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Administrative Inactivity and Inefficiency: Remedies in Administrative Decision-Making in Italy and Slovenia

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L'articolo esamina gli strumenti attraverso i quali due distinti ordinamenti giuridici – quello sloveno e quello italiano – affrontano l'inerzia amministrativa. La mancata risposta da parte degli uffici amministrativi può essere sintomatica sia di un'inefficienza radicata, sia dell'incapacità della burocrazia di reagire adeguatamente a emergenze improvvise. Mettendo a confronto le soluzioni adottate nelle due giurisdizioni, l'articolo mira a contribuire al dibattito dottrinale sull'efficacia dei meccanismi ideati per garantire una risposta adeguata alle esigenze di tutela dei cittadini.

The article examines the instruments by which two distinct legal systems – Slovenia's and Italy's – address administrative inertia. The non-response of administrative offices may be symptomatic both of entrenched inefficiency and of the bureaucracy's inability to react adequately to sudden emergencies. By juxtaposing the solutions adopted in the two jurisdictions, the article seeks to contribute to the scholarly debate on the effectiveness of the mechanisms devised to secure an adequate response to citizens' protection needs.

Summary: 1. Introduction.- 2. Definition of "state of emergency".- 3. Substantive powers to deal with administrative inactivity in administrative procedure in Slovenia.- 4. Substitutive powers in administrative procedure as a response to extraordinary situations in Slovenia.- 5. The Italian legal framework: system of appeals and general law on administrative procedure.- 6. Indirect measures: "silences", compensations and special commissioners.- 7. Pandemic management residues and European experiences.- 8. Is there really a use for the "special

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1. Introduction

The^[1] term *substitutive power* refers to a heterogeneous set of legal institutions that establish the possibility or obligation of a public entity to intervene in place of another subject, initially empowered to perform an administrative function. Such power is exercised under specific statutory conditions^[2] and generally aims to ensure the effectiveness of administrative action, the protection of public interests, and compliance with general principles such as legality, good administration, and loyal cooperation^[3]. The exercise of this function is further characterised by its capacity to produce direct or indirect effects within the legal sphere of the substituted entity^[4]. Substitutive power is sometimes associated with *administrative inactivity*, arising when the legally prescribed time to act has expired without a final decision being reached^[5], and sometimes with the need to address emergency situations for which ordinary administrative procedures prove inadequate^[6].

This study, therefore, aims to explore the concept of substitutive power – and related institutions such as the *commissario ad acta* – as developed in Italy and Slovenia. The objective is to ascertain whether a common foundation exists in the solutions adopted by the respective legal systems and to identify potential points of interaction between the legal institutions of the two States. Ultimately, the study seeks to determine whether substitutive powers are genuinely effective tools or whether alternative mechanisms might better ensure the efficacy of public administration.

Although it constitutes a legal topic of longstanding tradition and recognition, the issue of substitutive power is increasingly debated in contemporary doctrine, also at the level of study and comparison of different legal systems. In response to procedures that are often overly complex and that struggle to result in the issuance of a final decision, the legislator has adopted two approaches: replacing the decision with mechanisms such as silence – i.e., forms of conduct that merely *simulate* the existence of a decision solely in terms of its legal effects^[7] – or by transferring the competence to conclude the procedure to a person or authority

other than the one ordinarily vested with it^[8]. This can be regarded as the first common core with respect to substitutive powers. It can be defined as the ordinary response to administrative inefficiency^[9].

However, there is a second context in which the concept of substitutive power is used, which requires a more in-depth analysis. A comparative look at how States address increasingly common challenges shows that the use of substitutive powers today is one possible response to emergency or other extraordinary situations^[10]. In addition to the so-called “ordinary” substitutive powers, there are extra *ordinem* powers of an emergency nature, designed and used specifically to address exceptional cases in which the ordinary administrative procedure cannot withstand the complexity of the circumstances^[11]. They may be grouped into two broad categories: first, derogations from existing rules, involving the temporary suspension of their applicability; and second, the introduction of new, previously unavailable powers and procedures, specifically designed to equip the administration with the means to respond promptly to citizens’ needs, particularly in emergency situations.

The present study aims to briefly outline the elements common to or differing between the Italian and Slovenian systems in the regulation of substitutive power, both in ordinary and extraordinary contexts. A micro-bilateral comparative method^[12] will be used to understand differences and commonalities and to assess whether some of the solutions adopted in each country are applicable to the other^[13].

2. Definition of “state of emergency”

Before delving into the analysis of the subject matter addressed in the present work, it is necessary to distinguish between the ordinary and the exceptional. It is therefore necessary to distinguish between the use of substitutive instruments to remedy administrative inefficiency within the ordinary course of action and their use in exceptional situations, where the administration’s adaptive capacity is tested, and extraordinary powers are often introduced.

The legal notion that comes into focus is, therefore, that of the “state of emergency,” which may be defined – according to the dictionary – as «*something dangerous or serious, such as an accident, that happens suddenly or unexpectedly*

and needs fast action to avoid harmful results»^[14]. This definition may, in itself, be considered commonly accepted within the legal systems examined in the present study, insofar as it reflects shared elements such as unpredictability, the necessity of a prompt response, and the potential danger of serious consequences for the safety and health of citizens.

In general terms, within Italian administrative law, the state of emergency is governed by the *Codice della Protezione Civile* (D.lgs. 2 January 2018, n. 1), particularly in Article 24. Rather than constituting a mere condition, it represents an extraordinary legal instrument that may be activated by the Council of Ministers, upon proposal of the President of the Council, to address, at the national level, major emergency events requiring urgent intervention and the exercise of powers derogating from ordinary legislation^[15].

In Slovenia, the state of emergency is provided for by the Constitution of the Republic of Slovenia (Art. 92) and regulated through a plurality of legal sources, including the *Defence Act*^[16] and the *Act on Protection Against Natural and Other Disasters*^[17]. As in Italy, the state of emergency in Slovenia permits the adoption of extraordinary measures; however, the normative framework appears, as it will be shown, in some respects less systematised than the Italian model, which is based on a comprehensive code and a consolidated administrative practice^[18].

The state of emergency, however – particularly in the Italian context – is not the sole condition under which the use of commissarial and substitutive instruments is triggered. In recent years, extraordinary commissioners have also been appointed to expedite the implementation of major investment projects^[19].

3. Substantive powers to deal with administrative inactivity in administrative procedure in Slovenia

In cases of administrative inactivity, the Slovenian legal order provides the following legal instruments designed to ensure timely administrative decision-making:

- devolution of competence;
- administrative appeal due to administrative silence, where the general rule is that silence is deemed an unfavorable decision, unless a special law

- provides otherwise;
- measures by the Administrative Inspectorate due to administrative inactivity;
 - action in an administrative dispute before the Administrative court due to administrative silence;
 - determining the manner of implementation of a judgment, which, in a certain sense, also relates to mechanisms for addressing administrative inactivity.

The discussion of substitutive powers in administrative procedural law in Slovenia must begin with a brief overview of the Slovenian General Act on Administrative Procedure (hereinafter, GAPA)^[20]. GAPA has complex content, which uniformly regulates the administrative procedure and applies *«to the procedures of administrative and other state authorities, self-governing local community authorities and bearers of public authority where, in administrative cases, through direct application of regulations, they decide on the rights, obligations or legal benefits of individuals, legal persons and other parties»*^[21]. Unlike Italian law no. 241/1990, GAPA is comprehensive and detailed. GAPA is divided into six separate parts. The first governs general provisions, namely fundamental principles, jurisdiction, parties and their representation, language of the procedure, communication between authorities and parties, service, time limits and hearings, reinstatement of a case, maintaining order in the procedure, and costs of procedure. The provisions of the first part of GAPA apply to all phases of the administrative procedure, at first and second instance, and to procedures employing extraordinary legal remedies and enforcement measures. The second part, constituting the central part of GAPA, governs the first-instance procedure and contains provisions on the initiation of the procedure, the fact-finding procedure, and first-instance decisions in administrative procedure. Part three of GAPA governs ordinary and extraordinary legal remedies. Part four governs the enforcement of obligations imposed on duty holders by administrative decisions or orders. The peculiarity of GAPA is the explicit regulation of control over its application (part five of GAPA). These provisions were introduced in 2010 in order to strengthen the proper implementation of the administrative procedure. The last part of GAPA is more technical. It governs the implementation of

GAPA, and its transitional and final provisions.

In the Slovenian system of administrative procedure, a general prohibition of the devolution of competence applies. The first paragraph of Article 18 of GAPA provides that no authority may take over an individual administrative matter within the competence of another authority and decide it itself, unless expressly provided by law and the statutory conditions are fulfilled. The Slovenian legal order recognises two exceptions to this general prohibition. The first exception is regulated in the second and third paragraphs of Article 18 of GAPA. In line with these provisions, where the authority competent to supervise the work of a first-instance authority finds that the latter is failing to decide administrative matters within the statutory time limits, it shall draw this to the attention of the head of the first-instance authority and set a deadline within which the first-instance authority must issue a decision in the individual administrative matter. If, upon the expiry of that deadline, no decision or order terminating the procedure has been issued, the second-instance authority may take over the matter and decide it itself. In such cases, the devolution of competence is facultative and depends on the second-instance authority's discretionary assessment. By contrast, where the matter is such that a failure to decide in due time could result in harmful consequences for human life or health, for the natural or living environment, or for property, the devolution of competence is mandatory. In such cases, upon the expiry of the statutory time limit, the second-instance authority must take over the matter and decide it itself^[22].

