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Fundamentals of Italian Private Law

Summary: 1- Private Law and Public Law; 2- Hierarchy of Sources of Law in the Italian Legal System; 2.1- Constitution and Private Law; 2.2 – Community Legislation and Italian Private Law; 2.3. -The Role of Court of Justice of the European Communities (CJEC) and of European Court of Human Rights (HUDOC); 2.4 Law and Regulations; 2.5. Civil Code, Decodification and Recodification; 2.6. – Customary Private Law and Soft Law; 3.- The Role of Courts and Legal Scholars.

1- Private Law and Public Law.

The Oxford Legal Dictionary defines private law as "The part of the law that deals with such aspects of relationships between individuals that are of no direct concern to the state. It includes the law of property and trust, family law, the law of contract, mercantile law and the law of tort."

Accepting such a definition, we could assert that there's a strict distinction between private and public law.

Regarding to Italian legal system, the above division needs to be revisited according both to Italian law and to Italian jurisprudence.

As stated by art. 1 bis of the law 241/1990 on administrative proceedings and by art. 2, comma 4 of the law 163/2006 on public contracts, civil code works in public administration activity and especially in public amministration contracts if and when there's no specific dispositions within the rules of public law.

Moreove, untill 1999 there was no common opinion on the liability of a public administration.

In 1999 the Italian Supreme Court, taking into account scholars opinion, asserted that public administrations can damage individuals by failing to excise their power properly.

The liability of public administration is assed by applying general principles and rules on the torts contained in the civil code.

Last but not least, art. 118 of Italian Constitution (C.) says: "Administrative functions are attributed to the Municipalities, unless they are attributed to the provinces, metropolitan cities and regions or to the State, pursuant to the principles of subsidiarity, differentiation and proportionality, to ensure their uniform implementation… The State, regions, metropolitan cities, provinces and municipalities shall promote the autonomous initiatives of citizens, both as individuals and as members of associations, relating to activities of general interest, on the basis of the principle of subsidiarity."

The Principle of subsidiarity states that a wider and greater body, such as a government, should not

exercise functions that can be carried out efficiently by a smaller one, such as an individual or a private group, acting independently ([1]).

So individuals or associations, acting independently according to the rules of the Italian private legal system, could active solutions of public interest and the State, regions, metropolitan cities, provinces and municipalities shall promote citizens' autonomous initiatives.

2- Hierarchy of Sources of Law in the Italian Legal System

Italian private legal system fixes a hierarchy of norms taking into account the peculiar source from which the norms derive ([2]).

The principle of normative hierarchy states the relationships and the order between normative dispositions and the level of different authorities.

Art. 1 of Preliminary dispositions to the Italian civil code and the Constitution draw the following order among normative statements: Community legislation, Constitution, Laws, Regulations (the administrative rulings), customary law.

We can't understate the recent crisis of legislation and of the principle of hierarchy of sources of law.

The number of norms (constitution, community legislation, international treaties, ordinary law, regulations) produced to meet the needs of our developing society and the strong interplay between them, is undermining the certainty of the law and enhancing the judges power. We talk about "complexity of law". ([3]).

Moreover art. 117 C., as modified in 2001, states that "Legislative powers shall be vested in the State and the Regions in compliance with the Constitution and with the constraints deriving from EU legislation and international obligations.

The State has exclusive legislative powers in the following matters:

a) foreign policy and international relations of the State; relations between the State and the European Union; right of asylum and legal status of non EU citizens;

b) immigration;

c) relations between the Republic and religious denominations;

d) defence and armed forces; etc….

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[1] See GELAUFF, GRILO, LEJOUR, *Subsidiarity and Economic Reform in Europe*, Springer, 2008 and BOADWAY, GOLLIER, HINDRIKS, PESTIEAU, SCHOKKAERT, SPINNEWIJN, VAN PARIJS, DECOSTER, AND VERWERFT, *On the interaction between subsidiarity and interpersonal solidarity*, http://www.rethinkingbelgium.eu/rebel-initiative-ebooks/ebook-1-subsidiarity-interpersonal

[2] IUDICA- ZATTI, *Rules and Language of Italian Private Law. An Introduction* (Italian ed. *Linguaggio e regole del diritto privato*, Cedam, 2003) translated by J. FUNCK, edited by S. LIEBMAN and A. MONTI.

