AUGUSTO CERRI

The problematic basis of judicial review of legislation

First of all, the author examines the distinction between rigid and flexible Constitutions, pointing out its relativity.

After reconstructing the context, he examines the different reasons for the introduction of control of constitutionality as well as its possible contraindications and effectiveness.

Then the essay compares the role of politics with the jurisdiction in a democracy and it analyses in particular the effective incidence of the latter.

The conclusion is that the comparison between politics and jurisdiction reflects a problem of the whole world of law, which is a fragile protection against interests pressures but an essential order of the society. The force of legal system and in particular of control of constitutionality can be compared to the frictions of the physics, without that no regular movement is possible and which are always surmountable by major forces. The political process can be compared to a set of experiments, by which society tries to get better orders which are shareable by the majority: those experiments are precisely guided by the majority principle.

MICHELE SOLDANO

Regarding the Constitutional referendum between "juridical legitimacy" and "political legitimation"

The Italian Constitution came into effect in 1948 without any direct popular approval.

For the first time in the republican history, in 2001 a Constitutional revision was submitted to a referendum (requested both by the political party in power and the opposition).

The essay considers the referendum's role within Constitutional revision process by analysing the different theories about the legal nature of that institution and by delving specifically into the matter of "juridical legitimacy" and "political legitimation" of a referendum on constitutional rules, which have already been submitted to confirmative referendum in the past.

PIERO GAMBALE, GIOVANNI SAVINI

The legislative production of the Italian Government in the first part of XIV Legislature: brief remarks on some recent trends

The legislative production of the Italian Government in the first part of the XIV Legislature has confirmed some trends arisen also in the last years, but it has also shown relevant changes as a consequence of the constitutional reform of 2001.

First of all, statutes enacted by Government have become more and more frequent, whereas the emanation of decree-laws has increased again after the Constitutional Court sentence n. 360 of 1996 (which had forbidden the renewal of expired decrees). On the other hand, regulation of second level (Government and ministerial ruling) is less used, since the new article 117, sixth paragraph, of the Constitution has forbidden the State to enact analytic rules in the matters assigned to Regions.

Another major change in the Italian rule-making process is the promulgation of governmental statutes, named "Codes", in which the Government is instructed of collecting all the previous laws, simplifying the procedures and boosting economic liberalization (see law 29-07-2003, n. 229). Moreover, the recent law 05-06-2003, n. 131, has given the Executive the task of summarising all the "general principles" Regions will have to follow in ruling the matters they have been transferred.

The essay analyses those major trends in the Italian rule-making process stressing, in particular, the combined use of governmental decree-laws and statutes and the new role of the Executive respect to the Parliament, which has been the traditional rule-making body in Italy.

LUCIA SCAFFARDI

History of an unborn institution: the Integrated Parliamentary Commission on regional issues

This article examines the problematic aspects of the art. 11, (Italian) constitutional law 18 October 2001, n. 3 that contains a provision that enables both Houses of Parliament to open their Commissions on regional issues to representatives from Regions, provinces and municipalities.

The author starts from an historic prospective that underlines the necessity of an increased representation of local governments in the central Parliament. Then he passes to analyze the creation and the characteristics of the Parliamentary Commission on regional issues (PCRI) as modified by the enactment of the art. 11, c.l. 18 October 2001, n. 3.

In particular the author dwells upon the works of two specifically appointed Committees (the first of those composed by an equal number of

Senators and members of the lower House) for the solution of some controversial aspects concerning the "troublesome" PCRI, i.e. its competences (in its integrated composition) and its procedure and deliberating rules.

In the conclusive paragraph the author underlines the impossibility of discerning this limited reform from the one concerning the role and the "shape" of the current Senate and concludes in favour of a transformation of the upper House into an House of the Regions.

IDA NICOTRA GUERRERA

Islamic party and secular State in Turkey

The essay analyses the relationship between democracy and constitutionalism in liberal - democratic systems and those belonging to the model of protected democracy, in the light of the recent decisions of European Court of Human Rights about Turkish Islamic party.

After a brief analysis of institutional and political events, that in Turkey have contributed to the dissolution of Refah Partisi by the Constitutional Court of Ankara, the work dwells upon the central question which the principle of secularism of the Turkish system is related to. First of all, the Turkish Constitution recognizes the principle of secularism as supreme and unalterable and underlines the importance of preserving such a principle from real threats coming from social groups.

In this perspective, the Constitutional judges consider the Islamic Welfare Party, that in political elections of 1996 polled the 35% of the vote, a danger for the young Turkish democracy.

The European judge, also, justifies the legitimacy of the decision to make the Refah Partisi illegal with the violation of freedom of association and political pluralism and with the same liberal - democratic government,.

The Court, starting from the essentiality of the principle of secularism for the safeguard of democratic rights, states that Refah Partisi behaviours, aiming to the realization of a multi-juridical system, where society is divided in different groups on the ground of religion, would be in contrast with the principle of no discrimination of the European Convention on Human Rights.

Furthermore, the Court recognizes the preventive intervention power of national Turkish authorities, in order to safeguard rights and freedoms of people that could be threated by the foundation of Sharia, through which the Islamic party aims to implement a political-institutional system based on Muslim religion rules.

FRANCESCO PETERNITI

On the Crucified in the classrooms

The essay refers about the request to remove the Christ Crucified from classrooms.

In order to correctly identify the legal terms of the matter, the author starts from the principle of secular State, as it is defined by the Italian Constitutional Court. Then, the attention has been moved on the particular provisions that, at articles 7 and 8, the Italian Constitution dedicates to relations with Catholic Church and the other religious confessions. Finally, the essay tries to identify the reasons in favour of the admissibility of this symbol, even after the end of the religion of State, it concludes that the Christ Crucified represents an identification matter of cultural identity and of the Italian Nation's heritage, and, as such, it deserves to be protected.