



UNIVERSITÀ DEGLI STUDI DI SALERNO

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Curriculum - “Teoria delle istituzioni dello Stato tra federalismo e decentramento”

Tesi di dottorato

“La distribuzione tra il giudice e le parti dei poteri istruttori nel processo amministrativo”

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Abstract

The object of research is the distribution between the court and the parties of the investigatory powers in the administrative process.

The survey aims to reconstruct the rules and criteria by which the legislature governs the distribution between the court and the parties of the burden of proof.

The discipline of evidence in the administrative process has undergone significant changes over time.

At the origin of the system of administrative investigation was a mere contingency and documentary.

The administrative jurisdiction was characterized in an objective sense judges sought to verify the legality of administrative acts only in the interests of the general public.

In this context, the protection and the role of citizens were merely occasional.

Then, the administrative process assumed the characteristics of a "process of parts"; so the relationship between the powers of the parties and the powers of the judges was rebuilt along the lines of "sistema dispositivo con metodo acquisitivo", prepared by the doctrine in the fifties and consistently implemented by the case law.

Until the adoption of the Code of Administrative Procedure the regulatory framework was incomplete.

Can not be ignored, however, that the Code dedicates the Chapter IV of the first book in the discipline of evidence and the preliminary investigation (arts. 63-69).

Therefore, the introduction of the code to the interpreter puts the question to verify the impact of the new rules, compared to the traditional setting investigation.

The present research aims, first, to reconstruct the fundamental stages of the evolution and regulation, from the origins of the system of judicial administration until the adoption of the Code of Administrative Procedure.

In the second part, however, we intend to verify the impact of the new rules of the administrative process.

In this regard, in the third part, the research intends to focus on the graft in the administrative process of "cd. principle of "non contestazione", according to which the undisputed facts must be placed at the foundation of the decision by the court (article. 64, second paragraph, cpa).