

LATIN AMERICA LAW REVIEWS
ON ADMINISTRATIVE LAW

*Silia Gardini**

Latin America Law Reviews on Administrative Law begins from encouraging the encounter between italian doctrine and foreign legal systems, both with their similarities and differences. The aim is to examine in depth the theoretical and practical problems of the Italian Administrative Law, according to a comparative perspective. This paper includes some essays published in Chile, Argentina, Cuba, Perù and Colombia during 2021 about heterogeneous topics in order to offer a multifaceted view to users on the latest latin american doctrine linked to administrative law.

M. Castillo Arjona, *El fenómeno de la COVID-19 y sus efectos sociales en el derecho administrativo del siglo XXI*, 8-1 *Revista euro-latinoamericana de derecho administrativo* 174 (2021).

The phenomenon of COVID-19 and its social effects on XXI century's administrative law.

The paper seeks to analyze the phenomenon of the pandemic generated by COVID-19 from a sociological perspective of law and how it has significantly influenced the deterioration of relationships between citizens and rulers. It tried to address the following central question: how could the relationship between rulers and citizens be improved? The conclusion is that the ideal way to reach a better understanding between Administration and the administered ones is through the revision and reform of the norms of public law.

* Assistant Professor of Administrative Law, University Magna Graecia Catanzaro

The aim of this process is double: on one hand, to evolve towards national standards, on the other hand, to consciously involve the citizen in daily decision-making. Innovation plays an important role too in the process of transforming administrative law. The standards that have been achieved through European law and in Latin America, through Free Trade and Investment Agreements, as well as the remarkable influence of international human rights law on state dynamics, remind a public administration that ensures efficiency, effectiveness, continuity and permanence of the natural elements of the fundamental right to good administration.

Keywords: *administrative law; covid-19; pandemic; 21st century; public management.*

L. Ferney Moreno Castillo, *Potestad normativa en estado de excepción por situaciones de calamidad pública, como el COVID-19 en Colombia*, 27 *Revista Iberoamericana de Derecho Administrativo y Regulación Económica* 374 (2021).

Normative power in state of emergency for situations of public calamity, such as COVID-19 in Colombia

The purpose of the article is to explain the reasons why the normative power of the State proliferates in the state of emergency. A lot of norms have been issued, aimed at avoiding the extinction coming from the effects of the supervening and extraordinary situation, such as COVID-19. Bearing in mind that it has not been possible to deal only with regulatory powers in use of ordinary powers, but it is also been necessary exercising regulatory powers in use of extraordinary powers, with the declaration of a state of exception.

Keywords: *regulation; production of standards; COVID-19; competences; procedure; decisions; state of exception.*

F. Huepe Artigas, *Técnicas y propuesta metodológica para el control de legalidad de los actos administrativos reglados y discrecionales*, 33 *Revista de Derecho Administrativo Económico* 101 (2021).

Techniques and methodological proposal for the control of legality of regulated and discretionary administrative acts.

The paper analyzes the controlling method on administrative acts legality. It happens through several steps, starting with the identification and analysis of the elements of the administrative act, its normative coverage and the detection of the legitimacy flaw of the act in relation to the violated legal rule. The Author believes that technique of administrative discretionary acts' control can be adapted to all kinds of acts.

Keywords: *legality control; administrative acts; discretionary powers.*

J.C. Peláez Gutiérrez, *La responsabilidad patrimonial del Estado y la protección del patrimonio público en Colombia. La cultura de la anticipación como elemento central y articulador de una conciliación urgente, necesaria y posible*, 8-1 *Revista eurolatinoamericana de derecho administrativo* 191 (2021).

The patrimonial liability of the State and the protection of the public patrimony in Colombia. The culture of anticipation as a central and articulating element of urgent, necessary and possible conciliation.

In the paper the author deals with the issue of the contrast between patrimonial liability of the State and the protection to the public patrimony as conflicting extremes that should be addressed legally, in the framework of the Public Legal Defense in Colombia. He believes that the legal way to address the problem comes from the perspective of the culture of anticipation as a central and articulating element of an urgent, necessary and possible conciliation.

Therefore, it is necessary to conceive, develop and lay the foundations for the conception, implementation and consolidation of the anticipative law as an instrument of creation, development and consolidation of a Culture of Anticipation.

