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Fiscal Liability and Defensive Bureaucracy Between Perception, Causes and Remedies: Food for Thought

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Abstract

The fear of fiscal responsibility continues to constitute, at least in the perception of public decision-makers, a brake on the efficiency and effectiveness of administrative action. However, the analysis of this phenomenon and the consequent decisions to limit it often reveal some long-standing ills of our legal system, on which decisive action needs to be taken.

Keywords: Fiscal liability, defensive bureaucracy, causes and remedies

Riassunto. *Responsabilità erariale e burocrazia difensiva tra percezione, cause e rimedi: spunti di riflessione*

Il timore della responsabilità fiscale continua a costituire, almeno nella percezione dei decisori pubblici, un freno all'efficienza e all'efficacia dell'azione amministrativa. Tuttavia, l'analisi di questo fenomeno e le conseguenti decisioni per limitarlo rivelano spesso alcuni mali di vecchia data del nostro ordinamento, sui quali occorre intervenire con decisione.

Parole chiave: responsabilità erariale, burocrazia difensiva, cause e rimedi

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1. Introduction

The issue of administrative liability for pecuniary damage, defined as the attribution of damage to the Treasury that is etiologically attributable to a grossly negligent or wilful violation of the functional obligations of the agent (Albo, 2021), necessarily intersects with the transformations of the administrative function over the decades.

This form of liability was regulated for a long time by the provisions of Royal Decree 2440/1923, Royal Decree 1214/1934 and Consolidated Act 3/1957. Later, in the 1990s, it was profoundly revised following the separation between politics and administration and the recognition of the need for efficiency, effectiveness and cost-effectiveness in public action, the practical implementation of which requires flexible and agile forms of management (Bonelli, 2014).

[1] The opinions expressed by the author are personal and do not commit the institution in any way.

The transition from a legalistic model to one based on the «enhancement of the result» of administrative action has required a careful reflection on the interactions between the principle of efficiency and the discipline of the various forms of responsibility of the public employee (Attanasio, 2013).

From this point of view, all administrative action is functional to the achievement of the best result, i.e. the better satisfaction of the public interest which is inextricably linked to meeting the needs of the community (D'Orsogna, 2005).

The administration is, therefore, "called" to solve the problems of the community, according to the criteria of publicity, impartiality and adequacy of decisions (Spasiano, 2003).

Moreover, the participation of the private individual in the administrative procedure becomes a tool for achieving a better realisation of the public interest (Immordino and Police, 2004).

This trend has led to a review of the rules on administrative liability, aimed at making it compatible with the principles of cost-benefit and effectiveness, laid down in Article 1(1) of Law No. 241 of 7 August 1990. Those principles «constitute a specification of the more general principle enshrined in Article 97(1) of the Constitution» and «have acquired 'regulatory dignity,' assuming relevance at the level of the legitimacy (and not mere expediency) of administrative action»[2]. Principles that have permeated the reform of public employment (Legislative Decree No. 29 of 1993, Legislative Decree No. 80 of 1998), «in a perspective of greater enhancement of the results of administrative action, in the light of the objectives of efficiency and management rigor»[3] (Bartolini *et al*., 2022).

In this context, it is fundamental to find a balance between responsibility and administrative efficiency, i.e. «between the objective of ensuring continuity and timeliness in the exercise of the function in public offices and that of avoiding that the prospect of activating various forms of responsibility may translate into an incentive to inaction» (Acocella, 2020).

[2] Cons. Stato, Sec. VI, 847-02; Sec. IV, 6684-02.
[3] Constitutional Court, Judgment no. 371/1998.

In this paper, after briefly reviewing the fundamental characteristics of administrative liability for pecuniary damage, we shall focus on the phenomenon of the so-called defensive bureaucracy also connected to this form of liability and the impact of this phenomenon on the choices made by legislators and public employees.

2. Administrative liability for pecuniary damage: essential features

The forms of liability incumbent (civil, criminal, administrative, disciplinary, and managerial) may constitute, in the daily activity of the administrations, a sort of "Sword of Damocles" for public managers, encouraging them to adopt «dilatory techniques and the dispersal of responsibilities between offices and administrations» (Clarich, 2020), rather than managerial choices based on criteria of economy and effectiveness.