The second situation in which a second-instance authority may assume competence from a first-instance authority arises in cases of administrative silence. Administrative silence occurs where the first-instance authority fails to issue a decision or otherwise conclude the procedure within the statutory time limit^[23]. The time limits for issuing a decision laid down in GAPA are of an instructive nature. Nevertheless, in cases of administrative silence, GAPA grants the party the right to appeal, based on a legal fiction that an unfavourable decision has been adopted against the party. Where a party lodges an appeal due to administrative silence, the second-instance authority requests the first-instance authority to explain the reasons for its failure to issue the decision within the prescribed time limit. If the first-instance authority fails to provide justified reasons, the second-instance authority takes over decision-making in the case^[24]. In

such circumstances, the second-instance authority does not decide as a first-instance authority, but acts in its capacity as an appellate authority, proceeding on the assumption that an unfavourable decision has been adopted in respect of the party. The fundamental difference between the institute of an appeal due to administrative silence and the institute of the devolution of competence lies in the trigger for the assumption of competence. In the case of an appeal due to administrative silence, the assumption of competence is initiated by the party through the lodging of an appeal. In contrast, devolution of competence operates independently of the party's will^[25].

A specific instance of interference with competence due to administrative inactivity is regulated in Article 51 of the State Administration Act (hereinafter SAA)^[26]. Under this provision, where a ministry establishes that an administrative unit is failing to perform tasks falling within the ministry's competence, or is performing them improperly or untimely, it must draw the attention of the head of the administrative unit to this fact and require them to ensure the proper performance of those tasks or to remedy the identified irregularities. If the head of the administrative unit fails to act in accordance with the ministry's warning, the ministry may itself directly carry out a specific task within the administrative unit's competence. Where failure to act would result in harmful consequences for human life or health, for the natural or living environment, or for property, the ministry is obliged to perform the task directly within the administrative unit's competence. The ministry also has the power to assume a specific task where a local self-government authority fails to perform tasks falling within state competence in a timely and proper manner^[27]. What the mechanisms laid down in Articles 51 and 71 of SAA have in common is that they do not amount to a transfer of decision-making competence; rather, they involve solely the assumption of competence for the performance of individual tasks falling within the competence of an administrative unit or a local self-government body. In both cases, the competence to adopt decisions remains unaffected^[28].

Administrative inactivity is also subject to supervision by the Administrative Inspectorate. The Administrative Inspectorate operates within the Ministry of Public Administration and constitutes a specialised body of internal supervision over public-sector authorities. It exercises oversight of the formal procedural legality of administrative proceedings but does not review the substantive legality

of administrative decisions. In the course of supervisory proceedings, the Administrative Inspectorate may establish procedural irregularities; however, it lacks the power to decide the administrative case or intervene in administrative decisions by annulling, revoking, or amending them. Where, in examining specific administrative cases, an inspector identifies irregularities in the conduct of administrative proceedings, the head of the authority concerned may be ordered to adopt appropriate measures to address the irregularities and remedy the deficiencies. The measures imposed by the Administrative Inspectorate are therefore prospective in nature, seeking to ensure that the authority concerned aligns its future administrative practice with applicable procedural rules. The annual reports of the Inspectorate for the Public Sector in recent years indicate that the most frequently identified violations of the GAPA by administrative inspectors relate to failures to comply with statutory time limits for decision-making^[29].

If, as a result of a failure to comply with statutory decision-making deadlines and the consequently excessive length of administrative proceedings, damage is caused to a party, the party is – provided that the conditions for the State’s liability for damages under Article 26 of the Constitution are met – also entitled to compensation^[30].

Institutes addressing administrative inactivity are also regulated by the Administrative Dispute Act (hereinafter: ADA)^[31]. The primary instrument in this respect is an action in an administrative dispute due to administrative silence^[32]. By lodging an action due to administrative silence, the claimant seeks the issuance or service of an administrative act. As a rule, an administrative dispute is initiated against a final administrative act that has been adopted (so-called *subsequent administrative dispute*). In cases of administrative silence, however, no administrative act is issued; its absence is therefore replaced by a legal fiction that an unfavourable administrative act has been adopted against the party. Administrative silence may occur at the first instance, at the second instance, or even at both instances of the administrative procedure. In view of these different situations, ADA also regulates the conditions under which an administrative dispute may be initiated. If an action is brought for administrative silence and the court finds it well-founded, it upholds the action by judgment. In such a case, the court may either decide on the merits itself or order the

competent authority to issue a specific administrative act; alternatively, if the act has been adopted but not served, the court may order its service^[33].

Another mechanism that may affect administrative inactivity is the determination of the manner of implementation of an administrative court judgment. In Slovenia, if the administrative court annuls the contested administrative act, it may determine how its decision will be implemented. On the normative level, this regulation is new. It is inspired by the similar power of the Slovenian Constitutional Court to determine, in its decision, which authority must implement the decision and in what manner. In practice, the Constitutional Court uses this power to ensure the proper implementation of legislation or the effective enforcement of a human right or fundamental freedom during the period in which the legislator must remedy the unconstitutionality established by the Constitutional Court. The law does not specify the measures that the administrative court may use to implement its decision. Given the characteristics of this institution, it is expected that there will be many similarities with how the decision of the Constitutional Court is to be implemented, bearing in mind that the substantive scope will be tailored to the nature and importance of the administrative dispute. There is no doubt that, in substance, the determination of the manner of implementation of a court's decision may be an instruction to the administrative authority as to what act it should issue, how it should conduct the procedure, what substantive law it should apply, and how it should establish the facts. In this sense, the institution of determining the manner of implementation of a decision may be regarded as an alternative to a dispute of full jurisdiction, which makes an important contribution to ensuring effective judicial protection^[34]. On this basis, it is clear that the court could also use this institution to remedy administrative inactivity.

4. Substitutive powers in administrative procedure as a response to extraordinary situations in Slovenia

In Slovenia, the issue of emergency measures in exceptional circumstances falls primarily under constitutional law^[35]. The core elements of this framework are already expressly reflected in the Constitution of the Republic of Slovenia, in particular in Article 92, which regulates war and state of emergency. Article 92

provides that a state of emergency is declared when a serious and general threat endangers the existence of the State; the declaration of a state of emergency or war, as well as the adoption and repeal of urgent measures, fall within the competence of the National Assembly acting on a proposal from the Government, while in situations where the National Assembly is unable to convene, these decisions are taken by the President of the Republic and must subsequently be submitted to the National Assembly for confirmation at its first following session. In accordance with Article 16 of the Constitution, state authorities are also empowered, in times of a state of emergency or war, to temporarily restrict human rights and fundamental freedoms. The Constitution thus provides for the possibility of adopting emergency measures in a state of emergency^[36]. In practice, however, since the ten-day independence war in 1991, Slovenia has never formally declared a state of emergency, neither during the 2015–2016 mass migration crisis nor during the COVID-19 outbreak^[37].

In the field of administrative law, the Slovenian legal framework does not provide for substitutive powers in administrative procedure as a response to extraordinary situations, nor does it recognise a specific institute comparable to a *commissario ad acta*. The following sections, therefore, examine other legal mechanisms established by the legislation as possible responses by administrative authorities to extraordinary situations.

GAPA specifically lays down rules governing the conduct of administrative procedure in extraordinary situations. Article 306a of GAPA establishes a special regime for the conduct of administrative procedure in the event of extraordinary circumstances, such as natural or other serious disasters, epidemics, or comparable events that significantly affect the position of parties or hinder the functioning of administrative authorities. In such cases, the Government is empowered to adopt, by decree, one or more temporary and exceptional procedural measures, specifying their scope, the authorities concerned, and their duration. The provision enumerates a closed list of measures aimed at safeguarding the procedural position of parties while ensuring the continuity of administrative decision-making^[38]. These include, inter alia, the temporary reassignment of territorial jurisdiction where the competent authority is unable to operate, procedural flexibilization regarding the submission of applications (including electronic submissions without a qualified electronic signature),

restrictions on direct access to authorities and public participation for health or safety reasons, limitations on on-site access to case files, and extensions or suspensions of procedural and substantive time limits. The suspension of time limits does not apply to urgent matters, which are narrowly defined and justified by the protection of fundamental rights, prevention of serious risks to public interests, mitigation of the consequences of the extraordinary event, or the necessity of ensuring the effective functioning of public authority. Temporary measures are strictly time-limited, initially applicable for a maximum of three months, with the possibility of successive extensions subject to periodic governmental review. The provision also establishes procedural transparency obligations, requiring authorities to inform parties publicly of the adopted measures and to decide on deadline extensions in individual cases by formal decision. Overall, Article 306a of GAPA reflects a structured and legally constrained response to the risks of administrative inactivity in crisis situations, balancing administrative continuity with the protection of parties' procedural guarantees. The above-presented arrangement was adopted by the Act on Intervention Measures to Mitigate the Consequences of the Second Wave of the COVID-19^[39] Epidemic as a response to the COVID-19 pandemic; however, it was conceived more broadly, so that it may also be applied in other emergency situations.

As follows from the above analysis, administrative authorities may not apply the measures provided for in Article 306.a of GAPA at their own discretion, even if they consider that an extraordinary event within the meaning of Article 306.a of GAPA has occurred, since the application of these measures is conditional upon a governmental decision activating them and the adoption of a special decree. By contrast, GAPA contains certain general legal instruments which administrative authorities may apply autonomously in individual exceptional situations, provided that the statutory conditions are fulfilled. One such instrument is the possibility of conducting an abbreviated fact-finding procedure as an exception to the special fact-finding procedure, which constitutes the general rule in the Slovenian system of administrative procedure. The specific feature of the abbreviated fact-finding procedure is that, within this procedure, the authority is not required to ensure the party's right to be heard. One of the statutorily provided situations in which an authority may conduct an abbreviated fact-

finding procedure and decide on the administrative matter immediately is where urgent measures in the public interest are required and cannot be postponed, and where the facts on which the decision must be based have been established or are at least sufficiently demonstrated. Urgent measures in the public interest are deemed to exist where there is a danger to human life or health, to public order and peace, to public safety, or to property of substantial value^[40].

