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ABSTRACTS

L'ACCESSO ALLA TUTELA AVVERSO IL SILENZIO DELLA PUBBLICA AMMINISTRAZIONE

di Ines D'Argenio

Il silenzio amministrativo costituisce un fattore patologico, di negazione della stessa ragion d'essere dell'amministrazione. Il cittadino non può restare in balia del mancato esercizio del potere amministrativo. In questa prospettiva, lo scritto analizza l'evoluzione del silenzio nell'ambito della disciplina normativa in Argentina e l'esigenza di un'adeguata considerazione delle conseguenze che esso è in grado di generare.

CONSTITUTIONAL REFORM AND REGIONS WITH A SPECIAL STATUTE

by Guido Corso

The paper describes the history of the five regions with a special statute, born more than two decades before the ordinary regions, explaining the reasons of a continuous reduction of their prerogative. The main argument is the following. By opposing the claims of regions (ordinary and special) towards the State, the Constitutional Court has emphasized the State exclusive competences, delimiting the scope of the legislative matters reserved to the special regions by their own statutes. This trend is stressed by the project of constitutional reform which parliament is now discussing.

URBAN LAW IN SICILY BETWEEN NATIONAL AND REGIONAL LEGISLATION

by Salvatore Raimondi

The author, after having recalled the scope of the exclusive competence of the Sicilian Region on urban planning legislation, enshrined in article 14 of the Regional Statute, describes the limitations of that competence introduced by the case law of the Constitutional Court. Sicily has never made a comprehensive use of its competence, but it issued several laws, two of which are particularly significant: the regional law 71 of 1978 and the regional law 37 of 1985. The first operates a static reference to the State Law 10 of 1977, while the second set a dynamic reference to the State Law 47 of 1985. Therefore it is not easy to understand which provisions of the Consolidation Bill 380 of 2001 apply in Sicily. It would be desirable a reorganization of the Sicilian legislation on the subject.

CONSIDERATIONS ON TRANSPARENCY PRINCIPLE EVEN IN LIGHT OF THE CIVIC RIGHT TO ACCESS

by Mario R. Spasiano

Transparency principle has long since been considered a general criterion of the administration activity, but its rationale and implementation do not appear univocal. The traditional view finds its expression in the citizen's right of access ex l.n. 241/1990, from the one hand, and in the duty of publicity which falls on public authorities, on the other hand. Both aspects aim at empowering citizens to understand public decision procedures, even in order to participate, and find clear limits in fundamental rights, such as the right of privacy. Meanwhile, the recent introduction of the Civic right of access seems to present a different (although compatible) concept of transparency, intended as a complete accessibility to the information concerning administration organization and activity, viewing in the transparency an instrument not of awareness and participation, but of citizens diffuse control.

IS THE "ATTO POLITICO" AT ITS END?

by Felice Blando

The institution of "atto politico" is well known – with different meanings – in several contemporary juridical system. The best notion of "atto politico" is as follows:"an act justified by the necessity of preserving the very existence of the State". The Italian legislator, also after the passing of the Constitution, has remained loyal to the idea of excluding the area of "atti politici" adopted by the Government from the judicial scrutiny. The "Consiglio di Stato", instead, has widened its check over the so called "atti politici". This essay aims at proving that the crisis of the "atto politico" notion is due both to the present weakness and crisis of the politics itself and to a new inevitable tendency of the Italian juridical system. Its objective is to show that only a new approach which returns the politics the constitutional importance it deserves can give back the "atto politico" its traditional dignity.

CHANGES IN THE TAX BURDEN PROVIDED BY THE STATE AND CONSERVATION OF THE TAX REVENUE ALLOCATED TO LOCAL AUTHORITIES

SAFEGUARDS FOR THE TERRITORIAL AUTONOMIES AGAINST THE LEVY INCREASES RESERVED TO THE CENTRAL STATE OR AGAINST NOT–COMPENSATED TAX REDUCTIONS

by Flavio Guella

The article analyzes how the sovereign decisions on taxation can imply consequences to the regional and local government expenditure capacity, and which kind of protection for the quantity of local resources the legal system can provide for. The existence of a principle of proportional correlation between territorial resources and territorial competences in the Italian Constitution, so as in many other national systems and in the international standards, is translated in a principle of "compensation" of the national tax reductions, if such reduction affects the local expenditure (so that the changes in the tax burden provided by the State have to be harmonized with the conservation of the level of revenue allocated to local authorities). Such a safeguard for the territorial fiscal autonomy can be both realized against a levy increase reserved to the central State so as against a not–compensated tax reduction; in particular, even if sometimes the national legislator already provides with general clauses that compensate the reduction of regional and local taxes

with new resources, in other cases – on the contrary – the quantity of resources is not preserved by the Parliament itself and the judicial review is not able to adequately settle such situations. The analysis of the case law, indeed, shows the existence of a restrictive approach in the constitutional adjudication of the decisions concerning the allocation of resources, founded on a overestimation of the burden of proof at the regional level and on a reductive use of the proportionality test.