For this reason, in the three-year period 1994/1996 (with Laws n. 19 and n. 20 of 1994 and Law n. 639 of 1996), the legislator started a process of profound revision of administrative responsibility: the prosecution of damage-producing is limited to cases of malice and gross negligence, the obligation to pay compensation loses the characteristic of solidarity and becomes partial, the administrative choices cannot be questioned and the obligation to assess the advantages obtained by the public administration is introduced (Carlino, 2021; Tenore, 2018; Garri, 2012).

This review has also been carefully examined by the Constitutional Court, whose decisions can help to clearly identify the essential features of administrative liability.

In extreme synthesis, a brief review of the constitutional jurisprudence shows that:

1) the limitation of administrative liability only to cases of fraud or serious misconduct responds to the intention «to provide public employees and administrators with a regulatory framework in which the fear of liability does not expose them to the possibility of slowing down and inertia in the performance of administrative activities»[4]. According to the Court,

[4] Constitutional Court, sentence no. 371/1998.

this limitation responds «to the purpose of determining how much of the risk of the activity must remain with the apparatus and how much with the employee, seeking to strike a balance such as to make, for employees and public administrators, the prospect of responsibility a reason for stimulation and not a disincentive»[5];

2) the limitation, for cases of concurrence, of joint and several liability solely to persons who have acted fraudulently «falls within the scope of a new conformation of the institution of administrative and accounting liability, along lines aimed, *inter alia*, at accentuating the penalty profiles as opposed to the compensation profiles» and does not violate the principle of equality, «since the very transfer of the burden of compensation from the greater to the lesser culprit would risk not being in keeping with that principle»[6];

3) judicial review of the Court of Auditors, as provided for by Law no. 639 of 1996, must stop in the face of choices of a political nature or which concern the merits of the choice itself[7], precisely with the aim of safeguarding the efficiency of administrative action. In this regard, the Court of Cassation has also clarified that «there is no doubt that, in accordance with the provisions of Article 1(1) of Law 20/94, the exercise of the discretionary power of public administrators constitutes the expression of a sphere of autonomy that the legislator intended to safeguard from the scrutiny of the Court of Auditors»[8];

4) in the current system of administrative liability, the judge has the power to reduce the amount of the charge, «which may also take into account the economic capacity of the person liable, as well as his conduct, the level of liability and the damage actually caused»[9]. The institution of the reduction of the charge, in fact, would be functional to achieve that fair sharing of the risk between the employee and the public administration, already referred to by the constitutional case law, which would be seriously frustrated by charging only to employees or directors even the part of the harmful consequences dependent on structural factors, such as organisational defects or lack of means or instrumental resources (Attanasio,

5 Constitutional Court, sentence no. 371/1998.
6 Constitutional Court, sentence no. 453/1998.
7 Constitutional Court, sentence no. 327/1998.
8 Cass. civ., Joint Sections, September 29, 2003, no. 14488.
9 Constitutional Court, judgment no. 340/2001.

2013).

In the light of the constitutional case law, the Court of Auditors then identified the differences between administrative liability and civil liability, stating that the liability action brought by the public authorities «is not intended merely to restore the balance of assets between the public party injured by the damage and the perpetrator of the unlawful act that caused it, but above all to protect the need for public financial resources and public assets to be used to achieve the public purposes for which the public party is responsible. The protection accorded to public bodies for damages caused by persons linked to them by a service relationship conforms, in its essential features, to civil law institutions, but with significant differences consistent with the underlined finalist aspects. In this sense, the exclusive attribution of liability action to the Regional/General Prosecutor of the Court of Auditors, as the representative of the interests of the state community, is fundamental for the satisfaction of those needs covered by the public assets and the administrative activity, thus removing the protection of the rights in question from the discretionary assessment of the administrators of the public entities. The institutional function obliges the Regional/General Prosecutor to act according to the principles of impartiality and necessary protection of the public interests, expressed by the mandatory and inalienable nature of the action, through which both the public interest in the finalized the use of the public assets and the «sanctioning of illicit conduct of public administrators and employees» are protected[10].

This approach has recently been reiterated by the Court of Cassation (SU No. 14203 of 2020), which has specified, with reference to the relationship between liability actions for pecuniary damage and civil liability actions, how such an arrangement is based on the fact that, on the one hand, the first of such actions is aimed at protecting the general public interest, the good performance of the public administration and the proper use of resources with a predominantly sanctioning function, while, on the other, the second is aimed at fully restoring the damage, with a restorative and fully compensatory function, to protect the

[10] Court of Auditors, Joint Sections, March 25, 2005, no. 1.

particular interest of the plaintiff administration[11].