Another such instrument is the possibility of issuing an oral decision. In the Slovenian system of administrative procedure, the general rule is that administrative decisions are issued in writing^[41]. However, in cases involving urgent measures in the public interest, as mentioned above, the competent authority may exceptionally decide orally, and such an oral decision may also be enforced immediately^[42]. The issuance of an oral decision must subsequently be followed by the issuance of a written record of the oral decision. The time limit for lodging an appeal begins to run upon service of the written record of the oral decision^[43].

Furthermore, in cases of urgent measures in the public interest, it is also possible to resort to an extraordinary legal remedy, namely the extraordinary annulment of a decision^[44]. On the basis of this remedy, an enforceable decision may be annulled where urgent measures in the public interest that cannot be postponed so require, where the danger could not be effectively averted by other means that would interfere to a lesser extent with acquired rights. By means of this extraordinary remedy, an enforceable decision issued in administrative proceedings may at any time, and without the consent of the party and to that party's detriment, be wholly or partially annulled, even if it is entirely lawful, where its enforcement would adversely affect an important public interest. The protection of acquired rights in the application of this remedy is compensated by the possibility of claiming compensation for the damage suffered by the party as a result of the annulment of the decision^[45].

5. The Italian legal framework: system of appeals and general law on administrative procedure

In Italy, administrative inertia has long been debated^[46]. The issue has been addressed from various perspectives: through procedural remedies, through a

special judgement before administrative courts, and by imposing liability on public officials for damages arising from their failure to discharge the legally mandated duty to decide or act^[47]. For the purposes of this study, only the procedural measures will be deepened, as in the Slovenian legal system administrative procedure is understood strictly as decision-making regarding individual rights and obligations under public law.

First of all, the general law on administrative procedure, law no. 241/1990^[48], does not exhibit the same level of structural articulation and depth as the ZUP. In particular, it does not provide for systems for the resolution of disputes within the public administration, as a system for appealing administrative decisions of first instance or facing administrative inertia. On the other hand, similar tools of challenging administrative decisions are governed by Presidential Decree no. 1199/1971, which regulates the so-called “*ricorsi amministrativi*”. These are tools aimed at revising administrative decisions that have long since become extraordinary, with the exception of hierarchical appeal, which, however, has gradually lost its characteristic as an ordinary remedy^[49]. This sets a first difference between the Italian and Slovenian frameworks: the system of internal appeals is not regulated as a general tool to overcome inertia in Italy. The system of appeals envisaged by the 1971 Decree is instead aimed at giving the citizen a new opportunity for a favourable decision by activating a new procedure and an evaluation of the situation by the public administration^[50]. Thus, the appeal applies only when a decision has already been made^[51].

This system is coherent with a general premise. Whereas it is a well-known and ancient principle that each administrative procedure must end with a specific decision, once the decision has been issued, there's no obligation for the administration to reactivate or renew the procedure to issue a new decision, to better protect or fulfil citizens' rights and public or private interests^[52].

In short, there are no remedies that can be defined *latu sensu* as appeals in Law no. 241/1990. Nevertheless, there is a provision referring to the exercise of substitute powers if the administration exceeds the deadline for the conclusion of the procedure. Reference is made to art. 2, where it is provided that, in the event of the unsuccessful expiry of the term (i.e. administrative inertia or inactivity), the interested party may request the head of the administration (or a specifically delegated officer) to exercise the substitute powers so as to conclude the

procedure within half of the term initially provided by law^[53]. The remedy, thus, does not take the form of an “appeal” but rather a substitution of the person in charge to decide.

The provision literally suggests that the conclusion of the original procedure is mandatory for the administration, thus qualifying the silence (inertia) originally preserved by the public body as “devolutionary”^[54]. In fact, the rule^[55] establishes that the substitutive power must be activated either at the request of an interested party or, alternatively, by the same administration *ex officio*. The provision of this latter possibility indicates that, in reality, the activation of the power is formally due (and not at the administration's discretion), and, consequently, the request of the private individual is accompanied by a sort of obligation to respond on the part of the public administration^[56]. Therefore, the public body should -in theory- automatically devolve the power to adopt the measure when the term runs fruitlessly, without the need for any further request or intimation. This aspect also sets the Italian system apart from the Slovenian one, where appeals are always mediated by the (or aimed at the fulfilment of) the interest or right of the party involved in the procedure^[57].

This conclusion, however, is generally to be challenged based on the specific interest fulfilled by the “missing” administrative decision. In fact, *ex officio* power should be exercised only if the main interest protected through the procedure and, then, the decision is a public interest: it is very unlikely, on the sole basis of the general principle of cost-effectiveness. This is why substitutive powers envisaged by art. 2 are activated autonomously by the proceeding administration only if the main interest involved is public in itself.

6. Indirect measures: “silences”, compensations and special commissioners

Other provisions must be considered tools to overcome inertia in the Italian legal framework, which diverges quite radically from the Slovenian system.

The first set of measures to be addressed in a comparative analysis is the so-called “administrative silence”^[58]. Law No. 241/1990 establishes a general rule: whenever an administrative procedure is initiated at the request of a citizen, if the administration fails to issue a decision within the time provided by law or

regulation, silence amounts to unconditional approval of the application submitted by the private party^[59]. Although the provision is not applicable when sensitive interests are involved in the procedure^[60], the system should be considered an automated way to overcome inertia and fulfil the interests of the citizen. Where the system fails, however, is in granting real protection and fulfillment of the public interest^[61]: the absence of a real decision (and the explanation of the grounds underlying the decision itself) prevents from any evaluation of the compatibility of the citizens' activity with the general interest^[62]. This sets it apart from the Slovenian system, where the interest of the involved party is protected through the general possibility of an appeal: the appeal will lead to a decision, whereas Italian's "administrative silence" aims exactly at avoiding it. A silence that produces the same effects of an administrative decision – and that, therefore, can be challenged in front of an administrative court – is at high risk in failing the protection of public interest^[63].

Another measure which indirectly addresses inertia is the provision of automatic compensation in favour of the citizen who has been harmed by the inertia of the public administration, provided by art. 2-*bis*, Law No. 241/1990. The provision confirms, first of all, a general rule: should administrative inertia give rise to harm suffered by third parties, the public administration incurs liability and is consequently bound to provide reparation for the damages thus occasioned^[64]. The second paragraph, however, posits that mere administrative delay in issuing a required decision triggers a duty on the part of the public administration to indemnify the citizen, pursuant to predetermined criteria. By doing so, the provision elevates the value of time to a protected interest within the architecture of public law^[65] – recognizing that temporal harm is sustained whenever public authority remains inert. The mechanism thus functions not as a procedural corrector within the administrative process itself, but rather as a substantive guarantee designed to remedy the civic injury produced by administrative silence, reaffirming the normative expectation that public power is to be exercised with due temporal responsibility^[66].

The two automatic remedial mechanisms provided under Law No. 241/1990 – unlike the recourse to the substitutive administrative power – address the problem of administrative inertia primarily through the lens of compensating the harm (whether arising from the administration's failure to reply or from

economically detrimental silence) inflicted upon the citizen's legal and patrimonial sphere. Through these instruments, therefore, the individual's claim may ultimately be satisfied; yet the same cannot be said for the public interest, which remains neither represented nor assessed nor safeguarded through any administrative procedure culminating in an authoritative decision.

When combined with a non-generalised system of administrative appeals, these provisions reveal that the Italian framework departs from a monolithic conception of administrative authority and the general interest – an approach that, by contrast, underlies the Slovenian system of remedies for administrative inertia. Under the ordinary regime, substitutive powers function less as mechanisms for vindicating the public interest and more as instruments of administrative simplification and efficiency recovery^[67], ensuring the satisfaction of the individual's claim while containing the economic costs of inefficiency for the administration^[68].

A different and, in certain respects, non-systematic approach employed in Italian administrative law is the resort to the so-called *commissari ad acta*. These are *extra ordinem* figures who do not ordinarily belong to the administrative body responsible for the procedure, or who, even when institutionally part of it, are not directly accountable for the specific proceeding in which inertia has been identified. Such actors are entrusted with completing the procedure, at times by exercising powers not expressly vested in the administration itself. This remedial technique is deployed in two contexts: first, where an administrative court has, through a judicial ruling, formally established that the administration has remained unlawfully inactive; and second, where the state must respond to widespread administrative dysfunction or to public projects of particular complexity and institutional significance^[69].

These remedies are not expressly provided for in the primary statute governing administrative procedure; nevertheless, the legislature appears to regard them as the most effective tools available, as evidenced by the practical use of the judicial remedy against administrative inertia and the increasingly frequent recourse by the Government to extraordinary commissioners in matters of particular significance^[70]. The institution of the commissioner – absent from the Slovenian system – does not serve as an instrument of bureaucratic simplification or administrative streamlining. Rather, it is grounded in a broader principle of

outcome orientation and in the imperative to ensure the effectiveness of public action ^[71].

7. Pandemic management residues and European experiences

The hint at the figure of the extraordinary (or special) commissioner brings about some further reflections that can be developed towards the usefulness of substitutive systems in coping with general crises ^[72].

During the Covid pandemic, in Italy the crisis has been faced through exceptional measures that have derogated from the regulations in force – for example, in the field of public procurement, with specific reference to the purchase of the medical devices necessary for the first response ^[73]. This is a system common to the one used in Slovenia, where ministerial and government orders ^[74] have been used as a tool for a centralized response.

