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ABSTRACTS

ALIEN, CITIZEN, MAN IMMIGRATION AND IMMIGRANTS IN THE CONSTITUTIONAL COURT'S DECISIONS

by Guido Corso

The article discusses the legal conditions of regular and illegal aliens in Italy. After analyzing the actual size of State sovereignty in the context of immigration policies and the distribution of powers among central and regional governments, the article focuses on the most sensitive constitutional issues referring aliens, such as criminal procedure guarantees, social rights, right to family reunion. The author then concludes suggesting some additional burdens on policy makers resulting from constitutional principles which apply to both regular and irregular aliens.

AWARD OF PUBLIC SERVICES WITHOUT COMPETITION BETWEEN COMMON INTEREST AND CO-OPERATION

by Enzo Maria Marengi

Basics and the norm of European law legitimate the direct commitment of public service. The waiver works as a function of the common interest of public authorities's system, according to principles of cooperation and adequacy.

MEDICINES AND ANTITRUST

by Giovanni Pitruzzella

Preliminarily, this article examines the most important elements of competition in the pharmaceutical industry. It focuses on the particular structure of the demand of medicines – in which doctors, patients, and the national health systems interact -, and the two forms of competition we observe in this industry. As to the latter, on the one hand, there is the competition between originator companies based on research and development and the marketing of new products (the so-called *dynamic competition*). On the other hand, the competition between originators and generic companies arising once the patent of the blockbuster has expired and the latter can enter the market with their equivalent products at a lower price (the so-called price or static competition).

Then, the article provides an overview of the recent activity of the European Commission in the sector, mainly focusing on the 2009 Sectorial Inquiry and the AstraZeneca case, whose decision has recently been confirmed by the EU Court of Justice.

Finally, the enforcement activity of the Italian Competition Authority is analyzed. In particular, the article describes the recently closed “*ratiopharm/Pfizer*” case. The investigation concerned an exclusionary conduct by Pfizer Health A.B., Pfizer Italia S.r.l., and Pfizer Inc. in relation to an illegitimate extension of patent duration in order to delay generic entry. In the case, the behavior of Pfizer consisted in the submission to the European Patent Office in 2002 and to the Italian Patent Office (UIBM) in 2009 of objectively misleading representations so as to lead those offices to grant it a divisional patent and a SPC to which Pfizer was not entitled. Such a behavior had the effect of extending the intellectual protection of Pfizer blockbuster – *xalatan* – in Italy, delaying the entry into the Italian market of its generic version.

In the final section, another investigation opened by the ICA is examined. It relates to the alleged agreement involving Hoffmann-La Roche Ltd, Novartis AG, Genentech Inc., Roche S.p.A., and Novartis Farma S.p.A. aimed at excluding in Italy the ophthalmic use of Avastin, marketed by Roche, in order to advantage the sales of Lucentis, marketed by Novartis. According to several scientific studies Avastin and Lucentis are equivalent: however, Lucentis is far more expensive than Avastin. As Roche did not require an “on-label” registration of Avastin for ophthalmic use, only Lucentis is currently reimbursed by the Italian healthcare system: as a consequence, the claimants argue that the damages of the alleged cartel may amount to several hundreds of EUR millions per year. If established, the cartel could constitute an infringement of Article 101 of the Treaty of the Functioning of the European Union, which cartels and restrictive business practices.

URBAN PLANNING AND HIS COROLLARIES

by Filippo Salvia

Urban Planning is different from other related disciplines – which also have as their object the use and control of parts of the land – because it’s called to best meet all the interests in the land taken as a whole, in order to promote the orderly development of settlements and communities. But City Planning, which concerns the entire municipal land, affects an organized territory, where are embedded many interests, which also have solid legal guarantees and a constitutional basis. For this reason, there is a need to engage in City Planning different public and private stakeholders. The legislation appears to provide, on this point, several solutions: participation in the process planners, through observations and oppositions; planning contracted; planning by paracontractual procedures typical of coordination between administrations.

THE MECHANISM OF THE CONSENT BY SILENCE BETWEEN SIMPLIFICATION AND UNCERTAINTY

by Maria Alessandra Sandulli

The paper calls into question the real usefulness of the mechanism of the consent by silence and its conformity to the simplification objectives imposed by the European Union, in the light of the uncertainty that characterises its regulatory framework and the case law on the consequences on the possible verification of the lack of the conditions to be met for the request to be accepted. The A. wanders about the real advantages of the mechanism, also in relation to the fact that an increased protection is guaranteed in relation to the more classical silence “*inadempimento*” of the public administration.

THE ROLE OF NATIONAL PARLIAMENTS IN FRONT OF THE NEW EU ECONOMIC GOVERNANCE

by Antonello Sciortino

This paper addresses the issues of the role of National Parliaments in decision-making regarding to public finance and fiscal policy within the framework of the new European economic governance instruments. Although these tools seem to leave few influence to National Parliaments, many other tools can be enhanced or introduced in order not to marginalise the role of Parliament and not to exclude it from the control of Government decisions concerning EU economic governance (such as enhancement of the Parliament monitoring function of public finance trend control and the elaboration of possible remedies in case of deviation from the expected parameters).

WHY LAWYERS ARE ATTRACTED TO NEUROSCIENCES AND WHAT COULD LAWYERS TEACH TO NEUROSCIENTISTS. SOME PRELIMINARY OBSERVATIONS

by Lucia Corso

The essay discusses the more and more intense interest among lawyers for topics related to neuroscience and advances some explanations for such an interest. In particular, three main reasons are prospected which are captured under the labels of expectation of certainty, control desire and genuine curiosity for the human being. The essay then advances the claim that although those interests may be authentic, in some cases they are ill-directed. Lawyers may have also something to explain to neuroscientists.

THE INDEPENDENCE OF THE LAWYER BETWEEN CONSTITUTIONAL PROTECTION AND SUPERNATIONAL DIMENSION

by Maurizio Gemelli

The paper, after having briefly run over the most significant steps on the independence of the lawyer, starts to examine the profiles of constitutional protection of the right of defence in the Italian system and then it deals with the supernational front, particularly concerning the effectivity of the legal aid, analysed through the magnifying glass of the sentences of the European Court of Human Rights.

The treatment then recalls and develops, also given examples of paradigmatic events, the themes of the social function of the lawyer and its related coordinates, also within the limits of the law of the European Union. It also pays a more detailed attention of the lawyers on the undelayable need of new cultural horizons, preliminary to the birth of a new social responsibility.