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Claudia Tubertini

Essays and Articles

Statutory Guarantee Bodies at a Crossroads: Reform or Gradual Decline Due to Desuetude (p. 909)

Paolo Caretti

Approximately ten years ago, the approval of new regional statutes ushered in an original institution: the so-called Statutory Guarantee Council (Consiglio di garanzia statutaria), the main purpose of which is to safeguard statutory provisions from other potentially inconsistent regional sources of law. The article addresses the origins, the development, and the current crisis of this institution.

Regional Authorities for the Defence of Rights: The Case of Emilia-Romagna (p. 921)

Marco Magri

The article examines the prospects for reforming the three defence bodies set up in Emilia-Romagna (ombudsman, children and adolescents' rights defender, defender of persons deprived of liberty), based on an analysis of the evolution of national and international legal frameworks, within which some organizing principles about non-jurisdictional defenders of individual rights and freedoms are still awaiting full implementation. The author highlights that a modern regional reform requires such a framework and equally cannot ignore the possibility that regional authorities, such as the defenders of children and freedom-deprived persons, could operate as decentralized bodies of (or be coordinated by) a national authority. In this perspective, based on the strengthening of State's international relations for the establishment of new national human rights institutions, it is no coincidence that some regions, like Friuli-Venezia Giulia, Marche and Veneto, have chosen to set up a single defence body.

Italian Ombudsman Authorities and the Roles of State and Regions: The Ongoing Lack of an Integrated System of Guarantees (p. 961)

Roberto Medda

Originally a solution developed within Scandinavian constitutionalism, nowadays ombudsman-like institutions have spread around the world. The ombudsman is a well-established concept in academic scholarship: it is understood as an independent institution which receives citizens' complaints against alleged cases of maladministration. The creation of the so-called difensore civico by Italian regional governments in the 1970s represents the first attempt to transplant the Swedish institution into the Italian legal system. Over recent decades, other institutions have been introduced alongside the difensore civico: some of them, like children's or inmates' guarantors, are consistent with the concept of ombudsman, whereas others, such as the taxpayers' guarantor, on the contrary do not meet the standard required by the ombudsman definition, especially with regard to its independence from government. The transplant of ombudsman-like authorities in the Italian legal system has brought about the creation of a non-judicial mechanism of protection of citizens' rights characterised by weak coordination and overlapping competences between different authorities and, more generally, by an insufficient level of independence from government and policy-makers.

From Procedural Sacralization to Procedural Technique: Co.Re.Com Conciliation, an ADR Best Practice (p. 1001)

Francesco Eriberto D'Ippolito

In Italy, Regional Committees for Communication (Co.re.com.) perform highly significant functions for the community, among which conciliation is undoubtedly the most important. Conciliation is an example of Alternative Dispute Resolution (ADR), originally arising in Anglo-Saxon contexts, and has proven effective in Italy in satisfying a widespread demand for justice. Statistical data indicate about 200,000 mediation requests between 2014 and 2015, and over 100,000 conciliation requests in 2017 alone, 16,000 of which in the Campania Region. Even if resorting to conciliation is mandatory, it provides free protection for citizens in the sensitive area of telecommunications.

Administrative Decisions and Sensitive Public Interests: The New Rules on Open Government (p. 1021)

Stefano Vaccari

The article deals with new open government regulation in Italy, focusing on the public administration's decision-making processes. After drawing a distinction between two types of the so-called "civic" right of access included in Legislative Decree no. 33/2013, the main legal issues characterising the new regulation are addressed: namely, the vagueness of the constraints imposed on the new "civic" right of access; the issue of "massive" requests for documents and information; and, finally, the constitutional concerns raised by the power of the Italian National Anti-Corruption Authority (ANAC) to enact guidelines limiting and excluding the civic right of access. The final section of the article proposes some procedural and organisational solutions to overcome the issues mentioned above.

Notes and Comments

Territorial Reform Policies as Regional Development Strategy? A Comparison between Italy and France (p. 1057)

Patrizia Messina

To what extent does the reduction in the number of municipalities, especially smaller ones, influence regional development policies? Recent research on the topic has highlighted how a policy of reducing the number of municipalities can be a relevant factor in promoting integrated regional development policies. However, the French case, with about 36,000 municipalities and an above-average regional competitiveness index, is an important exception that, compared to the Italian case (about 8,000 municipalities), can be very informative in this regard. In fact, if it is true that France has not decreased its number of municipalities, it is also true that the French municipalities are functionally weak and that the totality of French territory is covered by associations of municipalities, which perform the functions that in Italy are assigned to the municipal authority, regardless of size. The essay compares the French and Italian cases – both of Napoleonic origin, but with specific differences – to suggest guidelines for regional territorial reform policies.