This is, therefore, a recurring element that may be identified as an enduring application of substitutive powers that appears to have persisted in the aftermath of the pandemic emergency: namely, the consolidation of centralised – more precisely, commissioner-led – procurement systems. The stabilisation of this operational model is justified by the structural tendency of public procurement systems toward inefficiency, so much so that even the civil protection procurement procedures proved inadequate. The increase of thresholds for simplified procurement procedures, in fact, has remained in both systems as a clear sign of dissatisfaction with the ordinary bureaucratic framework governing public tenders, while, evidently, the commissioner's power was not maintained, as the legal system no longer needed to devise an extraordinary response in a non-emergency context. What is particularly noteworthy, however, is that in both cases, the procurement framework, although designed to promote competition in a free-market setting, ultimately obstructed the administrative response to the emergency through its bureaucratic burdens.

Another implication of the crisis of administrative efficiency revealed by the global pandemic is the introduction of special powers granted to the public administration in derogation of ordinary legislation ^[75]. In this case, even in the absence of a commissioner, public authority is no longer structured according to

ordinary norms – evidently deemed inadequate to ensure an effective response – but operates instead through *extra ordinem* rules and powers. This operational modality exposes not only the inefficiency of the ordinary administrative procedure but also, albeit secondarily, the inadequacy of ordinary mechanisms designed to overcome administrative inertia^[76].

8. Is there really a use for the “special commissioner” or a “*commissario ad acta*”?

Precisely in light of the fact that the Slovenian legal system does not provide for the use of extraordinary commissioners – neither to address ordinary situations of inertia nor to respond to exceptional needs – or *commissari ad acta* or substitute for administrative bodies in default of their legally mandated obligations to decide, the comparative analysis invites reflection on whether the deployment of such a special figures is truly effective in resolving issues of administrative inefficiency.

Such actors are frequently perceived as an improper incursion into the autonomous decision-making sphere of the administrative authorities, whether from the perspective of the Government or of the judiciary^[77]). The Italian system, by contrast, makes extensive use of this figure, which has been systematized within the so-called *compliance proceedings* (*processo di ottemperanza*), that is, a specific judicial mechanism aimed at ensuring that the administration effectively complies with rulings issued by the administrative court^[78]. In particular, the need to devise a specific procedural mechanism to enable the substitution of the public administration arises from the inherent difficulty of compelling administrative authorities to act^[79], as well as from the occasional reluctance of bureaucratic bodies to give full effect to the decisions of the administrative courts^[80].

However, even in the management of national emergencies, the use of this instrument is recurrent, particularly in situations marked by such exceptional complexity that they cannot be adequately addressed through ordinary administrative law mechanisms^[81]: This, indeed, constitutes further evidence of the inefficiency – or, more precisely, the structural uneconomical nature – of the ordinary *modus procedendi* of the public administration.

As previously noted, this figure does not apply in the Slovenian system, which

instead addresses the issue of substitutive powers through alternative instruments^[82]. The rationale behind such a choice may be attributed – upon brief analysis – to both historical and structural legal considerations, although these appear to be less closely tied to the general principle of separation of powers, which remains central to continental justice systems such as Italy's^[83].

Nonetheless, it is fitting to inquire which of the two frameworks may more justifiably be deemed capable of securing an administrative apparatus endowed with the responsiveness and institutional capacity necessary to meet, with promptness and adequacy, both the legitimate expectations of citizens and the demands imposed by contingent circumstances.

Indeed, within the Italian legal system, the very existence and widespread use of the commissarial instrument may be seen as implicit evidence of the administration's inadequacy in confronting even ordinary challenges^[84]. That said, the Slovenian legal system also provides mechanisms for overcoming administrative inertia, although these are resolved through internal interventions within the administrative organisation, without the need to designate extraordinary bodies by the judge or the Government.

Such configurations may be understood as more faithfully aligned with the preservation of normative autonomy and with the deeper commitments embedded in the principle of substantive legality^[85], insofar as they eschew any alterations that might unsettle the internal rationality, equilibrium, and teleological coherence of the administrative process as institutionally conceived. Any theoretical engagement with the issue, however, must necessarily reckon with the structural complexity that characterises administrative organisation. As the number of constitutionally entrenched centres of autonomous authority – municipal, provincial, and regional – expands, so too does the systemic propensity toward a form of congenital inefficiency, one rooted in the need to mediate and integrate a plurality of normatively qualified and competing public interests within the architecture of administrative decision-making^[86].

9. Conclusion

Some points for shared reflection can be drawn from the dialogue between neighboring countries.

At a more abstract level, a unifying strand can be discerned across these normative domains, namely the construction of enforcement-oriented procedural entitlements and default-substitution devices that instantiate the citizen's claim-right to a reasoned determination (the 'right to a response') against administrative inertia, thereby rendering the duty to decide juridically effective within the broader architecture of administrative justice^[87].

A shared premise for the analysis is that, in both legal systems examined, the failure of public authorities to provide a timely response – understood as a manifestation of administrative non-performance – amounts, in itself, to an infringement of the citizen's fundamental rights^[88]. What fundamentally separates the two legal systems is the distinct epistemology and institutional logic through which they conceptualise and address administrative inertia. The Italian system exhibits a pronounced orientation toward the vindication of the substantive interest that constitutes the telos of the administrative procedure, operationalising this orientation through a remedial architecture that is predominantly quasi-contentious or fully contentious in nature. By contrast, the Slovenian system embeds intra-administrative appeals organically within the foundational statute governing administrative procedure, thereby rendering such mechanisms not exceptional but structurally integrated – indeed, 'physiological' – within the ordinary metabolism of administrative governance.

Moreover, although both jurisdictions have, during the pandemic, resorted to exceptional and extraordinary regulatory instruments, it is only the Italian system that displays a persistent, structurally entrenched reliance on commissarial substitution as a technique of administrative governance – an instrument that, far from being confined to moments of emergency, has come to function as a systemic response to chronic inefficiency and institutional inadequacy within the administrative apparatus^[89].

Ultimately, the comparative analysis between Italy and Slovenia reveals a shared preoccupation with administrative responsiveness and legal certainty^[90], particularly in emergency governance. Italy's reliance on extraordinary commissioners reflects a pragmatic attempt to counteract bureaucratic inertia, whereas Slovenia's system of internal administrative remedies foregrounds procedural regularity and institutional self-government. In both jurisdictions, substitutive powers – whether exercised through ordinary mechanisms or

exceptional intervention – are justified by the overarching imperative to safeguard fundamental rights and to ensure the timely performance of public functions.

At the same time, the comparison highlights the enduring need to balance central authority and local autonomy, especially in crisis conditions, and suggests that future reforms should aim to reconcile administrative efficiency with principles of democratic accountability. An administrative apparatus that maximizes operational efficiency yet fails to conform to the demands of the rule of law – namely legality, reason-giving, and reviewability – and that neglects the democratic legitimation of public decision-making, forfeits the telos of constitutionalized administration^[91]. Efficiency, in the absence of law-boundedness and accountable representation, ceases to be a public value and becomes administratively self-referential; such a system, however performant, ultimately betrays its *raison d'être*.

1. 1 Paragraphs 3 and 4 are attributable to B. Žuber; paragraphs 5, 6, and 7 to G. Biasutti; paragraphs 1, 2, 8, and 9 are jointly attributable to both Authors.
2. In accordance with the principles of legality and the typification of general administrative functions, as emphasized by D. Simeoli, *Appunti sul principio di legalità amministrativa*, in *Questione giustizia*, 4, 2016.
3. Cf. B. Žuber, *Commentary to Article 222 of ZUP* in P. Kovač, E. Kerševan (eds.), *Komentar Zakona o splošnem upravnem postopku (ZUP)*. Uradni list RS, Pravna fakulteta Univerze v Ljubljani, Ljubljana, 2024, S. Vogenauer, S. Weatherill (eds.), *General Principles of Law: European and Comparative Perspectives*, London, 2017. In these terms, therefore, substitutive power is not necessarily and inherently linked to the need to act in response to administrative inertia. At times, it emerges as a solution to complexity or exceptional circumstances in which the use of traditional administrative instruments proves insufficient to achieve the intended purpose.
According to G. Mazzarita, *I poteri sostitutivi fra emergency clause e assetto dinamico delle competenze*, in *Le istituzioni del federalismo*, 5, 2005, pp. 819 ff., the exercise of substitutive power entails a «migration of the exercise of actions or competences from one subject to another, thereby derogating from the ordinary allocation of competences».
4. As G. Sirianni, *Inerzia amministrativa e poteri sostitutivi*, Milan, 1991, pointed out. See also A. Berrettini, *Potere sostitutivo e risultato provvedimento nella dinamica della leale collaborazione tra privato e pubblica amministrazione*, in *CERIDAP*, 2, 2025, pp. 217 ff., F. Merloni, *Una definitiva conferma della legittimità dei poteri sostitutivi regionali (commento alla sentenza n. 43 del 2004)*, in *forumcostituzionale.it*.
5. Cf. N. Durante, *La decadenza tra principi generali e applicazioni amministrative e*