Keywords: *Patrimonial liability of the State; protection to the public patrimony; culture of anticipation; anticipatory law; constitutional weighting; public legal defense.*

A. Ramìrez Sànchez, *La responsabilidad patrimonial del Estado. Panorama de su regimen juredico en Cuba*, 19 *Revista Derechos en Accion* 548 (2021).

Public liability of the State. Review on its regulation in Cuba.

The author assumes that public liability confirms the quality of the law rule. Based on the new Constitution, the impact of regulation of public liability requires reflection on the essential aspects of its historical feature, constitutional development and configuration of its legal regime. Therefore, it represents the first patrimonial guarantee for citizens against damages suffered by the exercise of public power.

Keywords: *State; liability; rights; guarantees; reparation.*

P. Gamio Aita, *Retos de la regulacion de las energas renovables alternativas en el Peru*, 19 *Revista de Derecho Administrativo* 23 (2021).

Regulation challenges for alternative renewable energies in Peru.

This work analyses the excessive use of polluting energy (mostly based on hydrocarbons) in Peru, as well as, the challenge of gradually innovation to cleaner and renewable energies that

allow us to cope with climate change. Public policies are needed to promote the sustainable and healthy development of the country. Governance issues and the lacking of a proper institutional structure make the situation difficult to change. It also analyzes the great potential of renewable energies, such as solar, wind and geothermal energies, among others. The regulation will be reviewed to promote the renewable Energy.

Keywords: *hydrocarbons; renewable energies; environmental pollution; climate change; sustainable development; public policies; environment.*

A. Montaña, P. Zapata García, *La necesaria claridad conceptual y teórica sobre los contratos estatales que se rigen por el derecho privado como presupuesto para su control judicial efectivo*, 27 *Revista digital de Derecho Administrativo* 45 (2022).

The need for conceptual and theoretical clarity regarding public contracts ruled by private law, as a tool for effective judicial control.

The paper investigates the matter of public contracts ruled by private law. The fact that public contracts are labelled “especial” in nature when they are ruled by private law is unfair, since this type of public contracts are highly common, in fact. The plethora of issues related to their analysis leads the author to clarify some controversial ideas, fundamental to their judicial review. Given that they do not have a general instrument supervising every contract that the Administration executes, the paper is aimed to identify the main issues related to this topic and to introduce both conceptual order and prerequisites that are necessary in facilitating a thorough and coherent judicial review of these contracts.

Keywords: *public procurement; public contracts; private law; judicial control.*

C. E. Delpiazzo, *Nulidades contractuales en el derecho público uruguayo*, 25 *Revista digital de Derecho Administrativo* 109 (2021).

Contractual nullities in Uruguayan public law.

According to the author, contractual nullities are the result of non-compliance with a rule of law. This observation, common to different disciplines, is relevant to public contracts that lack a specific positive regulation on the subject. This allows to assess contractual pathologies from a classic classification. The latter distinguishes the subjective nullities (related to both the administration and the contractor), the objective nullities (referring to the illegal object and cause of the contract), and the additional nullities (derived from formal vices). Behind the referral to the Civil Code to distinguish the nullity from the annulment, as well as, to appreciate different grounds for nullity, the peculiarities of the public contract impose special assessments. Such evaluation derived from the nature of the affected interests, the contractual good faith principle, the importance of publicity and competition, the reasonableness inherent to administrative actions, and the special interpretation of contracts.

Keywords: *public procurement; administrative contract, nullities, void-ability, contractual good-faith.*

T. Reis, R. Alves, R. Dantas, *Imprecisiones en materia de indemnizaciones en los contratos de concesiones y asociaciones público privadas en Brasil*, 25 *Revista digital de Derecho Administrativo* 213 (2021).

Imprecisions in the matter of compensations in concessions and public-private partnerships in Brazil.

Until recently, the subject of contractual terms has not enough stressed in the discussion about the structuring of

concessions and public private partnerships (PPP) in Brazil. However, the practical challenges experienced by the Public Administration on this matter revealed the need for its review. As a matter of fact, early contractual terminations and the duty to provide a previous response to the effects of each event became more compelling in a credit crisis scenario, in order to allow an early termination. Despite the development of decision-making techniques in Brazilian law, some inaccuracies and scepticism can still be found regarding the amount of compensation due and its quantification in concessions agreements and PPP.

