Abstracts

La estabilidad presupuestaria y su eventual proyección en el Estado de las Autonomías

Luis Aguiar de Luque y Gema Rosado Iglesias

During the last decades have revived certain *neoliberalism* convictions that, questioning the public intervention in the economic order, have incited, in the plurality of States around us, a process aimed at restraining that public participation. This has special conditions between European Union Members States. Trade liberalization and deregulation politic and domestic financial stability imposed by Maastricht Treaty are only two good and fundamental examples.

Although certain economic stability can be a desirable target, its imposition by EU Law raises numerous questions and constitutional doubts: so, State sovereignty, Constitution supremacy, and maintenance of Welfare State order by some constitutional precepts.

In our country, also, there is other polemic factor: constitutional recognition of autonomy for *«Comunidades Autónomas»;* autonomy that includes financial autonomy, and, therefore, the power to approve their budget. In these circumstances, so the EU Law requires to all Public Administrations, as well *«Comunidades Autónomas»;* State and they must establish and strengthen cooperation instruments, and, for this purpose, Senate must play a principal role. Nevertheless, at this aim its reform seems necessary and without delay.

¿Del servicio público a los mercados de interés general?

Santiago González-Varas Ibáñez

If one is true to reality, apart from *legeferenda* positions, it will be necessary to recognise that the sectors that traditionally were public economic services have been converted into markets, although, far from being

simple «markets», they are in reality «markets of general interest», due to the inevitable presence of public elements that are essential to these sectors. This is translated, likewise, into the irruption of a new legal system, which combines and jointly applies rules of Public Law and Private Law, that is, a private administrative Law made real. In effect, what is characteristic now has stopped being the need to seek connections of Public law with respects to the activity of Private law. Rather, in the current legislation that regulates said markets, the rules of public Law and those pertaining to private Law are presented in an undeniably united manner.

Los derechos colectivos desde la perspectiva constitucional

Juan José Solozábal Echebarría

The intention of this work is to locate within the Spanish constitutional legislation the category of collective rights, which is a concept that stems from political philosophy, and the legitimacy of which is widely debated, in that they are usually employed precisely against individual rights. The first thing that is done in this study is a glance at this debate, comparing the positions of multiculturalism, especialiy Taylor and Kymlicka, and the thesis of Habermas, although leaving on record that not even the multiculturalisms admit the subordination of individual rights to collective rights, nor is Habermas insensible to the necessary protection of determined cultural facets of identity that allow for individual development.

In the Spanish constitutional legislation there are certain collective rights, that is powers or specific pretensions, the ownership of which is ultra-individual, amongst other things in harmony with a Constitution that very favourably covers pluralism and which determines to the collective, be it under this denomination or that of general or public interest, as a limit of the rights or as a guide of the actions of various institutions. But perhaps there are no fundamental collective rights, although there exist individual rights that are exercised collectively and rights of a collective ownership, without counting with the protection via the defence of certain collectives, personified or not. There are rights that are simply constitutionally collective, as are the rights to autonomy, and the historical rights. Rights baldly recognised, that require a legal configuration, which establishes certain organisations, which in the exercise of their powers, end up satisfying individual rights of a political nature.

What our constitutional system does not recognise is the collective right of auto determination, as if there existed a reserve of sovereignty, incompatible with the attribution of same to the Spanish people. Different to collec-

tive rights is the figure of institutional guarantees, through which some legal objects enjoy, lilkewise, constitutional protection.

Una reflexión acerca de la constitucionalidad de las Leyes de Estabilidad Presupuestaria

Francisco Uría Fernández

The Budgetary Stability Laws introduce a very interesting discussion about the budgetary balance as a tool of economic's policy.

Another possible economic reflection is related to the relationship between the Government and the Parlament in the field of budgetary issues.

These Laws introduce a new aspect in the budgetary debate, due in March, about fullfiling the budget stability.

Nevertheless, the main issue of the public debate about the implementation of stability law has been focused on its constitutionality and specially on the implementation on this principle in the framework of Spanish Autonomous Regions.

This work is intended to find out reflection elements to this issue, in the view of supporting the plain Constutionality of these measures, with the background of many resolutions of the Constitutional Court.

