioned or be subject to criminal proceeding. In Germany, when the individual resists to the officers of the execution he has to fulfil a penalty concerning imprisonment (until 2 years) or a fine.

French, dutch, greek and Portuguese reports also mention the appeal to criminal proceedings as well as the threat of criminal sanctions.

These countries also recognize the existence of administrative sanctions, such as the withdrawal of an authorization or a permission, fines (France, Greece, Portugal), loss of an advantage (France, Ireland), amendment or enlargement of the conditions to which authorization was granted (Netherlands).

Greek report mentions the special regime of collecting public receipts where seizure of properties, detention and restraint to go abroad are foreseen.

An administrative sanction, peculiar of the german regime, is the constraint of person which consists of a penalty of imprisonment (one day to two weeks) replacing the «astreinte». This penalty has to be ordered by an administrative judge through an application from the executory authority.

The «astreinte» (payment of a sum of money for each day of disobedience) is foreseen by german law (on the condition that a warning will be addressed to the individual), as well as by the law of the Netherlands, and France.

In Ireland (where administration must have previously a judicial injunction to carry out an order), the individual who refuses to the judge's order can be punished for disobedience to the court.

5. Irregular or illegal execution

a) Legal sanctions

Several motives will lead executory action performed by administration to an illegality or irregularity. In Portugal the act will be illegal, for

instance, when the administration, under the pretext of enforcement of a definitive act, amends its content introducing a new legal consequence. It's an act liable to a judicial review.

In this country execution will be illegal if it supports itself on an act null and void (either legal or material). Individuals need not then obey, being able to resist in a passive way to its enforcement, and if administration goes on enforcing it, the same individual may apply a judicial review so that the judge quashes the act.

In Germany there's a distinction between the execution of an act affected by an ordinary illegality and an act null and void. This expression means in German law an act presenting a particularly grave and evident illegality.

Only the execution of the act null and void is always considered to be irregular. It's a «*voie de fait*» liable to be sanctioned by the ordinary judge. In other cases of illegality the act can be regularly enforced till it is quashed by the administrative judge or while it isn't removed by the administration itself.

It will be necessary also that the suspensive effect of an administrative remedy or a judicial review may not proceed, in the case. The German report mentions two cases of irregular execution:

1.° — Execution of an act without aim, given the fact that the individual has obeyed the decision or this one got its purpose;

2.° — The non existence of conditions to the performance of the act (for instance, the individual isn't warned before, about the execution measures which constraint him to obey, or the warning doesn't mention the kind of constraint the administration wants to apply).

The individual has the right to apply for an administrative remedy and if it doesn't proceed that same individual may apply for a judicial review.

Different from what happens in Germany, concerning the acts vitiated by nullity is what happens in France where the execution of an irregular act is considered to be irregular, too.

In the same way execution becomes irregular (and the two systems are similar here) if, concerning a regular act, it was enforced in conditions that didn't allow it. This irregularity is generally constitutive of a «*voie de fait*» (a notion of great importance in the French system), which can be defined as an evident irregularity, carrying a serious damage, either to property right or to a right of freedom, in the fulfilment of a material act of execution.

The «*voie de fait*» raises from the censure of ordinary courts, that have here a total jurisdiction.

Ordinary courts assure in France, through the allowance of compensations, the reparation of damages the origin of which is in the «voie de fait». They can also prescribe the administration the injunctions to prevent the «voie de fait». The «juge des référés» will forbid administration such behaviours that will be constitutive of the «voie de fait» (it's the «référé» preventive).

When the «voie de fait» gives way to an act vitiated by such a deep illegality that makes it being considered as «null and void», the administrative judge may declare this act nugatory.

Belgian report mentions that irregular or illegal execution causes very rarely absolute nullity or a nugatory act (a word used to qualify such a seriously irregular decision). Jurisprudence only uses it quite rarely and in a very strict way.

The «voie de fait» is also an important notion in Belgium; many judicial decisions oblige the administration to put an end to it.

Individuals need not obey the acts and operations considered as being the execution of a decision which hasn't really been performed.

Ireland goes further: the individuals need not obey, not only in this case, but neither when a decision is enforced by irregular or illegal means. Anyway, the acts of the execution can be annulled by the courts.

Greek report mentions the acts connected with the collection of public receipts. Every measure of execution against the debtor, considered as breaching the law, may be declared void by the court. It will be nugatory if it is performed either by a body completely strange to the execution proceedings, or by a person not having the quality of an administrative organ. The proceeding of a nugatory act is passive of annulment.

b) Liability of the authorities and officials. Liability of a public corporation.

National reports are in accordance when they mention that authorities and officials are generally responsible for their faulty acts.

However, either in the United Kingdom, or in Germany, disciplinary proceedings are very rare. The United Kingdom report justifies this fact with the anonymity and discretion of administrative action and also with the fact that Ministers are personally responsible for the irregularities of their departments.

Cases of criminal liability of officials are almost unknown. The report mentions a specific case of financial penalties imposed on local authorities for improper expenditure.

In the United Kingdom, as well as in Ireland, the liability of administrative authorities and officials is a personal one whenever they act out of their powers, but it is possible to apply the theory of «respondeat superior».

The United Kingdom report still reveals that civil liability of public authorities, owing to the breach of statutory duty, doesn't depend on their culpability.

In every country, if administration enforces an illegal or irregular execution, it will cause, in principle, the civil liability of a public corporation and may be the aim of an action for legal redress, though in the United Kingdom, in certain matters, the Crown liability is restricted.

In Belgium this liability exists, but only if the administrative body acts in accordance with its aims. The offence of an officer involves the liability of administration whenever the act has been committed on duty and in connection with the functions of the officer.

