Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union i.n.p.a.

Association des Conseils d'Etat et des Juridictions administratives suprêmes de l'Union européenne a.i.s.b.l.

Council of State of Belgium

Association of the Councils of State and the Supreme Administrative Jurisdictions of the European Union
With the collaboration of the Council of State of Belgium

Increasing the efficiency of the Supreme Administrative Courts'powers

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ISSUE 1: The 'administrative loop', or the power to rectify the legality of an administrative decision

What is meant by 'administrative loop', or the power to rectify?
In the Netherlands, an administrative court can invite (court) an administrative body by means of an interlocutory judgement or enjoin it (Litigation Division of the Council of State and Central Council of Appeal) to rectify or have rectified, within a set period, an infringement in the disputed decision unless such rectification would result in unfair treatment of the parties concerned who are not party to the case. The interlocutory judgement indicates insofar as possible how to rectify the infringement. In this case, the administrative body must inform the administrative court as soon as possible whether it intends to take up the option, offered by the court, of rectifying the infringement or having it rectified. Where the administrative body accedes to the request to rectify the infringement, it shall indicate in writing as soon as possible how it is going to rectify it. The parties may, within a set period following said written notification being sent, indicate their attitude to rectification of the infringement. A final judgement shall be handed down upon the first appeal against the flawed decision that has been (or has not been) rectified.

Question 1: In your country's legal system do you know of a mechanism laid down in the constitution, in law or in regulations, or borne out of established case-law, that confers on an administrative court, in the course of proceedings, the power to *rectify* a flaw in a disputed decision rather than have that decision quashed and proceedings reopened? If so, what does this power consist of? How is it organised?

If not, what are the reasons that, in your country's law, lead to the power of the court to be limited to solely annulling the disputed decision or to denying the court the power to rectify an infringement that has been established or have it rectified?
If so, what specific powers does the administrative court have to rectify an infringement that has been established or have it rectified? Explain your answer.
Do these specific powers of the court apply to any infringement that has been applied and to all decisions of the authority? Explain your answer.
At what stage of the proceedings and under what conditions can the administrative court exercise its power to rectify a flawed decision? Explain your answer.

A mechanism such as the "administrative loop" as described above is not laid down in Italian legislation, nor is borne out of case-law.
Italian judges do not have the power, in the course of proceedings, before a final judgement is handed down, to rectify the disputed decision nor the power to enjoin an administrative body to rectify it or have it rectified.
Italian legislation, namely the code of administrative proceedings (codice del processo amministrativo) (hereafter: legislative decree nr. 104/2010, entered into force on 16th September 2010, or c.p.a.) provides the action of annulment of administrative decisions, due to breach of law, misuse or abuse of power, or lack of competence.
As a result, the administrative courts have, as a general rule, only the power to annul the disputed decision.
This legal system is based on the Italian Constitution and in particular on the principle, set out by the Italian Constitution, of the "separation of powers". According to this principle, the

judiciary cannot manage administrative power and cannot issue or rectify administrative decisions.
That is to say, the oversight performed by the administrative judge is limited to a verification of legality, and the judge cannot examine the decision's substance (possibility of a different administrative decision).
However there are some exceptions to this general rule, in the field of the "giurisdizione di merito" ("substantive jurisdiction", as an exception to the general legality jurisdiction).
In the field of "substantive jurisdiction", the administrative judge has the power to substitute public administration, by issuing a new administrative decision or rectifying the disputed decision (art. 7, par. 6, c.p.a.; art. 34, par. 1, lett. d), c.p.a.).
For example in administrative election litigations, the administrative Courts have the power to rectify the result of the elections.
Another example are the litigations concerning types of administrative penalties (e.g. pecuniary penalties inflicted by Antitrust Authority): in these disputes administrative Courts can rectify the penalty with the final judgement.
However this mechanism differs from the "administrative loop" as described above, because the rectification is handed down by the Court itself in the final judgement, and therefore it is not ordered in an interlocutory decision: that is to say, there is no possibility for the judge, in the course of the proceeding, to enjoin a rectification, and consequently no possibility for the administrative body to rectify its decision in compliance with a judicial injunction.
In the other fields of administrative disputes, the Courts, by annulling administrative decisions, indicate their flaws and how to rectify them in the reasons of the judgement. Courts don't rectify the flawed decisions directly.
However, administrative bodies are compelled to enforce the judgements, and therefore to rectify the flawed administrative act in compliance with the reasons of the decision of the Court.
If the administrative body doesn't implement the judgement, the other party can lodge an "enforcement action" before the competent administrative Court, to begin an "enforcement proceeding" (in Italian: "giudizio di ottemperanza").
In the enforcement proceeding the judge does not merely order the administration to comply within a set time; the Court also has the power either to substitute the administrative body, - by adopting or rectifying an administrative decision - , or to appoint its own representative (the "commissario ad acta"), who acts in place of the administration and takes any measures required to enforce the judgement.
The second option (i.e. the appointment of a representative) is, more often used, in the Italian judicial praxis, than the first one (i.e. the direct substitution of the judge to the administration).
The enforcement action can be lodged in relation to every judgement (given by a civil or an administrative Court) which either establishes that an administrative decision is flawed or annuls an administrative decision (in detail: civil Courts can only establish that an administrative decision is flawed, and declare it without effects, that is "tamquam non esset" but cannot, as a general rule, annul administrative decisions; on the contrary, administrative Courts can annul all types of administrative decisions, including regulations, which, according to the Italian legal system, are considered administrative decisions and not laws).

