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ABSTRACTS

THE RIGHT TO A HEALTHY ENVIRONMENT IN COLOMBIA

by Gloria Amparo Rodríguez

This paper describes the progressive recognition of the right to a healthy environment in Colombian legal system, one of the more advanced models of environmental guardianship in Latin America. The 1991 Colombian Constitution not only contains several regulations foreseeing environment protection, but it also consecrates the individual right to the environment and it foresees the duty of the State to guarantee the participation of the people to decisions able to engrave on the environment. The environmental legislation has introduced different mechanisms allowing people to take part to administrative proceedings on environmental matter (law n. 99 of the 1993) and it also has regulated different tools for jurisdictional guardianship of the individual right to the environment, as popular actions to defend collective interests, among which the interest to a healthy environment (law n. 472 of the 1998).

Nevertheless, the article underlines how, although Colombian system is highly sophisticate, there are still many operational problems that compromise the real application of this normative of environmental protection.

ABOUT THE CONSTITUTIONAL TRIAL LENGTH

by Giovanni Pitruzzella

The subdued contribution regards the timing of the constitutional trial, as another expression of its peculiarity: in particular, aside of relative quickness of it - in comparison with the ordinary ones – the Author underlines the primary topic of the proper protection of the (fundamental) rights, usually implied in all the different types of Constitutional Jurisdiction. Along such topic, in the contribution emerges indeed the unique role of the Court, whose sentences overlap both the political and the judicial competence, and it is for such reason, then, that the Court's «authority» cannot depend on its quickness in resolving cases but – more properly – on its capability of pursuing and issuing sentences, the more shared as possible by all the Judges themselves. The length of the Constitutional trial – and its procedural terms, prescriptions, decadences – is, therefore, another profile of the absolutely *sui generis* nature of the Constitutional Jurisdiction.

PRINCIPLE OF NON-REGRESSION, NATURAL PROTECTED AREAS, DECLASSIFICATION

by Fernando López Ramón

Exposition on the development of the legal system of declassification of protected natural areas under Spanish law according to the principle of non regression, considering: a) historical links with economic interests, b) conservationist interpretations derived from the 1978 Constitution, c) international and European system of declassification, in particular the case-law related to the network Natura 2000, d) impulse given by some regional experiences, e) the constitutional and administrative case-law, and f) the assumption of the principle of non-regression in this area by the basic legislation of 2007.

THE SCIENTIFIC CONTRIBUTION OF FABIO MERUSI ON THE ITALIAN SYSTEM OF JUDICIAL REVIEW OF ADMINISTRATIVE ACTS AND DECISIONS

by Alberto Zito

Fabio Merusi is one of the most prominent scholar of administrative law in Italy. The essay examines the works of Fabio Merusi on the Italian system of judicial review of administrative acts. According to Fabio Merusi this system was not able in the past to guarantee the effective protection of citizens against administrative decisions. The essay also examines the reform proposals advanced by Fabio Merusi.

ABOUT THE LEGAL-CONSTITUTIONAL BASES OF THE OBLIGATION TO ADOPT PROVISIONS

by Antonio Colavecchio

The paper examines the legal-constitutional bases of the obligation, on the part of Public Administrations, to finalize their own procedures with an explicit provision (the so-called *clare loqui*). Such obligation stems from art. 2 of law no. 241/1990. The analysis is carried out by pinning down the contribution of each constitutional and general principle of our administrative framework (as integrated by the EU Law) to the legal basis of the obligation to adopt provisions, as well as to the definition of its content and scope. In particular, the paper points out the contribution of the fundamental principles of the administrative action, such as “impartially”, “good administration”, “transparency”, “legitimate expectation”, in establishing – at constitutional level – the *clare loqui* obligation, as well as their contribution to make it effective. From this latter point of view, the paper highlights the evolution that, mainly thanks to recent reforms in administrative procedures, has marked the system of protection for citizens in case the Public Administration does not fulfill the obligation to adopt provisions. Such evolution, in the picture of the synergy between legislation and case-law, also in the light of the contribution of the scholars, strengthens the perspective of the citizen claiming an “administrative response” in good time as a real subjective right and, from the European Law point of view, as a fundamental right of the person.

FROM THE STATE REGIONS COOPERATION TO THE PROTECTION OF THE FUNDAMENTAL RIGHTS (AND BACK): *THE CLOSING CIRCLE* IN THE SICILIAN REGIONAL EXPERIENCE

by Stefano Agosta

In a very innovative way compared to a "guaranteed" one, the opposite pattern of "cooperative" Regionalism is inspired by a radically different intuition for which the center and the suburbs – precisely with a spirit of fair cooperation – must contribute each other to the exercise of their constitutional functions. From this particular point of view, the Sicilian regional experience represents undoubtedly a real "constitutional forge" *ante litteram*, being able to distinguish itself in a useful way between an "organic" cooperation and a "procedural" one: in particular, the first one concerns the special prevision of the possible invitation of the Sicilian Region President to take part in Council of Ministers deliberations; the second one, instead, is related to a sort of increasing "scale", ranging from the mere commitment of information and communication among the several governments levels until the highest "step" represented by the State-Sicily Region agreement. So the "circle" between loyal cooperation and protection of the fundamental rights closes itself whenever the State operates to "unify" regional functions *ex* art. 117, par. 2, lett. m, Const. (for example, in educational field or public housing development, etc.): that is a cooperation with Sicily, which is equally opened to the whole possible span of existence of State L.E.P. (in particular *at the beginning*, *during* and *at the end* of their emanation). Jurisprudence has the hard task to define – with an acceptable degree of security and stability – the judgment's standards to use, time after time, for the evaluation of the effective proportionally (*sic*, reasonableness) of the statal and regional joint action, in view of the highest value in field, that is the super-constitutional one of human dignity.

FORECASTING AND RISK MANAGEMENT IN AREAS OF HIGH HYDRAULIC HAZARD

by Mariaconcetta D'Arienzo

In a field characterized by innate uncertainty and limited rationality, where the need for prudential and preventive dealing collides with the freedom of private initiative, the "co-decision" allows to remove or reduce many of the practical difficulties of implementation plans, providing a meditated assessment of the involved interests and fair balance between the needs of planning and the environmental conservation

SOME NOTES ABOUT *RISIKOVERWALTUNG*

by Paola Savona

This paper analyses the role played by the precautionary principle (*Vorsorgeprinzip*) in German constitutional and administrative law. Referring to the principle, several statutes allow public administration to act in order to prevent or reduce *risks*, i. e. situations in which formal probabilities cannot be assigned to the outcomes due to lack of empirical data or theoretical basis (uncertainty). In such cases, the Administration (s.c. *Risikoverwaltung*) is endowed with a discretionary power, much broader then the power to counteract a *dangers*, legal concept commonly referred to a situation in which, if not prevented from taking its course, can be expected, with a sufficient degree of probability, a damage to public or private goods. To balance this power, law creates institutions and procedures, which aim to generate new knowledge and, in the meantime, to guarantee legal certainty.