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ABSTRACTS

BRIEF NOTES ON RAILWAY INFRASTRUCTURE COMPONENTS' LAW FRAMING

by Maria Immordino and Marco Ragusa

The paper synthetically describes how Italian courts and scholars interpreted the legal transformations occurred to the railway market, and notably to the rail-network's infrastructure components property regulation, since the end of the twentieth century. The authors refute the (prevailing) opinion assuming a substantial continuity between the current stage of regulation and the regime of public property provided by the 1942 civil code; they show the reasons why, on the contrary, the rail-network components have to be considered as goods subject to private property law both on the formal and the substantial floor. For this purpose, the paper emphasizes how the public interests aimed by the previously in force law scheme are radically different from the interests at present representing *rationes* of the services of general economic interest's special regulation.

PUBLIC TRANSPORT SERVICE IN ITALY: REGULATIONS AND MARKET OF RAIL TRANSPORT

by Aristide Police

In a postindustrial society, in which most wealth comes from the service sector, the recovery of competitiveness and productivity necessary for the economic relaunch should inevitably include the system of public services. In particular, among important non-local transport services, the service of rail transport in our country is probably the only one which is still going through an interesting transition stage between the deconstruction of state monopoly and the significant success of market models and their effective public regulation. At the EU level, the realization of the transport policy has been transfered from the Treaty to the successive legislative activity of EU institutions, which have developed the policy in three different historical stages: the first which starts with the formulation of the Memorandum of the Commission in 1961 until the accession of Great Britain, Denmark and Ireland to the Community in 1973; the second stage, beginning in 1973 and ending with the judgement of the Court of Justice on 22 May 1985, ruling on actions for failure to act appeal proposed by the European Parliament against the Council in this very matter; and finally the third stage, starting from that judgement and still in full progress. The Italian system has adopted over the years different EU legislative acts and with the legislative decree n.15/2010 has recently adopted the so-called Third EU railway package. Thanks to the latter, after the legislative

decree of 15 July 2015, n. 112, in line with the EU objective to promote rail transport among the EU member states, it has fostered the development of competitiveness and freee circulation of people and goods. The process of liberalization launched in the EU has contributed quite a lot to the emergence of an organizational arrangement, which in our country had been chosen for the ownership, management and regulation of railway infrastructure and related transport service. Recently, indeed, the awareness of the failure of the traditional model of public enterprises, both regarding the quality of services provided and their low level of profitability, has led to a gradual dissolution of state participation in economic undertakings and, at the same time, has brought about an intense process of transformation of government bodies and state companies. Therefore, in Italy, in addition to the process of liberalization pushed by the EU law there has been a concurrent process of privatization of monopolistic state companies. Given such legislative context at the national and EU level, the Government has decided to give way to "substantial" privatization of the state railway company (Ferrovie dello Stato S.p.a.) The industrial reorganization of the company, in the general context of reforms of public services, should be considered highly appropriate (if not even necessary) in order to contribute to the improvement of the competitiveness and the productivity, which is supposed to be unavoidable in the process of market positioning of a state railway company.

GENDER EQUALITY IN ITALY: THE JURIDIFICATION OF SUBSTANTIAL EQUALITY, BETWEEN PROTECTION OF INDIVIDUAL RIGHTS AND PUBLIC INTEREST

by Anna Simonati

The progressive attention by the Italian legislators (both at the central and at the regional level) for gender equality is still a work in progress. The starting point of the evolution is in some fields of private law (such as family law and labour law, where discriminations against women were particularly evident); later on, the same sensitivity grew up in other subjects and especially in constitutional and administrative law. The evolution of a gender-sensitive legal landscape was not totally spontaneous, as it was also a consequence of the inter-action with supra-national inputs. During the 20th century and in the beginning years of the 21st, many important results have been reached in the perspective of women's empowerment and involvement in social, political and economic life. The most relevant goal seems to be the acceptance of the idea according to which gender equality reflects an interest not only of women, but also of the whole society, because it grants real pluralism; moreover, it may also help men to reach equal rights in the fields where they are under-represented in light of surviving gender stereotypes. In recent years, further complications may be noticed in this subject; the role of public law is basic to introduce, thanks to a double approach, efficient hard law and soft law mechanisms.

THE COMPULSORY PURCHASE WITH NO COMPENSATION, ORDERED IN FAVOUR OF THE MUNICIPALITY, OF UNAUTHORISED BUILDINGS: THE LAWS ENACTED IN THE TIME AND THE LANDINGS JURISPRUDENTIAL

by Antonio Senatore

This article aims at providing a systematic and in-depth overview of law provisions governing a peculiar legal instrument which is frequently applied by public authorities in charge for supervision and control in the field of building and planning regulations: the compulsory purchase with no compensation, ordered in

favour of the municipality, of unauthorised buildings pursuant to article 31 of Presidential decree n. 380/2001, i.e. the so-called consolidated building Act. The analysis starts from the laws enacted in the time to regulate this instrument, with a focus on the recent introduction of a fine which applies in addition to compulsory purchase. The fine is also commented in the subsequent sections of the article which deal with procedural and practical issues. This article pays attention to the legal nature of compulsory purchase, to the conditions which need to be fulfilled for its application, as well as to objective and personal requirements for an effective transfer of ownership.

