

Italy: toward a federal state? Recent constitutional developments in Italy

1. The federal idea in Italian history

Italy became a unitary State between 1861 and 1870, assembling under the Savoy dynasty (at that time governing Piedmont and Sardinia) other States and Reigns of the Italian peninsula (State of the Church, Reign of the Two Sicilies and other States under the direct or indirect control of the Austrian Empire). The Italian territories were unified only after World War I, when Trent and Trieste joined the Italian Reign.

In the first period of state making and nation building, the question of the regional autonomy - though debated in intellectual circles - was not on the political agenda; the search for a national identity was too strong. The focus of the authoritarian fascist regime (1922-1943) remained the enforcement of nationalism without any space left for regional differences.

The democratic Constitution of January 1st, 1948 recognised the Regions as political bodies with legislative and administrative powers: five of them (Aosta Valley, Trentino- Alto Adige, Friuli-Venezia Giulia, Sardinia, Sicily) were granted a special status, based on constitutional laws due to ethnic and linguistic reasons or insularity. These regions could start to work just after the Constitution came into effect (1963 for Friuli-Venezia Giulia, when an international agreement regulated the status of Trieste). The 15 other Regions were ready to function only in the Seventies, when the Regional Councils were elected (in 1970) and when the new regional Statutes, finally enacted by acts of the national Parliament, were approved (in 1972).

In the 1990s, strong political pressure for subsidiarity and federalism emerged in Italy. The burden of politics and administration on the economy was too high; the northern Regions (Piedmont, Lombardy, Veneto), whose economic systems grew faster than those of the rest of Italy, were afraid that Italy would not be able to enter into the European Union and therefore were asking for a devolution of powers to the Regions. A search for different local solutions for welfare organization was observable. The Presidents of the northern Regions (but also the ones of the more efficient Regions such as Emilia-Romagna, Toscana, Puglia, Marche) were developing

autonomous international policies and trying to support the efforts of the regional economies. The central State was perceived as an unproductive mechanism and citizens demanded that decision-making procedures with regard to local matters (i.e. financing of local economies, education, health, local security, etc.) should be at a closer level.

2. The recent strengthening of Regions and Local Authorities

In the last year, Italy has gone through an important constitutional reform process that strengthened the role of the Regions and the Local Authorities as well as their international and European relationships. Federalism has long been an important strain of political thought in Italy and over the past decade many Italians have argued for increased decentralization and “federalization”.

On November 8th, 2001 a significant reform of the part of the Constitution that deals with Regions and the Local Authorities came into force after being approved by the Parliament and confirmed by a referendum (constitutional law nr. 3 of 2001).

Although this reform was hotly debated, it adapts Italy to the phenomena of regionalization and federalization of public powers – a process that is already taking place in most parts of the European Union. Today, 10 European states out of 15 have regional institutions that are more (Germany, Belge, Spain) or less (France) significant in the political process, or sometimes only administrative agencies (Greece, Spain) and more or less guaranteed at a constitutional level, with or without legislative powers. Poland has reorganised its regional administration, with the objective of making accession to the European Union easier.

An important research on the strengthening of the regional and local democracies was carried out by the Committee of Regions and will be published in Italian and English at the end of April and in all European languages by the end of this year.

3. A new election of the Presidents of the Regions and new role of the Regional Statutes

The constitutional law n. 1 of 1999 introduced the direct election of the Presidents of the Regions and linked the life of the Regional Assemblies with the permanence in charge of the Presidents of the Regions: the Assembly can reverse the President and the Regional Government, but it will be dissolved and new elections have to be held to choose a new President and new Assembly.

The same constitutional law foresees that Regions can approve autonomously their Statutes,

without the control of the National Parliament (only the central Government can appeal the Statute before the Constitutional Court: see decision n. 2/2004).

The reform stipulates that a referendum against the statute can be triggered by 1/50 of the regional electors or by 1/5 of the regional deputies. And the reform foresees that in the near future, a council of Local Autonomies, as a connecting body between the Region and the Local Authorities, should be created.

Since the approval of the law n. 1 of 1999, no Italian Region has passed a new Statute (Calabrian Assembly approved the Statute, but it was appealed by the Government and the Constitutional Court declared it void).

4. Powers enshrined in the Constitution

Among the changes introduced by the Constitutional Law n. 3 of 2001 it is important to stress that it lists Municipalities, Provinces, Metropolitan Cities, Regions and the State (the central government) as components of the Republic with equal “dignity” (art. 114), rejecting the notion of an absolute identity between State and Republic. An important decision of the Italian Constitutional Court (n. 106 of 2002) had clearly stated that, according to Article 1 of the Constitution, the only sovereign subject is the people, and not the State. And local and regional institutions derive their legitimacy from the people just as much as do the National Parliament and government.