Keywords: *infrastructure; concessions; public private partnerships (PPP); project structuring; contractual terms.*

E. Cordero Quinzacara, *El permiso de construcción desde la perspectiva del Derecho administrativo general. Análisis de sus principales problemas a nivel jurisprudencial*, 33 *Revista de Derecho Administrativo Económico* 33 (2021).

Urban planning licenses in general Administrative Law. Analysis of its main problems in Jurisprudence.

This research aims to analyze the urban planning license in Chile and the way it has been incorporated into the institutions and the concepts of administrative law, considering positive legislation and jurisprudence from a vision of urban law. In addition, it is shown how this license constitutes one of the main categories of analysis to strengthen general administrative law and provide conclusions that are projected in various areas of this discipline, such as the existence of rights that have their source in legal-administrative titles, the effects of the invalidation, the extinction for the term and the judicial and administrative actions.

Keywords: *urban planning; licenses; construction; urbanism.*

R. Pacheco Reyes, *Los conceptos de función administrativa y servicio público en la jurisprudencia y en la doctrina iuspublici stacombiana*, 26 *Revista digital de derecho administrativo*, 11 (2021).

The Concepts of Administrative Function and Public Service in Colombian Judicial Rulings and Scholarly Works in Public Law.

The research highlights the main thesis that either equate or differentiate the concepts of administrative function and public service in Colombia. The main argument distinguishes public service from administrative function by resembling the later with public prerogatives; an organic position simplifies public services by making them dependent on the nature of the service provider; and a finalist perspective requires explicit rules to resolve procedural aspects arisen when the administrative function may not be authoritative and governed under private law. The theoretical highlighted inconsistencies explain why the concepts of public service and administrative function request caution against common generalizations and are still a relevant topic in the field of public services.

Keywords: *Administrative Function; public service, economic activity, public function, state prerogatives.*

J.J. Rastrollo Suárez, *Contratacion publica y programas de cumplimiento empresarial en América Latina: los casos de Brasil y Colombia*, 26 *Revista digital de derecho administrativo*, 197 (2021).

Public procurement and regulatory compliance in Latin America: the cases of Brazil and Colombia

The article analyzes regulatory compliance as a tool to prevent corruption in the area of public procurement. Firstly, it examines the introduction and integration of regulatory compliance in the field of Public Law from its incorporation to U.S. American and European law. Secondly, it analyzes the introduction and development of regulatory compliance in Latin American legal systems,

with special attention to the national cases where regulatory compliance has been most advanced, such as Brazilian and Colombian law.

Keywords: *business compliance; public procurement; self-regulation; inspection; control; Latin America.*

M.A. González Maldonado, R. Rivero Ortega, *La codificación del procedimiento administrativo en América Latina. Un hito más*, 27 *Revista Iberoamericana de Derecho Administrativo y Regulación Económica* 684 (2021).

The codification of administrative procedure in Latin America. One more milestone.

A new administrative procedure Act is always an event for public Law. The processing of the bill in the Paraguayan Congress gives to the doctrine the opportunity to participate in the improvement of this text and to mention other recent legislative initiatives in El Salvador. Therefore, the paper analyzes the project of a procedure law, the first Paraguayan legal text which incorporates the express recognition of administrative law general principles, such as legality and rationality. Latin American norms show inspiration from Spanish Law, also reflected in the Ibero American Chart of Citizen's Rights and Obligations, approved by CLAD in the XXIII Ibero American Summit of Heads of State.

Keywords: *administrative procedure; state reform in Latin America; citizen's rights; innovation in public administration; comparative law.*

L. E. Ferreyra, *Contratos de participación público privada*, 19 *Revista Derechos en Acción* 510 (2021).

The work depicts the legal regime of public-private participation contracts (PPP) in Argentina. Likewise, the main

characteristics of PPP contracts are here presented. Moreover, it addresses the problems that the initiatives suffered due to the economic and financial turbulence of the country, which, in turn, were used to justify a new and irregular loan with the International Monetary Fund (IMF). IMF conditions led to cuts in the works program, particularly those to be carried out with PPP contracts. However, the fragility of the PPP plan exhibited other transparency and sustainability deficiencies. Finally, the few PPP contracts that were entered into for highway corridors are examined and the reasons for their termination are developed.

Keywords: *Public administration; contracts; Public Private Participation; PPP contracts; monetary fund.*