Marta Cartabia

Introduction

Two key words characterize the most recent developments in constitutional justice: openness and cooperation. The first concerns the Court's knowledge not only of law, but of all aspects of social life; it also means, for the Court, making one's role in society known. The second consists in loyal cooperation between the powers of the State and with the European Union.

Report on the Activity of the Constitutional Court in 2019

The Report analyzes the jurisprudence of the Constitutional Court in a complete and in-depth manner. First of all it provides the statistical data; therefore it identifies three trends: the strengthening of dialogue with the legislator, the development of collaboration between jurisdictions, including European ones, in the protection of human rights, a more rigorous control in criminal matters.

Extensive consideration is devoted to the techniques used by the Court, including that of the 'warning judgment', in which the Court invites the Government and Parliament to take legislative action to resolve problematic regulatory situations.

Particular attention is paid to the relationship between the Constitutional Court, national judges and the Court of Justice of the European Union in the protection of fundamental rights, especially in the light of the EU Charter of Fundamental Rights. Cooperation with the European Court of Human Rights in criminal matters is also intense. The article explores the recent case law of the Court of Justice of the EU on the rule law crisis, with European Court of Human Rights in criminal matters is also intense

Giandonato Caggiano

On the International Transfer of Personal Data of Users of the Digital Single Market, Following the *Schrems II* Judgment of the Court of Justice

The article analyzes the most important legal issues regarding the international transfer of personal data in the European Union, comparing the European and US protection models in the context of the global geopolitical order. It assesses the relevant indications coming from the very recent *Schrems II* judgment of the Court of Justice of the European Union, highlighting the constitutional role played by the Court in the matter.

Gianluca Contaldi

The Recovery Fund

The Next Generation EU (also called Recovery Fund for its function of restructuring the economy of the member States, after the COVID-19 pandemic) is a plan with which the European Union aims to raise funds on the market through the issue of bonds and, subsequently, to disburse sums of money, including non-repayable funds, for the realization of projects of common European interest. With this plan, the EU intends to finance the so-called green transition, bridge the digital divide and, in addition, support the structural reforms necessary for each member State.

The program is very ambitious and marks a turning point in the European Union's approach to managing economic crises, in the sense that, instead of the so-called 'austerity', the supranational legislator prefers to finance investments capable of supporting growth and industrial reconversion.

The paper analyzes the conclusions of the extraordinary meeting of the European Council in July and the main draft acts published by the European Commission. The author notes that the program presents certain provisions which, at first glance, may appear incompatible with the Treaty, such as the power of the Commission to issue bonds and the incidence of the no bail-out clause on the legitimacy of non-repayable aids. However, these doubts can be resolved in the light of the correct reading of the provisions of the Treaty on the Functioning of the European Union.

The problem is that the Next Generation EU plan ends up restricting the already limited room for maneuver of national parliaments in defining economic policies, so it does not seem really lawful in the light of the democratic principle enshrined in Article 10 TEU.

Francesco Moliterni

Pandemic Economic-health Crisis, the Phenomenon of the 'Small World' and the 'Common Safety, Common Benefit' Paradigm as a Heuristic Legal Model

The global pandemic is an economic and financial crisis, but it is also a humanitarian catastrophe, which produces a new solidarity. So, 'common safety, common benefit', are more than simple words.

In fact, nobody is safe, if the others, all the others, are not safe by the peril of the virus. The world is our vessel, and the global pandemic is as a general average.

Therefore, 'common safety, common benefit' is the only model of the rules, to oppose to the global pandemic and to the consequent economic and financial crisis.

Egeria Nalin

COVID-19, Derogations and Limitations under the European Convention on Human Rights

The spread of the pandemic, known as COVID-19, inevitably encroaches on rights and freedoms guaranteed by the European Convention on Human Rights (ECHR), since States Parties resorted to exceptional emergency measures that affected, suspended or limited fundamental rights to reduce the risk of contagion. In time of public emergency threatening the life of the nation, the European Convention recognizes the possibility of derogating, in a temporary, limited and supervised manner, from their obligation to secure certain rights and freedoms under the Convention (Art. 15). Nevertheless, many States, even if declaring the state of emergency, preferred to restrict the enjoinment of human rights in accordance with the treaty provisions that allow such restrictions to protect public health. This is the case of Italy.

On these bases, the paper first illustrates the regulation of derogations and limitations under the main international treaties on human rights; then, it analyzes whether the practice to derogate or restrict human rights in the view to limit the spread of the coronavirus is in conformity with the ECHR. In this regard, it also examines whether the measures – both of derogation or limitation in respect to the freedom of expression, of movement and to the right to personal liberty, adopted by some States – should be assessed by the European Court of Human Rights, as they do not meet the requirements of legality, necessity and proportionality required by the ECHR. Finally, the paper deals with the effect of the soft law acts issued by UN and ECHR treaty bodies to ensure that the above mentioned measures remain proportional to the threat posed by the spread of the virus and do not undermine the genuine long-term interest in safeguarding Europe's founding values of democracy, rule of law and human rights.