Both in this country and in Italy personal liability of officers towards a third party co-exists with that of the public corporation but in Germany, the State is the entity that always pays the indemnity instead of the officer (even if this one had acted faulty).

In France, damages supported by the individual, owing to the «voie de fait» and the irregular expropriation, give way to a right of redress to the victim. It will be settled by the court that states and verifies those irregular proceedings. The irregular expropriation consists in the taking possession of a private property, temporary or definitively, without legal right, by the administration.

II

Intervention of the courts in the execution of the act

6. Competent courts to intervene in the execution

In the Community countries the action of the administration, in the fulfilment of its executory decisions is submitted to the control of courts, as a rule specialized. This control is more or less wide and efficacious, according to the countries. In three countries — Denmark, Ireland and the United Kingdom — there is no institutional distinction between administrative jurisdictions and those which decide conflicts between individuals.

Besides, a real system of independent and general administrative law doesn't exist there, but several ensembles of legal rules about certain

sectorial connections between individuals and administration. At the same time, litigations between the individuals and the authorities or bodies having administrative power (administration, in the continental sense) are brought before ordinary courts, except in some specified disputes or litigations which are ruled by special administrative courts.

Only exceptionally courts intervene during the enforcement of the decision. The rule is the intervention «post factum».

In the United Kingdom the Attorney General may bring before the High Court (Queen's Bench Division) an action (relator action) against a public authority which issued an illegal act. Private citizens may seek an interim reparation.

The Irish High Court, with some exceptions, is also the competent court to intervene in the execution of an administrative decision, provided that its illegality is pleaded.

In the other countries exists a duality of jurisdictions, what brings to the partition of competence. In most countries administrative jurisdiction is competent to intervene in the litigations about the execution of the decisions of the administration.

Italy occupies a special position in the countries with double jurisdiction. In this country administrative courts are confined to rule «legitimate interest», a special concept of the Italian system, which focuses the situation of a private citizen «vis-à-vis» the administration on usage of its public powers and on whom the administrative act takes effects.

This citizen has a legitimate interest in the legal behaviour of the authority and according to the legal purpose of its power to act.

Ordinary courts are competent to protect subjective rights (absolute rights and rights that result directly from law, from contracts, as well as from an illegitimate fact).

In several community countries the claim for compensation owed to private citizen by damages (for instance, owing to illegal execution measures) falls in the competence of ordinary courts. It means that all liability actions against entities of public law must generally be applied to ordinary courts.

It's not the same in France, Portugal, Greece and in the Netherlands in certain conditions. In Belgium, however, if a damage isn't awarded by an ordinary court, the «Conseil d'État» may, on certain conditions, have competence for an exceptional compensation claim.

In France the intervention of an ordinary judge, though exceptional, is of great importance. He has competence to take decisions about administra-

tive acts for two main reasons: on one hand as the keeper of private property and individual freedom; on the other hand as a judge who, during a litigation has to deal with questions that fall in the competence of an administrative judge (interlocutory questions).

Concerning the individual freedom this principle becomes a constitutional rule of law.

Matters concerning civil status, capacity, nationality, quality of elector fall also in the competence of the ordinary judge, as well as the violation of the right to choose domicile (for instance the internment in psychiatric hospitals). At last he also has competence to judge damages against private property (he's competent to determine the compensation for expropriation and to perform the transfer of property). Jurisprudence has unfolded theories on «voie de fait» and irregular expropriation which we've already mentioned.

7. Aim of jurisdictional intervention

This aim is connected, in every national system, with the nature of jurisdictional means used by individuals. In France, Belgium and Italy, where the judicial review («recours pour excès de pouvoir») presents an objective feature, since an individual can ask the judge if the act is in accordance with the law, the aim of the intervention is the protection of the law, as well as the general and impersonal interests it guarantees.

In a different way if the means — appeal or action — recognize and protect the rights and interests of the individuals, its feature will be a subjective one, and the aim of the intervention will be the defence of those same rights and interests. This aim is pointed out by the greek report when it mentions the execution of administrative acts. But the reports from the United Kingdom, Ireland, Portugal and Germany point out that the two aims are associated, what may signify the mixed nature of the judicial review (the german report emphasizes the subjective element, because it considers the defence of the law and society a secondary effect of the jurisdictional intervention).

8. Jurisdictional means at the disposal of the individuals against an irregular or illegal execution.

These means are generally those that the individuals may bring against executory decisions: judicial review («recours contentieux») and actions for

legal redress (in kind of compensation, by the award of an amount of money).

All the reports give importance to this last means.

With some exceptions, civil liability of a public corporation is based on a fault of an administrative official. However, in Greece this liability has an objective feature because it's not based on the fault of the official. In Belgium, the liability of administration can also be determined without the existence of fault (namely about public works). On the other hand several laws establish in the same country an objective liability, either on the charge of every entity (administrative authorities included), or specifically on the charge of public powers. Liability action is independent from the judicial review («recours pour excès de pouvoir») brought before the Council of State and can be applied even if the executory act hasn't been challenged.

This last principle is in force in Portugal, though in a more restricted way, because the law conditions the right to file an action, that is, the damage suffered by the plaintiff won't be owed either to the lack of bringing the judicial review or to a negligent conduct in the judicial review.

The vagueness of this rule, which is difficult to interpretate, doesn't favour the individuals who, owing to the forfeiture of the right, may not obtain the compensation.

In the United Kingdom, besides the action for legal redress, the individual may apply for a judicial review, which will have a certain timing. It's an ordinary proceeding against the irregular action of the administration. Court decisions are the following: «Certiorari» (quashes the administrative act in dispute); «prohibition» (prevents administration from acting in excess or abuse of its powers); «mandamus» (forces administration to act in a specified way); «injunction» (imposes to do or to refrain from doing certain things); «declaration» (declaratory judgement, with merely persuasive effects, that is to say, not obligatory).

