

ITALIAN GREAT CONSTITUTIONAL REFORM*

WIELKA WŁOSKA REFORMA KONSTYTUCYJNA

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Abstract

The 1948 Italian Constitution – a beacon for many European Charters and even outside the borders of the “Old Continent” – is beginning to feel the weariness of these 75 years of its existence. The Parliament and the Government, as well as other Italian Institutions, feel the need to modify all or part of its content to adapt it to the many social, political and relations changes among the organs of the State.

Manuel Vescovi, a senator in the 18th Legislature, has proposed a constitutional “Great Reform” in the federalist and presidentialist sense, including, as well, other extensive quantitative and qualitative changes in many areas, starting with the judiciary, public administration, taxation, protection of private enterprise and citizen security.

Keyword: Italian Constitution, Italian constitutional reform, federalism, presidentialism, separation of careers of judges, limitation of taxation, right to the pursuit of happiness, right to security, meritocracy, life senators, Manuel Vescovi

Abstrakt

Włoska Konstytucja z 1948 r. – latarnia morska dla wielu Kart Europejskich, nawet poza granicami „Starego Kontynentu” – zaczyna odczuwać zmęczenie tymi 75 latami swojego istnienia. Parlament i rząd, a także inne instytucje włoskie odczuwają potrzebę modyfikacji całości lub części jej treści, aby dostosować ją do licznych zmian społecznych, politycznych i stosunków między organami państwa.

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Manuel Vescovi, senator XVIII kadencji, zaproponował konstytucyjną „wielką reformę” w sensie federalistycznym i prezydenckim, obejmującą także inne szeroko zakrojone zmiany ilościowe i jakościowe w wielu obszarach, począwszy od sądownictwa, administracji publicznej, podatków, ochrony prywatnej przedsiębiorczości i bezpieczeństwa obywateli.

Słowa kluczowe: Konstytucja włoska, włoska reforma konstytucyjna, federalizm, prezydencja, rozdział kariery sędziowskiej, ograniczenie opodatkowania, prawo do dążenia do szczęścia, prawo do bezpieczeństwa, merytokracja, dożywotni senatorowie, Manuel Vescovi

1. A new Italian Constitution based on presidentialism, federalism and meritocracy

Politics and Institutions have acknowledged that the 1948 Constitution¹ is no longer the one we know that we have studied and experienced over the decades in the Quirinale, Montecitorio, Madama and Chigi Palaces.

It has changed, as all human events and the products of man’s intellect inevitably change, and it must be read with what constitutionalists define as “material” or “substantial.” [Giulimondi 2016; Idem 2015, 2].

Over the years, the written Constitution has been joined by one that lives in the folds of relationships and relational dynamics between Parliament, the Government, the President of the Council, the President of the Republic, the judiciary, the Constitutional Court, trade unions, political parties, associations of various kinds and European institutions and international. Now this constitution forged out of the “legal” or “formal” Constitution needs to come into being. Sen. Manuel Vescovi² understood that the excellent Italian Constitution needs to be not so much adequate, but radically changed.

We need to give a form to that constitution which over the years has been composed between and behind the words written in the 1948

¹ The Constitution of the Italian Republic was approved by the Constituent Assembly on 22 December 1947 and promulgated by the provisional President of the Republic Enrico De Nicola on the following 27 December; published in the Official Journal of the Italian Republic n. 298, extraordinary edition, of 27 December, came into force on 1 January 1948.

² AS 1869 submitted on 4 July 2020 by Sen. Manuel Vescovi to the Senate of the Italian Republic, www.senato.it/leg/18/BGT/Schede/Ddliter/53124.htm [accessed: 12.02.2024].

Constitution, responding to the requests that have come from territories, regions and municipalities for decades. Not only. The economy itself is asking for a new rewriting of the Constitution, because its close and constant relation with law cannot be denied.

These intuitions were already present in 19th-century Italy in Cattaneo's thought, intuitions aimed at enhancing regionalism by greatly strengthening its administrative, financial, legislative and political autonomy, to the point of co-opting it into the vast organizational-regulatory framework of federalism. There is an overbearing need to transform the Regions into real States, federated into a unitary State which maintains competencies and powers even higher than those of the individual States which, however, go on to acquire executive, parliamentary and judicial powers until now unknown to the regions.