Question 2: Can the administrative court itself exercise its power to rectify a flawed decision and itself rectify the infringement that has been identified (power to reverse decisions)?

If so, explain in brief how this mechanism works. If not, is the authority required (obligation) – in the context of the exercise of this specific power to rectify a flawed decision– to rectify the infringement determined by the court?

Explain your answer.

See answer to question 1

Question 3: How is the action to quash affected if the decision involving an infringement is rectified? Is the appeal still valid? Must or can the rectified decision be disputed in another appeal? How do the proceedings continue once the court decides to exercise or has exercised its power to rectify a flawed decision? Explain your answer.

As already explained in the answer to question 1, Italian judges cannot order the administration to rectify the disputed decision, in the course of the proceeding.
However, the administrative body can always rectify the decision by itself, even in the course of a proceeding initiated by an action to quash.
If this happens, the rectification can affect the pending lawsuit in different ways:

1) if the rectification is assessed completely satisfactory by the claimant, the Court declares the matter of litigation ended, i.e. termination of the dispute (in Italian: "cessazione della materia del contendere") (article 34, par. 5, c.p.a.);

2) if the rectification is assessed unsatisfactory for the claimant, the latter can either file a distinct new action against the rectified decision, claiming new flaws, or, within a set time, add new motives to the initial action, in the same proceeding (in Italian: "motive aggiunti di ricorso", reasons added).
These two options are available only during the first instance proceeding.
On the other hand, if the administrative body rectifies the disputed decision during the second instance proceeding, it's only possible to file a new action, in first instance, and the claim in the second instance proceeding has to be declared precluded due to lack of interest (in Italian: "improcedibilità per sopravvenuto difetto di interesse").

Question 4: What are your experiences of the administrative court having such a power to rectify? Is it implemented successfully?

The Italian experience mainly regards the "enforcement proceeding" before administrative Courts.
This kind of proceeding is very efficient and effective. As a general rule, claimants obtain an "enforcement judgement" within a few months.
The Italian experience of the Court's power to rectify regards, in a limited measure, the field of "substantive jurisdiction"; this power is successfully implemented.

Question 5: Does your court hear appeals against decisions that are rectified in this way and, if so, how are such appeals dealt with?

No, in general Italian Courts don't hear such kind of appeals, for the reasons explained above.
There is only one case: in the "enforcement proceeding", when the representative of the judge substitutes the administrative body and adopts an administrative decision, this decision can be impugned by the parties of the previous trial and by the third parties.
There are different rules: the parties of the previous trial can impugn the new decision before the Court of the pending enforcement proceeding; the third parties can impugn it before the competent Court in an ordinary proceeding.

The rules of "ordinary proceedings" and of "enforcement proceedings" are quite different regarding the time limits, the powers of the Courts, and the necessity or not to respect the principle of "double degré de jurisdiction".

ISSUE 2: Power to award compensation and action for annulment

Question 1: Are you familiar with the system of compensation as an alternative to annulment?

1.1. If so, is this system applied to the exclusion of annulment?
1.2. Does the system only work for certain illegalities or only the most serious ones?
1.3. Is it available in appeals on any grounds or is it limited to appeals on only the most serious grounds?
1.4. Is it applied to regulations and individual decisions?
1.5. Is a choice between annulment and compensation available and if so, based on what criteria and who makes this choice (the legislator through the effect of the law, one of the parties, the court?)
1.6. and when (at the time the appeal is lodged, during proceedings (how does this impact on adversarial proceedings))?
1.7. Does the administrative body itself still have the option to annul its decision when compensation is asked or granted in Court?