In Ireland «injunction» is the decision the victim of an irregular decision may apply to restrain the effects or the threat of a physical action when declaration of rights isn't sufficient.

In the Netherlands when a decision isn't granted by a central authority, the individual can, except in certain cases, lodge a complaint to that authority and, if the attack to its rights still persists, he can appeal to the Council of State.

The regime deserves, in Germany, a special attention because the obligation of doing, to refrain from doing and to permit is ruled by a federal law.

As in the other countries, the individual disposes of jurisdictional means: but these means are compulsorily preceded by an administrative remedy, the effect of which is generally a suspensive one and allows the re-examination of the «opportunity» of the act by the administration. The individual has also other different means: a jurisdictional remedy, when the obligation that is the purpose of the execution is nugatory; a remedy tending to obtain a decision of the judge to oblige the administration to remove the act object of the execution; a precautionary remedy to prevent administration from issuing irregular measures of execution; the power to apply to the court for an interim injunction before the judicial review.

If the executed act isn't attacked in due timing (which makes it not challengeable), a judicial review may be applied against the measures of execution.

Greek example is also interesting, but unfortunately it's restricted to the collection of public receipts, where a specified law foresees remedies against the irregular or illegal execution of the administrative act, either before or during the fulfilment of the measures. In principle the individual has, in other fields, no means to prevent the execution or to obtain the annulment of the acts of irregular execution. He can only apply after its execution, claiming for damages against the administration.

Some reports mention the extreme situation of the issue of measures of execution by administration, applying either for a nugatory act or for an inexistent one (there's no material decision).

Both in Germany and Portugal (where a nugatory act becomes similar to an act null and void), it can always be verified through the judicial review and vitiates the execution of illegality. In Belgium the individual may refer to the «Conseil d'État» only if the act is a nugatory one; if there's no material decision, the judicial review will not proceed because it will have no object.

9. Other means

Very few reports mention other means: in Germany the petition to the national representation and the hierarchic remedy (that has no form or time); in Belgium, the administrative remedy (hierarchic or tutelar).

10. Stay of execution

a) *The suspensive effect of the judicial review and the stay of execution*

The stay of execution is bound to the principle of the non-suspensive

effect of appeal before courts against executory decisions. It's a proceeding of provisional protection of the rights and legitimate interests, trying to mitigate, in the absence of the suspensive effect of the judicial review, the inconvenients brought by the application of an eventually illegal act (and, sometimes, obviously illegal) against the individuals who want to appeal.

Only in Germany (and in Greece, concerning the taxation cases) the judicial review, has, with a few exceptions, a suspensive effect. This rule is removed when the law, (mainly concerning matters on taxes, charges and fees) or the administrative authority (through a special rule or express act) eliminate the suspensive effect.

In this case, even before the introduction of the appeal, the individual can apply for a decision of stay (of execution) or reinstatement of the suspensive effect. This reinstatement can be submitted to the payment of a deposit.

The opposite system is represented by Belgium and Denmark, where, except in some cases, the individual who wants to apply to the courts is not allowed to use the proceeding of the stay of execution.

In Belgium this rule is mitigated by the judge of «référés» who, in certain cases, can order a stay. One of the conditions to which the competence of a judge of «référés» must obey is the speeding up (urgence), but one tends to deduct from this «urgence» the non-suspensive effect of an appeal to the «Conseil d'Etat».

In the Netherlands the court cannot grant the stay; this is of the competence of the President of the Jurisdictional Section of the «Conseil d'Etat» and only in urgent cases.

In the other Community countries the administrative or ordinary courts may grant the stay of execution in a more or less free way. Less freely in France.

Indeed, the French report mentions that the stay obeys to restricted admissibility rules and to still more rigorous conditions.

In the United Kingdom and Ireland the stays are ordered by the High Court — interlocutory injunction in the U. K., interim injunction in the latter. The individual must apply to them, but in the United Kingdom, the Attorney General may bring a relator action whenever there's no standing.

We'll develop now the points limited by the questionnaire.

b) Possibility to obtain a stay of execution independently from a judicial review against the executory act

Both in Germany and Portugal it's possible to have an independent and

previous proceeding before a judicial review against the executory decision.

The United Kingdom report mentions the possibility to bring an «injunction» before the judicial review or the civil action, but it doesn't mention if it is an independent proceeding.

In Belgium, the action brought before the judge of référés who, in certain cases can grant the stay, is independent from the «action au fond».

In the other countries the petition of the stay of execution can be introduced only when a judicial review is brought against a litigious decision. However there isn't always a coincidence between the competence of a court «ratione materiae» and to grant a stay. It may happen in Italy, where the individual must apply to a regional administrative court (court of first instance); and this necessarily takes place in the Netherlands (where the President of the Jurisdictional Section of the Council of State is competent to grant the stay), in Luxemburg (the stay is granted by the «Comité du Contentieux» of the «Conseil d'État», that can grant it in certain conditions, in matter of reformation) and in Greece (the stay is granted by a Commission «ad hoc» where the President of the Council of State, or the President of the concerned Section, as well as two other members of the Council, take place).

c) Stay of execution of an act already performed

This is possible in Germany and Portugal. In the former, the court can submit its decisions to the payment of a deposit or to any other obligation. In the latter, an evident usefulness for the individual resulting from the grant of stay in what concerns the effects to be still performed by the act. Besides, the stay cannot be granted if the individual, whom the stay brings damage to, proves that it will be a damage much more difficult to be redressed than that which would result to the petitioner, concerning the performance of the act.