The model is that of the United States of America, from which the denomination is borrowed, United States of Italy, which are based not only on work but also on business, thus constitutionalizing the reality of a large part of the national territory which sees in micro, small and medium enterprises a powerful connective tissue and an energetic lifeblood of the Italian economy. Not only the States and its right to happiness constitute the regulatory paradigm of reference, but also Germany structured in Länder.

A new State model in which State architectures are embraced and composed as a mature and complete development of the regions, together with a central State that finally sees a President of the Republic who is also Head of Government, i.e. finally a Presidential Republic fluctuating between the US polar star and the French one.

A new Rome erected – as it should have always been – as a State, the highest “status” among the variegated “status” of Paris, London and Washington.³ A new Italy where a centuries-old debate between the best minds of Italian public law doctrine can be completed, and beyond.

There is an ancient political and legal tradition which, since the 1800s, has tried to bring regionalism into the great family of federalism. Federalism can arise from the dimensional needs of the territories, which due to their extension cannot be governed entirely at the central level, as well

³ For an overview *in subiecta materia* cfr. Giulimondi 2021.

as from accentuated ethnic-religious differentiation of the people who reside there: in our case, federalism is a consequence of Italy's own history, which has seen the social and economic diversification of the various Italian populations.

The Italian Regions with the reform of Sen. Vescovi are transformed into real States, "components" of a federation which gives life to the federal State, a union of States with own juridical personality, in which the individual federated States are recognized executive, legislative and judicial powers, within the limits established by the federal constitution.

With the birth of the United States of America (1776, Declaration of Independence; 1787, Federal Constitution) the form of the federal State takes on a complete connotation, whose vitality is attested by its ever more frequent recurrence on the world legal scene (Canada, Germany, Switzerland, India, Australia, Brazil; Belgium is a federal State on an ethnic basis: Walloons, Francophones and Dutch-speaking Flemings).

The Constitutions carry out the task of clarifying the competences of the federal government and of the State, regional or provincial ones, thus configuring two or more levels of government, even if the "central" one maintains unifying powers. Legislative power is exercised by two chambers, one of which is composed of representatives of the States, Regions or Provinces.

The confederation (which is quite different from the federal State), on the other hand, is an alliance between States by virtue of treaties that pursue common economic, commercial, military, monetary, political goals, through *ad hoc* institutions, while maintaining each one full independence and sovereignty. The founding treaty creates some common bodies and assigns them various powers. The European Union is a typical example of a confederation of States.

The confederation of States can constitute the intermediate stage between the form of the centralizing national State which does not recognize anything outside itself (apart from some administrative decentralization within it) and the federation of States, i.e. the federal State. Italy abandons the garments of the decentralized unitary State to cover itself with the garments of the federal State aimed at a new horizon, the "happiness of citizens," introduced in the new Article 3 adopting the "pursuit of happiness"

inserted in the United States Declaration of Independence of July 4, 1776, which, in turn, took up the thought of the Neapolitan philosopher Filangeri: from Italy it arose, to Italy it comes back [Filangeri 2003].

Furthermore, we are witnessing the full recognition of protection of work in all its dimensions and facets, from public and private employment to entrepreneurial activity in all its angles. The entrepreneurial action carried out every day and in every part of Italy constitutes the backbone, together with public and private employment, of the Italian economy. The reading of the new Article 4 together with that of the reformulated Article 41 (freedom of private economic initiative) finally strengthens the exercise of the business activity, after a Marxist culture openly or covertly opposed to the “private” has raged for decades; especially in the period we are experiencing and that we are about to experience, this constitutional change can also be particularly incisive on our GDP.

Within federal Italy, the protection of idioms is reinvigorated in such an enriching linguistic anthology for each territory, obviously remaining Italian as the only official language that binds the vernaculars and dialects of every corner of Italy: I am thinking of Emilia-Romagna, Gallurese, Friulian, Ligurian, Greek, Lombard, Venetian, Occitan and Sicilian. Protecting the “speech and languages” that dot the landscape of Italy means protecting the history, culture and roots of the entire Italian community.

Summing up the text of the Vescovi’s Reform is the result of the study of the constitutional systems of the United States, the United Kingdom, France, Germany and Poland, all shaken in Italian sauce.

