Abstract

Problematic Aspects of the "Implementation Rules" of the Special Regional Statutes

by Simone Pajno

The aim of the essay is to deal with some problematic aspects of the "implementation rules" of the Special Regional Statutes, namely the non-involvement of the Parliament in their approval procedure despite the primary level of this source of law in the hierarchy of norms. The special feature of the approval procedure of these rules is due to the deference towards the principle of territorial autonomy: as it is well known, the decision of the Council of Ministers must be based on the opinion of a State-Region joint committee.

The essay holds that it is necessary to identify the role of the joint committee in the specific regional system considered, whereas, as far as the approval procedure of the implementation rules is concerned, the practice of legislation and constitutional case-law seems to underestimate the differences between the special regional statutes. Secondly, the essay criticizes the broad use of the "implementation rules" to regulate any issue concerning the Special Regions, even if outside the scope of the Statute, because the exception to the principle of the parliamentary source of the primary rules can be constitutionally justified only when the "implementation rule" considered is grounded in the special Statute. Finally, the essay suggests to reform the approval procedure of the "implementation rules" in order to assign the final decision to the Parliament, even though this decision will be based on the opinion of the joint committee.

The wide regulatory power of the Independent Transport Authority on the railway sector

by Cristiano Celone

The National Independent Authority for Transport, imposed by European Law and established in Italy in 2013, is characterized by using wide powers of control, regulation and sanction, which cover all transport sectors.

Regulatory competences seem in particular to interfere, in some areas, with the functions, also of political direction, of the State, Regional and Local Government, as well as the competences of the other administrative independent bodies such as the National Antitrust Authority or National Anti-Corruption Authority. This requires the provision of forms of coordination and cooperation beetwen those authorities, waiting for a clear *actio finium regundorum* by the national legislator, in order to avoid risks of conflicts between the activities of the various authorities or the adoption of contradictory or misaligned decisions and measures on the same issues.

The paper will give a general outline of this type of independent regulation

and the several public interests assigned to the Transport Authority, and, in particular, it will focus the attention on many regulatory competences of the Transport Authority on the railway sector, recently extended by the legislative decree n. 139/2018, as well as the content of the several measures adopted by the Transport Authority for the railway market, considered in the light of European policy of market liberalization, establishing a single European railway area and promoting a safe, efficient, multimodal and sustainable trans-European transport network.

Public procurement and conflict of interest

by Alessandro Cioffi

Italian administrative Code for public Procurements sets new rules on conflict of interests. The aim is to protect competion, according to Eu principles, under the art 42. It provides to avoid any interest, as personal interest, economic interest or financial interest, that may influence the final goal. So the whole system involves the idea of what might be the position of public Administration relating to such kind of interests. Should it be considered out of any contact or not? The big deal is in determining final values and kinds of conflict. So real conflict or potential conflict, and several values, as competion or public interest, can play a big role in definition of the rule of law.

Contractual hermeneutics and information modeling in building and infrastructure industry

by Raffaele Picaro

Obligatoriness, even though gradual, of Building Information Modeling (BIM), imposed by law d.m. n. 560/2017, marks a radical change in the public tender calls context, with consequences within the construction industry chain, looking towards – also on the basis of an acquired international experience – the introduction of effectiveness and guarantee elements so far not observed in such a productive branch, as well as field testing of new job organization models deriving from qualifying technologies, with due regard to public demand, from which renovated occasions of economic facts awareness on behalf of juridical science will no doubt derive.