Italy can be included in this group. In fact, the Italian report reveals that the stay of execution granted by the regional administrative courts has effects «ex-tunc» and is applicable to decisions already performed. Therefore, the administrative authority must restore the former situation as well as possible. However, the court can limit the consequences of the stay of execution.

d) Suspensive or non-suspensive feature of the application for a stay

Only in Portugal the application for a stay has a similar effect to the

stay of execution, because the authority, after the notification of the application, must urgently take the necessary measures to prevent the services and officers to proceed with the execution.

Exceptionally, in cases of great urgency, and with a written justification, the authority may start or continue with the execution.

Greek report mentions that the administration, even not having a legal obligation, usually does not proceed with the execution when it receives the information about the existence of an application for a stay.

e) Stay ex-officio

The courts of community countries cannot grant a stay by its own initiative. But generally it's not the same concerning the administration.

f) Scope and effects of the sentence of the stay

The notification of the stay forbids administration to enforce the act (temporarily deprived of its legal effects). So, all the execution measures taken after the granting of stay are illegal. In principle the grant of stay maintains its effect till the final judgement (that is to say, the authority of a «res judicata») of the proceeding against the executory act.

The effect of the stay can be limited by the court, and that's why the execution is in part forbidden, both in Germany and Italy. In this last country, as well as in Portugal, the courts can submit the stay to conditions.

The decision granting the stay hasn't the power of a «res judicata» concerning the judge upon the merits. In Belgium, France and Luxemburg-, where the system imposes the existence of solid grounds to grant the stay (that is to say susceptible to lead to the annulment of the administrative litigious decision), the sentence of the stay gives the judge of the appeal (judge upon the merits) an important indication.

g) Appeal against the sentence of the stay

The decisions taken by the courts of first instance are generally liable of an appeal to superior courts, Court of Appeal in Germany, Council of State in Italy and Supreme Administrative Court in Portugal.

The decisions of german Court of Appeal, even taken in first instance, aren't liable of an appeal. The same in Belgium («Conseil d'État») and Portugal (Supreme Administrative Court), except on what concerns the

contradictory judgements (in this case, the plenary assembly of the section is competent to examine the appeal).

Belgian report points two exceptions to the principle of insusceptibility of the appeal against the decisions of the «Conseil d'État». The decisions of the judge of the «référés» are liable to opposition and appeal.

In the United Kingdom the judgement granted by the High Court are also liable to appeal.

11. Enforcement and effects of the jurisdictional voidance of the act already performed

a) Enforcement of jurisdictional decision

If the administration has enforced an act brought to the court, owing principally to the rejection or abstention of the request of a stay, three questions have to be asked: what are the effects of an eventual voidance of the act on the elements already performed; how can administration carry out the sentence and if it cannot legally be done; what is the competence of the court to oblige the administration to carry out the jurisdictional decision.

As a rule in the Community countries the voidance of an administrative decision by the court has an effect «ex tunc»: the act is likely to have never existed.

Administration must enforce jurisdictional decision. It must issue the acts and measures to fulfil the judgement in a complete and suitable way according to the exigences of the same. So, if the void act has granted or changed a legal situation, the administration must, not only replace the act, but reconstitute the situation as it should be if the act had never existed, with all the consequences, positive or negative, this may imply.

Nevertheless, the achievement of the retroactive effect has limits and blandness. Belgian report mentions them, saying that the official, whose nomination had been annulled, must not return the salary he was paid. On its turn, the greek report adds that the acts issued by that official are still in force. And according to the french report the official is considered as legally vested in his functions, as if nomination hadn't been annulled. The rights acquired by a third party, which are definitive, have to be maintained.

In the United Kingdom the safeguard of a third party rights reduces the retroactive effects of jurisdictional decision. Besides, in this country, the retroactive effect isn't automatic, exactly as in Ireland and Denmark.

In the Netherlands, also, the retroactive effects aren't necessarily

produced, once the Jurisdictional Section of the Council of State can decide that they are totally ou partially maintained.

b) Legal non-performance. Liability of the public corporation.

The acting of administration in the execution of the Jurisdictional decision faces sometimes insuperable difficulties, and becomes impossible. It's what happens when in the meantime definitive changes occur, for instance, the demolition of a building with unique characteristics and prohibition of a meeting that would have taken place on a previous day, in the past.

The existence of an impossibility of law will be possible. It's the case of a validation by law, in a retroactive way, of an illegal decision which is being impugned, or already annulled. In Portugal, however, the administration can't consider the validation by law as a legitimate cause of non performance, because the Constitutional Court will always declare it constitutionally vitiated. It this country law accepts the non-performance in case of serious damages to the public interest.

The systems from Germany, Italy and Greece are more severe: in these countries the damage to the general interest or to the good functioning of public services do not prevent Jurisdictional decision from being enforced.

The victim of a legal non performance keeps a right to damages, either in France or in Portugal. In Italy, only if a subjective right was infringed. In the other countries the liability of a public corporation depends on the existence of a fault.

c) Illegal non performance. Power of the court to oblige administration to enforce judgement

Illegal non performance appears normally by the abstention or refusal of administration to take totally or partially the measures demanded by the complete enforcement of the sentence. According to the law, this is, in many countries, an illegality liable to a judicial review owing to the lack of obedience to the «res judicata».

In the United Kingdom and Ireland disobedience to an injunction results in a criminal proceeding for contempt of court, punishable by fines and imprisonment. Besides, the Judge can condemn the administration to act in a certain way emitting the «mandamus». Concerning such a decision the United Kingdom courts can oblige the administration to reconsider the question in litigation, free to take another decision.

