

all'accentramento amministrativo: a tal fine basta ricordare quelle sui ministeri ed enti locali, in cui il ministro degli interni ed il prefetto assumevano un ruolo strategico nell'ambito dell'organizzazione amministrativa. Non vanno, peraltro, dimenticate alcune fondamentali leggi del 1865 in materia di attività, che fino a circa un decennio fa sono state vigenti: si pensi alle normative in materia di opere pubbliche, espropri, contabilità. All'atto dell'unificazione, peraltro, mancava un carattere fondamentale dello stato a diritto amministrativo, consistente nella presenza di un giudice indipendente dell'amministrazione. Anzi, con la nota legge abolitrice del contenzioso del 1865 si stabilì che il potere di giudicare l'amministrazione spettasse esclusivamente al giudice ordinario, con competenza limitata alle questioni concernenti i diritti. Di contro, si creò un vuoto di garanzia giurisdizionale, poiché, così facendo, non venne accordata tutela nel caso di lesione di interessi legittimi (si pensi all'interesse ad ottenere un'autorizzazione, una concessione). Il vuoto di tutela venne colmato solo nel 1889 con l'istituzione della IV sezione del Consiglio di Stato, cui venne attribuita la giurisdizione, come giudice indipendente, sugli interessi legittimi, mediante la cognizione dei ricorsi per annullamento degli atti amministrativi affetti da vizi di legittimità (incompetenza, violazione di legge, eccesso di potere).

#### Quadro di sintesi.

Si può, dunque, affermare che in Italia è occorso quasi un secolo per la formazione dello Stato a diritto amministrativo:

- la normazione a carattere speciale e l'organizzazione burocratica vengono alla luce dopo il congresso di Vienna con lo Stato sabaudo;
- il principio di divisione dei poteri e la rule of law si manifestano con lo Statuto Albertino del 1848;
- l'istituzione di un giudice indipendente dell'amministrazione avviene in due tappe: dapprima nel 1865 con la devoluzione al giudice ordinario delle questioni attinenti ai diritti e nel 1889 con l'istituzione della IV sezione del Consiglio di Stato con funzioni giurisdizionali sugli interessi legittimi.

#### LEZIONE INTRODUZIONE AL CORSO.

Questa materia può essere strutturalmente divisa in tre settori:

- 1) organizzazione amministrativa, parte in cui si identificano le pubbliche amministrazioni, gli enti pubblici e i suoi organi ai quali la legge attribuisce un determinato potere per la cura di interessi pubblici. Non c'è uno specifico codice ma una serie di norme.
- 2) L'attività amministrativa, quegli enti pubblici ai quali la legge ha affidato determinati poteri e quei soggetti all'interno degli enti pubblici hanno la possibilità di esercitare il potere attribuitogli e questo esprime l'attività amministrativa che si può esercitare in modo autoritativo o la PA può usare gli strumenti del diritto privato. Normativa di riferimento che è contenuta nella legge generale sul procedimento amministrativo, legge n.241 del 90.
- 3) Giustizia amministrativa – processo amm.vo, regolata da un apposito codice chiamato CPA. Peculiarità del diritto amm.vo □ si basa su norme e leggi generali, ma è anche un diritto sparso in varie leggi di caratteri speciale (materia urbanistica, società pubbliche), si basa anche su principi di carattere giurisprudenziale. Importante settore è quello che riguarda la spiegazione dei principi.

1. profili storici
2. organizzazione PA
3. personale (personale alle dipendenze e PA) testo unico d.Lgs. 165 del 2001 (teledidattica)
4. attività amministrativa = attività discrezionale (concetto complicato) (teledidattica)
5. procedimento amm.vo □ provvedimento amm.vo (teledidattico)
6. patologia del provvedimento amm.vo (teledidattico)
7. autotutela (teledidattico)
8. diritto di accesso ai documenti amm.vi (tutela privacy, amm.ne trasparente)
9. tutela giurisdizionale
10. responsabilità PA

#### L'ATTIVITA' AMM.VA

L'attività amm.va è connotata da una caratteristica : la discrezionalità, è il modo attraverso il quale la PA esercita il suo potere e quindi tutela gli interessi della collettività.

# Riassunto Libro Lezioni Di Diritto Amministrativo

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