Abstracts

Algunas ideas básicas sobre regulación de sectores estratégicos

Gaspar Ariño Ortiz y Juan Miguel de la Cuétara

Strategic sectors are now managed differently than they were until only a few years ago. Former public enterprises have been privatized, have new managers and act in a profoundly different way. Regulation consists in regulating these sectors that have recently been opened to competition, putting them under the control of commissions or regulatory bodies (Telecommunications Market Commission, National Energy Commission, etc.) in order to meet the objectives of the former public services, but under market conditions. The activity of these strategic sectors must be constant and the services they provide must be regular and permanent. Regulation sees to it that these sectors satisfy collective needs in a regular and continuous way but under competitive conditions and involving individual initiative.

The new way of regulating former public services, which have become economic activities of general interest, consists in complex actions that must be applied, if possible, without dangers or difficulties. To this end the legal, economic and technical bases of regulation are examined here, along with the undesirable results deriving from a partial use of the available tools, whether legal, economic or engineering. Only a correct combination of the three tools will provide the proper results for assuring competition in strategic sectors, reducing discretionality and avoiding the politicization of regulatory decisions.

Constitución y modelo económico liberalizador

Tomás de la Quadra-Salcedo

The process of economic liberalization being carried out in many countries, among them Spain and the other members of the European Union, makes it necessary to consider whether this process is compatible with the obligation of public powers to make the freedom and equality of individuals and of the groups to which they belong real and effective.

Thanks, on one hand, to the current state of technology and its convergence with computing, and on the other to the simultaneous process of globalization, «natural monopolies» may cease to exist and market techniques may be applied to the management of sectors traditionally subject to government intervention (communications, water, transportation, energy, etc.). Liberalization consists in suppressing these monopolies, as well as the limits established for nationalized activities or for those declared to be public services —in which only public powers formerly took part— in order to provide free market access.

The Spanish Constitution allows both for the public service model and for liberalization as defined above. Furthermore, the decision by the European Commission, the Council and national governments in favor of the liberalizing process does not respond only to technical or economic considerations, but rather constitutes a real political option, and as such, is constitutionally justified in Spain by the cession of sovereignty implied when this country joined the European Community. Under these circumstances, the question is limited to determining if abandoning the notion of public service and opting for the free market is compatible with article 9.2 of the Constitution. The answer is that the goals of the precept remain with liberalization, but the way of reaching them is different. The public powers continue to be committed to guaranteeing these goals, but through supervising and/or imposing obligations on the businesses acting in liberalized sectors.

The European Union defines the concept of universal service as that of taking the goals of a public service and bringing them to a competitive venue. These goals must be satisfied by the market, whether spontaneously or through intervention, so that real competition is also insured. The debate thus shifts to the scope and content of universal service in a society that must remove the obstacles that impede equality.

La lealtad federal en el sistema constitucional alemán

Javier Laso Pérez

The concept of Federal Comity (Bundestreue) is an unwritten constitutional principle which has no explicit expression in the German Constitution and which was developed into a fully justiciable norm by the German Federal Court. The duty of cooperation between the components of the Federal State is not specific to the German constitutional system. There is an increasing explicit recognition of a duty to cooperate in several federal states, although this duty does not have the same importance and significance.

Federal Comity is based upon the concept that the federal system requires that each member of the Federation consider it a duty to regard the general interest. From a negative point of view, it limits the exercising of powers and imposes a mutual self restraint, but it has also developed into affirmative duties of cooperation among its members, e. g. concrete duties of financial equalization, an obligation to reach a common understanding, a duty to be informed about matters of mutual interest. It also regulates the conduct and style of negotiations between the Bund and the Länder.

In general terms, it has a fundamental significance for the whole constitutional structure and demands special consideration for the interest of all its components, which facilitates harmonious functioning and smoothes the tension between its centrifugal and centripetal forces.