In these two countries, execution against administration is similar to that against the individuals. This system accepts forced judicial execution, taken as distraint or seizure of property performed by police authority. Except the Crown, which is released from every execution, seizure or proceeding implying an obligation to do or pay something.

The court, in Denmark, has no power to oblige the return to the «status quo ante».

Germany, Italy, Luxemburg and Portugal have specific ways of execution.

German report mentions in detail the legal way concerning the execution of a judgement. The individual has the right to demand the judge to condemn the administration to take all measures to enforce the decision of annulment of the act. Administrative courts grant the enforcement of sentences on the analogy of ordinary courts, not contrary to dispositions of the administrative code. Execution measures are: seizure-judgement, seizure-execution, «astreinte», fine and seizure of real property. In order to make these measures superfluous, before granting the decision (except in case of the execution of a «référé» or a provisional decision), the court must warn the administration about the execution, demanding it to enforce willfully its obligations in a delay, no more than one month. If the administration doesn't perform it, the administrative judge orders the execution, determining the necessary measures and delivering it to the competent authority that must follow the court instructions.

Concerning the decisions that oblige the administration to reform or extinguish the damage produced by an illegal execution of an ulteriorly annulled act, the law authorizes the court to impose the administrative authority that hesitates to execute the sentence an «astreinte» of about 2000 D. M.

Portuguese law grants the individual, who has filed a judicial review, the right to demand the court a declaration concerning the inexistence of a legitimate cause of non-performance. When the court declares the inexistence, it must specify, after hearing the administration and the petitioner, the acts and operations to be accomplished and the term to do it. The acts performed against the judgement are null and void and those performed under the pretext of having a legitimate cause of non-performance are voidable.

The Italian report refers to the proceeding of its country as quick and efficacious. According to the cases, the individual may ask the regional administrative court or the Council of State a determination of a term to the

enforcement of the act. He may also demand the appointment of an authority that, acting as a delegate of the court and in lieu of the disobedient authority, will take the necessary measures to accomplish the judgement.

The power to put an authority in-the place of another also exists in Luxemburg, where the individuals can refer to the «Comité du Contentieux du Conseil d'État» after a delay of three months (since the sentence). This one nominates a special «commissaire» to enforce the act in a delay settled by the Committee, in lieu and at the expenses of the authority which should be the competent one. The new decision is liable to an appeal.

The power of intervention of the french, belgian, greek, and dutch courts is weaker. In the Netherlands and in France the «astreinte» pronounced against the authority of whom depends the execution, is the principal right of the individual. But while the dutch Jurisdictional Section of the Council of State only intervenes after the application by the individual, the french «Conseil d'État» and the president of the «Section du Contentieux» of this Conseil can order an «astreinte» «ex officio». Law imposes fines to the executives themselves whose behaviour caused the astreinte (french report still mentions the function of the «Conseil d'État» to inform and explain the administration about the measures to the enforcement of «res judicata» and what to do about a Jurisdictional decision).

Belgium and Greece are in a lower level. In Belgium, the courts have no coercitive means to oblige the administration to enforce their orders. One of the reasons for this is the immunity of execution enjoyed by entities of public law. There's an hope to modify this situation owing to the unique Benelux law on «astreintes» and owing to an important doctrinal movement «pro» mitigation of the principle of the immunity of execution.

In Greece, neither the administrative courts nor the Council of State have the effective power to assure the execution of their decisions. It's even impossible to bring before them a judicial review against the abstention of execution, or the issue of the concerned acts. The intervention of the courts is limited to the following: a committee, composed by members of the Council of State with intervention «ex officio» or on application of the individual, can give a written notice to the President of the Cabinet and the Minister of Justice, that administration is in delay or unjustly refuses to enforce a sentence.

d) Liability of the authorities and officials

The system of liability of authorities and officials, resulting from

illegal acts concerning the execution of jurisdictional decisions is similar to what concerns item 5.b) of this report.

We've already written about criminal proceedings for contempt of court, which are specific of the United Kingdom and Ireland systems, concerning specifically the non-performance of the court orders which oblige the administration to fulfil them. Portuguese report mentions that the non-performance of an administration court decision implies a criminal sanction correspondent to the infraction of disobedience, when the administration doesn't enforce the acts and measures determined by the court, in an executive proceeding. A similar sanction is applicable to the authority charged of the execution which clearly shows not to want to enforce «res judicata» without invoking a legitimate cause of non-performance.

III

The intervention of the courts concerning the jurisdictional protection of environment and political refugees

12. Limits of this chapter

To outline this question better, some national reports schematize the right of environment and political refugees of their countries. This is not the scope of this chapter, but only the more specific or significant features concerned with intervention of the courts in these fields.

13. Jurisdictional protection concerning the environment

The rule of the suspensive effect of judicial review in force in German law, can be put aside by a special decision that states the reasons on which it is based, if environment protection, which is part of general interest, requires immediate execution of the administrative measure. However the possibility that the individual requires the administrative judge the reinstatement of the suspensive effect is not excluded. This effect is eliminated by law concerning jurisdictional remedies against certain decisions about legal protection against noxious and dangerous substances, which do not prevent the request for the stay of execution.

In France, Greece, Italy and the United Kingdom the jurisdictional control operates especially by the stay of execution.

In France, concerning the article 2. of a law of July 10-1976, if an application for the administrative jurisdiction against an authorization of a project concerning al. 1.^a of the said article, is based on the absence (material, according to jurisprudence) of «d'étude d'impact», the court grants the application for a stay, without evaluating the difficult reparatory feature of the prejudice, which is one of the normal conditions for the granting of the stay.