- tributarie*, in *Riv. Corte dei conti*, 2, 2021, pp. 53 ff.
6. See Z. Mamyrbaeva, K. Ketners, A. Zheenalieva, N. Sheripov, O. Hudyma, *Public administration effectiveness in crises and emergencies: experiences and lessons from different countries*, in *CERIDAP*, 2, 2025, where the Authors clarify that «*in emergency situations, the effectiveness of public administration depends on the availability and use of appropriate adaptation mechanisms*».
 7. What is missing, in fact, is what can be defined as the “heart” of the measure, i.e. its motivation. Motivation constitutes the inescapable core of the exercise of power, since it justifies its assumptions, reasons and measure. Cf. A. Cassatella, *Motivazione del provvedimento amministrativo*, in *Diritto online – Enciclopedia Treccani*, 2018, which underlines in particular how even at the level of the European Union the motivation is now considered a fundamental principle to all Member States, as it is necessary to allow full protection in court of the rights and interests of citizens. The jurisprudential reference in this regard is made with reference to the judgment of the Court of Justice of 15 October 1987, C-222/86, *Unectef v. G. Heylens and others*. On a comparative level, see also G. della Cananea, *Due Process of Law beyond the State. Requirements of Administrative Procedure*, Oxford, 2016, as well as J. Schwarze, *European Administrative Law*, Londra, 1992.
 8. Sometimes within a period shorter than the one originally provided for the issuance of the measure, as in the Italian case (Article 2, Law No. 241/1990), other times by initiating a procedure that potentially has the same duration as the one unsuccessfully concluded, as for example happens in Austria, pursuant to Article 73 of the General Law on Administrative Procedure. See for a general overview of the relevant wide-ranging spettro E. Wiederin, *Evolution and Gestalt of the Austrian State*, in S. Cassese, A. von Bogdandy, P.M. Huber (ed.), *The Administrative State, The Max Planck Handbooks in European Public Law*, I, Oxford, 2017, pp. 126 ff., as well as H. Stolzlechner, C. Bezemek, *Einführung in das öffentliche Recht*, Wien, 2018.
 9. These provisions refer both to the case in which we are faced with an effectively inefficient machine and to the case in which this inefficiency is caused by the subjective and objective complexity of the procedure, which, however, is not reflected through an adequate asset of skills and material resources of the public party.
 10. A clear example of this is the Covid-19 pandemic crisis, which has laid bare the inefficiencies of state bureaucratic machines, especially with reference to the actual response times that they could guarantee with respect to a situation in continuous and sudden evolution. So G. Napolitano, *Il diritto amministrativo dalla pandemia alla resilienza*, in *Giornale di diritto amministrativo*, 1, 2021, pp. 150 ff. in particular.
 11. B. Mameli, *Efficienza amministrativa e discrezionalità ai tempi della pandemia*, in *P.A. – Persona e amministrazione*, 2, 2020, pp. 194 ff., where the Author concludes by stating that «*Rooted in the presumption of an incapable and corrupt administration, such perceptions have paralyzed administrative action, rendering efficiency objectively unattainable. The right to good administration must be safeguarded through a renewed*

conception of the public entity – one that envisions the State as a creator of public value, capable of fostering innovation while simultaneously being held accountable for the failure to achieve results» (translation made by the author). However, Mameli also argues that the range of tools prepared to deal with the pandemic is potentially able to make the Italian administration achieving this ambitious result.

12. Reference goes to R. Scarciglia, *Metodi e comparazione giuridica*, Milan, 2021, especially p. 90 et seq.
13. Without aiming, then, at general comparative evaluations on the legal systems: again, reference goes to R. Scarciglia, *cit.* p. 122 et seq. See also, of the same Author, *Introduzione al diritto pubblico comparato*, Bologna, 2006 and *Nuove frontiere nella metodologia comparativa. Quali strumenti per la ricerca giuridica nel XXI secolo?*, in *Diritto pubblico comparato ed europeo*, Special issue, 2024, pp. 3 ff.
14. Source: Cambridge English Dictionary.
15. S. Spuntarelli, *La dichiarazione dello stato di emergenza in Italia*, in *Annali della facoltà giuridica*, Camerino, 2021, pp. 294 ff., particularly emphasized that the declaration of a state of emergency allows for the adoption of *extra ordinem* ordinances, in derogation of existing provisions, in order to ensure relief and assistance to the population, the securing of affected areas, and reconstruction efforts. According to legal scholarship, this institution is configured as a form of “emergency administration”, grounded in a delicate balance between the need for prompt action and the adherence to constitutional principles.
16. Zakon o obrambi – ZObr (Official Gazette, no. 82/94 as amended).
17. Zakona o varstvu pred naravnimi in drugimi nesrečami – ZVNDN (Official Gazette, no. 64/94 as amended).
18. Slovenian legal scholarship has highlighted certain critical issues within the system, particularly with regard to the clarity of normative sources and the distribution of powers between Parliament and Government. During the Covid-19 pandemic, for instance, extensive use was made of government decrees with the force of law, raising concerns about constitutional legitimacy and the balance of powers within the State: cf. M. Žgur, *Le fonti del diritto nello stato di emergenza. La normativa slovena, le sue carenze e la prassi davanti all’epidemia del Covid-19*, in *Federalisimi.it*, 29, 2022, pp. 208 ff.
19. This is the case, for instance, of the *Novo Nordisk Fill and Finish Expansion Anagni* project, as well as the construction of the bridge over the Strait of Messina. In other instances, such as the collapse of the Morandi Bridge in Genoa, an extraordinary commissioner was appointed to address the exceptional emergency situation.
20. Zakon o splošnem upravnem postopku – ZUP (Official Gazette, no. 80/99 as amended).
21. For a general introduction to the topics dealt with in the law, see E. Kerševan, V. Androjna, *Upravno procesno pravo: upravni postopek in upravni spor*. Ljubljana: Lexpera, GV založba, 2018, pp. 36 ff. and B. Žuber, *Slovenia*, in Z. Kieciak (ed.). *Administrative proceedings in the Habsburg succession countries*. Łódź-Warszawa, 2021, pp. 217 ff.
22. B. Žuber, *Commentary to Article 222 of ZUP* in P. Kovač, E. Kerševan (eds.), *Komentar*

- Zakona o splošnem upravnem postopku (ZUP)*. Uradni list RS, Pravna fakulteta Univerze v Ljubljani, Ljubljana, 2024, pp. 484 ff., 485.
23. On this see art. 222 of GAPA.
 24. See art. 255 of GAPA.
 25. B. Žuber, *Commentary to Article 222 of ZUP* in P. Kovač, E. Kerševan (eds.), *Komentar Zakona o splošnem upravnem postopku (ZUP)*. Uradni list RS, Pravna fakulteta Univerze v Ljubljani, Ljubljana, 2024, p. 485.
 26. Zakon o državni upravi – ZDU-1 (Official Gazette, no. 52/02 as amended).
 27. See art. 71 of SAA.
 28. On this see also: N. Hudej, *Commentary to Article 18 of ZUP*, in P. Kovač, E. Kerševan (eds.), *Komentar Zakona o splošnem upravnem postopku (ZUP)*. Uradni list RS, Pravna fakulteta Univerze v Ljubljani, Ljubljana, 2024, pp. 203 ff.
 29. Report on the Activities of the Inspectorate for the Public Sector for 2022, <https://podatki.gov.si/dataset/letna-porocila-o-delu-inspektorata-za-javni-sektor> (7 December 2024), p. 17; Report on the Activities of the Inspectorate for the Public Sector for 2021, <https://podatki.gov.si/dataset/letna-porocila-o-delu-inspektorata-za-javni-sektor> (7 December 2024), pp. 16-17; Report on the Activities of the Inspectorate for the Public Sector for 2020, <https://podatki.gov.si/dataset/letna-porocila-o-delu-inspektorata-za-javni-sektor> (7 December 2024), p. 16; Report on the Activities of the Inspectorate for the Public Sector for 2019, https://www.gov.si/assets/organi-v-sestavi/IJS/Porocila-o-delu/Porocila-o-delu-IJS/Porocilo_o_delu_IJS_2019.pdf (2 April 2020), p. 14; and Report on the Activities of the Inspectorate for the Public Sector for 2018, https://www.gov.si/assets/organi-v-sestavi/IJS/Porocila-o-delu/Porocila-o-delu-IJS/Porocilo-o-delu-IJS_2018.pdf (2 April 2020), p. 13.
 30. More on State's liability for damages under Article 26 of the Constitution see: D. Možina, *Commentary to Article 26 of the Constitution*, in M. Avbelj (ed.), *Komentar Ustave Republike Slovenije*. Nova univerza, Evropska pravna fakulteta, 2019, pp. 255-265.
 31. Zakon o upravnem sporu – ZUS-1 (Official Gazette, no. 105/06 as amended).
 32. See art. 28 of ADA; the third indent of the first paragraph of art. 33 of ADA, art. 39 and 69 of ADA.
 33. See art. 69 of ADA.
 34. B. Žuber, T. Majnik, *Ensuring effective judicial protection in administrative disputes through the annulment power of the administrative judiciary*, in *Access to justice in Eastern Europe* 2, 2025, str. 121-154, https://ajee-journal.com/upload/attaches/att_1747288690.pdf.
 35. For a comparative reference, see C. Bjørnskov, S. Voigt, *The architecture of emergency constitutions*, in *International Journal of Constitutional Law*, 1, 2018, pp. 101 ff.
 36. The idea that situations of serious crisis legitimize the use of *extra ordinem* powers was not born with the Covid-19 pandemic but is always latent in advanced democracies. The issue

