

Abstract

Regional holding bodies, Regional owned-companies and privatization in Sicily

by Gaetano Armao

This essay reconstructs the framework within which the main region-owned enterprises of Sicily region are articulated, as well as the wide range of forms of direct intervention adopted in the economy. After a brief reconstruction of regulatory provisions on the subject, the approach that characterizes this study is empirical, and it focuses on the recognition of the phenomenon in its various facets. The events involving the state-owned enterprises of the Sicilian region represent a paradigmatic example of the high level of interference that the public authority exercises in the sicilian economy. In the light of the serious underdevelopment that characterized the region, autonomist institutions have quickly given up regulating in favour of an ever more effective and articulate presence in the market through state-owned enterprises. The intervention in the Sicily's economy through the traditional form of regional separate bodies was supported by other forms of interference on market dynamics which were created to encourage regional development but have increased the detachment of the sicilian economic system from the national and community levels. Meanwhile, the increase of the regional expenditure was not associated with the development of enterprises' competitiveness. This situation caused that, the more the European Union members States set political ties and the Italian legal system introduced key reforms in terms of protection of competition, privatization, and regulation of markets; the more the Sicilian economy increased the level of welfare assistance.

A divergence that has compound the economic backwardness of Sicily, for instance contributing to its industrial desertification. With specific regard to state-owned enterprises must be considered that in Sicily, more than in the rest of the country, a kind of benchmarking in negative has worked. Municipal, provincial, regional economic bodies and public banks have become more similar to the p.a. than to private competitors. The change in the economic paradigm related to the establishment of the single European market has just affected minimally the regional economy. The organizational form of the public economic entity, which has led Sicily to be the first of the "Entrepreneurial regions", was found to be inadequate over time. The bureaucracy constituted, together with some wrong choices in terms of business initiatives, the main cause of failure in the region and a long period of lack of regional holdings, still in progress. It will only quit as a result of the ten years winding-up of economic entities. Since the beginning of the year 2000 with the start of the process of disposal of regional investments, the second season in the region takes shape. On one hand, this phase is characterized for the creation of a series of limited mixed companies, with private investors chosen through a public tender process. On the other, a container company is constituted in order to perform services on behalf of the administration. This new expansion of the Region has resulted in substantial effects on the regional budget, forcing the region to participate in the rescheduling of loans. The complex and comprehensive path of subsidiaries' reorganization in the sicilian region is based on the interventions from the regulation of 2010 until the last decree of 2016. The reorganization of subsidiaries in the region aimed at reducing the strategic residual subsidiaries. The system of regional holdings of Sicily subject to a substantial reform in the governance structure, seems to look at the compliance with the evolution of the European legislation and the principles of competition, subsidiarity horizontally and spending review, with a view to reducing the regional public sphere. In this context, the essay analyzes the set of reforms made at the State level (d.l.gs. 19 agosto 2016, n. 175 ("Testo unico in materia di societa' a partecipazione pubblica") in matters concerning the system of regional companies.

Abstract

Regulation of public procurement and competences of special autonomies, from the public works to the public contracts

by Flavio Guella

The paper analyzes competences and experiences of the Italian special regions involved in the regulation of public procurement. Starting from the regulations approved by some special autonomies after the 2014 directives and the new national code of public procurement of 2016, the analysis moves to the evolution of the Constitutional court's case law in this field. In particular, the special statutes' set of competences on public works, together with the limit of the private law, is compared to the use of competition and civil legal system as "transversal" categories codified by the constitutional reform of 2001.

Abstract

The informatic administrative act

by Tomás Hutchinson

Starting from the notion and elements of administrative act, the author poses the question of the possible adaptation of the "traditional" categories and rules to the modern concept of informatic administrative act. This effort represents a challenge for scholars, in order to understand whether the nature of administrative law may become a special attitude to transformation and adaptation

Abstract

About a recent book by Franco Gaetano Scoca on post-unitarian brigandage

by Marco Mazzamuto

The paper deals with the causes of brigandage in the early years of Italian unification and the Government reaction by discussing the recent opinion expressed by Franco Gaetano Scoca. The paper also touches on the relationship between "modernity" and Southern societies.

Abstract

The acción de lesividad in the new legal order

by Natalia Mortier

The paper is focused on the exam of the accion de lesividad in the Argentinian legal system. The analysis starts from the description of the legislative evolution and takes into account the main results in case law and in the doctrine. In this perspective, the relationship between the accion de lesividad and the possible nullity or invalidity of administrative measures is also carefully taken into account.

Abstract

The regulation of public procurement: a comparison of experiences in Sicily and the rest of Italy

by Hadrian Simonetti

The paper examines the way in which European Directives on public procurement procedures are been implemented in our national and regional experiences, with particular reference to the region of Sicily where the Special Statute recognises a particular competence in this field and where appeals against the decisions of the Regional Administrative Court are brought before the Council of Administrative Justice for the Region of Sicily.

Abstract

Observations on «conflict of interests» in the administrative procedure in the light of a recent ruling by the State Council

by Alessandro Berrettini

The conflict of interest in the administrative procedure, ex art. 6bis l. n. 241/1990, is one of the most important anticorruption measures introduced by l. n. 190/2012 in the Italian legal system. The purpose of this article is to understand the role of that legal framework, highlighting its lights and shadows, through the analysis of a recent ruling by the Council of State. This analysis will be based on the interpretative difficulties, encountered by first and second instance judges in the application of art. 6bis to the specific case, in order to recognize the innovative scope of the conflict of interest and the strength of the relations between art. 51 c.p.c. and the art. 6bis.

Abstract

The private property's acquisition by municipal power towards heirs unrelated to the infringement of local building regulations

by Antonio Liguori

The author investigates a ruling pertaining to the municipal acquisition of private property in case of illegal buildings when the owner, distinct from the builder, was ignorant of both the illegality of the structure and the existence of a demolition order. The seizure of the property was consequent to the unfulfillment of a demolition order of which the present owner was unaware, as he inherited the property on which the structure stands. This paper questions the coherence of the ruling, arguing that the nature of the sanction is not merely restorative but punitive, hence an investigation of the subjective element of the private party is needed, especially in borderline cases in which the incoherence of the legal framework is due to the inefficiency of the public administration.

Abstract

The openness guarantees in electronic tendering procedures.

by Marco Pedersoli

The paper concerns the relationship between openness and new technologies in the tendering procedures. In particular it deepens the Italian Council of State decision number 4990 dated 2016, in which the Supreme Administrative Court rules that is not necessary to disclosure the offers in an open public session every time the procedure is managed by an electronic system. Indeed, according to the Court, the software assures the same transparency and openness as the public opening of the sealed envelopes, in addition to an easier participation to the procedure for tenderers far from the contracting authority.