Italian law is familiar with the system of compensation for damages stemming from a flawed administrative decision.
This system is initially borne out of case law (see Court of Cassation, grand camera, judgement n. 500/1999), and has then been introduced by written law, namely by Act n. 205/2000.

1.1. In Italian law the annulment is considered a sort of "specific" compensation. When the annulment is not satisfactory, or not wholly satisfactory, the party can ask for compensation for damages.
As a general rule, annulment and compensation are concurrent and not alternative remedies: the judge quashes the flawed decision and sets compensation for damages, provided the claimant has given evidence of the damages.
In some cases, compensation is applied with exclusion of annulment; this happens:
a) when the annulment is not possible or useful anymore, for example because in the meantime the administrative decision has already been enforced and has produced its effects;
b) when, in the specific field of public contracts for works, services and supplies, the judge assesses that the general public interest requires that the contract shall not be annulled;
c) when a special law rules out annulment and provides sole compensation (currently this special rule in Italy exists for public contracts regarding "strategic infrastructures");
d) when the claimant has only asked for compensation and not also for annulment.
This last case is worth further explanation, having being introduced only recently, by legislative decree n. 104/2010.
Before the above mentioned legislative decree n. 104/2010, it was very controversial whether the claimant could request only compensation, or should request both, annulment and compensation, within the same time limit (normally: 60 days).

The Supreme Court of Cassation and the Council of State had resolved this legal matter in different ways, the first one ruling that the claimant could file an action for the sole compensation, the latter ruling in the opposite way.
Eventually, the legal matter was resolved by legislative decree n. 104/2010 in compliance with the Supreme Court of Cassation, but setting further specific limits.
As matter of fact, article 30, par. 3, legislative decree n. 104/2010 provides that the claimant can lodge an action for compensation for damages, without demanding also the annulment of the administrative decision.
The action for compensation can be filed within 120 days either of cognizance of the disputed act (if the damages stem from the act) or of the initiation of the damage.
In other words, the time limit for this action is longer than the time limit for the action of annulment, being the latter set at 60 days and, in some specific fields, at 30 days (public contracts, access to public documents, administrative elections), or even at three days (in the sole case of administrative election disputes, filed during the election competition before the election day).
In any case, in proceedings for compensation, the Courts must deny compensation if it is demonstrated that the claimant could have avoided damages with due diligence (reasonable care), and in particular by filing a timely action for annulment, or other legal remedies, when available.

1.2. Compensation for damages is provided for all kinds of illegalities and not only for the most serious ones, provided that the flawed decision has produced a damage to the claimant and provided that there has been negligence or intentional wrongdoing on the part of the administrative body.

1.3. The same as under 1.2. Compensation for damages is available for any grounds of recourse, provided that damages and negligence are demonstrated.

1.4. The same as under 1.2. Compensation for damages is available for any kind of administrative act, both individual decisions and regulations, provided that damages and negligence are demonstrated.

1.5. See under 1.1.
In some cases the choice is given to the claimant (see the above mentioned action for the sole compensation); in other cases the choice is made by the law (see the above mentioned case of strategic infrastructures), in other cases the choice is made by the Court (see the above mentioned case of public contracts for works, supplies, services).

1.6. The action for the sole compensation must be filed within 120 days (see under 1.1. for details).
When an action for annulment is timely lodged (within 60 or exceptionally within 30 days), compensation for damages can:
- either be requested with the same form and within the same time as that for annulment;
- or be requested later, in the same proceeding; in this case it is necessary to notify the other parties of the new request, and the counterparties have the right to a time limit for their reply;
- or be requested after the judgement of annulment is handed down; in this case the action for compensation must be submitted within 120 days starting from the day when the judgement becomes “res iudicata” (that is 120 days from final judgement no longer subject to appeal).

1.7. Administrative bodies always have the option to annul their decisions (by means of a self-remedy decision, in Italian "autotutela"), even if the decisions are impugned before a Court, or a compensation is asked or granted in Court.

Question 2: What is the extent of the compensation and how is it calculated?