- that is constantly debated, if anything, is how to ensure that these powers do not improperly affect the fundamental freedoms and rights of citizens. D. Dyzenhaus, *The Constitution of Law. Legality in a Time of Emergency*, New York, 2006, as well as J. Ferejhon, P. Paquino, *The law of the exception: A typology of emergency powers*, in *International Journal of Constitutional Law*, 2/2, 2004, pp. 210 ff.
37. On this see: S. Zagorc, S. Bardutzky, *Business as Usual, but to the Unusual Extremes: Slovenia and Covid19*, in *VerfBlog*, 26 April 2020.
 38. The Government may adopt one or more temporary measures as provided for by law. In doing so, it must take into account the circumstances of the extraordinary event and carry out a proportionality test with regard to each measure. If a temporary measure fails to satisfy the proportionality test, the Government may not adopt it. In light of the statutory conditions governing the adoption of temporary measures, it is reasonable to expect that, when adopting the decree, the Government provides a concrete and specific justification of the proportionality assessment for each individual measure, rather than relying on a merely general assertion that the measure complies with the principle of proportionality. On this see: M. Remic, *Commentary to Article 306.a of ZUP*, in P. Kovač, E. Kerševan (eds.), *Komentar Zakona o splošnem upravnem postopku (ZUP)*. Uradni list RS, Pravna fakulteta Univerze v Ljubljani, Ljubljana, 2024, pp. 170 ff.
 39. Zakon o interventnih ukrepih za omilitev posledic drugega vala epidemije – ZIUOPDVEZUS-1 (Official Gazette, no. 175/20 as amended).
 40. See art. 144 of GAPA.
 41. See art. 210 of GAPA.
 42. See art. 211 of GAPA.
 43. See art. 235 of GAPA.
 44. See art. 278 of GAPA.
 45. More in this see also E. Kerševan, V. Androjna, *Upravno procesno pravo: upravni postopek in upravni spor*. Ljubljana: Lexpera, GV založba, 2018, pp. 462-463.
 46. See, *ex multis*, G. Bottino, *La burocrazia “difensiva” e le responsabilità degli amministratori e dei dipendenti pubblici*, in *Analisi giuridica dell’economia*, 1, 2020, pp. 117 ff., as well as S. Battini, F. De Carolis, *L’amministrazione si difende*, in *Riv. trim. dir. pubbl.*, 1, 2019, pp. 293 ff., C. Feliziani, *Quanto costa non decidere? A proposito delle conseguenze delle mancate o tardive decisioni della pubblica amministrazione*, in *Dir. econom.*, 1, 2019, pp. 155 ff., and V. Tenore, *Prime problematiche e riflessioni critiche sulla legge Foti 7 gennaio 2026 n. 1*, in *Lexitalia.it*, 1, 2026.
 47. That is the liability for detriment to the public purse, which may arise not only from pecuniary harm directly suffered by individual citizens but also from conduct amounting to maladministration, insofar as it generates systemic or structural inefficiency within the public administration. See L. Lorenzoni, *La responsabilità amministrativa in relazione al fenomeno della cosiddetta burocrazia difensiva*, in *Il lavoro nelle pubbliche amministrazioni*, 4, 2021, pp. 761 ff.
 48. For a general introduction, see V. Lopilato, *Manuale di diritto amministrativo*, I, Turin,

- 2021, G. Virga, *Le modificazioni ed integrazioni alla l. n. 241 del 1990 recentemente approvate. Osservazioni derivanti da una prima lettura*, in *Lexitalia.it*, R. Chieppa, Mario Nigro e la disciplina del processo amministrativo, in *Riv. trim. dir. pubbl.*, 3, 2010, pp. 667 ff., A. Napolitano, *Commento breve alla riforma della legge 241/90*, in *AmbienteDiritto*, 2 October 2005, G. Pastori, *Nuove norme generali sull'attività amministrativa*, in *Amministrare*, 3, 2002, pp. 316 ff., D. Sorace, *La "legificazione" delle norme generali sull'azione amministrativa*, in *Amministrare*, 1, 2002, pp. 321 ff., G. Morbidelli, *Commento agli articoli 1, 2 e 3 della legge 7 agosto 1990, n. 241*, in *Prime note*, XI, 1990, pp. 20 ff.
49. And, in fact, even the hierarchical appeal, which should constitute a general remedy that can be operated against all non-definitive measures, in the light of the current physiognomy of the administration, which sees the spheres of greater competence protected, has become a very residual instrument. Formerly M.S. Giannini, *cit. op.*, with reference to the hierarchical appeal stated that «*With regard to the term extraordinary, two main explanations have been offered: according to some, the appeal is deemed extraordinary because it derogates from the ordinary allocation of competences, both in relation to administrative appeals and to judicial remedies. Others, however, consider the appeal extraordinary insofar as it constitutes a residual mechanism from a bygone era*» (translation by the author), p. 75, cited above. See also G. Vacirca, *Brevi spunti in tema di rapporti tra ricorso amministrativo e ricorso giurisdizionale*, in *Foro amm.*, II, 1975, pp. 363 ff.
50. See Cons. St., sec. IV, 9 May 1978, n. 398 and also S. Cassarino, *Rapporti tra ricorsi amministrativi ordinari e ricorso giurisdizionale*, in *Foro amm.*, 2, 1975, pp. 83 ff. and A. Travi, *Ricorsi amministrativi*, in *Digesto delle discipline pubblicistiche*, XIII, Turin, 1997. To be precise, this possibility of a new evaluation is expressly prohibited in the case of the so called "*Ricorso straordinario al Presidente della Repubblica*", which is a semi-jurisdictional appeal, much closer to a judgement in front of an administrative court: see P. Tanda, *Le nuove prospettive del ricorso straordinario al Capo dello Stato*, Turin, 2014, and N. Saitta, *Sistema di giustizia amministrativa*, Naples, 2015, pp. 899 ff.
51. The argument for the non-applicability of the appeals system against inactivity is upheld by C. Volpe, *Il ricorso straordinario al Presidente della Repubblica*, in G.P. Cirillo (ed), *Il nuovo diritto processuale amministrativo*, Milan, 2014, pp. 1396 ss. especially p.1430. See Cons. St., sec. I, 7 May 2012, no. 4648, in *Foro amm.* – *CdS*, V, 2012, pp. 1381 ff., and, *contra*, Cons. St., sec. II, 30th April 2003, no. 1036.
52. The power to renew the administrative decision is called "*autotutela*". More specifically, jurisprudence considers that requests aimed at the exercise of powers of self-revision (so called *autotutela*) do not even generate the obligation for the administration to provide an answer to the citizen, since the administration enjoys full discretion in revising its decisions' largely discretionary power. *Ex multis*, Council of State, sec. IV, 27 March 2025, no. 2569.
53. On the risks related to the application of the institutions of silence with the devolution of

competences that should be reserved to specific offices and bodies, see, without claiming to be exhaustive S. Vernile, *Ragionevole durata del procedimento amministrativo e "sorte" dell'atto tardivo*, in *Dir. econom.*, 3, 2020, pp. 337 ff. as well as M. Calabrò, *L'inefficacia del provvedimento tardivo di cui al nuovo art. 2, co. 8-bis della l. n. 241/1990 e gli effetti sulla disciplina del silenzio assenso: primi passi nell'ottica della certezza del diritto*, in *AmbienteDiritto*, 1, 2021 and L. Vandelli, *Tendenze e difficoltà della semplificazione amministrativa*, in *Nuove autonomie*, 3-4, 2008, pp. 417 ff.

54. That is, the silence kept by the first person responsible for the measure means that the relative power is devolved, through the request of the private person concerned, to the manager. The latter, then, will assume the burden and responsibilities related to the conclusion of the procedure itself. See Council of State, Section IV, 2 October 2023, no. 8610, as well as, in doctrine M.P. Chiti, *Semplificazione delle regole e semplificazione dei procedimenti. Alleati o avversari?*, in G. Vesperini (ed.), *Che fine ha fatto la "semplificazione amministrativa"*, Milan, 2006, where the author points out the difference of devolutionary silence compared to the case of silent assent. Although both institutions are generally preordained to ensure a simplification and streamlining of the administrative procedure, while the silence-consent guarantees the achievement of a result of final satisfaction for the private individual «*The case in which the case subject to any silence-consent necessarily involves complex preliminary phases or is part of a more complex procedure, where it would be very useful, in the interest of both the interested party and the Administration, to carry out all the necessary checks, then expressed in the provision and in the related motivation*», p. 38, cit.
55. Article 2, paragraph 9-ter, Law no. 241/1990.
56. An obligation whose existence is, moreover, positively demonstrated by the sanction ability of silence further maintained in inter-administrative terms (performance evaluation, implications on remuneration, administrative and tax liability) but also external, i.e. the possibility of censuring inertia through action before the administrative court.
57. For comparison, the Italian processual law has a specific provision, applicable in general to all civil and administrative litigation: art. 100 of the *Codice di procedura civile*. The provision establishes that, in order to bring an action before the courts – or, where applicable, to challenge an administrative measure – a claimant must demonstrate a specific and legally cognizable interest. See for a general introduction to the principle V. Andrioli, *Commento al Codice di procedura civile*, I, Naples, 1954, especially pp. 278 ff., M. Marinelli, *La clausola generale dell'art. 100 c.p.c. Origini, metamorfosi e nuovi ruoli*, Turin, 2005, A. Carratta, C. Mandrioli, *Diritto processuale civile. Disposizioni generali*, I, Milan, 2025, pp. 36 ff.
58. Which is roughly translated from Italian "*silenzio della pubblica amministrazione*". See T.G. Tasso, *Il Silenzio della Pubblica Amministrazione. Il paradosso del silenzio come forma di comunicazione tra Privato e Pubblico*, Naples, 2004 and, *ex multis*, L. Donato, *Procedere senza provvedere? Il silenzio amministrativo tra legalità, discrezionalità e*

