Società Italiana di Diritto Internazionale e di Diritto dell'Unione Europea

Società Italiana di Diritto Internazionale e di Diritto
dell'Unione Europea SIDI
c/o Istituto di Studi Giuridici Internazionali ISGI-CNR
Via dei Taurini, 19 00185 ROMA ITALIA
06 49937673 www.sidi-isil.org info@sidi-isil.org

PRESENTAZIONE DEL VOLUME

(a cura dell'autore o del curatore)

Informazioni generali

Autore: **Giulia Ciliberto**

Titolo del volume: **Litigating Socio-Economic Rights in Times of Resource Constraints. Lessons Learnt from the Eurozone Sovereign Debt Crisis.**

Casa editrice e luogo di stampa: **ESI-Nomos (Napoli- Baden-Baden)**

Anno di pubblicazione: **2023**

Pagine complessive e costo del volume: **XII+356; € 85,00**

Informazioni sul volume

During the last decades, the idea that economic and social rights are judicially enforceable has gained traction thanks to the creation of dedicated treaty regimes and related international supervisory mechanisms, alongside the growing body of national case-law adjudicating these rights. However, vindicating socio-economic rights in judicial settings remains a tricky matter on a practical level, as shown by the case-law on austerity legislation adopted in the context of the Eurozone sovereign debt crisis.

Against this backdrop, this book considers the 2008-2018 turmoil as a polyhedral case-study to assess whether the national, international, and European Union systems provided adequate remedies for the violation of socio-economic rights and whether these systems could have adopted a different adjudicative approach with the view of enhancing the effectiveness of socio-economic rights enshrined in international human rights law. This book also strives to offer insights on the significance of these outcomes *vis-à-vis* prospective violations of socio-economic rights in times of resource constraints, including as a consequence of the enactment of austerity-like policies in the near future.

The book is structured in five chapters (divided into two parts) and brief concluding remarks. Part I is composed of Chapter I to III. Following a description of the external and internal factors that contributed to the Eurozone sovereign debt crisis, Chapter I outlines the responses to the crisis and clarifies the functioning of the four assistance mechanisms that were set up to manage the turmoil, alongside the negative impact of austerity measures on socio-economic rights and the identification of the sources of human rights obligations and their duty-bearers.

Chapter II focuses on the peculiar features of socio-economic rights, from both a substantive and a procedural perspective. We qualify ES rights as individual rights with a *collective* dimension and address the general obligations stemming from international treaties safeguarding socio-economic rights, namely the obligation to progressively achieve the full realisation of ES rights and the minimum core obligation. Both the *collective* dimension of ES rights and these general obligations are relevant in assessing which forms of reparation are adequate remedies for violations of ES rights, a topic dealt with in the following chapter. Chapter II also addresses the requirements underpinning legitimate limitations to socio-economic rights and the procedural aspects of dispute settlement, namely the function of judicial and quasi-judicial bodies that received complaints in the context of the Eurozone crisis and the risk of competing proceedings. Lastly, it explores whether, and to which extent, this regime changes in times of sovereign debt turmoil.

Chapter III deals with the regime governing States' responsibility for the violation of socio-economic rights with specific regards to the elements of international wrongful acts, the application of circumstances precluding wrongfulness and the notion of adequate remedies for violation of ES rights in context of sovereign debt crisis. Notably, we suggest two parameters to assess the adequateness of remedies for the violation of international socio-economic rights in times of resource constraints. The first parameter rests on the above-recalled *collective* dimension of most ES rights and on the *collective* impact of austerity policies. This aspect requires remedies to tackle the structural or systemic causes of the breach, which usually correspond to national law on allocation of public resources. Thus, remedial measures should have a *collective* impact as well, *viz*. they should benefit the victimised class as a whole, rather than individual victims. Secondly, remedial measures should avoid major distributional or unintended consequences to the detriment of public finances, which are already jeopardised due to the economic and financial crisis and whose soundness is essential for the realisation of socio-economic rights. The second parameter takes into account States' international obligations, namely minimum core obligations and the duty to progressively achieve the full realisation of ES rights. Remedial measures negatively impinging upon States' economic soundness would negatively affect their ability to perform the obligations related to ES rights, since, as already mentioned, compliance with these obligations requires the long-term sustainability of public sector policies.

Part II analyses the Eurozone-crisis litigation and comprises Chapters IV and V. Chapter IV explores the austerity-related case-law at the domestic level. It starts by recalling key features governing the relationship between IHRL and domestic legal systems. Then, it addresses the case-law of the courts of the five Eurozone States which obtain assistance from international lenders, namely Cyprus, Greece, Ireland, Portugal and Spain. The comparative analysis of this case-law shows some common features. The first is the scarce reference to (international) socio-economic rights as parameters of judicial review, in favour of general constitutional principles (such as proportionality or equality). The second is the judicial self-restraint of domestic courts in order to preserve States' solvency. The third concerns the wide impact of declarations of unconstitutionality (even those of the Greek lower courts), and the peculiar use of the power to restrict their temporal effects *pro futuro*.

Chapter V investigates the crisis-related litigation at the international and EU levels. As for the former, it addresses the cases before the UN Committee on Economic, Social and Cultural Rights, the International Labour Organization's Committee on Freedom of Association, the European Committee on Social Rights and the European Court of Human Rights. The chapter also attempts to verify the existence of approaches which could enhance the protection of socio-economic rights before this latter Court. It briefly addresses the consequences of the overlapping jurisdictions of these human rights dispute settlement mechanisms.

Then, it deals with crisis-litigation at the EU level, with a focus on the role of the Court of Justice of the EU *vis-à-vis* proceedings invoking the application of the EU Charter of Fundamental Rights. The chapter attempts to clarify the stance of the Court of Justice towards austerity-driven procedures in light of the broader relationship between socio-economic rights under international treaty law and the EU legal system, with specific regard to the famous "*Laval* Quartet".