Does it cover all the damage sustained or is a lump sum awarded, e.g. in the case of a fair satisfaction? In the latter case, does the award of the lump sum preclude action for further compensation to cover all the damage caused or may such action still be taken, where appropriate before another court? Can the plaintiff or the defendant initially request a decision *in principle* as regards compensation and only move to proceedings concerning the actual amount thereof once the principle has been acknowledged by the court?

The compensation usually must cover all damage, insofar as the damage is demonstrated.
There are numerous criteria to calculate compensation, laid down in civil code and borne out of case-law.
Administrative Courts tend to apply rules of civil law of torts (artt. 2056, 1223, 1226, 1227 Italian civil code).
As a general rule, the plaintiff must provide evidence of the damage and of the precise amount of compensation.
Compensation must be a "restitution in integrum", and as a consequence it comprises both actual damage and loss of anticipated profits.
If it's impossible for the claimant to provide evidence of the exact amount of the damage, the Court awards damages with a fair assessment (equitable).
As a general rule, compensation must be fault-based, according to civil law of torts (see under article 2043 c.c.).
Negligence or intentional wrongdoing on the part of the administrative body must be proven.
The claimant bears the burden of proof of damages and of negligence/intentional wrongdoing.
However, when an infringement is established by the Court, the negligence of the public administration is presumed, and it is the burden of the public administration to provide proof that there was no negligence.
There is only one exception to the fault-based compensation, and this exception ensues from some judgements of the European Court of Justice (October 14th 2004 C – 275/2003; September 30th 2010 C-314/09).
In particular, the latter mentioned judgement ruled that: "Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts, as amended by Council Directive 92/50/EEC of 18 June 1992, must be interpreted as precluding national legislation which makes the right to damages for an infringement of public procurement law by a contracting authority conditional on that infringement being culpable, including where the application of that legislation rests on a presumption that the contracting authority is at fault and on the fact that the latter cannot rely on a lack of individual abilities, hence on the defence that it cannot be held accountable for the alleged infringement".
Italian administrative Courts comply with this principle.

It is controversial in Italy whether the claimant has the possibility to initially request a decision in principle and in a second moment to lodge a claim concerning the exact amount of damage, or not.
The "decision in principle" is provided under article 278 of Italian civil procedure code, but it's controversial whether this article is applicable in administrative proceedings, before administrative Courts, or not.
Before legislative decree n. 104/2010 entered into force, the Italian Council of State – grand camera, ruled out this option (see decision n. 5/2009 October 8th).
Legislative decree n. 104/2010 doesn't provide, among the available actions, the action for compensation "in principle", but article 39, par. 1, states that the civil procedure code is applicable to administrative proceedings, regarding any matter which is not specifically ruled by legislative decree n. 104/2010.
So, even after the c.p.a. came intro force, the matter remains controversial, whether article 278 c.p.c. is applicable or not., and it has not yet been decided.
In any case, a different sort of "decision in principle", when compensation for damages is requested, is provided.
In fact, Courts have the power to declare that there is a damage and a negligence on the part of the public body, and to set the criteria according to which the public body must determine, within a set time, the amount of damage, instead of setting the amount directly in the judgement.
If the administrative body doesn't comply with this judgement, the counterparty can lodge an enforcement action, to obtain the execution of the previous judgement "in principle" (article 34, par. 4, c.p.a.)
As you can see, this mechanism is different from the "decision in principle", because the Court doesn't only establish the need for compensation, but also sets the "criteria" for the "quantum" (amount) of compensation itself.

Question 3: What is the impact of penalising an unlawful decision by awarding compensation on the decision itself?

Is an unlawful decision which has been penalised in the form of the award of compensation subsequently assumed to comply with the law? What is the extent of this assumption? To what extent does a final decision awarding compensation impact on the power of other courts to control the lawfulness of that decision?

As already explained, as a general rule compensation for damages and annulment of the unlawful decision are concurrent remedies.
As a result, when a compensation is awarded, at the same time the administrative decision is quashed by the Court, so there is no space for a further initiative of the administrative body regarding its original decision.
In the few cases in which compensation is awarded and the unlawful decision is not annulled, the Court assesses that the decision is unlawful, even if it doesn't quash it.
This assessment can have the following effects:
a) the short term to file an action of annulment (60 or exceptionally 30 days) has usually already expired when a judgement for compensation is handed down, and in consequence there isn't the practical possibility of another proceeding (civil or administrative) to control the lawfulness of the decision;