Concurring legislation applies to the following subject matters: international and EU relations of the Regions; foreign trade; job protection and safety; education…etc."

The principle of hierarchy is eroded by the principle of competence and of subsidiarity.

We can say that we have still no a strict hierarchy of sources of law. We have a multilevel protection of rights and judges try to govern such a complexity by applying ordinary laws, according to community legislation and to constitution, integrated by regulations and customary law.

2.1. Constitution and Private Law

The Constitution of the Italian Republic was enacted on 22 December 1947.

It's composed of the following parts: fundamental principles, rights and duties of citizens, the organisation of republic.

According to art. 136 C. every law needs to be conformed to the Constitution and the Constitutional Court has to pass throw judgement on controversies on the constitutional legitimacy of laws.

However, considering the Italian jurisprudence it becomes evident that Constitutional principles don't represent only a limit to the legislator, but they play a significant role in private law evolution.

Lately the Constitutional Court tends to avoid pronunciations on legitimacy or illegitimacy of the parliament laws and invites judges to read the law in a constitutional term ([4]).

Therefore, according to Italian scholars opinion, judges have to themselves put into force Constitution ([5]).

Constitution recognizes fundamental rights of the citizens that have been protected by civil law remedies.

On first, we have to keep in mind some fundamental norms from the private legal system point of view such as Constitutional norms that conceive the idea of "Person" as an individual or in social communities.

According to art. 2 "The Republic recognises and guarantees the inviolable rights of the person, both as an individual and in the social groups where human personality is expressed. The Republic expects that the fundamental duties of political, economic and social solidarity be fulfilled"

As said Einaudi "the constitution recognizes the right of citizen to be left alone and the right to be

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[3] GROSSI, *Crisi delle fonti e nuovi orizzonti del diritto,* Satura, 2009.

[4] Italian legal scholars talk about "interpretazione della legge in senso costituzionalmente orientato"("Laws interpretation accordino to Constitutional principles "). See RESCIGNO G.U., *Interpretazione costituzionale e positivismo giuridico*, in *Dir. pubbl*., 2005, 29; GUASTINI, *Componenti cognitive e componenti nomopoietiche nella scienza giuridica*, ivi, 2004, 931 s.; PACE , *Metodi interpretativi e costituzionalismo*, in *Quad. cost*. 2001, 35 ss.

[5] PERLINGIERI P., *Il diritto civile nella legalità costituzionale*, ESI, 1991.

left free in the activity in which his life, both as an individual and as a member of the community, is fulfilled. But it does more than bar the state from entering these areas of freedom; it directs the state to lend the active support of its machinery to the securing of those rights to work, to security, to welfare, to education, which are today considered an essential part of any organized political society" ([6]).

Article 3, providing that "all citizens have equal social dignity and are equal before the law", contains some fundamentals criteria for law interpretation: rationality, proportionality and solidarity.

Private spheres are protected by the guarantee of "Personal liberty" (art. 13 C.) and "Inviolability of personal domicile" (art. 14 C.).

Also private activity is protected as a fundamental right. According to the art. 18 "Citizens have the right to form associations freely and without the authorization for those ends that are not forbidden by criminal law". However the most important constitutional norm on private autonomy is contained in art. 41, as we are going to say.

Article 32, providing that "the Republic safeguards health as a fundamental right of the individual", has had remarkable importance in regard to tort laws. Infact article 2059 c.c. allows compensation for unpecuniary losses only in the cases stated by legal dispositions such as in case of personal damages arising by a violation of a criminal law, as asserted by art. 185 c.p. However we have to include also the Constitutional provisions into legal provisions about which is spoken in art. 2059. Thus in case of individuals' health (art. 32 C.) violations judges can order compensation also for unpecuniary losses ([7]).

Constitution has had a remarkable impact as regards family laws ([8]), introducing the principle of equality between spouses and between children born in and out of marriage .

On second we have to keep in mind constitutional norms on economic rights and duties that have had a strong importance in the evolution of the concepts both of private autonomy and of property.

