



BIRTH AND DEAD OF THE “PURCHASE OCCUPATION”. SOME CONSIDERATION ON A CONTROVERSIAL LEGAL INSTRUMENT, A JUDGEMENT OF THE ITALIAN SUPREME COURT, A DECISION OF THE ITALIAN CONSTITUTIONAL COURT AND THE INTERPRETATION FOLLOWED BY THE EUROPEAN COURT

This article analyses the most recent development of the Italian Courts on interpreting the notion “purchase occupation”, “usurping occupation” and “legitimizing occupation”, taking as legal framework art. 1 protocol 1 of the ECHR and its application by the European Court. The three legal instruments under examinations have been created by the Italian legislator and the jurisprudence to resolve the problem arising in cases when the public administration occupies private properties to build public goods.

In particular, the author highlights the different approach between the Supreme Court (case n. 735 of 2015) and the Constitutional Court (case n. 71 of 2015 on the constitutionality check of the art. 42 d.p.r. n. 327/2011). Differently from the Supreme Court, in fact, the Constitutional Court didn't follow the interpretation of the ECtHR.

Finally the author suggests some modification of the d.p.r. 327/2011 so to better conform it to the art. 1 protocol 1 of the ECHR.