STUDI
parlamentari e di politica costituzionale

Abstracts of Articles

RENZO DICKMANN

Procedural constitutional guarantees and limits of the law

In presence of a rigid Constitution all the powers of the State meet formal limits. They are, for the lawmaker, the ordinary legislative proceedings and the constitutional revision procedure. Those limits aim at keeping the balance between the powers of the State and they can be defined as procedural constitutional guarantees.

PIER PAOLO PEZZATI

The new allocation of duties between the Prime Minister and the President of the Republic. Its influence on their respective rôles

On 25th and 26th June 2006 the Berlusconi-Bossi reform modifying the Part II of the Italian Constitution was rejected by a referendum. This referendum did not theoretically or practically defeat the proposed solutions. Indeed these solutions may be (re-)adopted, possibly with modifications, under different circumstances.

The reform was accused of being treacherous against the Constitution. This is based on an accusatory theory that the reform would have strengthened the powers of the Premier.

It states that the Premier would have been able to adopt an anti-democratic power. This is because there would have been no counter-balance, which would normally take place through the threat of the dissolution of the Chamber of Deputies, to limit his power. However, the accusation is not wholly convincing in light of the Italian move towards "immediate democracy" and in the prospective relationship between the Prime Minister and President of the Republic.

In particular, it is claimed that the reform would have strengthened the position of the President. This is due to the fact there was no decrease in the acts that need to be countersigned without, however, stating a solution to the weaknesses of the procedure of electing the President.

In this work, the author highlights the consistency between the trans-

formation of the figure of Prime Minister into Premier and the evolution of Italian politics. He contests that the Prime Minister's power to ask the dissolution of the Chamber of Deputies is anti-democratic in nature. However, this is not the case when viewed in the wider dynamics of politics.

CHIARA MEOLI

Publication and force of the decree-law

The paper deals with the approval of the law n. 248/2006 "Conversion in law, with modifications, of the decree-law no. 223/2006".

Specifically it concerns the approval of the art. 40 bis (transitory norm) of this law, which says that the private actions and contracts which are stipuled or placed in the same day of the publication of the decree-law n. 223/2006 on the Official Gazette, in application and observance of the pre-existent laws, do not constitute a violation of that decree. In these cases, the decree is considered come into force in the next day as to the day of publication on the Official Gazette.

According to the art. 77 of the Italian Constitution, the decree-law comes into force as soon as published, unless it does not preview a period of vacatio which defers its coming into force. This (eventual) prevision does not represents necessary condition for the constitutionality of the decree: failing it, the decree comes into force (and produces its effects) from the day of publication on the Official Gazette.

The Official Gazette is knowable to the people in the next day as to the day of publication. A lot of problems come from this situation, because the actions which are placed in the day of publication of the decree are subjected to the decree as soon as it is published and come into force.

The (not frequent) praxis to fix the coming into force of the decree-law in the next day as to the day of publication seems the more opportune solution: however few and isolated praxis show the "dysfunction" of the system and are not sufficient to correct it.

Indeed, in order to conform the praxis to this model and to heal the system, the necessary step will have to be the generalization of these formulations, which defer the coming into force of the decree and the production of its effects to the day in which it is really knowable.

IRENE SIGISMONDI

Interpretations' theory on regulatory impact evolution: first remarks

The evaluation of the impact of regulation (verifica dell'impatto della regolamentazione VIR) introduced by the "simplification statute" (legge di semplificazione) for 2005, i.e. law no. 246 of 2005, is a novel form of ex post evaluation; it is unprecedented, as a legislative disposition, in our legal system. It is a different form of analysis of the impact of regulation, which was introduced in 1999 (law no. 50, "simplification statute" for 1998). This paper deals with aspects related to the scope, framework, methodology and effects of this tool and it underlines the role of the theory of interpretation and an economic argument "by consequences".

NICOLETTA RANGONE

The regulatory analysis impact on proceedings, organization and independence of the Independent Authorities

In 2003, Italy provided the impact assessment (IA) for the general acts of the Regulatory Institutions. However, some of the Independent Authorities are not even aware of this new obligation, others have not yet got past the experimental phase and none has submitted an IA analysis to the Parliament's supervision. A number of questions are, indeed, still open: which regulations are under the scrutiny of the IA? Do the procedures have to be self regulated or guided by some principles common to all the independent authorities? Do the IA procedures have to start with administrative procedures? What does Parliamentary supervision consist of? The widespread adoption of the IA will be an important step in limiting regulatory inflation and improving quality of regulation, but the IA must not betray hits intrinsic function and become an instrument of new controls incompatible with the independence of the regulators.

PIERGIORGIO MARIUZZO, MARIO MARTELLI

A "survival kit" for the Regulatory impact analysis: the "soft" drafting

This paper gives account of some indications arisen during the inception phase (years 2001-2005) of the implementation in Italy of new tools connected to law design and better regulation, in which the two authors

have been actively involved. In this respect the paper represents the experience of the authors and their pragmatic suggestions in order to proceed for introducing effectively, in the core of the administration, better regulation tools (basically a simplified IA) which might be useful either for the PA officer and for policy makers contributing to their dialogue when drafting new regulation.