Over the years, the legislator has added to administrative liability for damages of a compensatory nature also sanctioning cases (for example, breach and evasion of the stability pact, breach and evasion of the balanced budget, failure to adapt internal control systems to monitor legal constraints, failure to implement the plan for the rationalisation of investee companies), introducing «a type of administrative liability that cannot be generic, but typified, since, being of a sanctioning nature, the relevant cases must necessarily correspond to the constitutional parameters referred to in the aforementioned Art. 25 of the Constitution, i.e., the principle of strict legality in the multiple meaning of typicality, of taxation (in the sense that the legal cases are not susceptible to analogical interpretation), of determinateness, and of specificity (in the sense that the law must very accurately indicate each element of the entire sanctioning case, i.e., both with reference to the precept and to the sanction)» [12].

Basically, it is a matter of typified sanctioning cases containing, in addition to the indication of an unlawful conduct, also that of a predetermined or in any case determinable pecuniary sanction (Cimini, 2014; Occhiena, 2017).

The tendency to the typification of the cases of administrative responsibility - as recalled by the Attorney General of the Court of Auditors in the written report on the occasion of the inauguration ceremony of the judicial year 2008 - has the scope of recognizing «a clear design of strengthening the 'effectiveness' of judicial protection which the Legislator entrusts to the Court itself, through new measures of contrast prepared in consideration of the particular financial importance of the public interests to be protected».

These cases have been supplemented over time by other provisions which, without laying down new typified sanctions, have nevertheless provided that certain types of conduct automatically give rise to civil liability (e.g. failure to publish the appointments of collaborators or consultants on the website).

[11] Thus, Court of Auditors, Inauguration of the 2021 judicial year - Report on activities carried out, Rome, 19 February 2021, 43.

[12] Court of Auditors, Joint Sections, December 27, 2007, no. 12/QM/2007.

In such cases, where a provision of law merely provides that a given action or activity «gives rise to liability», or similar expressions, but without establishing precise and mandatory sanctions, the Court of Auditors has clarified that «it must necessarily be considered that there is an ordinary case of administrative liability [...]. The only peculiarity lies in the fact that the provision of this abstract hypothesis of liability, from the point of view of the existence of an offence, is made directly by the legislator, and therefore there is no need for the interpreter to verify the existence or otherwise of such a profile in this case: without prejudice, however, to the need to demonstrate that all the essential elements indicated in general terms by the aforementioned rules for the attribution of a financial loss to the agent (i.e. that there has been the conduct that the legislator has qualified as unlawful and that there is also serious misconduct, as well as a consequent unjust financial loss and the causal link between the unlawful action and the damaging event) are present» (Santoro, 2007; Chiappinello, 2007).

Finally, from a procedural point of view, it is worth noting the introduction by Legislative Decree No. 174 of 2016 (the so-called Accounting Justice Code) of two institutes aimed at simplifying and accelerating the processes: the monitoring process, i.e. a procedure with reduced guarantees for minor fiscal damage, and the alternative procedure (so-called abbreviated) that allows the rapid recovery of the sums misappropriated to the extent of fifty per cent of the caused damage (Rivosecchi, 2021).

3. Treasury liability and defensive bureaucracy: perceptions, causes and legislative intervention

Despite the process of gradual adaptation of public liability to the evolution of administrative action, this form of liability continues to be identified as one of the main causes of the so-called defensive bureaucracy, understood as a behaviour assumed during a decision-making process, aimed at the self-defence of the decision-maker against risks, both

financial and non-financial. This attitude implies that the option chosen coincides with the one that avoids potential negative consequences for the decision-maker, even if it does not correspond to the best choice for the organisation exercising decision-making functions (Cortese, Marcantoni and Salomone, 2014; Battini and Decarolis, 2020; Cassese, 2023).

The analysis of the relationship between fiscal responsibility and defensive bureaucracy deserves to be contextualised in light of three considerations.

