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ABSTRACTS

THE REVIEW OF ADMINISTRATIVE ACTION, AFTER LAW 124/2015

by Alfredo Contieri

Following the recent Law n. 124/2015, the Italian public authorities may annul, only within eighteen months, the unlawful administrative measures that enable private activities or give economic advantages. This time limit sacrifices the rule of law and in general the public interest but strengthens the Community principle of trust and of legal certainty also in order to encourage foreign investments in Italy.

THE NEW RULES GOVERNING PURCHASING BY PUBLIC ADMINISTRATIONS OF IT SERVICES

by Alberto Zito

Law 208 of 28 december 2015 introduced new rules governing purchases of IT services. On the basis of said rules public administrations and their companies are obliged to purchase said services using public central purchasing bodies. The article examines new rules in order to enable correct application by public bodies.

SOCIAL AND ENVIRONMENTAL ASPECTS OF PUBLIC PROCUREMENT IN ITALY

by Nicola Gullo

This paper examines how the European Union policy induced the Italian legislator to integrate social and environmental considerations into public procurement practices.

The new code of public procurement, giving application of the 2014 EU directives, introduce two fundamental instruments. First, the legislative provisions allow contracting authorities to exclude from contract award procedures any supplier or contractor who was found guilty of breaching rules of environmental protection or social objectives promotion. Second, the code allows, under certain conditions, to include social and environmental protection objectives among the criteria for the selection of candidates.

REFLECTIONS UPON THE CONSTITUTIONAL REVIEW BETWEEN REFORM PROCESSES AND CRISIS OF POLITICAL REPRESENTATION

by Ornella Spataro

The law of constitutional amendment for which we will vote on December 4 puts citizens before large uncertainties. On one hand it is presented as a response to unpostponable demands for reform, on the other involves some of the fundamental Italian institutions, operating controversial choices on the level of constitutional law. The constitutional reform provides the transformation of equal bicameralism, with consequential changes to the legislative process, the review of relations between State and Regions, the reform of the participating institutions, the abolition of Provinces and CNEL, with system effects that have major repercussions on the overall dynamics of the form of government. The present comment puts in evidence the lights and shadows of the constitutional reform, in order to verify if there is the possibility of indentifying a relationship of congruence between the political aims that are invoked to justify it, and the legal instruments that in view of the abovementioned objectives are prepared.

THE NEW ITALIAN PUBLIC PROCUREMENT CODE: CHRONICLE OF A REVOLUTION ONLY ANNOUNCED

by Annalaura Giannelli

The paper examines the contents of the new Italian public procurement Code. The analysis aims to verify which are the objectives of the recent reform and whether these objectives have been pursued by the new rules. From this point of view the Code is affected by many contradictions, which must be overcome by the scientific literature doctrine and by jurisprudence.

THE LEGAL NATURE OF THE BROKEN TERTIARY PACKAGING: WASTE OR BYPRODUCT?

by Roberto Leonardi

The essay concerns packaging management and especially broken packages. Pending the transposition of the European directive adopted in 2008, broken packages were considered by jurisprudence as waste with the consequent application of the penalty rules in terms of waste management unauthorized.

Legislation development, together with the immediate application of the waste directive adopted in 2008, by article 117, 1 Cost., allowed to consider broken but reusable packages as byproducts, with the application of the related discipline provided by Environment Code of 2006.

THE INDIRECT RESTRICTION OF A TOTAL CONSTRUCTION BAN IN THE PROTECTION OF CULTURAL ASSETS, INCLUDING PROPORTIONALITY AND COMPENSATION

by Fortunato Gambardella

Article 45 of the Code of Cultural Heritage and Landscape regulates the institution of the so-called “indirect restriction” that describes the faculty of the public administration to adopt measures necessary to protect the architectural and environmental context into which cultural assets fall. These measures may also impose, at the expense of the citizens, absolute prohibitions on buildability in privately-owned areas and, in such instances, the law does not recognize any compensation to private individuals. The study evaluates the possibility of overcoming this jurisprudential direction in consideration of the particular importance that the law acknowledges, by way of motivating such restrictive measures, of the proportional

nature of the administrative decision and in light of recent reflections on compensation as a rule for the activities of the administration which entail a sacrifice for the private individual.

HEALTH PROTECTION ON THE PERIPHERY: PROBLEMS AND INTERVENTION PERSPECTIVES

by Viviana Molaschi

The paper tackles the issue of health protection in peripheries. First, it clarifies the notion of periphery, which no longer has only a spatial dimension as a suburb, and introduces the concept of social peripheries, defined as “extensive” and “widespread” F. Martinelli, which is the context of this research. Then, after analyzing the Constitutional and legal framework of health guarantees, it investigates the health situation in peripheries, looking into the reasons why it is worse there and why there are more criticalities and health protection gaps. The study focuses on the following: the effect of financial conditioning factors and the consequences of the economic crisis and of the related service cuts; the issue of the territorial distribution of health and social-health services; the importance of social policies (and of other policies) in guaranteeing the right of health; the role of municipalities in health protection. The analysis aims at identifying instruments that can contribute to improving the health situation of the highlight what municipalities can do I order to grant health protection within the *Health in All Policies* strategy, which has fostered the creation of *Healthy Cities Networks*.

ACCESS TO PUBLIC RECORDS AND PROACTIVE DISCLOSURE OF INFORMATION IN ITALY: AN OVERVIEW

by Paola Savona

The paper analyses the rules related to the right of access to public documents laid down in Law No. 241/1990 on administrative procedure, and the interpretation given to them by case law. It then presents the Italian FOIA enacted in 2016 and the system of proactive disclosure of public sector information. It concludes that, notwithstanding the salutary introduction in the Italian legal system of a general right to know, the norms on transparency still need to be improved in order to clarify the statutory framework and to find a better balance between public interest in disclosure of information and personal data protection.