organizzazione, in *Giustizia Insieme*, 31 December 2025

59. This is the summary of art. 20, regarding the so called “*silenzio-assenso*”. For the general application of the provision reference goes to P. Otranto, *Silenzio e interesse pubblico nell’attività amministrativa*, Bari, 2018.
60. Namely interests concerning cultural and landscape heritage, environmental protection, safeguards against hydrogeological risk, national defense, public security, immigration, asylum and citizenship, public health and safety, as well as cases in which European Union law requires the adoption of formal administrative measure. The same exception is applicable when a specific provision states that administrative inertia is deemed to constitute a rejection of the application submitted.
61. The absence of a statement of reasons for the administrative measure is regarded as a critical weakness of the regulatory framework by F. Certomà, *Le esigenze di giustizia ed equità alla base dell’obbligo di provvedere*, in *Lexitalia.it*, 2010, as well as M. Monteduro, *Sul processo come schema di interpretazione del procedimento: l’obbligo di provvedere su domande «inammissibili» o «manifestamente infondate»*, in *Dir. amm.*, 1, 2010, pp. 103 ff. and B. Mameli, *Il silenzio dell’amministrazione tra mercato e persona*, in *Rivista della regolazione dei mercati*, 2, 2022, pp. 691 ff.
62. Of course, if inertia is deemed to constitute a rejection of the application, there’s no fulfillment of the interest of the citizen. Although the case then is not deepened in the present study, it can be said that the final result is the same: there’s an automatic effect of the inertia that does not satisfy the need for a decision that faces the interests involved in the procedure.
63. Reference for this conclusion goes to G. Mari, *L’obbligo di provvedere e i rimedi preventivi e successivi ai silenzi provvedimentali e procedurali della P.A.*, in M.A. Sandulli (ed), *Principi e regole dell’azione amministrativa*, Milan, 2020, pp. 226 ff., as well as M. Calabrò, *Silenzio assenso e dovere di provvedere: le perduranti incertezze di una (apparente) semplificazione*, in *Federalismi.it*, 10, 2020, pp. 21 ff.
64. This is, indeed, a general principle of public law in Italian system, as pointed out by E. Follieri, *Il modello di responsabilità per lesione di interessi legittimi nella giurisdizione di legittimità del giudice amministrativo: la responsabilità amministrativa di diritto pubblico*, in *Dir. proc. amm.*, 1, 2006, pp. 18 ff.
65. See F.G. Scoca, *Il silenzio della pubblica amministrazione*, Milan, 1963 and R. Caponigro, *Il tempo come bene della vita*, in *giustizia-amministrativa.it*.
66. It is, indeed, contested whether the framework as presently delineated correctly captures the legal nature of the case. If statutory time-limits for concluding the procedure impose a juridical duty upon the administration, then the breach of that duty gives rise to compensable harm – calling for damages rather than indemnity. Under Italian law, moreover, while the institution of damages (*risarcimento del danno*) redresses both the immediate injury directly caused by the unlawful act and the future harm that ensues, indemnity (*indennizzo*), premised on the fact that the harm was produced by conduct that is nonetheless lawful, compensates only the direct pecuniary diminution suffered by the

citizen. See for a general introduction A. Crismani, *Le indennità nel diritto amministrativo*, Milan, 2012.

67. Since they also minimize the possibility of the citizen to pursue legal actions for compensation against the public administration due to damages resulting from delays in issuing decisions or taking required measures.
68. Certainly, the substitution provided in art. 2 conveys the possibility of protection for the citizen, nevertheless, the relative structure, starting from the possibility of *ex officio action* of the substitute, allows us to reflect on the real *ratio legis* of the institution.
69. There are numerous instances in which *commissari ad acta* have been appointed to oversee the implementation of strategic infrastructure or to address emergencies of particular magnitude. One notable example is the Government's Extraordinary Commissioner for the reconstruction of the municipalities in the Regions of Abruzzo, Lazio, Marche, and Umbria affected by the seismic event of 24 August 2016, most recently appointed by Decree of the Presidency of the Council of Ministers of 17 January 2025; another is the Extraordinary Commissioner tasked with carrying out seismic-retrofit interventions on publicly owned buildings in the Campi Flegrei area pursuant to Article 2 of Decree-Law No. 91 of 2 July 2024, most recently appointed by Decree of the Presidency of the Council of Ministers of 17 July 2024. The full set of governmental appointments may be consulted at: <https://presidenza.governo.it/amministrazionetrasparente/organizzazione/commissariordinari/index.html>. At the foundation of these interventions lies an explicit statutory mandate empowering the Government to appoint such commissioners and, where appropriate, to confer upon them special powers necessary for the fulfillment of their institutional tasks. See S. Giardini, *Note sui poteri amministrativi straordinari*, in *Dir. econom.*, II, 2020, pp. 147 ff., where the author emphasizes, in particular, the necessity of a stringent application of the limits governing the powers entrusted to extraordinary commissioners, so as to prevent the state of emergency that justifies their appointment from impermissibly hardening into a condition of normality. A constitutional democracy governed by the rule of law must, indeed, ensure that the principle of legality continues to apply even in *extra ordinem* circumstances.
70. It is not possible, for reasons of space, to examine in detail the general framework of civil protection within the Italian legal system. It may nonetheless be observed that civil protection, as an administrative apparatus entrusted with responding to disaster situations, is governed by an autonomous regulatory regime, marked in particular by the availability of substitutive powers and, more broadly, by powers operating *extra ordinem*. However, it does not constitute an apparatus designed to address situations of administrative inertia or inefficiency. For general reference see Law No. 225/1992, Law No. 59/97 and Legislative Decree no. 112/98. On the subject of concurrent legislation, see, *ex multis*, L. Paladin, *La potestà legislativa regionale*, Padua, 1958, G. Falcon, *Modello e transizione nel nuovo Titolo V della Parte seconda della Costituzione*, in *Le Regioni*, 6, 2001, pp. 1247 ff., G. Tarli Barbieri, *I rapporti tra la legislazione statale e la legislazione regionale*, in E. Bettinelli, F.

- Rigano (eds), *La riforma del Titolo V della Costituzione e la giurisprudenza costituzionale*, Turin, 2004, pp. 198 ff., P. Colasante, *La competenza concorrente in Italia fra neocentralismo statale e prospettive di riforma*, in *Italian papers on federalism*, III, 2014, M. Carrer, *La delenda potestas. Guida alla lettura dei principi fondamentali delle materie di potestà legislativa concorrente in quindici anni di giurisprudenza costituzionale*, in *Federalismi.it*, 23, 2016, and doctrine cited therein.
71. General reference goes to M.R. Spasiano, *Dall'amministrazione di risultato al principio di risultato del Codice dei contratti pubblici: una storia da scrivere*, in *Federalismi.it*, 9, 2024, pp. 206 ff., as well as *Funzione amministrativa e legalità di risultato*, Turin, 2003, S. Perongini, *Il principio del risultato e il principio di concorrenza nello schema definitivo di codice dei contratti pubblici*, in G. Corso, M. Immordino (eds.), *Scritti in onore di Filippo Salvia*, Naples, 2023, pp. 410 ff., and G. Corso, *Amministrazione di risultati*, in AA.VV., *Annuario AIPDA*, 2002, pp. 127 ff.
 72. The assumption from which to start in seeking a common reflection, indeed, is constituted, as underlined by R. Arjen Boin, M. Ekengren, M. Rhinard, *The European Union as crisis manager. Patterns and prospects*, Cambridge, 2013, by the existence of a common conceptual substratum that highlights the physiological inadequacy of the ordinary administrative system in the face of the exceptional nature of events which, proposing to be systematized within programs and forecasting schemes, ends up overpowering the ordinary way in which public power is able to guarantee the fundamental rights of citizens (such as freedom of movement) within situations of an exceptional nature. Cf. F. Fracchia, *Coronavirus, senso del limite, deglobalizzazione e diritto amministrativo: nulla sarà più come prima?*, in *Dir. econom.*, 2, 2020, pp. 579 ff., U. Allegretti, *Il trattamento dell'epidemia di "coronavirus" come problema costituzionale e amministrativo*, in *Forum Quaderni Costituzionali*, 25 March 2020, G. Azzariti, *I limiti costituzionali della situazione d'emergenza provocata dal Covid-19*, in *Questione Giustizia*, 27 March 2020.
 73. Cf. M. Magri, *Il "collasso" del sistema degli appalti nella prima fase dell'emergenza*, in *Istituzioni del Federalismo*, – special issue, 2020, pp. 77 ff., as well as M. Colistro, *I contratti pubblici prima e durante l'emergenza sanitaria COVID-19: quali prospettive future?*, in *Ratio juris*, which spoke of the «dissemination of commissioner powers» of an exceptional nature as a characteristic and at the same time a criticality of the system response to the pandemic, and M. Cozzio, N. Parisi, *L'emergenza sanitaria causata dal COVID-19: l'impatto (attuale e futuro) sul sistema nazionale dei contratti pubblici*, in *Dir. econom.*, 1, 2021, pp. 37 ff.
 74. These are two distinct powers of ordinance: for a critical analysis see J. Kukavica, (Rule of) Law in the Time of Covid-19: Warnings from Slovenia, in *VerfBlog*, 25 March 2020, where the Author proposes a critical reading of the operational methods adopted by the government in managing the crisis, where the Slovenian constitution does not in fact provide for an express power of ordinance in the event of a health emergency for the executive, but only for the Ministry of Health. See also St. Zagorc, S. Bardutzky, *cit. op.*