In another way, the administrative judge widened the field of the application of the stay once the reasons concerning the exigences of environment or of esthetic are added, by the judge of the stay, to the trespass of private property, usually considered by the court. So, protection of the environment is considered of general interest, convenient to preserve, especially by granting a stay of execution of the decision liable to cause damage. Attack to environment brings a damage very difficult to repair.

Jurisprudence of greek State Council decides the same way, but on the other hand rejects, in principle, for being against the public interest, the stay of execution of acts which order the closing of instalations or equipments dangerous or unhealthy and pernicious to the environment.

Italian report gives the example of the permit for construction of a building in a rural region, given by municipality, but which is not in accordance with the plan approved by the town council. In this case any inhabitant may either require the competent court the annulment of the permit or require the regional administrative court for a stay of execution. After the grant of the stay, if the authority doesn't perform the decision of the administrative court, the plaintiff can apply again to this court, which will nominate an authority, giving it indications of the acts that must be enforced. The administrative judge can also inform the mayor about the legal proceedings.

The United Kingdom report gives as examples of the stay of execution, to restrain a local authority from executing a demolition order, the absence of a judicial proceeding with a propoer hearing of the owner, or the annulment of the municipal order which supported the power to order demolition. The role of the courts is of importance, besides the stay of execution.

Greek report informs that the jurisprudence of the Council of State, judge of the judicial review, has developed in the last years towards a better protection of environment, making a judicial interpretation of certain articles of the Constitution to guarantee this protection. The proceeding of administrative execution ruled by the law concerning the collection of public

receipts is applied to the administrative executive procedures dealing with the collection of fines. The individuals can legally appeal to the competent administrative courts against these acts, as well as against the concerned acts of execution.

Environmental has in the United Kingdom, a favoured field for the execution «ex officio», which is historically bound to the performance of the authorities while on duty concerning the repair and maintenance of roads and bridges. Any citizen can institute proceedings against these authorities and get the right to do by himself the necessary works, and to be returned by the faulty authority of the expenses he made.

In Ireland environment protection is connected with the enforcement of laws on territorial ordering as well as planning, which foresee building permits. The grant of these permits is preceded by a specific administrative proceeding whose last decision may be susceptible of an appeal. The Appeal Board will pronounce a definitive decision.

If the building permit is submitted to conditions and these ones aren't fulfilled, the court, on requirement of the private citizens, may order by an injunction the demolition of the building or the structure.

Out of the ordering law, the courts only intervene on the terms of special law or in cases of serious attacks to the public or private interests.

In Luxembourg a law dated august 11-1982 submits practically all Concerning the said law an appeal against a minister's decisions is brought to the «Conseil d'État (Comité du Contentieux)» which decides as judge on to the «Conseil d'État (Comité du Contentieux)» which decides as judge on the merits. This decision is enforceable, being the administrative authority obliged to enforce, under penalty of forcible execution by a special commissioner.

Laws, in Belgium, with different sources, in a great part regional, have dispositions in various environmental sectors: maintenance of monuments and sites, protection of woods and forests, territorial ordering and planning, fight against noise, atmosphere and subterranean waters pollution, fight against surface waters pollution, regulation of equipments whose exploitation can carry danger, insalubrity or disturbance, as well as protection against ionic radiations.

Belgian authorities dispose of large administrative powers against the individuals who infringe protective rules or refuse enforcing administrative decisions.

Through these laws and according the said cases, the administration can enforce its decisions instead of the individuals, can take preventive or

urgent measures to assure the enforcement, can apply to the public force, can forbid conducts that infringe the protected ecological values.

The decision brings in a «post factum» appeal to the «Conseil d'État», without suspensive effects.

Ordinary court can intervene, through the means of the «référé», on requirement of the individual, to suppress the order of the interdiction of works, concerning the territorial ordering as well as planning.

Protection of environment in Denmark doesn't remove the principle of necessity of the administration to apply to the court to correct an illegal situation or impose sanctions (e.g. fines). Execution «ex officio» will follow the judgement on the validity of administrative decision, using sometimes discretionary proceedings that will be under the judge's control and pernicious effects are liable to be repaired.

However, concerning for instance the protection on environment certain laws grant execution «ex officio», without court intervention, of mandatory orders or prohibitory orders if the individuals do not obey to them, in time. Even in this case, execution «ex officio» doesn't allow the use of physical force, but police can help the administration in the enforcement, for instance, if the danger of pollution is great. Criminal proceedings and the use of physical force, in order to stop an illegal behaviour, depend, in principle, on complaint to the police.

According to a law coming into force in the Netherlands in January 1-1988, the administrative, Dispute Division of State Council intervenes (like Jurisdictional division as the final administrative judge) in the litigations that will be brought to the Crown, which are above all those concerning environment legislation, being the Crown appealed to know and decide them.

14. Jurisdictional protection concerning political refugees.

With the exception of the United Kingdom and Ireland, where this matter is ruled by laws concerning immigration and the foreigners, respectively, the persons persecuted for political reasons have, in the Community countries a specific regime of administrative protection which is based on the Genève Convention of 28.July 1951 on refugees statute, and on the protocol of 31.January 1967. In two of these countries, Germany and Portugal, the Constitution guarantees the right of asylum.

This right and the quality of refugee are recognized or granted by the governments of Greece, Italy, Luxemburg, Portugal, United Kingdom an

Ireland (in this last country, owing to an agreement with the Government, the enforcement of the Genève Convention is carried out under the supervision of the High Commissioner for the refugees of the United Nations). A special administrative service under the authority of one or several officers, independent from the government, recognizes or grants the said right and quality of refugee. Thus, the cases of this specific administrative service are granted by a federal bureau in Germany; by the French Bureau for Protection of Refugees and Stateless Persons in Belgium, and by the Direction for Foreigners, in Denmark (Direktoratet for Udlænding).

