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Essays and Articles

Crisis and new forms of local government (p. 533)

Gianluca Gardini

The economic crisis has produced an obvious setback for the autonomist ideals that, since the 1990s, had played a central role on the Italian political and media stage. The word “federalism” has gradually vanished from political, legal and economic discourse, being unjustly associated with resource waste and bureaucratic system and rule complexity. The “genetic” transformation stemming from the (proposed) amendment of Title V of the Constitution is remarkable: municipalities become the essential and undifferentiated particles of the administrative system; provinces and metro cities become indirect expressions of municipalities and are highly exposed to the contamination of proximity interests; regions are transformed into macro-management bodies devoid of any guidance function. However, if constitutional reform pushes towards centralization and uniformity of local entities, a recent statute law (the so-called Delrio law), enacted with an unchanged Constitution, has extensively redefined the territorial map, creating interesting opportunities for organizational and functional differentiation between large area governments and between regions.

The role of vast area districts in the reform of intermediate local government (p. 569)

Cesare Pinelli

The author examines the role of the new “vast area” districts (provinces and greater metropolitan areas) in the reform of the intermediate local government as approved by law n. 56/2014, with a special focus on their troublesome relationship with the simultaneously enacted process of aggregation between municipalities, the opportunities for enforcing the constitutional principle of differentiation, and the enduring post-reform difficulties in re-structuring intermediate local government.

The new statute of senior civil service in act no. 124/2015 (p. 591)

Gianfranco D'Alessio

The article examines the new rules concerning senior civil service contained in act no. 124/2015. Firstly, the analysis addresses the establishment of three unified categories, which will include all the managers (“dirigenti”) of national, regional and local administrations, with the goal of creating a “market” of public managers. The author, then, focuses on senior civil servant recruitment procedures (unified competitions and course-competitions), highlighting the problems connected to winners’ placement. The provisions about the training of managers and the reform of the SNA (National School of Administration) are also mentioned. Specific attention is given to the rules concerning managerial appointments: calls (so-called “interpelli”) open to all members of unified categories constraints on the possibility to appoint outsiders; duration, confirmation and revocation of tasks; dismissal of managers with no assignment. The text also identifies the functions of new civil service commissions, stressing the need to provide them with adequate facilities and qualified staff. Finally, the article describes legislative innovations concerning performance evaluation and managerial responsibility (as opposed to their disciplinary responsibility) of the “dirigenti”, as well as their wages and employment conditions.

In search of University law (p. 625)

Carla Barbati

Five years ago law no. 240 (30 December 2010) was enacted. As a result, the Italian higher education system has undergone an extensive reform process. Its implementation has generated increased regulation, frequently revised and recently amended once again by 2016 Stability Law. Universities have been affected by a new body of rules and regulations governing many of their organizational and operational choices and behaviors, which reflect the idea the enactment of reforms requires increasingly detailed and invasive norms. The experience of this excessively burdensome regulation and its negative impact on universities point to the need to evaluate existing and forthcoming legislation and introduce a new “fit-for-purpose” regulatory framework, particularly in view of the needs and interests of the higher education sector.

The necessary ingredients for a «good» school autonomy recipe (p. 647)*Monica Cocconi*

The overall structure of the “Buona Scuola” (Good School) reform (l. 13th July 2015, no. 107) revolves around the implementation and enhancement of schools’ governance autonomy. In order to strengthen the latter, the reform relies on a set of innovations, including three-year education plans, the introduction of functional staff provisions – identifying the number of teachers in each school on the basis not only of teaching needs but also other equally important factors – and the enhancement of headmaster powers. Rather than actually “reforming” the previous system, the new regulations aim to improve that system’s institutions which encountered difficulties within the innovative framework introduced by art. 21 of law no. 59/97. The essay explores the effectiveness of the new reform from the viewpoint of strengthening schools’ governance autonomy.

The regional conference system and its European function: a necessary balance between uniform European principles and internal autonomist principles (p. 677)*Matteo Falcone*

In a period of constitutional revision of Title V of the Constitution and the system of local government, the author addresses the issue of the link between the regional conference system and the regions’ legislative and administrative autonomy, with a focus on the relationship between European Union, the State and territorial autonomies. The organizational and procedural framework of the regional conference system and its European function is an attempt to meet a fundamental regulatory need: finding a balance between the autonomist principles of the Italian legal system and the European-level principles of uniformity. Such a balance depends on the regional conference system’s regulatory ability, within its European function, to govern the impact of European legislation on the distribution of legislative powers and administrative functions provided for in the Constitution. The analysis aims to verify whether and how the current regional conference framework and its European function are able to guarantee this balance, indicate possible solutions and highlight future trends.

Notes and Comments

On the registration of homosexual unions celebrated abroad: the State Council reinstates rationality in the legal system (p. 707)

Edoardo C. Raffiotta

Is it lawful to record same-sex marriages celebrated abroad? The question arises in relation to the decision made by some mayors to recognize, via transcription in public registers, homosexual unions contracted abroad. This practice, legitimized by some regional administrative courts, has been censured by the State Council with its decision no. 4897 (26 October 2015). In commenting this judgment, this article develops some reflections concerning the role of the mayor as a government official and his/her hierarchical subordination to the prefect, who has the power to cancel registrations enacted in violation of the law.

A controversial «exemplary» judgment, from the viewpoints of law and legal policy (p. 719)

Marco Magri

The Italian State Council clearly states that the law on vital records does not allow registration of same-sex marriages between two Italian citizens when celebrated abroad and that the Minister of the Interior (whose decision had been challenged in this case) has the «implicit» power to withdraw and delete complete registrations, even when already sealed by the signature of the local registrar (i.e., the mayor, in his/her role as a government officer). Although the Council obviously intended to “set an example” with its sentence, yet the latter is questionable. Partly, the decision expresses a judgment regarding the validity of same-sex marriages, which is excluded from administrative courts jurisdiction according to the principle set forth in art. 8 c.p.a. (administrative procedure code). Furthermore, it seems dubious that, as the sentence implies, a principle of hierarchical ordering of administrative competences applies in the field of vital records and that the Minister of the Interior is empowered to assume full power over the disposal of registrations. The sentence thus appears inconsistent with the law, attributes to the Pub-

lic Prosecutor the power to rectify registration in order to safeguard the public interest and reserves to ordinary courts the authority to delete illegitimate registrations.

Local public transport in the experience of selected European countries (p. 747)

Elena Ferioli

The paper presents an overview of the solutions that some European legal systems have identified for the regulation of road-bound local public transportation in reference to distinct problems that have emerged as crucial in this sector: control functions of competent authorities, protection of competition in contracting and managing services, definition of public service obligations and minimum quality standards, tools for financing the services.

Some reflections on the category of town clerks in the European context (p. 765)

Giorgia Pavani

Law no. 124/2015, involving the definition of the executive branch's powers in the field of Public Administration reform, abolishes the category of town clerks and creates a new position, called managing director. Several functions now performed by the town clerk will be assigned to this new subject. Until the national government enacts the decrees necessary to implement the regulations that are merely outlined in the above-mentioned law, the change can be analyzed in light of the experiences of States belonging to the French-Napoleonic model in order to understand if the reform is consistent with European trends.

Regional Observatory

An overall assessment of the effectiveness of building incentives in Italian regional housing plans (p. 793)

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Readings and Highlights

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