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Agriculture, Food, Environment: toward a globalised framework of justiciability

ABSTRACT

European Agri-Food and Environment Law are increasingly characterised by a peculiar way of rule-making, where multilevel sources of law overlap and interact, and where private and public responsibilities are brought to unity through vertical and horizontal cooperation.

Globalisation of production and trade opened the way to Globalisation of rules, where European, International, National and Regional level play roles which cannot be reduced into the traditional hierarchical framework.

In this perspective European Agri-Food and Environment Law, by their proper nature, must now be appreciated as European and Global Law, in the true comparative sense of communication and contamination among legal systems, leading to the conclusion that within the present dimension many global sources of law concur to build new models of European Governance in this sensitive area of experience.

International agreements certainly have played and are still playing a decisive role. It is sufficient here to mention the WTO agreement, the well known cases discussed before WTO panels (from use of hormones in bovine meat, to GMOs, to GIs), the Treaty signed by EU and Vietnam, the CETA, the negotiations on the TTIP even if not arrived to a final result, and recently Reg. (EU) 2019/1753 on the accession to the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications.

Together with those sources a relevant role is played by recommendations of organisations and institutions, like Codex Alimentarius Commission, UNECE, OIV, which as a matter of principle are classified as soft law, but in most cases benefit of a role very near to hard law.

Finally, a decisive and increasing role is played by what legal scholars qualified as legal transplants, and that we could consider as the shared dimension of Law.

We must therefore recognize that we are facing an increasing communication of legal model within a global framework, with the tendency to share models and answers on the basis of shared experiences, in the two aspects of including external sources within the internal legal system and, on the other hand, of acting as source (or at least as model qualified and complied with) of rules that have effect beyond geography and political sovereignty.

Even sources of law are largely involved in this process.

The traditional border between public and private law sources is becoming difficult to trace in EU Agri-Food, and Environment Law, where regulatory authorities, technical rules and standards are typically transnational, and standards of private-law origin have large and relevant impact on the effective governance of the sector, giving place to what has been meaningfully qualified as the "Hybridization of Safety Governance".

Conversely, the Community, Euro-unitary, and National Legislator, and the same international sources, have repeatedly dialogued with the jurisprudence, proposing new regulatory and protection structures as an answer to the critical issues of the discipline that emerged within the litigation.

From reverse discrimination, to the identification of the subject responsible for the labelling, to genetically modified and transgenic products, to the appreciation of ethical values in the rules of origin indication, to food choices, to protection of animal welfare and biodiversity, there are numerous and well-known examples in this sense, even recent ones, which confirm the peculiarity of the discipline of agriculture and food.

The crises of recent years have then brought security policies back to the fore and with them the responsibility of science and institutions in guaranteeing the right to food, declined as a guarantee of access to an essential good (better: to the essential good, a necessary prerequisite for the exercise of any other right).

In this sense, agri-food law stands as an exemplary laboratory, in quantitative terms for the large number of judicial decisions on the subject, and on a systemic level for the interstitial and multiple nature of this field of legal experience.

If the legislation relocates and reorders the experience in a process of continuous innovation, through acts of different nature, content and scope, the jurisdiction becomes the occasion to consolidate the existing experience and at the same time to anticipate evolutionary trends, on the substance of regulation and on the institutional level involved.

In a dimension which is not only European, litigation turns out to be an ordinary position tool of agri-food law, as much and sometimes more than the administrative and legislative tools traditionally privileged in some Member States (including Italy).

Such trend is underlined by the increasing attention of the central courts, both at European and national level, for rules and models adopted in other framework and territories, be they international for the Court of Justice, or European for the Italian courts.

It arises in all these cases - with particular relevance where there is a question of identifying possible offences and penalties, both in the relation between food business operators and between them and citizens (not only consumers; exemplary are the repeated pronouncements on the subject of access to food and food choices by prisoners and students) - the need to draw models and paradigms, suitable for a justice difficult to reduce within the traditional order of the sources designed by traditional national rules.

In this perspective, Comparative method appears to be a precious tool to better know, implement and in some cases reform this area of legal experience, not only as an academic research tool, but as a necessary tool to operate in the real world.