Sarah Lattanzi

The Constitutionalization of the Withdrawal Procedure in Light of Brexit

This article aims at analysing the withdrawal procedure in its actual realization. We start by sketching out the negotiation process in which the first 'red lines' or 'core principles' were outlined. We then examine the scope and nature of those principles and their implementation in the withdrawal agreement. In conclusion, we try to understand how and why it was possible for the EU to impose its objectives and values vis-à-vis a third State. In the case of withdrawal, we argue, this was possible, due to a specific form of 'proceduralization' that is not enshrined in the Treaties but was created in practice. This contributed to the constitutionalization of the withdrawal right from the Union in the course of the Brexit process.

Ugo Villani

Brief Notes on the anomalous use of counter-limits in the judgment of 5 May 2020 of the *Bundesverfassungsgericht*

In its judgment of 5 May 2020, the German Federal Constitutional Court (*BVerfG*) declared that the decision of the European Central Bank concerning the Public Sector Purchase Programme lacked a sufficient assessment on the proportionality of the measures therein envisaged. Moreover, the *BVerfG* found that the judgment of the Court of Justice of 11 December 2018, according to which the decision of the ECB did not infringe the principle of proportionality, was to be considered as *ultra vires*; thus the German Federal Constitutional Court considered itself not bound by such a judgment. The decision of the German judge represents an application of the doctrine of counter-limits which does not seem correct, especially in comparison with the jurisprudence of the Italian Constitutional Court concerning that doctrine.

Andrea Cannone

The Automatism of Confiscation in Cases of Unlawful Site Development under the Scrutiny of the Constitutional Court

The Court of Appeals of Bari doubts of the constitutionality of the legal provision excluding, when the confiscation in cases of unlawful site development is not proportionate to the terms indicated in the *G.I.E.M. s.r.l.* ECHR judgment, a less restrictive alternative measure for those accused with a low degree of culpability or negligence in proceedings statutory barred like the duty of a substantial successive adaptation of the works to the planning regulations. Given that the different envisageable solutions (decision of inadmissibility demanding to the judges the power to evaluate if the confiscation is proportionate or not in case of a substantial adaptation to the original artisan use; declaration of incostitutionality of the automatic application of confiscation; necessity of the legislature to introduce the aforesaid duty of a substantial successive adaptation of the works) present some shortcomings, the decision of the Constitutional Court is crucial. However, the approach of the judges *a quo* is welcomed because they search for a substantial justice solution based on the ECHR judgment.

Alice Riccardi

In Search of a Legal Escape Route. Some Preliminary Thoughts on *M.N. et al. v. Belgium* before the European Court of Human Rights

On 5 May 2020, the ECtHR declared that States parties to the ECHR do not have jurisdiction on humanitarian visa applications lodged at consulates abroad and rejected – albeit implicitly – that States parties have positive obligations on such matter. This article critically assesses both aspects, specifically reflecting on the jurisdictional test elaborated by the Court and on the relationship between this decision and the previous judgment in *N.D. and N.T. v. Spain*. The article concludes that the Court is u-turning, compared to its previous case-law, in both respects.

Eugenio Zaniboni

Containment of Migration Flows and Protection of Fundamental Rights between Effectiveness and Myth: The Prohibition of Collective Expulsion of Aliens after the Case *N.T. and N.D.*

Inter-state cooperation on the management of migrants flows and irregular borders crossings at external borders is focusing on different forms of containment, on a tightening of domestic disciplines and on a related expansion of (pretended) spheres of discretion of States in relation to the respect of the conventional obligations assumed in human rights treaties. In this complicated scenario, the procedural rule prohibiting the collective expulsions of aliens – embodied in Art. 4, Prot. 4, of the ECHR and in Art. 19 of the European Charter of Fundamental Rights – acquires an uncomfortable and uneasy role: a 'hinge-rule', intersecting social needs today more divergent than ever before. According to the Author, this unprecedented issue, which is leading to increased conflicts between legal stakeholders with different social exigencies and expectations, emerges from the *revirement* of the European Court of Human Rights in the judgment *N.T. and N.D. v. Spain*, a controversial decision in which the Grand Chamber declared the non-violation of Art. 4, Prot. 4.

Miriam Postiglione

The Appointment of Former High Representative Federica Mogherini as Rector of the College of Europe: A Few Remarks on the Duties ‘to Behave with Integrity and Discretion’

The aftermath of the appointment of Federica Mogherini as Rector of the College of Europe rose the opportunity to scrutinize such event under the light and scope of the European Law provisions involved. The present paper aims at reflecting on the duties the Treaty imposes on the former Commissioners to behave with integrity and discretion with regard to the acceptance of professional activity once the institutional mandate has expired. The procedure foreseen to this end in the Code of Conduct of the Members of the European Commission and the role of the Commission in the evaluation on the compatibility of the professional with such duties resort the question of the adequacy of the legal instrument to the scope of preserving the general interest of the European Union as a whole.

Anna Forina

The Anti-suit Injunctions after Brexit: Some Considerations in Light of the Withdrawal Agreement

The paper, after framing the anti-suit injunctions instrument, tries to investigate the effect of Brexit on its application in the EU context. As doubts of legitimacy of such an instrument have already been brought to the attention of the EU Court of Justice, which examined it in its relationships with the 'Brussels regime', the paper evaluates the multiple options that could, in the future, regulate the relationship between the United Kingdom and the European Union members in the context of the use and misuse of anti-suit injunctions in both civil and commercial jurisdictional and arbitral litigation.