First, although the measurement of the phenomenon of defensive bureaucracy is still limited and insufficient, its perception is nevertheless significantly present among public officers: (i) from a survey conducted in 2017 by Forum PA, based on interviews conducted with around 1,700 people – 80% of them were employees (public officers, managers, administrators) – defensive bureaucracy has grown in the last 5 years for 62% of respondents. Only a few believe that it has decreased (7%) and only 5 out of 100 (5%) say that «defensive bureaucracy does not exist» (Piersanti, 2017) (ii) according to a more recent study, based on a questionnaire answered by 538 public administrators active as *Responsabile Unico del Procedimento* (RUP) of public works, services and supply contracts, defensive decision is taken by a subset of RUPs ranging between 10 and 20% of the total. This data qualifies the data on the perception of defensive behaviour where, on the other hand, the RUPs note that between 30 and 50 per cent of both individual and home contracting authority decisions are taken from a defensive perspective (Battini and Decarolis, 2020).

Second, data provided by the accounting judiciary do not reveal a particular incidence of the "signature leakage" phenomenon on the judgments adopted by the Court of Auditors. In particular, in the approximately 2,000 liability judgments brought in the 2019/2020 biennium, the cases referred to mainly concern: cases directly related to the commission of offences (267 in 2019, 203 in 2020), EU fraud (one hundred or so), numerous cases of absenteeism, the cases of time card frauds, failure to collect tax revenues, failure to collect fees, receipt of undue emoluments, undue conferment of tasks and consultancy, damage resulting from healthcare activities, undue receipt or use of public contributions, undue

payment of bonuses, allowances, accessory salaries, failure to recover debts, delayed or failed assessments, various types of damage to public assets, illegal recruitment, false invalids, etc.

In addition, the number of dismissals and acquittals is also particularly significant: on average, only three or four investigations out of a total of 100 become liability judgments; and only 60% of these judgments end in a final conviction (Canale, 2021).

However, despite the fact that even the most in-depth studies on the decisions of the Court of Auditors confirm a significant number of dismissals and acquittals (Zuliani *et al*., 2009; Zuliani *et al.*, 2013), the dissuasive and deterrent effectiveness of the compensation discipline depends on the *ex ante* perception of the risk of having to answer, not on the actual applications, as verifiable *ex post* (Cafagno, 2018; Clarich, 2020). In any case, from a statistical point of view, there has been an almost constant increase from 2011 to 2019 in the number of judgments of the Court of Auditors. The probability of conviction, as calculated through the automated reading of the operative part of the judgments on contracts, remains more or less constant at around 60% (Battaglia *et al*., 2021).

Third, even in the absence of extensive investigations and evidence on the phenomenon of defensive bureaucracy, there is no doubt that the failure to decide or the delayed decision by the public administration has a negative impact not only from an economic point of view, but also in terms of relations between the various powers of the State, ending up by offloading onto the legislator and the judge - especially the administrative one - important decisions for collective life that should instead be taken by the administration (Feliziani, 2019).

Even in light of these general considerations, the issue of defensive bureaucracy remains at the heart of the Italian public debate precisely because of its impact – even only potential – on the efficiency of the administration and the implementation of public policies.

In this regard, even in recent months, there was no lack of authoritative interventions, summarised below:

1) President Mario Draghi, in his speech at the inauguration of the Court of Auditors' judicial year, stressed that «it is always necessary to find a balance between trust and responsibility. This is not an easy task, but it is a necessary one. It is necessary to avoid the paralysing effects of what is known as the "flight from signature" but also regimes of irresponsibility in the face of the most serious wrongdoings for the Treasury. Bearing in mind, moreover, that in recent years the legislative framework governing the actions of public officials has been 'enriched' by complex, incomplete and contradictory rules and by additional responsibilities, including criminal ones» (Draghi, 2021).

2) in the report for the inauguration of the judicial year 2021, the President of the Lazio Regional Administrative Court (*Tribunale Amministrativo Regionale* – TAR), highlighted «the inefficiency, sometimes pushed to the point of inactivity, of the Public Administration, which prefers to delegate to the judge those decisions that are institutionally its responsibility. There is thus a risk of creating a mixture of roles, given that the administrative judge should be reserved the sole function of verifying the legitimacy of the acts; emblematic in this sense is the definition of the phenomenon – "fear of the signature" – coined by the doctrine and referred to public officers who are called upon to take administrative decisions and who refrain from doing so» (Savo Amodio, 2021, pp. 10-11.