In general, decision granting or refusing the right of asylum are liable to a jurisdictional remedy.

However, the German general regime of the jurisdictional remedy has some deviations in this country. In reality the rule of previous administrative remedy is not applicable, because the petitioner of asylum can apply directly to the administrative judge. Besides, the jurisdictional decision cannot be appealed to a superior court unless the administrative court or the Court of Appeal, according to the cases, has authorized the plaintiff to appeal or to lodge an appeal. If the administrative court rejects the appeal, as obviously irrelevant or without grounds, there will be no appeal.

Judicial remedies have no suspensive effect (but a stay of execution procedure is possible) when a petition for asylum must be rejected because the plaintiff obviously enjoys the protection of another state.

Concerning the legal statute of the refugees in the Netherlands, there is a peculiarity about the stay of administrative decisions: as an ordinary judge the president of the district court can grant, or order, a provisional remedy, being the parties able then to apply and lodge an appeal.

In Portugal, the jurisdictional remedies against the refusal of the right of asylum have exceptionally a suspensive effect.

There are exceptions to the principle of direct attack of administrative acts, before the courts, in the following countries:

1.° — In Belgium, the decision of the general Commissioner for the refugees and stateless persons are only liable to remedy to the appealing Permanent Committee, being the president of the chambers either a judge or a conseiller. Committee decisions are only liable to remedy, on the terms of article 14 of the co-ordinated laws on the Conseil d'État against administrative contentious decisions. The «Conseil d'État» cannot grant the stay of the execution.

2.° — In Denmark, the decision from the «Direktoret», refusing the

petition for right of asylum are liable to a remedy, without suspensive effect, to the Committee of the refugees. Its president is a judge, whose decisions have a definitive feature, being the individual not able to attack them before a tribunal or a court.

3.° — In France the decisions of the French bureau of Protection of refugees and stateless persons can be submitted to the Appealing Committee for refugees and stateless persons.

The individual can lodge an appeal before the «Conseil d'État». At a time before having been recognized the quality of refugee, a foreigner, wishing to benefit from the right of asylum can see his entrance in national territories refused by a minister's decision (or, in Denmark, by the «Direktoratet»). In this case the decisions are liable to a judicial review. In Belgium, the decision can be the object of an urgent demand for re-examination.

National reports mention the refugee's situation that loses his right of asylum (owing to a behaviour not in accordance with the duties he is submitted to, or owing to security or public order reasons) and, consequently, is obliged by the administration to leave national territory. In a similar situation is the foreigner who did not obtain the statute of refugee and hasn't the right, for some other reason, to go on living in the country. It's a case of expulsion where the forcible execution of the administrative decision is allowed in all the countries. That is to say, the concerned person is taken forcibly to the border. But the foreigner who is in risk of expulsion doesn't lose his legal protective means. He keeps the normal jurisdictional means and in the countries where it occurred, he may apply for a stay of execution (except in Greece, if the foreigner's expulsion is a government act). In Germany, the judicial remedy, in this case, has no suspensive effect. In the United Kingdom, besides the judicial review, he has the right to the «habeas corpus» and can be granted an extra-judicial stay of the administrative decision and measures.

In Portugal the declaration of extinction of the right of asylum and the order of expulsion fall in the competence of the Court of Appeal. And the individual can lodge an appeal to the Supreme Court of Justice against the decision of the Court of Appeal.

In Belgium, whenever the decision of the Minister of Justice, refusing the entrance to a foreigner, who says to be a refugee, orders him to be conducted to the border of the country from where he fled and where his life or freedom are threatened, he can require a judicial remedy with suspensive effect to the president of the court of first instance. It is applicable, in this

case, the procedure of «*référés*», but the decision is not liable to an opposition neither to an appeal. Nevertheless, the orders to leave the country, being able to be the purpose of an appeal to the Conseil d'État (that has no power to stay the execution) aren't liable to «*référé*» application before the president of the court of first instance.

In France the refugee in risk to suffer expulsion can have, as foreigner, a guarantee of regular attendance before the committee of expulsion, except in absolute urgency, and as a refugee, he can apply, with suspensive effect, to the committee of appeal.

The proceeding of expulsion, in its successive stages, is controlled in a more and more developed and complete way by the administrative judge.

The appeal against the expulsion order can be issued by administrative court, which can also grant the stay of execution.

The decision of expulsion can also be the object of a request of abrogation to the Home Office, whose decision can be impugned before the administrative judge.

IV

Synthesis and final remarks

The comparative study we have just made points out that the administration mustn't be hindered by legal obstructions in order to proceed its own purposes, which are enforced by, for instance, executory acts or decisions that are presumed to be issued for the realization of the general interest and according to the law. Its action cannot have more than certain powers or prerogatives to give way to the execution «*ex officio*», that is to say, to the execution of the decision instead of the individual who doesn't want to enforce it freely, without obliging the administration to apply previously to a court. In Denmark and Ireland the administration must generally obtain an authorization or judicial order, though there are exceptions expressly provided by the law or dictated for reasons of public order, urgency or serious damage to the general interest. Protection of the environment and expulsion of foreigners who didn't obtain, or lost, the statute of refugee are the fields where these exceptions take place.

National systems seem diversified when the administration, to assure execution, has necessity to appeal to public force. This diversity concerns less the exigence of a law foreseeing expressly the coercitive means or of

constraint that administration can use than different conceptions concerning the limites of the field of activity of forcible execution and its submission to the conditions of indispensability, adequacy and proportionality.