b) the administrative body still has the power to annul the decision, but it is not compelled to do so as, as already said, the short term to file an action for annulment (60 or exceptionally 30 days) has usually already expired when a judgement for compensation is handed down. In consequence, the administrative body can annul its decision as a self-remedy, but this is up to its discretion;
c) considering that when a compensation is awarded, as a consequence of an unlawful administrative decision, the Court assesses that the decision is unlawful, even if it doesn't quash it, if the administrative body doesn't self - quash or doesn't self-rectify its decision, this deed could be assessed by a criminal Court or by the Court of Auditors (which in Italy has jurisdiction over liability of public employees), or by administrative audit bodies: failure to self-quash a flawed decision could be considered an abuse of power (in Italy it is a crime, punishable by criminal law), and a liability of the employee who authored the decision; id est the liability of the employee towards the administrative body which has been sentenced to pay compensation for damages, and which has the right to recourse against the employee, in order to obtain reimbursement.

Question 4: Does your court have the power to settle compensation for the damage caused by the unlawful decision it has previously annulled? If so, is this an exclusive power or is that power also granted to other courts?

Does the plaintiff have to submit the application for compensation at the same time as the annulment request or can it be made subsequently, after annulment?

See also answer to question 3.
In Italy, according to written law, it falls within the exclusive competence of the Administrative Courts to settle compensation for damage caused by an unlawful decision, previously annulled or not.
However, there is a recent case-law handed down by the Supreme Civil Court of Cassation, according to which the civil Courts have the competence to settle compensation for damage caused by an unlawful administrative decision previously quashed by an Administrative Court or previously self-quashed by an administrative body, in the sole case in which the action for compensation is lodged by the person/body who had benefitted from the decision, before its annulment, and therefore had interest for the decision not to be annulled.
For example, if an administrative Court annuls the award of a public contract, the previous successful tenderer, could ask for damages against the contracting authority, before a civil Court.
However, these judgements have been strongly criticized, and the matter is still controversial.

Question 5: What is the extent of the compensation and how is it calculated?

Does this compensation have to be fault-based? Does it have to remedy all the damage? Is a lump sum involved and if so, can an action for compensation to cover all damage incurred subsequently be brought before another court?

See answer to question 2.

ISSUE 3: The effectiveness of enforcement of the rulings of administrative courts

Question 1: Do the administrative courts in your country have the means to ensure actual implementation of their rulings and judgements by the authorities?

If so, describe in brief these means and how exactly they are implemented. If not, what are the reasons for the absence of such means?

Yes, they have the means.
As mentioned above, the "enforcement proceeding" (in Italian: giudizio di ottemperanza) is provided for in Italy.
If judgements are not spontaneously implemented, this particular enforcement procedure may be used to ensure that judicial decisions be carried out (articles 112-115 c.p.a.).
This procedure is applied to the administration or similar entities (for example public-law institutions) for various judicial decisions, including those rendered by civil judges.

This procedure is particularly effective insofar as the judge does not merely order the administration to comply within a determined time; but the Court may also appoint its own representative ("ad acta"), who acts in place of the administration and takes any measures required to enforce the judicial decision.
This representative also has substantive powers.
The judge can even directly substitute the administrative body.
This is one of the rare cases where the administrative judge also has substantive powers.
The administrative Courts, therefore, have both the power to order the authority to enforce their rulings and judgements (power of injunction) and the power to appoint a representative who acts in place of the administration.
A novelty introduced by legislative decree n. 104/2010 is that the administrative Courts also have the power to fine the administration if it does not comply within the time limit ("astreinte").
All these powers can be used by the Court in the "enforcement proceeding", and in particular in the judgement which concludes this proceeding.
Therefore, there is a second judgement which orders the enforcement of the previous judgement of annulment and/or compensation.
So this second judgement may:
- order the administration to enforce the previous judgement;
- indicate to the authority how it can rectify the illegality;
- impose a deadline;
- appoint a "commissario ad acta" in cases where the authority fails to adhere to the stipulated deadline;
- set a monetary penalty ("astreinte") for each day, or week or month of further delay.

As already explained, all these measures can be requested by the parties of the previous proceeding in which a judgement has been handed down, which quashes the flawed decision and/or awards compensation for damages.
The measures must be requested with a new action, the enforcement action.
This action can be lodged within ten years starting from the "res iudicata".

A novelty introduced by legislative decree n. 104/2010 is that the appointment of a representative of the Court – charged to act in place of the administration – can be requested with the same action of annulment/compensation.
In this case the Court, with a unique judgement:
- quashes the administrative decision and/or awards damages;
- sets a deadline for the enforcement of the judgement;
- appoints its representative, charged to substitute the administration, in cases where the latter fails to respect the deadline.

