

OBJECTIVE OF THE RESEARCH

The research aims to analyse the path of administrative jurisprudence on how the principles of prevention and precaution behave, the role they assume for the public decision-maker and the judge's review.

THE NATURE AND THE RATIO OF THE PRINCIPLES

The precautionary and preventive principles share the anticipatory nature of the intervention of the public decision maker with respect to the occurrence of damage. In order to prevent the risk of the occurrence of such damage, the precautionary principle legitimises the adoption of preventive, remedial and countermeasures at a stage when the damage not only has not yet occurred, but there is not even full scientific certainty that it will occur. The preventive principle differs from the precautionary principle in that it deals with the prevention of harm with respect to risks that are already known and scientifically proven relating to behaviour or products for which there is full certainty that they are dangerous to man and the environment.

THE «METHODOLOGICAL AND BIDIRECTIONAL» DIMENSION OF THE PRINCIPLES

The two principles do not operate in a predominantly axiological dimension (i.e. they do not presuppose a precise choice of end-values) nor in a single direction (i.e. that of the interdiction of 'risky' public decisions) but rather in a methodological and bi-directional dimension: they do not offer 'rules for deciding', but only 'rules for proceeding', since they make it possible to identify the path of proceduralisation of public authority decisions through intervention on the causes of the possible emergence of danger (prevention) or in situations of uncertainty (precaution), allowing collective risk management.

THE SCIENTIFIC BASIS OF THE PRINCIPLES...

...represents a guarantee of the reasonableness of public choices and consequently strengthens the compliance of positive rules (based on it) that impose behavioural obligations on citizens. The awareness that the public decision-maker is obliged to follow an evaluative strategy (of problem solving) based on the verifiable and verified acquisitions of the best science of the moment (and on the rigour of the relative method) contributes to excluding the suspicion of arbitrariness inevitably connected to every «epiphany» of authoritativeness.

THE «RESERVE OF SCIENCE»

The reserve of science, to which the public decision-maker must make necessary reference, leaves to this, due to the inevitable margin of uncertainty that also characterises scientific knowledge in the construction of truths that can only be acquired over time, at the cost of strict studies and rigorous experimentation and subject to the criterion of verification-falsification, an undeniable margin of discretion in the balancing of the values at stake that must undoubtedly be used in a reasonable and proportionate manner and, as such, subject in our system at the regulatory level to the legitimacy review of the judge of laws and at the administrative level to that of the administrative judge.



SCAN ME



SHARING IS ENCOURAGED



ANNARITA IACOPINO - annarita.iacopino@unier.it