75. See G.E. Metzger, *Administrative Law and the Pandemic*, in E. Carolan, J.N.E. Varuhas, S. Fulham-McQuillaneds (eds.), *The Making and Re-Making of Public Law*, Bloomsbury, 2025, pp. 24 ff., K. Binder, M. Diaz Crego, G. Eckert, S. Kotanidis, R. Manko, M. Del Monte, *States of emergency in response to the coronavirus crisis: Situation in certain Member States*, in EPRS, *European Parliamentary Research Service*, June 2020. For a comparative perspective, see also E. Slautsky, F. Bouhon, C. Lanssens, A. Jousten, X. Miny, E. Dermine, D. Dumont, M. Franssen, *Belgium: Legal Response to Covid-19*, in *Oxford Constitutional Law*.
76. Mechanisms which, quite evidently, proved inadequate to meet the challenges posed by the pandemic.
77. Having in mind this general premise, it must be noted that in both legal systems, the commissioner – an individual endowed with specialized technical expertise – may be employed as an auxiliary figure to the judge in the resolution of particularly complex cases, which, therefore, cannot be adequately understood through legal knowledge alone, of which the judge is the designated expert. Cf. V. Caracciolo La Grotteria, *La consulenza tecnica e il sindacato giurisdizionale*, Naples, 2008, as well as *Verificazione e consulenza tecnica nel processo amministrativo. Nota a Cons. Stato 24 marzo 2023 n. 3025*, in *Giustizia Insieme*, 21 giugno 2023, C.E. Gallo, *I mezzi di prova e l'istruttoria*, in R. Garofoli, G. Ferrari (eds), *Codice del processo amministrativo*, (D.lgs. 2 luglio 2010 n. 104), Rome, 2010, L. Giani, *La fase istruttoria*, in F.G. Scoca, *Giustizia amministrativa*, Turin, 2023, pp. 418 ff.
78. This is a generalized instrument that has become necessary in order to progressively limit the residual discretion and exercise of power that remains vested in the administration even after the annulment of an unlawful measure by the administrative court. See, among others: S. Giacchetti, *Il giudizio d'ottemperanza nella giurisprudenza del Consiglio di giustizia amministrativa*, in *Giurisprudenza amministrativa siciliana*, 2, 1988, pp. 36 ff., L. Ferrara, *Dal giudizio di ottemperanza al processo di esecuzione. La dissoluzione del concetto di interesse legittimo nel nuovo assetto della giurisdizione amministrativa*, Milan, 2003, G. Soricelli, *Il giudizio di ottemperanza dopo il codice del processo amministrativo e i decreti correttivi*, in *Federalismi.it*, 2, 2013, P.M. Vipiana, *L'ottemperanza al giudicato amministrativo fra l'attività del commissario ad acta e quella dell'amministrazione "commissariata"*, in *Urb. app.*, 10, 2015, pp. 1055 ff., M. Clarich, *L'effettività della tutela nell'esecuzione delle sentenze del giudice amministrativo*, in *Dir. proc. amm.*, 3, 2018, pp. 540 ff., A. Crismani, *Il rischio dei termini e ambiguità sulla disciplina del reclamo avverso gli atti del commissario ad acta nel rito del silenzio (nota a Consiglio di Stato, sez. III, 8 gennaio 2024, n. 254)*, in *Giustizia Insieme*, 6 marzo 2024, G. Mari, *Il giudizio di ottemperanza*, in M.A. Sandulli (ed.), *Il giudizio amministrativo. Principi e regole*, Naples, 2024, pp. 663 ff., A. Cassatella, *Ottemperanza e poteri del giudice (nota a Cons. Stato, Ad. Plen., 22 aprile 2024, n. 6)*, in *Giustizia Insieme*, 13 November 2024.
79. Again, reference goes to Battini, F. De Carolis, *cit.*
80. This phenomenon is commonly referred to as “*elusion of the judgment*”: an expression

used to describe an administrative act which, while formally complying with the court's ruling, is in substance evasive of its content and therefore incapable of satisfying the underlying substantive claim or the citizen's right. See V. Lopilato, *Il giudizio di ottemperanza*, in G.P. Cirillo (ed), *Il nuovo diritto processuale amministrativo*, Milan, 2014, pp. 1067 ff., F. Francario, *Sentenze di rito e giudizio di ottemperanza*, in *Dir. proc. amm.*, 1, 2007, pp. 52 ff., M. Clarich, *L'effettività della tutela nell'esecuzione delle sentenze del giudizio amministrativo*, in *Dir. proc. amm.*, 3, 1998, pp. 528 ff., F. De Leonardis, *L'ottemperanza nell'amministrazione – Tra imparzialità e commissario ad acta*, Turin, 1995, Ferrara, F. Fracchia, *Violazione del giudicato e nullità del provvedimento*, in *Foro it.*, 3, 1993, pp. 213 ff.

81. The referral is to the abovementioned examples of *Novo Nordisk Fill and Finish Expansion Anagni*, the tragedy of the Morandi Bridge in Genoa and the bridge over the over the Strait of Messina.
82. The above-mentioned systems of delegation of competence, appeal against administrative silence, administrative dispute before the court due to administrative silence, measures by the Administrative Inspectorate due to administrative inactivity and enforcement of administrative court judgments.
83. As noted by scholarly literature, the establishment of compliance-enforcement proceedings (*giudizio di ottemperanza*) in the Italian system itself attests to the need to mitigate an uncompromising construction of the separation-of-powers doctrine, with a view to ensuring comprehensive and effective judicial protection for individuals. See A. Cassatella, *cit.*
84. Yet, at times, even situations that are substantively ordinary – such as the *Novo Nordisk* case, involving the implementation of a private investment project aimed at establishing an industrial hub – fall within the scope of commissarial intervention, despite not fitting the definition of emergency or exceptionality previously discussed.
85. Cf. B.Z. Tamanaha, *On the Rule of Law. History, Politics, Theory*, Cambridge, 2004, and N.E. Simmonds, *Law as an Idea We Live By*, in G. Duke, R.P. George (eds.), *The Cambridge Companion to Natural Law Jurisprudence*, New York, 2017, pp. 256 ff.
86. Reference goes to A. Crismani, *Strategic Infrastructure and Administrative Challenges: From NIMBY to BANANA and other extremes*, in *CERIDAP*, 2, 2025, pp. 64 ff.
87. The term in quotation marks is used to underline a common existence in the various countries of what can be defined as the obligation of the administration to take the measure, which is to be considered the common basis necessary for the identification of an ordinary substitutive power. In fact, where there is no obligation for the public administration to respond to the requests of the citizen, it would be evident that it would be impossible to configure a substitute power that could be activated at the end of the term provided by law for the conclusion of the procedure. Cf. M.R. Spasiano, *Funzione amministrativa e legalità di risultato*, Turin, 2003, F. Gambardella, *Il silenzio assenso tra obbligo di procedere e dovere di provvedere*, in *Giustamm.it*, 2007, A. Colavecchio, *L'obbligo di provvedere tempestivamente*, Turin, 2013, and a T.A.R. Roma, sez. II, 23 January 2013,

- no. 788. In the broader EU perspective, see G. Della Cananea, D.U. Galetta, (eds), *Codice Rencual del procedimento amministrativo dell'Unione Europea*, Naples, 2016.
88. This general principle is provided by Article 41 of the Charter of Nice, which refers to the right to a “good administration” as a fundamental principle common to all European constitutional systems. For a comment on the provision – which is represented to be directly binding in all Member States – see M. Lais, *Das Recht auf eine gute Verwaltung unter besonderer Berücksichtigung der Rechtsprechung des Europäischen Gerichtshofs*, in *Zeitschrift für Europarechtliche Studien*, 3, 2002, pp. 3 ff., K. Klanska, *Towards Administrative Human Rights in the EU*, in *European Law Journal*, 3, 2004, pp. 296 ff., A. Wakefield, *The right to Good Administration*, Alphen aan den Rijn, 2007, C. Celone, *Il “nuovo” rapporto tra cittadino e pubblica amministrazione alla luce dell’art. 41 della carta dei diritti fondamentali dell’unione europea*, in F. Astone, M. Caldarera, F. Manganaro, F. Saitta, N. Saitta, A. Tigano (eds), *Studi in memoria di Antonio Romano Tassone*, Naples, 2017, pp. 439 ff., as well as D.U. Galetta, *Riflessioni sull’ambito di applicazione dell’art. 41 della Carta dei diritti UE sul diritto ad una buona amministrazione, anche alla luce di alcune recenti pronunce della Corte giust.*, in *Il Diritto dell’Unione europea*, 1, 2013, pp. 133 ff., and *Il diritto ad una buona amministrazione nei procedimenti amministrativi oggi (anche alla luce delle discussioni sull’ambito di applicazione dell’art. 41 della Carta dei diritti UE)*, in M.C. Pierro (ed), *Il diritto a una buona amministrazione nei procedimenti tributari*, Milan, 2019, pp. 1 ff.
89. Cf. S. Vlaj, *Regionalisation of the Republic of Slovenia*, in *Uprava* (Ljubljana), letnik 6, številka 1, p. 7 et seq., M. Luciani, *Un regionalismo senza modello*, in *Le Regioni*, V, 1994 and G. Ferriauolo, *Il regionalismo italiano tra tecnica e spirito*, in *Federalismi.it*, 15, 2021, *ex multis*.
90. At the core of this concern lies the notion of legitimate expectations, understood as the general principle whereby the administration – precisely because it is the institution endowed with technical expertise – is required, within a constitutional welfare state, to give practical effect to the rights articulated in legislation. Among these rights is the entitlement to receive an administrative response within a legally certain timeframe. In this sense, legitimate expectations also encompass the individual’s reliance on the stability and predictability of their legal positions, as shaped by temporal guarantees expressly established by law. See G. Vercillo, *La ‘semplificazione amministrativa’ come diritto e come strumento di cittadinanza*, in A. Bartolini, A. Pioggia (eds), *Le cittadinanze amministrative. Percorsi e prospettive dell’amministrazione tra diritti e doveri a 150 anni dalle leggi di unificazione amministrativa*, in *Cittadinanze amministrative*, Florence, 2016, pp. 339 ff.
91. Which is, precisely, the practical realization of citizens’ rights and legitimate expectations, rather than a mere adherence to managerial or efficiency-driven metrics characteristic of corporate governance. In a constitutionalized administrative state, the ultimate benchmark of administrative action is not operational performance per se, but its capacity to vindicate legally protected interests and to honor the normative commitments that bind public

authorities. Reference goes, among others, to R.K. Christensen, H.T. Goerdel, S. Nicholson-Crotty, *Management, Law, and the Pursuit of the Public Good in Public Administration*, in *Journal of Public Administration Research and Theory*, pp. 125 ff., where the authors underscore the persistent tension between legalist and managerial approaches that has characterized successive waves of administrative legislation.