Libertad de empresa y otros fundamentos constitucionales de la acción voluntaria

Manuel Aznar López

This work analizes the possible constitutional bases of the voluntary activity excluding freedom of speech, free person development, right to participate and subordination principle. On the contrary, the right to constitute foundations and associations is estimated as applicable, as well as the free enterprise in the case that his aim is to give services or to produce goods.

In this sense, that freedom would constitute a common legalization title for the profit and non-profitmaking enterprise whose aim be the above mentioned service giving or goods producing.

Representación y sexo

Ascensión Elvira

Since mid eighties the discussion on quota and parity has been a main issue in many European countries, and there bave been some intents to implement quota in electoral rules and some Constitutions have change in order to permit modification of legislation according to the interpretations of Constitutional Courts.

The discussion has been focussed usually in equality, but in our opinion the legal imposition of quota is political representation what attempt.

Since the origins of liberal State political representation is based in a neutral significance: members of Parliament of the whole country, the whole people, independent of personal conditions of this people. Introduction of quota breaks this meaning, thus it introduce a factor distortion in our complete understanding of democratic State: presence of women in Parliament (or in other representative entities) does not mean political representation, and we open the door to division on political society, and thus con we later introduce another kind of divisions.

Parity between women and men in Parliament is good, but it has not to be imposed against our accepted principles of Law.

La proyección europea de las entidades territoriales subestales

Gema Rosado Iglesias

Regional level plays, at the moment, an important role in European construction and integration process. For this high profile have contributed, between other elements, the growing interest of European institutions in regions, the creation of instrument in order to the regional representation and participation into European Union, the more and more number of Members States with a territorial multi-level governance, and the regional constant demands about the admission of their powers for sharing the regulation performance, EU Law, and of their faculties for taking part in the decision-making process, when these decisions attach straight and really to their material abilities and their possibilities of executing them. So then,

there's no doubt that necessity for developing instrument of co-operation between different territorial levels and for reconsidering regional position in EU. Nevertheless, we must beat in mind that this new regional role falls about the paper of State. Therefore, the search for a correct solution needs the interaction of both dimensions and takes into consideration their grounds: sovereignty of State, regional autonomy and international liability, between others.

Precisiones sobre la convalidación de las notificaciones

Javier Oliván del Cacho

This work studies the new regulations on the notification of administrative actions derived from the legal amendment to Act 30/1992, of November 26, on the Juridic Regime of Public Administrations and Common Administrative Procedures, by Act 4/1999, of January 13. Specifically studied is the system of convalidating notifications as a result of the passing of time, which enshrines, in the provisions of the Act, a legal solution different than that stated in the Preamble to Act 4/1999, which seems to recognize a kind of convalidation of defective notifications through the simple passing of time. In the study, which has now been consolidated, it is proposed that the Declaration of Motives lacks any interpretational sense, since it is coherent with the original text of the Draft Legislation that was modified during parliamentary procedures and was simply the result of defective legislative procedures, inasmuch as the Preamble was not adapted to the changes made to the provisions of Act 4/1999 during parliamentary debate on the legislation.

La responsabilidad patrimonial derivada de actos legislativos en Bélgica: análisis jurisprudencial y doctrinal

José Antonio García de Coca

The aim of this article is to analyse the judicial treatment that has received in Belgium the repairing damages caused by Acts of non

confiscatory character that imply a sacrifice in terms of justness or equality in connection with public obligations for a citizen or citizen's group. The analysis is structured in three periods: 1831-1946, 1946-1971 and 1971-1999. The conclusion is that Belgium has suffered a regression as a consequence of an omission of the Act of June 3 1971, that supposes a turn to the past and, in a certain way, the acceptance of the sovereign nature of the Act. The current situation is, therefore, unsatisfactory and it is necessary its appropiate and quick revision. The author offers several solutions: The *Conseil d'Etat* jurisprudence rectification, the modification to the Act of 1971, the recognition for the Legislative Power in each Act the corresponding compensation and the option of the civil responsability.

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