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[6] EINAUDI M., *The Constitution of the Italian Republic,* in *American Political Science Review,* XLII, 1948, pp. 661-676 in www.jstor.or

[7] Corte Cost. 233/2003 recognizes unpecuniary losses not only in case of the violation of criminal laws or of other legal provisions but also in case of constitutional interests "lesione di interessi di rango costituzionale": C. Cost, 30.6- 11.7. 2003, n. 233, in *Foro it*., 2003, 2201 con nota di E. NAVARRETTA, *La Corte Costituzionale e il danno alla persona <<in fieri>>;* in *Giur. it.,* 2003, 1776 con nota di P. CENDON – P. ZIVIZ, *Vincitori e vinti (…dopo la sentenza n. 233/2003) della Corte Costituzionale.*

[8] See also par.2.5.The article 29 C. states that "The Republic recognises the rights of the family as a natural society founded on marriage. Marriage is based on the moral and legal equality of the spouses within the limits laid down by law to guarantee the unity of the family". According to the art. 30 "It is the duty and right of parents to support, raise and educate their children, even if born out of wedlock. In the case of incapacity of the parents, the law provides for the fulfilment of their duties. The law ensures such legal and social protection measures as are compatible with the rights of the members of the legitimate family to any children born out of wedlock".

Article 41 C. says that "Private economic enterprise is free. It may not be carried out against the common good or in such a manner that could damage safety, liberty and human dignity". So Constitution seems to recognize private authonomy in the light of social responsibility.

Also the right of property is not recognized as a fundamental rights. It's asserted in the perspective of the limits to individual autonomy regards to the concept of social function. Article 42 C. states that "Private property is recognised and guaranteed by the law, which prescribes the ways it is acquired, enjoyed and its limitations so as to ensure its social function and make it accessible to all".

At last, we can note that constitutional values are taken into account in the interpretation of general clauses. In civil law systems, legislator uses "general clauses" such as good faith (art. 1366, 1175, 1375 c.c., art. 33 consumer law-dlgs. 206/2005), equity (art. 1374 c.c.), "public order" (art. 1343 c.c.) etc.We can try to define the term "general clauses" as "flexible rules" that increase the role of judges in making laws. Therefore general clauses can play an important function in counterbalancing the abstract binding force of a law and concrete social economic issues ([9]).

Let's think about the meaning of the Italian "ordine pubblico". It comes from the French "ordre public" and evokes the fundamental principles of the legal system contained in the Constitution ([10]). According to artt. 1343 and 1346 c.c., a contract is void, if its object or its function is contrary to public order and good morals. Thus a contract of buying or selling votes or political influence is illegal and void because it goes against principles of the "ordine pubblico". Infact such a contract is against the art. 48 of Constitution that says: "Any citizen, male or female, who has attained majority, is entitled to vote. The vote is personal and equal, *free* and secret."

Eventually we can note an evolution in the Italian model of judicial review by emphasizing the creativity of the Constitutional Court and the relations with the judiciary and the legislature.

2.2 – Community Legislation and Italian Private Law;

The European law has significantly affected national private law systems with special regard to the impact of European directives on Italian private law legislation (such as consumers' laws, insurance laws, etc.) ([11]).

As well known, a directive is a legislative act of the European Union that "shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the

[9] Regards to Italian "good faith" see TROIANO, *Interpretation of general standard of good faith and the list of unfair terms*, in www.secola.org

[10] FERRI G.B., Ordine pubblico, buon costume e la teoria del contratto, Giuffré, 1970

[11] P. GROSSI, A History of European Law (Making of Europe), Hopper translator, Blackwell Publishing, 2010

national authorities the choice of form and methods" (art. 288 of " The Treaty on the Functioning of the European Union").

We can't understate the relevance of the Convention for the Protection of Human Rights and of the Charter of Fundamental Rights of the European Union (the so called Chart of Nice), that sets out the whole range of civil, political, economic and social rights of European citizens and all persons resident in the EU.

The Chart of Nice is now part of the Lisbona Treaty signed in 2007 and ratified by Italy in 2008.

According to Article 51 of the Chart: " The provisions of this Chart are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application there of in accordance with their respective powers". Most of the principles asserted by the Chart have a deepen impact in Italian private law system such as dignity, equality…etc

There can be another relationship beetween Community Legislation and Private Law. As Christian Joerges has lately noted it could be to wonder whether the European law has affected national private law systems or on the contrary, whether the national private law systems of the European Union member States are of any relevance for European integration ([12]).