3) in its recent report for the purposes of the annual law on the market and competition, the Antitrust Authority suggested, as part of the revision of the regulations on public contracts, an intervention aimed at «reducing recourse to the so-called 'defensive bureaucracy' which often blocks the operation of contracting authorities, for example by providing for the liability of officers for financial damage only in the event of fraud» (AGCM, 2021).

The debate on defensive bureaucracy could last for years, as it is rooted in long-standing ills of our legal system, which our country has so far failed to tackle with determination.

In addition to the well-known phenomenon of regulatory inflation, which leads to a tendency towards "over-precaution" (Battaglia *et al.*, 2021), we are referring to two significant pressures that our administration has been subjected to for decades.

On the one hand, there is the tendency to limit discretion, replacing it with increasingly precise regulatory indications, in the illusion of caging a dangerous discretion; hence also the fear of the public manager, who, in the end, prefers not to decide and to entrust concrete choices to Parliament or the courts (Pajno, 2020b).

On the other hand, a multiplication of controls, including preventive ones, surrounding administrative activity (civil, criminal, and accounting liability), often leading officials to escape from decision-making (Pajno, 2020b).

To counter, at least in part, these pressures, the legislator intervened in 2020 with the Simplification Decree (Decree-Law No. 76 of 2020) precisely on the system of public liability (Carbone, 2020).

In particular, the first paragraph of Article 21 of the aforementioned decree states that «In Article 1, paragraph 1, of Law No. 20 of 14 January 1994, the following sentence is inserted after the first sentence: 'The proof of intent requires the demonstration of the will of the damaging event'». As highlighted in the dossier drawn up by the study service of the Senate of the Republic and the Chamber of Deputies, «[...] the will of the legislator would therefore seem to be that of excluding hypotheses of wilfulness which do not comply with the provisions of Article 43 of the Criminal Code. [...] The intent in criminal law is therefore made up of two components: - the so-called "representation", which consists in planning the action or omission aimed at creating the harmful event; - the "resolution", i.e. the decision to actually carry out the executive effort of the plan, in order to achieve the harmful or dangerous fact»[13].

In essence, the liability of the Treasury due to fraud is excluded in cases where the agent has intended to implement only the conduct (the action or omission) and not to achieve its effect (Battaglia *et al*., 2021).

The second paragraph, recently amended by Decree-Law No. 77 of 2021, provides: «Limited to acts committed from the date of entry into force of this decree and until 30 June 2023, the liability of persons subject to the jurisdiction of the Court of Auditors in matters of

[13] Dossier no. 275 of 21 July 2020 (A.S. no. 1883)

public accounting for the liability action referred to in Article 1 of Law No. 20 of 14 January 1994 shall be limited to cases where the production of the damage resulting from the conduct of the person acting is wilfully intended by him. The limitation of liability provided for in the first sentence shall not apply to damage caused by the omission or inertia of the agent».

On closer inspection, it is not a question of introducing a "fiscal shield" for public officers (Gatta, 2020), but of a new form of fiscal liability, also in the light of the general considerations made above on the subject of administrative discretion.

In fact, liability for gross negligence continues to be provided for «with reference to omissive activities and, more generally, to the inertia of the officer, while for any damage connected to a positive activity of the agent, liability is provided for only in the event of malice. In this way, the intention is to encourage the positive deployment of administrative discretion and its ability to choose in order to identify, in the concrete situation, the best way to achieve the public interest, emphasising, at the same time, the danger of inertia and omissive activity for the general interest, through the configuration of possible damage related to such inertia, and the maintenance, with respect to them, of liability for gross negligence» (Pajno, 2020a).

4. Concluding remarks

The fear of fiscal responsibility continues to constitute, at least in the perception of public decision-makers, a brake on the efficiency and effectiveness of administrative action.

However, the analysis of this phenomenon and the consequent decisions to limit it often reveal some long-standing ills of our legal system, on which decisive action needs to be taken.

First, there is still a lack of a general aptitude on the part of operators, public decision-makers and scholars for a statistical reading of regulated phenomena (Zuliani *et al*., 2013),

as shown by the still very limited number of surveys and extensive evidence on defensive bureaucracy. This makes the perimeter of regulated phenomena and the monitoring of the effects of adopted rules particularly difficult, with negative consequences in terms of the effectiveness of regulatory interventions.