Spending review, public real estate and "judicialcompensation". Reflections About the assumptions of italian Court of Auditors

by Vanessa Manzetti

The research work starting from the arguments carried out by the Regional Control Section for Piemonte of the Court of Auditors regarding the relationship between policies of public real estate spending review and "judicial compensation" (opinion No. 125 of 2018) is aimed at presenting some reflections on how the advisory function of the Court of Auditors may be of help to the good performance of the administrative action as introduced by the constitutional reform of 2012, which introduced budget balance and sustainability of public debt (articles 81, 97, 117, 119). On a methodological level the paper will start a reflection on the ratio underlying the measures of public real estate spending review, to then proceed to a re-reading of the spending review policies in the new constitutional context, considering that these, having any way reflected on the budget of the institution, must be placed within the constitutional reform of 2012. Finally, this will lead to investigate the role assumed by the Court of Auditors in the performance of its functions (consultative, control and jurisdiction) as a "natural interpreter" of the dynamism of public accounting.

Organization and right to health, to the test of regionalization and corporatization of health systems

by Caterina Ventimiglia

The contribution proposes an analysis of the effectiveness of the right to health, deepening the evolution of "regionalization" and "privatization of a state-owned company" of the National Health Service, in comparison with the marked regional differences (gaps) in the provision of Essential Levels of Assistance. The author researches the profile of the organization and of the financing of health services which take on a peculiar complexity in the health sector, in which there is the most complex experience of decentralization and also the introduction of fiscal federalism through the application of the requirement and the standard cost.

For the purposes of overcoming health inequalities, the analysis proposes the territoryalization of the standard cost through the introduction of the socio-economic deprivation index and considers fundamental the development of the health care company by enhancing the organizational autonomy and the introduction of an uniform system of internal controls on health services, including the detection of the quality perceived by the user, adequate to support the improvement of services and the uniform fulfillment of Essential Levels of Assistance.

Social Impact Bond: an innovative tool searching for its own law

by Clara Napolitano

The Social Impact Bond is a new financial instrument that shall be used for social purposes by public Administration. It is already present in other legal orders – such as the UK and USA, among the others – and it has been successful in saving public money in the field of social services. This kind of contract is atypical and not well-known in Italy, so the question we try to answer is how to import it without contrast with the Code of public contracts. The hypothesis carried out is that the Social Impact Bond could be an atypical form of public-private partnership (PPP), even if it presents characteristics that aren't – at this time – perfectly super imposable to those foreseen for the PPPs. Therefore, two paths can be followed in order to sustain the compatibility of the Social Impact Bonds with the PPPs: large interpretation of the norms or intervention of the legislator.

Reform of the electoral law and European political parties

by Giacomo Delledonne

This essay aims to analyse how electoral system for European elections, and the discussion about their constitutional significance and reform, have contributed to shaping the legal status of the European political parties. The relationship between electoral laws, party systems and political party regulation is a locus classicus of constitutional law. In this respect, the peculiar character of the composite constitutional system of the European Union, in which supranational and national legal materials coexist, shows that the development of the European political parties and its autonomisation from national party systems is still an ongoing process.

Concessions in Public Procurement Code. Market opening aspects and novelties with regard to contract execution

by Alessandro Di Martino

The purpose of this work is to examine concessions in the new Public Procurement Code, analysing, on the one hand, market opening aspects, and on the other hand, the novelties regarding contract execution. This analysis stems from a preliminary and fundamental observation, regarding the new understanding of concessions within the administrative system. Nowadays, we speak of "concessioni-contratto", concluded with a partner, which allow to overcome the traditional idea of concessions as unilateral measures (expanding the legal sphere of individuals) by the public administration. After having analysed the specific features of concessions and procurement contracts, the focus then shifts on other

elements from which it is possible to deduce, on the one hand, the wide margin of discretion of contracting authorities during the procedure for the awarding of concessions; on the other hand, the analysis focuses (above all) on two legal arrangements applicable to concessions, whose aim is to open up the awarding of works and services concessions to competition: the "avvalimento" (reliance on the capacity of other entities) and the application (established in case-law) of the rotating principle are instrumental to a further market opening to small and medium enterprises. Finally, this work analyses art. 177 of Public Procurement Code, which deals with the contacting out to third-party contractors by the concessionaires, by highlighting the main novelties which are to be welcomed, by focusing on its implementation issues, and, if practicable, by recommending a de jure condendo perspective.