We can refer to the Common Core Project involving more than one hundred scholars mostly from Europe and the United States.

They are trying to derive the common core of the of European private law from the various legal systems of European Union member states.

2.3 The Role of Court of Justice of the European Communities (CJEC) and of European Court of Human Rights (HUDOC)

Court of Justice of the European Communities (CJEC) and European Court of Human Rights (HUDOC) also have significantly affected the national private law.

The Court of Justice of the European Communities ensures that the EU legislation is interpreted and applied in the same way in all EU countries.

The rules on the interpretation of provisions contained in the Community law, such as directives that are binding upon every Member State, the judgments of CJCE can be important for a national private law innovation.

The European Court of Human Rights is an international court set up in 1959. It rules on individual

[12] JOERGES , *The Impact of European Integration on Private Law*, *Reductionist Perceptions, True Conflicts and a New Constitutional Perspective*, in *European Law Journal*, Vol. 3, No. 4, December 1997, pp. 378–406

or State applications alleging violations of the civil and political rights set out in the European Convention on Human Rights.

2.4- Law and Regulation.

Law takes the first place in normative hierarchy according to article 1 of "Preliminary dispositions to the civil code", but , as we have just said, it has to be considered also the Constitution - enacted in 1948 - and the 1957 European Treaties.

Under the term of "Law" we shall include: laws of Parliament, and some acts of the Government: "Decreti legge" and "Decreti legislativi".

As well known, the legislative function is exercised by both Houses (Camera and Senato). Legislation can be introduced by the Government, by a Member of Parliament and by those entities and bodies so empowered by constitutional amendment law.

The Government, in case of necessity and urgency, adopts under its own responsibility a temporary measure called Decreto legge. Such a measure loses its effect from the beginning if it is not transposed into law by Parliament within sixty days of its publication.

The exercise of the legislative function can be delegated to the Government according to principles and criteria established by the Parliament with a "Legge Delega" and then only for a limited period of time and for specified purposes. Such decrees of government are called "Decreti legislativi".

They have a very important place in Private law system. The consumer code is a "Decreto legislative". The Civil Code is a "Decreto legislativo" too.

Government and public Authorities adopt regulations that are second class sources of law. So they have to be conform to law.

Italy is divided in Regions. According to art. 117 C. every Region has legislative power in some residual matters. In other cases (such as urbanistic law, health, sports, transports, energy, etc) it is provided a concurrent competence of State and Regions.. In matters of national interest (such as immigration, public order, military force, justice ecc.) only the State has legislative power.

Regulations of public authorities (such as Isvap, that controls insurance market, and Consob, that controls banking market) play a relevant role in private law system.

For instance on 26 May 2010 ISVAP published Regulation number 35 on the disclosure duties of insurance undertakings (with particular regard to pre-contractual information to the insured parties) and the advertisement of insurance products.

2.5 The Civil Code. Decodification and Recodification?

The Italian Civil Code, adopted in 1942, consists of 2969 articles divided into six books organized

as follows ([13]):

First Book	Individual Rights & Family Code
Second Book	Succession Law (Italian Inheritances)
Third Book	Real & Personal Property
Fourth Book	Contracts
Fifth Book	Labor & Corporations
Sixth Book	Protection of Individual Economic Rights

The first book contains definition about juridical capacity and legal capacity.
Natural persons and legal entities have juridical capacity that can be defined as the possibility to be the subject of legal relations.
Individuals of age and legal entities have "capacity to act", that is the power to do valid acts with legal effects.
To provide a complete definition of the concept of person it is necessary to identify the moment at which the person comes into existence from a legal point of view ([14]).
The Italian Law of 19 February 2004, no. 40 contains 'Rules governing medically assisted procreation' . Its purpose is to "enable the solution of reproductive problems deriving from human sterility or infertility'. But such a law consists mainly of prohibitions:

- prohibition against experimentation on embryos (Article 13 paragraph);
- a prohibition against research not intended for the protection of the health and for the development of the particular embryo that is the subject of the processing for the purposes of fertility (Article 13 paragraph 2);
- a prohibition against producing embryos for the purposes of research and experimentation (Article 13 paragraph 3 letter a));
- a prohibition against any form of selection of embryos for eugenic purposes (Article 13 paragraph 3 letter b));
- a prohibition against premature fission etc. of an embryo even for the purposes of procreation (Article 13 paragraph 3 letter c));
- a prohibition (Article 14 paragraph 1) against the preservation of embryos by freezing (except for reasons of a sudden crisis in the health of the woman, pursuant to Article 14 paragraph

[13] TIGGIANO, *Toward a civil code. The Italian Experience*, http://www.teoriaestoriadeldirittoprivato.com/index.php?com=statics&option=index&cID=132

[14] ALPA, *New developments of Italian law about the use of embryos in assisted procreation*. www.revistapersona.come

3) and against the destruction of an embryo (Article 14 paragraph 1); and a prohibition against the production of supernumerary embryos (beyond the number three) (Article 14 paragraph 2).

The first book, when enforced in the 1942 code, that was conservative and discriminatory, took a position toward wives and children perhaps even more strict than that of the 1865 code. We have to consider that the 1942 code shows the authoritarian vision of family enveloped by fascist regime.

Italian family law has been strongly reformed, according to constitutional values. The most important innovation has been introduced by divorce law (issued in 1970) and by family law (enforced in 1975), which concerns the relationships between spouses, between parents and children, between children born in and out marriage.

The evolution of family laws has had a relevant impact on inheritance law too, with a specific regard to the relationship between parents and children born out of wedlock ([15]).

The last innovation of inheritance law concerns mortis causa contracts. According to art. 458 c.c. mortis causa contracts are null. A mortis causa contract is an agreement regards to the transfer of personal assets for the time of the death of the owner.

Such a disposition seems to be in conflict with the typical economic and financial aims of companies: efficiency and stability.

Italian legislator have recently introduced some legal instruments to allow to the business-owner to plan the transfer of his business before his death.

In the civil code there are two different kinds of solution: the first one concerns "companies rules". Statutes can provide limits on the transfer of shares *mortis causa* according to new article 2355-bis (introduced by d.lgs. 6/ 2003) ; the second instrument concerns the "Family Pact" which was recently introduced in to the Italian legal system as an alternative opportunity to manage the "transfer of the business". The rules of "Family Pact" are contained in art. 768-bis and follows (introduced by law n. 55/ 2006).

Private property and private autonomy have a central position in the civil code of 1942.

Making a comparison the 1942 code has made the attempt to change the individualism characterizing the previous 1865 code. So property has been redefined within 'the limits and […] the obligations established by the legal order' (art. 832).

Such a limit on properties is further enlarged in the 1948 Italian Constitution.

Article 832, in spite of art. 436 of 1865 code, doesn't contain a definition of 'property' but describes the characters of owners' powers.

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[15] MARELLA, *Radicalism, Resistance and the Structure of Family law*, in www.legalleft.org

The main and important, character of the 'ownership' concept is to be absolute within the limits established by the law.

The "Possession" receives legal remedies deeply inspired by Roman legal tradition in Italian legal system. The "Possession" is defined in art. 1140 as: 'the power over a thing that is proved by an activity corresponding to exercise of ownership or other real right. One can possess directly or by means of another persons, who has merely detention of the thing'.

The art. 1168 of the Italian civil code says that "one who has been violently or by stealth deprived of possession can, within one year since the dispossession, sue the guilty to recover possession".

The book four contains rules on obligations and contracts. Contracts are one of the source of obligation. Infact, according to the art. 1173, obligations can arise from a contractual bargaining, from torts , unilateral promises, unjust enrichment, restitution and others acts indicated by the law.

Scholars say the 1865 code beeing the code of property, while the 1942 code beeing the code of private autonomy ([16]).

Infact one of the fundamental principles contained in 1942 civil code is that the parties are free to manage their economic relationship (art. 1322 civil code). The Civil Code contains provisions ruling general contract principles and also provides for specific types of agreements, such as sales contracts, agency agreements, lease contracts, loan agreements, and insurance agreements. However, most rules can be modified by an agreement between the parties.

Thus scholars use to say that private autonomy is a source of law ([17]).