Secondly, regulatory hypertrophy and instability, organisational confusion and a lack of willingness to recognise real scope for discretion on the part of the administration mean that «in order to avoid the risk of incurring liability [...] there is not always only the path of greater diligence in decision-making; often there is also the path of choosing, when in doubt, that decision which, although it may be unfair and socially harmful, is less likely to cause the kind of damage that can only give rise to a liability action» (Trimarchi, 1985).

This, for example, is a disincentive to the use of the negotiating settlement of the dispute, as the administrative officials – due to the fear of tax liability – prefer to resist in court than engage in risky proactive dispute management (Giomi, 2021).

Thirdly, the excessive legal-formal approach on the part of officers, their old age, the absence of technical bodies and, more generally, the absence of a «selection of the best professionals, leading to greater decision-making capacity and courage to achieve objectives» continue, in any case, to constitute disincentives to the fast and effective exercise of the administrative function.

Fourthly, in view of the «persistent equivocal nature of the criteria for identifying the subjective element" in the field of public liability and the related consequences in terms of "fear of signing", the Court of Auditors should "enumerate in a less ambivalent manner the conduct capable of constituting serious misconduct*, ex ante*» (Cafagno, 2018).

Finally, the pandemic confirmed the need for a public administration that "knows how to do it" quickly. This will have to be supported by the creation of an accountability system «finally linked to results and not simply to formal compliance with procedures» (Valotti, 2021). The challenge now is that this accountability-enhancing process continues in the coming years, also to overcome the delays and inertia that have often accompanied our public policies (Rizzica, 2021).

Reference List

Acocella C. (2020). Snodi della relazione non univoca tra semplificazione e responsabilità. Diritti regionali. *Rivista di diritto delle autonomie territoriali*, 4: 560.

Albo G. (2021). Le fattispecie direttamente sanzionate dalla legge: profili sostanziali e procedurali. In Procura Generale della Corte dei conti, *Incontro di studi in memoria di Francesco Garri*, Conference Proceedings, Rome, April 16. Rome: Corte dei Conti. Retrieved from: https://www.corteconti.it/Download?id=b3227f87-b586-46d8-b587-c71ca4b2f6a3 (18/10/2022).

Attanasio A. (2013). Le nuove prospettive della responsabilità amministrativo-contabile: dal risarcimento del danno alla responsabilità gestoria. *Seminario su "Risanamento dei conti pubblici e nuovi vincoli di bilancio: Il ruolo della Corte dei conti (audizioni, controlli, responsabilità)" tenutosi presso la Luiss Guido Carli, 6.* Retrieved from: https://archivioceradi.luiss.it/files/2013/03/Attanasio-CERADI-1.pdf (19/08/22).

AGCM - Autorità Garante della Concorrenza e del Mercato (2021). *AS1730 - Proposte di riforma concorrenziale ai fini della legge annuale per il mercato e la concorrenza anno 2021*. Retrieved from: https://www.agcm.it/dotcmsCustom/getDominoAttach?urlStr=192.168.14.10:8080/C12563290035806C/0/914911A1FF8A4336C12586A1004C2060/$File/AS1730.pdf (24/09/2023).

Battaglia A., Battini S., Blasini A., Bontempi V., Chiti M. P., Decarolis F., Mento S., Pacini A., Pirri Valentini A., Sabato G., eds. (2021). *Burocrazia difensiva: cause, indicatori e rimedi*. Internal Document. Roma: IRPA – Istituto di ricerche sulla Pubblica Amministrazione. Retrieved from: https://images.irpa.eu/wp-content/uploads/2021/03/Burocrazia-difensiva_Battini.pdf (19/09/2023).

Bartolini A., Bonetti T., Marchetti B., Mattarella B.G., Ramajoli M. (2022). *La legge n. 241 del 1990, trent'anni dopo*. Torino: Giappichelli.

Battini S., Decarolis F. (2020). Indagine sull'amministrazione difensiva. *Rivista Italiana di Public Management*, 2: 354. Retrieved from: https://www.rivistaitalianadi

publicmanagement.it/wp-content/uploads/2021/06/08_RIPM_V3-N2_CloseUp_Art.8.pdf (05/07/2022).

