



## JPs Review of Conferences, Seminars and Events

### **REPORT ON ‘THE ROLE OF COURTS BETWEEN THE CRISIS OF POLITICS AND THE GLOBALIZATION OF ECONOMY’, SEMINAR HELD AT THE SECOND UNIVERSITY OF NAPOLI (26 NOVEMBER 2013)**

by Marco Dani (University of Trento) and Luigi Ferraro (University of Naples II)

The seminar ‘The role of courts between the crisis of politics and the globalization of economy’ was held at the Department of Law of the Second University of Napoli on 26 November 2013. The initiative was included in the PhD programme on ‘The Government of the European Union, social and fiscal policies’ and was part of the PRIN 2012/2014 on ‘Jurisdiction and pluralisms’ (national coordinator, Roberto Toniatti – University of Trento). The event was organized by Lorenzo Chieffi, head of the local unit of research and coordinator of the PhD programme.

It was up to Lorenzo Chieffi to introduce the first session of the seminar. In his opening remarks, Chieffi highlighted the importance of the topic given the economic crisis affecting in the last years Europe and, in particular, Italy. Due to widespread concerns for the sustainability of public debts, several EU member states have been asked to incorporate the principle of financial stability in their constitutions so as to cope with the speculative attacks initiated in the global markets in the summer of 2011. Also Italy codified at constitutional level the balanced-budget principle through the constitutional law n. 1/2012 amending article 81 of the Constitution. In this respect,

Chieffi offered an interpretation of the constitutional amendment and, more in general, of the predominant austerity drive stressing its inherent risks for the protection of social rights. However, important signs of resistance against this trend seem to emerge from the case-law of constitutional courts (see the case of the Portuguese Constitutional Tribunal), the Italian Court of Auditors (section of Campania, 2013) and ordinary courts.

After the introduction, Guido Rivosecchi focused his presentation on the amendment of article 81 of the Italian Constitution. The discussion was framed against the background of the instruments adopted in the Eurozone to cope with the financial crisis since 2011 (in particular: the Euro Plus Pact). After having noted that it is in these legal sources that we may detect the origins of the balanced budget principle, Rivosecchi offered an examination of the contents of the new constitutional regime. Firstly, he pointed out how the reform has been approved with an unprecedented speed. Secondly, he underlined a number of ambiguities existing in the text approved: concepts like “adverse phases” or “favourable economic cycle” are likely to add to the under-determinacy of article 81 and it will be up to the implementing legislation to provide more detailed reference points.

Amedeo Arena (University of Napoli ‘Federico II’) developed an analysis of the ruling of the Portuguese Constitutional Tribunal of 5 April 2013. In that judgment, the Constitutional Tribunal found that several measures contained in the budgetary law for 2012 implementing the agreement between the national government, the Commission, the European Central Bank and the IMF infringed the constitutional principle of equal proportionality. Arena noted that the ruling at issue may be viewed as an application of the counter-limits doctrine and, on this basis, elaborated on the possibility to derogate to EU law and international treaties in order to protect national fundamental values.

Carlo Iannello (Second University of Napoli) focused his discussion on the peculiar contents of the statute of the ECB in respect to those of other central banks. Particular attention was devoted to the impossibility for the ECB to lend to EU member states, an aspect undermining the capacity of this institution to contribute successfully to the solution of the financial crisis. Moreover, Iannello considered with some scepticism the strict approach to fiscal policy dictated by Germany to the other EU member states.

In his view, what is needed, in a context of economic recession, is the possibility of reasonable increases in public spending.

Also Marco Dani (University of Trento) focused his discussion on the case-law of the Portuguese Constitutional Tribunal. He joined Arena in saying that the issue can be classified within the theoretical framework of the counter-limits doctrine. Dani shared also Chieffi's view whereby this type of judgments may be seen as instances of resistance by national courts against the austerity and structural change policies promoted by the Union. In his view, however, these types of judgment do not constitute outright challenges to austerity and structural change; rather, the Portuguese Constitutional Tribunal aims at the more modest goal of making more sustainable and proportionate the pursuit of austerity and structural change.

Roberta Catalano and Daniela Bifulco (both from the Second University of Napoli) devoted their interventions to the "chambers specialized on firms-related issues" (the so-called "Tribunale delle imprese"). Catalano highlighted the purpose of these new chambers, i.e. diminishing the duration of litigation in cases involving medium or large firms in order to favour their competitiveness. Yet, the analysis pointed out a number of criticalities putting into question the efficacy of this legislative solution. Bifulco reflected on the role of the judiciary in the context of the financial crisis. Globalisation has an influence on the role of courts in that their role and rulings assume increasingly the characters of a private good supplied by the state, as if the latter were a services undertaking. According to Bifulco, the 'Tribunale delle imprese' can be seen as an emblematic manifestation of this trend.

Luigi Ferraro (Second University of Napoli) offered a comparative analysis of the implementation of the principle of balanced budgets with particular reference to the Spanish experience, given that also in that country article 135 of the Constitution has been amended. Ferraro examined several critical aspects of this amendment and, especially, its fast approval justified by the need to reassure the European Central Bank and the financial markets on the budgetary discipline of Spain.

A comparative insight was offered also by Giuseppina Passarelli (University of Calabria) through an examination of the *default* of the city of Detroit. Passarelli observed that in the US federal legislation on bankruptcy applies also local authorities, while in Italy a specific legislation has been introduced.

The new version of article 81 of the Italian Constitution inspired also the statements by Raffaele Manfellotti and Gianpiero Coletta (both from the Second University of Napoli). Manfellotti analysed in detail the contents of the new text, while Coletta stressed the correlation between financial requirements and the welfare state. In particular, Coletta elaborated considerations on the principles of equality and social solidarity by focusing on the criticalities existing in the Italian pension reform resulting from the application of the balanced budget principle.

The morning session of the seminar was concluded by Maria Pia Iadicicco (Second University of Napoli) who considered ordinance 207/2013 through which the Italian Constitutional Court has referred to the European Court of Justice interpretative questions on the EU directives on fixed-term work. After observing that the ordinance at hand constitutes the first preliminary ruling raised by the Italian Constitutional Court in *incidenter* proceedings, Iadicicco offered a detailed analysis of the case highlighting its remarkable social implications.

The seminar was closed with a round table on ‘Constitutionalism in the age of economic globalisation’, a discussion inspired by the book of Giorgio Grasso (University of Unsubria) titled *Il costituzionalismo della crisi. Uno studio sui limiti del potere e sulla legittimazione al tempo della globalizzazione* (Napoli, 2012). With this book, the author offers an examination of the topic of the crisis from the perspective of national sovereignty, increasingly eroded by decisions adopted at supranational level liable to affect the level of protection of constitutional fundamental rights. Particular attention in the discussion has been devoted to the letter from the ECB to the Italian government (August 2011) recommending several economic reforms and more stringent constitutional rules to improve the budgetary situation. Grasso concluded calling for a more serious protection of social rights and for a more democratic management of the financial crisis as ways to respond to the current criticalities of European economic governance.

Grasso’s claims prompted a discussion between Carlo Venditti, Claudio De Fiores and Ulderico Pomarici (all from the Second University of Napoli). De Fiores centred his statement on the role of the rating agencies that, in certain occasions, put pressure on debtor states to amend their constitutions. In this regard, De Fiores underlined the risks for popular sovereignty, an element the latter largely ignored in the

financial dynamics of globalized economies. Pomarici followed on this topic by developing philosophical insights on economic crisis and globalization. At this point, Grasso joined his discussants insisting on the opacity of the conduct of rating agencies and their lack of accountability.