The fifth book contains provisions on business associations, corporate finance, security regulations, unfair competition, trademarks and trade names, copyright, as well as 'labor law'. But the most important act on labour law is the statute of workers' rights L. 300/1970, which is out of code civil.

The sixth book contains rules about the 'protection of rights'. The main topics of this book are: transcription, law of evidence, mortgage, limitation of actions.

Not all private rules are part of civil code. Let's think to the Law on rent L. 392/1978 as revised by L. 431/1998; divorce act L. 898/1970 as revised by L. 74/1987; consumer code d.lgs. 206/2005. Such special laws break up the original unity of the civil system and seem to create a plurality of microsystems inspired by various principles.

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[16] FERRI G.B., *Divagazioni di un civilista sui concetti, sui valori e sull'idea di codice civile*, in *Dirittto e Giurisprudenza*, 2006, p. 121.

[17] VASSALLI F., *Extrastatualità del diritto civile,* in *Studi in onore di A. Cicu,* Milano, 1951, vol. II, pp. 481 ss.; CESARINI SFORZA W., *Il diritto dei privati,* in *Riv. it. sc. giur.,* 1929, p. 43 ss.

Scholars speak of a "decodification". Such a phenomenon is well known in all civil law systems. According to Diez Picazo "decodification is the proliferation of special legislation outside the codes that causes important fissures in the unit body of the civil codes." ([18]).

As Dies Picazo notes there are other two decodification causes: the increasing of the role of judges in making law and the constitutionalism growth. As also Merryman says, "the civil codes no longer serve a constitutional function" ([19]).

The proliferation of special legislations has caused confusion and uncertainty . The foresaid problems have find a solution (but is it a real solution?) in the revision of the codes incorporating special legislations and in the creation of new special codes such as the consumer code, the insurance code, the privacy code etc. Such a phenomenon is commonly known as "recodification."

2.6. – Customary law

The last source of Italian private law is the customary law that we find when a certain legal practice is attended and the relevant actors consider it to be a law. So opinio juris is an essential element of customary law, that differs from the mere usages.

According to article 8 of Preliminary dispositions to the Italian civil code, customary laws have been applied only when a law refers to customary laws.

Italian scholars, interpreting art. 8, state that customary laws can not be against the law (so-called "usi contra legem") but they could fill up the lacks of a written law (so-called "usi praeter legem").

Customary law has to be distinguished from conventional customs, that lead the parties to an agreement. A conventional custom is a fixed practice which is binding because it has been expressly or impliedly incorporated in a contract. Civil code refers to conventional customs as source of integration for a contract (art. 1340).

Customary law need to be distinguish from soft-law too. Soft law is rapidly developing in private law system The term "soft-law" refers to a great variety conduct rules that haven't the same law power: declarations of principles, codes of practice, recommendations, guidelines, standards, charters, resolutions, etc. Although all these kind of rules are not legally binding, there is an expectation that they will be respected and practiced by the community of individuals.

Soft law is commonly distinguished from "hard law". The term "hard law" indicates all rules legally binding. Therefore "hard law" may be a superfluous term . Every law is hard but we may use the term "hard law" to distinguish this kind of law from the so-called "soft law".

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[18] LUIS DIEZ PICAZO Y PONCE DE LEON, *Decodificación, Descodificación y Recodificación*, ANUARIO DEDERECHO CIVIL, Apr.–Jun. 1992, 473

[19] JOHN MERRYMAN ET AL., THE CIVIL LAW TRADITION: EUROPE, LATIN AMERICA AND EAST ASIA 3 (1994), 1244

Is “soft law” a kind of customary law?

The fact is that, as foresaid, a customary law is a source of law. It is to say a kind of the so-called “hard law”. Thus customary law is distinguished from a “soft law”, which is not legally binding.

Soft law has been having a deepen impact regards to consumers’interests protection. Principles of consumers’ protection were officially stated in European law in 1975 by the resolution of 14 april 1975 on a preliminary program of the European Economic Community for a consumers’ protection and information policy.

The program included the right to protection of health and safety, the right to protection of financial interests, the right to compensation for damages, the right to information and education, and the right of representation. Since then, the Community policy on consumers’ protection has been increasing. Consumers’ interests have been specifically identified in various normative contexts on both national and community levels ([20]).