Bonelli E. (2014). La nozione di colpa grave quale elemento soggettivo della responsabilità per danno erariale a quasi venti anni dalla legge 20 dicembre 1996 n. 639. In Crocco D., (ed.), *La Corte dei conti tra tradizione e novità*. Napoli: Jovene.

Cafagno M. (2018). Contratti pubblici, responsabilità amministrativa e "burocrazia difensiva". *Il diritto dell'economia,* 97, 3: 625-657.

Canale A. (2021). Il Decreto Semplificazioni e il regime transitorio in tema di responsabilità amministrativo-contabile: i chiaro-scuri della riforma. Intervention at the online conference «La Corte di Conti in the era of the recovery plan: what role between administrative-accountability, simplifications, and investments», held on March 25, and organized by the Centro di ricerca sulle Amministrazioni pubbliche della Luiss Guido Carli *Vittorio Bachelet* and the Court of Auditors. *Amministrazione in Cammino*, November 12. Retrieved from: https://www.amministrazioneincammino.luiss.it/wp-content/uploads/2021/11/CANALE.pdf (19/09/2023).

Carbone L. (2020). Una responsabilità erariale transitoriamente "spuntata". Riflessioni a prima lettura dopo il d.l. 16 luglio 2020, n. 76 (c.d. "decreto semplificazioni"). *Federalismi.it*, 30: 1. Retrieved from: https://federalismi.it/ApplOpenFilePDF.cfm?artid=44355&dpath=document&dfile=04112020134219.pdf (19/09/2023).

Carlino G. (2021). Opening remarks. In *Incontro di studi in memoria di Francesco Garri,* Conference Proceedings, April 16. Retrieved from: https://www.corteconti.it/Download?id=b3227f87-b586-46d8-b587-c71ca4b2f6a3 (22/05/22).

Cassese S. (2023). Amministrare la nazione. La crisi della burocrazia e i suoi rimedi. Milano: Mondadori.

Chiappinello A. (2007). Brevissime note sulla sentenza delle Sezioni riunite n. 12 del 27 dicembre 2007/QM, concernente "questione di massima riguardante la sanzione disciplinata dall'art. 30, comma 15, l. n. 289 del 27 dicembre 2002 (legge finanziaria 2003)". *Giustizia amministrativa, 6:* 1344.

Cimini S. (2014). Tipizzazione dell'illecito erariale e limiti all'attribuzione del potere sanzionatorio al giudice contabile. *Federalismi.it*, 23: 2. Retrieved from: https://www.federalismi.it/ApplOpenFilePDF.cfm?artid=28148&dpath=document&dfile=09122014140529.pdf (24/09/2023).

Clarich M. (2020). Riforme amministrative e sviluppo economico. *Rivista trimestrale di diritto pubblico,* 1: 159.

Cortese F., Marcantoni M., Salomone R., eds. (2014). *Deontologia e buon andamento della pubblica amministrazione*. Milano: FrancoAngeli.

D'Orsogna D. (2005). *Contributo allo studio dell'operazione amministrativa*. Napoli: Editoriale Scientifica.

Draghi M. (2021). Intervento all'inaugurazione dell'anno giudiziario della Corte dei conti, Roma, 19 febbraio 2021. Retrieved from: https://www.corteconti.it/Download?id=e7ac8dd0-0cc6-4b60-a412-ade9411a88ec (26/10/2022).

Feliziani C. (2019). Quanto Costa Non Decidere? A proposito delle conseguenze delle mancate o tardive decisioni della Pubblica amministrazione. *Il diritto dell'economia*, 65, 98: 155. Retrieved from: https://www.ildirittodelleconomia.it/wp-content/uploads/2019/08/05Feliziani.pdf (24/09/2023).

Garri F., ed. (2012). *La Corte dei conti. Controllo e giurisdizione. Contabilità pubblica*. Milano: Giuffrè.

Gatta G.L. (2020). Da 'spazza-corrotti' a 'basta paura': il decreto-semplificazioni e la riforma con parziale abolizione dell'abuso d'ufficio, approvata dal Governo 'salvo intese' (e la riserva di legge?). *Sistema Penale*, July 17. Retrieved from: https://www.sistemapenale.it/it/scheda/riforma-abuso-dufficio-decreto-semplificazioni-commento-abolizione-del-reato (19/09/2023).