THE NEGOTIATIONS FOR THE AGREEMENTS (INTESE) WITH THE RELIGIOUS CONFESSIONS, BETWEEEN POLITICS AND LAW (MARGINAL REMARKS ON CONSTITUTIONAL COURT, ORDER N. 40/2015)

by Fabiano Di Prima

Among the jurists is found the idea that the current "fibrillations" between politics and justice are similar to those that have characterised the Italian landscape of the 90's, since they - yesterday like today - are generated by the same system's thorny problems, and, signally, by the crisis of politics, that has a negative influence on the quality (irrationality) and quantity (excessive or insufficient) of the law produced by the Legislator. Appears paradigmatic in this latter sense the "clash" Executive vs Judiciary recently recorded in the field of the negotiations State/Churches in view of the Agreements (Intese), culminating in a "conflict of allocation of powers" (raised by the Government towards the Cassazione) declared admissible by the Consulta with the order n. 40/2015. The essay highlights the crucial incidence that the absence of key legal lines plays on the origins of the conflict upstream, which has led, on the one hand, to the affirmation of a governance praxis in the area with all the signs of the full freedom of decision-making of the Executive; and, on the other hand, to the occurrence - over time - of a jurisprudence unwilling to the domination of this praxis and ready to use the figure of the constitutional legality in lieu of the legal one, spotting a governance area jurisdictionally reviewable, for the protection of the collective religious interests protected by the Charta. In analysing the main points of the conflictual matter, the essay cultivates the hypothesis that – paradoxi-cally - the exact sentence (of the Consiglio di Stato) that has originated such matter, contained a considered solution likely to partially satisfy, but with tolerable sacrifices, the two opposing instances in question, configuring under the applicants groups, rather than a right to the opening of negotiations (that overflows the negotiating sphere), a right to a full investigation (that remains outside the actual negotiations).

L'INCIDENZA DELLA RIFORMA DEL REGIME LOCALE SULL'ORGANIZZAZIONE TERRITORIALE DELLA CATALOGNA

di Josep Ramon Fuentes i Gasó y Marina Rodríguez Beas

Questo testo, dopo aver presentato una descrizione sommaria del sistema istituzionale di organizzazione territoriale della Catalogna fissato dallo Statuto del 2006, analizza l' impatto della riforma del governo locale spagnolo gestito dalla Legge 27/2013, di razionalizzazione e sostenibilità dell'Administrazione locale. Questa riforma è un altro tentativo, ma in sommo grado, di ricentralizzazione da parte dello Stato; precisamente in un momento in cui la transizione statale della Catalogna è discussa, in una Spagna in una profonda crisi politica e istituzionale

FROM THE VALUE OF A TORT TO LEGALITY AS A VALUE. NEW JURISPRUDENTIAL APPROACHES DEALING WITH "ACQUISITIVE OCCUPATION"

by Michele Russo

This article has been inspired by the will to research and analyse the administrative profiles and peculiarities of the Italian jurisprudential institute of "acquisitive occupation", first introduced in our judicial system by the Supreme Court judgement n. 1464/1983. Starting with the analysis of the institute's historical evolution, the article follows focusing on the compatibility between Constitution and the principles whose it is based on. The key question of the EDU Convention's influence on our internal judicial system is deeply discussed, since it has been the cause of years of Supreme Court conflicting judgements. The Supreme Court judgement n. 735/2015 writes the final chapter of the story: the unlawfulness of the expropriation proceeding and the irreversible transformation of the private area doesn't let the Administration gain its property, even in presence of a public utility declaration. The private citizen can ask for restitution in addition to the compensatory damages for the area's utility loss. Final considerations deserve recognition to the value of the forward–looking Supreme Court's work on the arduous research of a rightful balance between public and individual interests.