The constitutional reform introduces a new division of legislative powers between the central government and the regions, overturning the criteria that had been applied previously (art. 117). Prior to the reform the Regions had responsibilities only for those matters that the Constitution expressly assigned to them. The new constitutional provision lists responsibilities reserved to the central government and those governed by concurrent legislative powers of the centre and of the regions.

For any other matter not expressly reserved for the centre, the regions have legislative powers, without interference of the centre. The central government has priority jurisdiction in a number of key areas:

- foreign and defence policy,
- coordination at the European level,
- citizenship,

- the organization of justice,
- the civil and penal codes,
- local authorities,
- protection of the environment,
- and equal protection at the national level of civil and social rights.

Concurrent legislative powers are recognized in the sectors of infrastructure, welfare, labour policies, and urban and territorial planning. Agriculture, handicrafts, commerce, tourism, industry, local transportation, and public works are, among others, in the exclusive regional jurisdiction. This list is not exhaustive and there are no doubt matters where the Constitution doesn't specify who is responsible. It is probably impossible to devise a list of powers and responsibilities that would take into account all contingencies. The history of Constitutional and Supreme Courts of federal countries "is full of cases trying to resolve the whole question of what is the role and the power of the states as opposed to what is the role and the power of the national government in ever new circumstances" (President Clinton's Speech on Federalism, October 8, 1999, Mont- Tremblant, Quebec, Canada, available on the web site of the Forum of Federation: www.forumfed.org).

In the last months the Italian Constitutional Court decided many questions regarding the legislative powers of the central Government and of the Regions, trying to rationalise the distribution of competences and to introduce some flexible criteria between State and Regions (among others, see decisions n. 303 of 2003 and 6 of 2004).

5. Administrative functions ; International and EU relations; finance

In addition to defining areas of jurisdiction, the constitutional reform reorganizes the distribution of administrative functions. It seeks to rationalize and distribute roles and tasks according to the principles of "unity, subsidiarity, differentiation and adequacy", to use current popular European language. The effect is that Municipalities have an enhanced administrative role and Regions have the responsibility to administer matters on which they legislate (art. 118). As regards international and European relations, the reform opens up interesting prospects for the Regions. It refers to "international and European relations" and the fact that agreements may be made between Italian Regions and other sub national entities.

With respect to financial autonomy, though the constitutional changes do not introduce the principle that tax revenues should be spent in their area of origin, Municipalities, Provinces, Metropolitan Cities and Regions have autonomous resources, receive a part of the tax revenue collected in their territory, and establish and apply their own taxation and revenue systems. Coordination of public finance is a concurrent jurisdiction of the central government and the regions (art. 119).

6. No more subject to the centre

Another feature of the reform is that the central government no longer exercises control over regional legislation and administration. Regional laws now come into force as soon as they are approved by the Regional Council and enacted by the President of the Region. The central government's Regional Commissioner no longer exists. In the same way, Regions no more exercises controls over the local administration.

In addition to their guaranteed powers, all the Regions may now request special "conditions of autonomy" with regard to the concurrent legislative powers (e.g. health, professions, employment, infrastructure, education, etc.) and with regard to three matters in which the central government has exclusive jurisdiction (the organisation of the basic level of justice, the environment, and guidelines on education).

7. Implementation and revision of the constitutional reform

Italy is now facing difficulties in both completing and implementing the constitutional reform. In terms of completion, the political debate focuses on the need for a Chamber of Regions that could represent the political regional instances at the central level and on the need for a regional presence inside the Constitutional Court.

The Government introduced a bill of reform of the Constitution, aiming at the modification of the composition of the Senate and of the Constitutional Court.

In Italy there are two political Houses (Camera dei deputati e Senato della Repubblica), both composed according to the same criteria and both participating at the election of the Government. The Constitutional Court is composed of 15 judges, 5 of them elected by the Parliament in common session, 5 appointed by the President of the Republic, and 5 selected by the Supreme Civil, Administrative and Account Courts.

Recently, a law of implementation of the reform was passed by Parliament (law n. 131/2003).

The goal of creating new institutional mechanisms is that in the new, more “federal” Italy, the Regions should participate in the political decisions of the central government. As for a timetable for putting this package of reform into practice, Italian authorities are most concerned about the capacity of the regions to assume their new, greater role. After all, the regions will have to assume new legislative power and Italians have to figure out a practical working distribution of functions between administrative levels.

Italy faces the task of building accountable fiscal federalism. The challenge will be to guarantee better public services and to include an element of equalization that improves the fiscal capacity of the poorer areas of the country – all without adding burdens to the Italian economy as a whole.

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