STUDI
parlamentari e di politica costituzionale

Abstracts of Articles

AUGUSTO CERRI

Procedural and substantial conceptions of the Constitution: the contribution of the Italian Constitutional Court

The distinction between procedural and substantial idea of democracy is relative and not sharply drawn: it is because some procedural qualifications can be surrogated by substantial conditions and vice versa and because the interpretation of each guarantee can be, of course, more or less severe. Then, the trends of a Constitutional Court can emphasise either the procedural or the substantial elements of a Constitution.

The analysis of the italian Constitutional Court's trends reveals an attention to the procedural or substantial elements that is dissimilar in various periods. The emphasis on procedural guarantees (as the rule of law, the guarantees of the judiciary power, etc.) was strong in the initial period, when the Court reexamined the old regime's laws. An accentuation of substantial elements, through a wide balancing test, emerges around the half of Eighties. The emphasis on procedural or substantial elements varies also in different issues.

The surpassing of initial social antagonism, also through the reforms prefigurated by the Constitution itself, makes now praticable a more accentuated procedural idea of democracy. This idea was announced by the plurality system in electoral laws; in which the constitutional guarantees accomplish the requisites of a legitimate social experiment. But it is the political process the way through which people seek the best conditions of social life.

ANTONIO ZORZI GIUSTINIANI

Statutory power and regional government after the reform of the Title V of the Italian Constitution

In 1995 the Italian Parliament passed a bill concerning the popular election of the President of the executive branch in the ordinary regions and

the plurality premium to the winning coalition. The good performance of this reform is witnessed by the trend toward a bipolarization grounded upon two opposed catch-all coalitions and the strengthening of the presidential leadership supported by the elected majority.

That is why the constitutional amendments approved in 1999 and in 2001 consolidated the 1995 electoral reform and extended it to the special statute regions. In the meantime, framing a quasi-federal system through the new draft of Title V of the Constitution, the Parliament vested the regions with a real, autonomous statute-making power, which includes the authority to outline its own system of government. Now the regions are free to confirm or not the popular election of their chief executive, but in the first case they can not remove the clause which rules the dissolution of the council as an unavoidable consequence of the no confidence motion approved by its majority.

The censure-dissolution clause, which ties the political destiny of both the regional council and the president-governor (simul stabunt simul cadent), produces an hazardous swinging of the regional system of government from a neoparliamentary to a hyperpresidential model. Framing the new statute, the regions not propitious to restore a type of parliamentary regime will face the hard task to soften the impact of the mandatory censure-dissolution clause, which can not be repealed without abolishing the direct election of the regional chief executive.

FRANCESCO BRUNO

The conflicts of powers between State and Regions about financial resources and public properties

The essay is intended to provide an overview on the istitution of the "Conflitti di attribuzione tra Stato e Regioni", whose ratio is to contribute to a constitutional balance of central and local governments.

It focuses on the main questions involved at the light both of the doctrine and of the relevant jurisprudence, pointing out the contrast of the different criteria that administrative judges have been developing.

Finally, the essay briefly analyses the topic in relation to financial resources and public properties.

CARMEN IUVONE

The institutional competences for environmental matters in the light of the new Title V of the Italian Constitution

The Author analyzes the impact on environmental protection of the innovative constitutional reform (act n. 3 /2001), which has changed the legislative power of State and Regions on the subject.

The constitutional reform has established the exclusive authority of the State on environmental protection, while confirming the competence of the Regions on territorial government, public health and cultural property protection.

The Author focuses on the constitutional fundamental principle of environmental protection, as defined by the regulations prior to the reform, to better understand the innovations introduced by the reform itself, with a synthetic reference to the contentious between State and Regions, which has immediately increased after the introduction of the reform .

It is also provided an overview of the Constitutional Court sentences on these issues with particular attention to the criteria adopted by the Court in order to ensure the correct actions of the public administration in such an important and complex area as the environmental protection.