Question 2: Do the administrative courts have the power to order the authority to enforce their rulings and judgements (power of injunction)?

If so, at what stage of the action can this power of injunction be asserted?
Where the court can decide to issue such an injunction at the time of handing down its ruling, who may apply for such an injunction and by what means, and what will its scope be (can the court indicate to the authority how it can rectify the illegality?)? Can a deadline be imposed in respect of such an injunction and what happens if the authority fails to adhere to the stipulated deadline?
Where the injunction can be implemented at the stage of enforcement of the ruling or of the judgement, who can request it, by what means and at what time?
What scope will it have?
Does the authority have a certain period to enforce it?
What happens if it has to be enforced urgently?
Is this power of injunction also applied when the authority in question is ordered to pay a sum of money (e.g. damages) and if not, how does this recovery work?

See answer to question 2.

Question 3: Have all your country's administrative courts been granted this power of injunction?

Can an injunction be enforced even in case of appeal or cassation complaint?
In other words, in the case of an appeal or cassation complaint does the administrative court of first instance retain the power to ensure that its ruling is enforced or does the higher court become competent?
Where the court of first instance court retains this power, what happens if the decision in respect of which it is seeking enforcement is annulled on appeal or quashed following a cassation complaint?

First instance administrative Courts (regional administrative tribunals: Tar) also have the power to ensure enforcement of their judgements, even if these judgements are appealed.
But this power cannot be exercised if and when the Italian Council of State suspends ad interim first instance decisions.
If the first instance decision is initially enforced by order of a Tar, and later quashed by the Council of State, the enforcement judgement is automatically rendered null and without effects.

Question 4: Can your country's administrative courts sentence the offending authority to pay a penalty or a fine?

If so, is this penalty or fine independent of the court's power of injunction?
Explain the mechanism that has been put in place and the conditions under which the penalty or fine will be imposed.
If this penalty is combined with implementation of a power of injunction, explain how the two mechanisms interact.
Does this penalty or fine benefit solely the litigant who has won the case?

As already explained, Italian administrative Courts have the power to sentence the authority to pay a penalty ("astreinte").
This penalty is not independent of the injunction, because a penalty is inflicted only if the administrative authority fails to comply with the injunction.
The penalty benefits solely the litigant who has won the case, and therefore it's considered a sort of further "lump –sum" compensation, and not a fine (a fine ordinarily benefits the State).

Question 5: What happens where the authority has enforced the ruling or judgement but this enforcement is not in line with the authority of *res judicata*?

Can the litigant in the case in question make an application for enforcement of the judgement or ruling to the competent court?
Furthermore, if the administrative court considers that it cannot implement the power of injunction because the judgement or ruling has been enforced, can the litigant lodge an appeal against this decision?
And to conclude, are there circumstances in which an authority can refuse to enforce a judgement or ruling despite an injunction to enforce having been issued?

When the authority has enforced the ruling or judgement but the successful party claims that this enforcement is not in line with the authority of *res judicata*, this party can lodge the above described "enforcement action".
In fact this action is provided for both in case of lack of enforcement, and in case of wrong enforcement, partial and not exact enforcement.
Regarding the competence for the enforcement action, the rules are as follows:
a) where the enforcement of a judgment of a Tar is requested, the same Tar is competent; the Tar is competent also where its judgement has been appealed before the Council of State, and the latter has confirmed the first instance decision, on the same grounds;
b) where the enforcement of a judgement of the Council of State is requested (that is when the Council of State either overrules the first instance decision or confirms it but on different grounds), the Council of State is competent;
c) where the enforcement of a judgement of a civil Court or of a Court of arbitration is requested, the Tar is competent.
If a first instance administrative Court, ruling over an enforcement action, rejects it, and rules that the administration has correctly implemented, the judgement handed down in the "enforcement proceeding" can be appealed before the Council of State.
When it comes to the enforcement of a judgement of the Council of State, in the case mentioned above, the enforcement action must be lodged before the Council of State, and in this case the enforcement judgement cannot be further appealed.

But in exceptional cases, there is the remedy of revocation for specific flaws, also against judgements of the Council of State.
There is also the remedy of recourse before the Court of Cassation, but only on jurisdictional grounds (i.e. when the claimant alleges that the decision of the Council of State is outside the limits of its jurisdiction).