La ley autonómica

Manuel Aragón Reyes

The object of this article is to study the meaning, in a formal and material manner, of the autonomic law within the Spanish legislation, constructing it as a dialogue with the recent book by professor Jiménez Asensio regarding «The Autonomic Law within the constitutional system of sources of Law», a solid and brilliant piece of work. Through the article a review is carried out of the different facets of the autonomic law, commencing with the formal proximity between autonomic and state law and, on the other hand, the material divergence between one and the other. The later divergence is derived from the system of territorial distribution of powers between the State and the Autonomous Communities, which originates a situation, nearly general, of shared powers, as weil as the understanding of the clause found in Article 149.1 of the Constitution, as a title not only with interpretative value, but also attributive of state powers.

Régimen jurídico de la actividad publicitaria de las Administraciones públicas

Agustín García Inda

This paper analyzes the legal frame of the public administration publicity. On the one hand it tackles the legal frame of the public administration when it makes publicity of their own activity, i.e., the problems of the mass media engagements, the publicity during electoral campaing, the use of other oficial languages, or the merchandising. Moreover the paper also analyzes the possibility of using administrative means to make publicity of other administrations or private companies. The article studies the existing local laws on that issue and offers a critical analysis about the white paper that is being negotiated in the national Parlament. The autor concludes that it would be enough to have certain provisions within a more general law, such as the general electoral act or the yearly budget act. He states there is no need of an especific publicity act.

El silencio administrativo negativo

Marta García Pérez

«The negative administrative silence» conteint a legal analysis about administrative silence, when negative, in spanish law. After a short historical reflection, using the jurisprudence of constitutional and supreme Court of Justice, the author analyse one of the most important questions which appeared in the Law 4/1999, modifying the Law 30/1992, about administrative procedure: the legal obligation of Public Administration to decide and notify each procedure, and the effects of nonfulfillment which consist in a legal fiction in favor of affected citizen in order to contest that «administrative silence» as it were an administrative act.

Sobre la violencia doméstica

Enrique Arnaldo Alcubilla

Domestic violence is a problem of first order in contemporary societies. An important effort has been carried out by the Public Administrations in actions regarding prevention, sensitising of the public, assistance and social intervention, as well as training. Likewise, penal and procedural legislation has been modified, but the legal response is still considered insufficient, defined as «late and insensible». The General Council of the Judiciary Branch

has approved an important report that proposes different instrumental, substantive and procedural reforms, in particular, for the adequate coordination amongst civil and penal jurisdictions. Likewise, it approves a practical guide against domestic violence, directed to judges and magistrates.

La subcontratación administrativa

Juan Luis de la Vallina Velarde

The recent regulation of the contracts hold by the Public Administration, contained on the Texto Refundido proved by Decreto Legislativo 2/2000, of 16th of June, has brought to first page the form of *subcontratación*.

Although it was due to meta-juridical motivations and specifically to the group and managers, whom act like subcontratistas of the big constructions enterprises that make contracts with the Public Administrations, it is true that it doesn't let to show up important juridical questions.

It is a strictly juridical-private relationship, the one of the subcontractors of the Public Administrations, and it is regulated by an administrative principle. This Principle doesn't change the strictly character juridical-private of the *subcontractual* relationship, however, a big problematic appears from the point of view of the opportunity and the scope that must have this principle, and it has consequences on the strictly scenery of the juridical Dogma.

La nueva regulación de los horarios comerciales en España. A propósito del Real Decreto-Ley 6/2000, de 23 de junio, de Medidas Urgentes de Intensificación de la Competencia en Mercados de Bienes y Servicios

Helena Villarejo Galende

At last the Spanish Government has acted to amend the Law relating to retail opening hours. The *Real Decreto-Ley 6/2000* removes some controls on opening hours wich were previously imposed by the *Ley Orgánica 2/1996*. One of the foremost innovations is that smaller shops, with a «useful surface for exhibition and sale» of 300 square metres or less, are completely exempted for restrictions on opening. Certain others shops can open free of control regardless of their size: shops in railway stations, motorway service stations and airports, shops selling bread, pastry, press or flowers, shops placed in the frontier area or placed in «areas of great influx of tourists»... Regulation is laden with numerous and inconsistent exceptions.

Thus, regulation must be criticized by those who, as the author, think that the exceptions are unnecessary and arbitrary.

Two other measures complete a far-reaching process of deregulation in retail: the authorization to open on progressively twelve Sundays a year and the enlargement of opening hours at ninety weekly hours. Finally, with a legislative compromise between the State Government and the regional Governments, freedom probably will come in the near future. Maybe in the year 2005, the authorities decide to choose total deregulation, which would give complete freedom of choice and allow opening to be determined by commercial judgments of the wishes of the public.

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