THE *UBER CASE* AND LOCAL PUBLIC SERVICES: REGULATION, JUDICIAL REVIEW AND A NEW ROLE FOR LOCAL AUTHORITIES

by Olivia Pini

Within the new trends of today's administrative law, great interest has been raised by the subject of *technology services for mobility* (STM), and particularly by the *UberPop* issue; this system can be described as a passenger transport service, carried out by non-professional drivers, which aims to the matching between supply and demand by the use of a digital operating system and isn't subject to the public rules generally applied to other transport services such as taxis. Many different institutions (both *Authorities* and judges) have recently expressed their point of view on *UberPop*, particularly focusing on its nature, on its compliance to the law and most of all on pointing out the most suitable regulation for it; moreover, also the European Court of Justice has been lately involved in the matter. What seems to emerge from these facts is the urgent necessity, in this subject, of a new regulation, able to overcome its complexities and to enhance its advantages in terms of *smart* technologies' development and competition-promoting.

THE *GENERATIVE WELFARE* BETWEEN THEORY AND PRACTICAL APPLICATIONS: NOTES ON THE ROLE OF LOCAL AUTHORITIES

by Simona Polimeni

The present work has as its object the study of so-called *generative welfare*, both from a theoretical point of view that in its possible practical applications. The starting point to frame the institution in question is the recent bill of Zancan Foundation, which provides a normative description and supervising the so-called social compensation actions (SCA).

The *generative welfare* implies a rethinking of theories of justice that characterized so far the *welfare* systems. In particular, we tried to pick up some hints offered by the *idea* of justice proposed by Amartya Sen, who considers, together with the unilateral decision as to what are the principles of justice, *removal of injustice*, through an open process of dialogue and comparison, among the various parties involved. We do not try, that is, only to include what type of institution can be considered *fair*, but, also, what kind of *society* we must train in order to avoid injustice, exclusion and indifference. In this complex process of reworking, finally it is necessary to support the idea of justice a further element: *care* (or *housing*). To remove injustice, in fact, it is necessary not only to make the right decisions (which must, in any case, be born from a comparison between several opinions, all equally reasonable), but also *to take care of the needs of others*.

This is, in hindsight, the idea of justice to the underlying *generative welfare* model, which responds well to the increasingly pressing *subjectivism* in the demand for justice. Only in such a theoretical perspective, in fact, one can accept that a social right (or rather: the provision of a social benefit), is conditioned to a

positive act (or social compensation actions). It seemed necessary, in the present work, to dwell on the study of the relationship between the benefit to the quid pro quo, to see what legal category it should retract. It was decided, finally, for the burden category, drawing from this the appropriate conclusions about the limits and possibilities of practical application of this model. The bill of Zancan Foundation accurately describes the process that allows to realize the quid pro quo, providing the intervention, next to the recipient (so-called *Actor of SCA*), a Lender of performance, of an *actuator body* (which projects SCAs) and a *regulator body* (which monitors the proper implementation of the SCA). We note, in this tripartite division, a peculiar role assigned to local authorities, who are entrusted with the task of promoting, regulating, monitoring and evaluating the SCA, as well as to keep a (municipal) register of the SCA and to measure the social and economic value to these product.

Finally, analysing art. 11 of the bill, which extends the application of SCA - and, in general, the *generative* model – to the criminal and penitentiary sphere, we tried to assess the possible development of the *generative welfare* towards so-called *restorative justice*. We tried to show that the logic underlying the two institutions and the goal to achieve is very similar, and we believe that the *generative welfare* can be a useful tool to disseminate and implement *restorative justice* practices, especially at the local level.

AN UNFORESEEABLE VIRTUOUS CIRCLE: RULES AND REGULATIONS ON THE *IMMIGRATION REGIME* AND NEEDS FOR LOCAL DEVELOPMENT (MINOR MARGINAL NOTE OF CALABRIAN REGIONAL GOVERNMENT'S LAW NO. 18/2009)

by Simona Polimeni

The paper deals with immigration phenomenon between multilevel governance and regional/local rules. It is taken into account the duty to welcome immigrants on the basis of the constitutional principles of equality and solidarity (as a form of juridicization of empathy?). Then it is faced the issue of Original citizenship, citizenship as sense of belonging, and citizenship as participation: turning the immigration 'problem' into a 'resource'. The analysis of Calabrian Regional Government's Law No. 18/2009 then leads to some conclusions on how the polycentric law-making can sometimes be effective.

MUSEUM SERVICES AS ESSENTIAL PUBLIC SERVICES: RATIO AND REGULATORY CONSEQUENCES OF THE INTERVENTION

by Giulia Silvia

In September the Government adopted an important Decree that produces effect in the public service sector, including museum services in the list of 1990 September 12, n. 146. Nevertheless this seems only an attempt to defend the government's image. In effect the Decree was adopted during a particular event, a meeting of the workers who carry out their service at the Colosseum, that caused an unannounced closure of the monument. This paper analyses the evolution of strike regulation and tries to explain the role of the public service on strike commissions and how it must act. Currently the Commission has limited power even though this role is important in the balance of its work. It's important to define the role and authority of the commission in order to bring some regulation to strikes in essential public services but also try to organize this sector that is characterized by inefficiency and disorganization.