Anyway it’s a matter of fact that consumers’ interests are not only under the protection of the law. At the present time we have also to consider the interplay between consumers law and the rules contained in codes of business conduct ordered to enhance customers’ satisfaction ([21]).

Companies take continuous effort to maintain high customers’ satisfaction levels. Customers’ satisfaction is important for the success of firms because it permits to repeated purchases level and word-of-mouth recommendations. It is also the most reliable indicator of the service quality offered to customers.

Business organizations need to find new strategies to meet competition other than the traditional ways. Today they are responding to these challenges by establishing more collaborative relationships with their customers

Companies ask their consumers for feedback about their products, services, slogans, logos, etc. They ask questions verbally or in questionnaire form.

As with any other branch of science, a rigorous approach needs to be taken in designing and executing questionnaire studies.

In case of customers’ satisfaction questionnaires, for instance, it’s important to note that satisfaction depends on expectations. If customers have high expectations, they will be often disappointed even in the case of services superior in 'absolute' terms”.

The results of customers’ satisfaction questionnaire have been used also to formulate and

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[20] Paul Craig, Gráinne De Búrca, The Evolution of EU Law, 2011; Geraint G. Howells, Stephen Weatherill, Consumer Protection Law, 2005; Bourgoignie – Trubek, Consumer Law, Common Markets and Federalism in Europe, 1987

[21] Fernando, Business Ethic and Corporate Governance, 2010; Mullerat- Brennan, Corporate Social Responsibility, 2010

implement code business conducts.

Making rules ordered to high standards quality is part of customers' satisfaction process. Companies practice business ethics by adopting codes of conduct (or ethic codes). It's important to create good relationships with business partners, both suppliers and customers, in order to benefit from fair business together and to ensure customers' satisfaction through high quality products, good pricing, on-time delivery and excellent service.

Of course all directors, officers and employees must respect and obey applicable laws and regulations. Code of conducts is just a particular kind of policy statement. It is a set of principles of conduct within an organization that guide decision making. Usually such code is binding on directors, officers and employees, with specific sanctions for its violation.

Business ethics emerged as a specialty in the 1960s in the tracks of the "social responsibility" movement. More recently, it has been emerging the influence of corporate social responsibility on customers' satisfaction.

Companies have been writing codes of business conduct for decades, but the role of such codes is changing. The focus is shifting from writing a system of norms to regulate conducts within a company to leveraging a code of values that inspires a good performance among employees, management and executives according to consumers' interests too.

3- The role of courts and legal scholars

During the last century the approach to solve juridical problems has been widely dogmatic and positivistic also in Italy. Civil code and written laws have had a central task and there has been the preassumption that the law is a coherent system of rules by which it is possible to find the solution to any specific question.

If we consider the function of courts in law sources, we wonder whether judges draw their decisions from legal rules and principles, or they decide cases in the light of what is fair by examining the facts at hand.

We have just spoken about it with specific regard to the constitutional interpretation and to the role of "general clauses" in civil law systems.

In addition we can note a crisis of brocardo "in claris non fit interpretatio". The legal language is ambiguous because legal terms generally can have two or more distinct meanings. The text clearness is the result of an interpretation, not the premise to elude interpretation. In such a perspective all norms need to be interpreted and revisited by judges.

Judges create law not only by applying the interpretation rule of analogy (see the art. 14 preliminary disposition) that works in case of law lack in the civil law system. According to the analogy matters

in case of similarity between two situations judges can decide the case, that has not its own rules, by the application of the rules provided for the other one.

Therefore it is now widely accepted that court decisions should be considered as a source of law also in civil law systems.

Something similar could be said about the role of legal scholars.

The object of study for most legal scholars is still positive national law, but scientific products are also notes under court decisions, papers and monographs, that offer an interpretation of law.

Generally speaking regarding the crisis of formalism in the new European legal culture Hesselink concludes "in a code system the courts and the scholars together master the gap between the abstract rules and the specific cases (concretisation) that legislator has left. Legislator (necessarily) provides abstract rules, the scholars are the expert on what their specific implication are, and the courts (inspired by these scholars) decide what they mean in specific case" ([22]).

[22] Hesselink, The New European Private Law, The Hague-London- New York, 2002, 16