

EGU24-22292

EGU General Assembly 2024

© Author(s) 2024. This work is distributed under the Creative Commons Attribution 4.0 License.



Precaution and prevention in the jurisprudence of the administrative judge

Annarita Iacopino

Università Europea di Roma

This paper 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. In this perspective, priority is given to examining the nature and *ratio* of the two principles, as well as the relationship between them. It is then necessary to define their sphere of operation and the essentially "methodological and bidirectional" dimension in which they move. They, in fact, offer rules for proceeding and not for deciding, thus allowing the identification of the path of proceduralisation of public decisions in situations of danger (prevention) or in situations of risk (precaution), enabling the minimisation of risks, respectively, through intervention on the causes of the possible emergence of danger and through the identification of the solution that makes it possible to balance the minimisation of risks with the maximisation of benefits. In an emergency phase, as in the case of compulsory vaccination, this may require operating in a "counter-intuitive" manner with the imposition of instruments-therapies- that ensure more benefits than risks, since the potential risk of an adverse event for an individual is far less than the actual damage to society as a whole. In all these hypotheses, the scientific basis represents a guarantee of the reasonableness of the choices, since the public decision-maker's assessment must be based on acquisition of the best science of the moment and on the rigour of the relevant method; a "reserve of science" whose reasonableness and proportionality is subject to the administrative judge's review.