Giomi V. (2021). Burocrazia difensiva e disincentivi alla soluzione consensuale dei conflitti amministrativi: il ruolo della giustizia contabile. In Cassatella A., Dalla Bontà S., Mattevi E., (eds.), *Pandemia e gestione responsabile del conflitto. Le alternative alla giurisdizione*. Proceedings from the Same Title Conference, June 10. The University of

Trento. Retrieved from: https://iris.unitn.it/retrieve/handle/11572/329012/520800/C.DB.M.%20per%20IRIS.pdf (24/09/2023).

Immordino M., Police A., eds. (2004). *Principio di legalità e amministrazione di risultati. Atti del Convegno (Palermo, 27-28 febbraio 2003)*. Torino: Giappichelli.

Occhiena M. (2017). La fuga dall'atipicità nella responsabilità amministrativa: profili sostanziali e procedurali. *Il diritto dell'economia*, 94, 3: 919.

Pajno A. (2020a). Il sistema amministrativo e il decreto semplificazioni. Qualche osservazione sulla disciplina dei contratti pubblici e sulle responsabilità. *Astrid Rassegna*, 325, 14: 12.

Pajno A. (2020b). Progettare il futuro. *Nuova Antologia*, 624, 2: 32.

Piersanti V., ed., (2017). Burocrazia difensiva. Come ne usciamo? Una ricerca FPA. Annual Report 2016, May 23-25. *Forum PA*. Retrieved from: https://www.forumpa.it/riforma-pa/burocrazia-difensiva-come-ne-usciamo-una-ricerca-di-fpa (26/10/2022).

Rivosecchi G. (2021). La Corte dei conti ai tempi del "Recovery plan": quale ruolo tra responsabilità amministrativa-contabile, semplificazioni e investimenti. *Federalismi.it*, 20: IV. Retrieved from: https://www.federalismi.it/ApplOpenFilePDF.cfm?eid=605&dpath=editoriale&dfile=EDITORIALE_06082021145554%2Epdf (24/09/2023).

Rizzica L. (2021). Il pubblico impiego: differenze territoriali nella composizione e nella selezione. Banca d'Italia - Questioni di Economia e Finanza, Occasional Paper no.658. Rome: Banca d'Italia. Retrieved from: https://www.bancaditalia.it/pubblicazioni/qef/2021-0658/QEF_658_21.pdf (24/09/2023).

Santoro P. (2007), La responsabilità amministrativa sanzionatoria tra clausola generale e tipizzazione dell'illecito. *Foro amministrativo - CdS*, 6, 12: 3565.

Savo Amodio A. (2021). *Relazione del Presidente Antonino Savo Amodio*. Inaugurazione dell'anno giudiziario, Roma, 23 febbraio 2021. Roma: Tribunale Amministrativo Regionale del Lazio. Retrieved from: https://static-r.giuffre.it/DIRITTO_E_GIUSTIZIA/Relazione_AG_23_02_2021_SAVO_AMODIO.pdf (21/09/2023).

Spasiano M.R. (2003). *Funzione amministrativa e legalità di risultato*. Torino: Giappichelli.

Tenore V., ed. (2018). *La nuova Corte dei Conti: responsabilità, pensioni, controlli*. Milano: Giuffrè.

Trimarchi P. (1985). La responsabilità del giudice. *Quadrimestre: rivista di diritto privato*, 3*:* 367.

Valotti G. (2021). Pubblica amministrazione da cambiare. *Corriere della Sera*, December 20. Retrieved from: https://www.corriere.it/editoriali/21_dicembre_20/10-cultura-nuovocorriere-web-sezioni-a2669dae-61c4-11ec-b501-5738353be174.shtml (24/09/23).

Zuliani A., Aurisicchio G., Canzonetti A., De Benedetto M., Liverani A., Menichino P., Rispoli L., Salvi S. (2009). Un'analisi statistica delle sentenze della Corte dei conti: prime evidenze. *Rivista trimestrale di diritto pubblico*, 3: 673.

Zuliani A., Aurisicchio G., De Benedetto M., Canzonetti A., Guagnano G., Liverani A., Menichino P., Rispoli L., Salvi S. (2013). La responsabilità per danno erariale alla prova del contenzioso. *Rivista trimestrale di diritto pubblico*, 2: 489.