Germany and Portugal do not belong to this group of countries, because here administration has a general power to choose forcible execution. But in the first country this power is compensated by a specific law that rules administrative execution and restrains administration to proceed in an inadequate and excessive way.

In every country, irregular ou illegal execution instead or against the individual is legally punishable and contains in itself the liability of authorities and officers. Civil liability depends generally on a faulty behaviour. It contains, in principle, the civil liability of a public corporation, though in the United Kingdom, in certain fields, the Crown has none.

All the countries organize control systems and offer the individuals legal procedures, to compensate the said-powers and administrative privileges. These legal procedures are mainly of jurisdictional feature: «recours contentieux», actions, judicial review, etc. Their main purpose is to oblige to respect the general interest and objective right, or to protect the rights and interests of the individuals, or both. However, there is a tendency to favour the subjective. element.

In countries like the United Kingdom, Ireland and Denmark, where no jurisdictional administrative order exists, the control of the execution of administrative decisions belongs to ordinary courts, except in some cases which fall in the competence of special administrative courts.

The other countries know the duality of jurisdiction — ordinary and administrative courts — what implies a division of competences.

Administrative jurisdiction is normally competent to examine the litigations concerning the execution of administrative decisions, without forgetting the importance of the intervention of the ordinary judge in France and Belgium. The report from this last country points out the wish of the expansion of the «Conseil d'Etat» powers.

Italy calls attention to the specificity of its system, being the division in a vertical sense: on one side ordinary courts protect subjective rights; on the other, administrative courts protect legitimate interests.

From all these reports one can conclude that the unity of jurisdiction concerning administrative litigations is of great importance in the enforcement of jurisdictional control.

Courts intervene very often after the fulfilment of the administrative decision and redress «En Nature» becomes, in a large number of cases,

difficult, even impossible. That's why national reports give importance to the claim for damages, of the competence of ordinary courts in most countries. Only in France, Greece, Portugal and the Netherlands (in certain conditions) the administrative judge is competent in what concerns the liability of the authorities and public corporations (belgian report points out an exceptional case where the «Conseil d'Etat» is the competent one).

In order to prevent illegal executory act from attacking the individual's rights and interests, the most efficient solution might be the giving of a suspensive effect to the judicial review and other jurisdictional ways. However, german system is the only one to consider this solution as a general rule (greek law accepts it, too, but concerning only the taxation cases), without, according to the german report, being obstructed the action of the administration, which keeps the power of immediate execution if public interest demands it (suspensive effect can be re-established at the individual's application).

In any case, most countries adopt the stay of execution granted by courts, with more or less severity.

Concerning the protection on environment certain reports point out that the stay is granted (or not) considering the effects of the act on the protected values. And concerning the political refugees, too, the courts have tendency to grant the stay if this one is not evidently against national interest.

Belgium and Denmark are excluded from this group of countries, because there only very exceptionally the courts can grant the stay of execution. However, in Belgium the judge of the «référé» grants, in some cases, the stay of execution. In Denmark courts intervene before the enforcement of the decision by the administration.

The annulment by the court of an executory decision already performed has in most countries a retroactive effect («ex tunc»). This effect obliges the administration not only to replace the voidable act by a legal one, but also to take the acts and measures necessary to fulfil the judgement (it may be the case to re-establish the situation as if the act had never been done). The retroactive effect is not automatic in the United Kingdom, Ireland and Denmark; the judge has to declare it. In the Netherlands the State Council can decide that the effects of the voidable act must be maintained (in a total or partial way).

Administration cannot refuse to fulfil judgement unless in the case of impossibility (of fact or legal). The most common example of legal impossibility is the retroactive legal ratification of the impugned decision, what is considered in Portugal, by the Constitution Court, against the constitutional

principles. This country is the only one to accept non-performance owing to a great damage to the public interest.

Concerning a case of impossibility, the individual only has the right to an award of an amount of money as damages.

The differences of the national solutions are deeper and the «nuances» are numerous when the administration abstentions or refuses to fulfil the judgement without being able to apply for a legal cause of non-performance.

In the United Kingdom and Ireland, besides the public prosecution carried out by disobedience to an injunction, the individual has the executive procedure of common law at disposal of every entity, either private or public, concerning any case. This procedure admits judicial forcible execution, that can consist in the seizure of real property. However, Crown immunity limits, in the United Kingdom, the efficacy of this way.

German and Portuguese laws open specific ways to jurisdictional execution. They give the administrative judge the power to oblige the administration to issue acts and operations and to impose very efficient measures. The German system is near to the forcible execution of judgements by civil ordinary courts.

In Italy and Luxembourg the jurisdictional intervention is direct and quick, because judgement can be enforced by a court delegate authority or a special commissioner, acting in lieu and instead of the faculty authority.

French and dutch courts detain lesser powers. The *astreinte* against the authority on which depends the execution of the judgement is their most important means. With still lesser powers are the belgian and greek courts, because they have nor coercitive means, neither the power to impose «*astreinte*» to assure efficiently the execution of their judgements.

From this synthesis results that the question of jurisdictional protection of individuals' rights and interests «vis-à-vis» the executory action of administration is considered by the laws of all European Community Countries. The moment to enforce the action isn't always the same: in a few countries the courts intervene before the beginning of the action; in others — most part — when the judicial review is brought before the court. In certain countries this protection is combined with a jurisdictional execution procedure that obliges the administration to accept the judgement.

It may be said that certain national systems can develop to a more perfect and efficient protection of individual's rights and interests, being all

the reports in agreement with a general tendency to get the rightful equilibrium between individual's rights and the necessity not to difficult the action of the administration, the aim of which is the realization of public interest.