2. Limit of taxation in the Constitution⁴

The new Article 53 of the Italian Constitution maintains the fair principle of progressiveness aimed at making those who earn the most pay more, with changes to the text that are, however, truly innovative.

Taxation will occur at three levels: federal, state and municipal. As mentioned in a previous article, the Federation is the central State while the States are the former Regions.

⁴ Cfr. Savino 2009, 3.

For each of these three levels an insurmountable tax limit is established: 10 per cent at the federal level; 15 per cent for States and 5 per cent in relation to municipal administrations.

The sum of the three thresholds leads to the overall tax limit of 30 per cent, thus approaching the maximum US tax paradigm trend of 33 per cent.

The phrase “income received” links what should be taxed to where it should be taxed, resolving the concern about including large financial web giants among taxable persons (Google, Amazon, Facebook, and others). The introduction of the word “perceived” greatly limits tax evasion since, even if the registered office, the location of the server or the place of main activity or provision of services of a company or enterprise are outside the territory Italian, what prevails for the purpose of identifying the taxable person and the taxable base is only where the income is acquired, received, collected, i.e. where the payment is made or the sum liquidated. The perception of an income in Italy makes the Revenue Agency automatically the taxing body of what is received, for example, from Amazon as consideration for the online purchase of a book attributable to the national territory (ID, cell phone or other means of Italian telephone, electronic or telematic identification).

Thanks to this powerful constitutional novella, the coffers of the State will be significantly increased by the collection of taxes on the enormous earnings of the sacred monsters of the Internet, as well as by the probable increase in the taxable base due to the conspicuous reduction in tax rates (the so-called “Laffer curve”).

3. A new Parliament: Federalism⁵

The Assemblies, with the palingenetic constitutional reform Sen. Vescovi maintain at the linguistic level, with a “small” adjectival retouch (substantially very relevant), the same current wording: “The federal Parliament is made up of the Chamber of Deputies and the federal Senate.”

⁵ Cfr. Giulimondi 2022a, 50-59.

The Senate as we have known it will no longer exist, radically changing its face. It is no longer the Upper House of Roman origin (the “*Senatus Populusque Romanus*”), present in many European legal systems, but the branch of the Parliament expression of the States, whose members are elected on a state territorial basis, like the German Länder, like the Bundestrat.

There are 220 senators compared to the current 200 (following the constitutional law 1/2020⁶), plus 20 elected in the “Abroad” district (no longer attributed to the new Chamber of Deputies).

The figure – much discussed in recent years – of life senators is suppressed. The senator for life, as former President of the Republic or appointed (in the maximum number of five units) by the Head of State among those who have honored the country for outstanding merits in the social, scientific, artistic and literary fields, had to carry out – according to the Fathers Constituents – the role of illuminating the Chamber in making decisions in the wisest possible way on highly sensitive issues; indeed, they have turned, all too often, into supporters of governments with friable political majorities. The senator for life should never have operated in fields made peculiar by the political characterization, while we have seen them vote on motions of confidence or no confidence and issues of confidence related to the approval of legislative acts, effectively entering with their leg outstretched in purely partisan actions, far from their original function.

Federal Senate and Chamber of Deputies are very different from the old structure, in terms of composition and duration, as well as the competences of the respective Presidents, since the eligibility requirements are the same for both branches of Parliament (18 years, the age required before the constitutional law October 18, 2021, No. 1, only for the Chamber). The age for standing to vote remains, however, diversified: 25 years for being elected deputies and 40 years for election to the federal Senate (the age of 40 – and no more than 50 – is foreseen for the election of the President of the Republic, who will also cover the role of Head of Government,

⁶ L.cost. n. 1 del 19.10.2020 (“Modifiche agli articoli 56, 57 e 59 della Costituzione in materia di riduzione del numero dei parlamentari”), in: GURI, Serie Generale, n. 261 del 21.10.2020.

elected directly by the electorate, giving life, finally, to a federal and presidential Republic).

There is a big difference between the two branches of Parliament, as well as in the number of members (we have seen that there are 220 senators and 400 deputies, again corresponding to those provided for by the aforementioned constitutional law, the so-called “seat cutter,” 1/2020), even in the type of composition, mobile in the Senate: similarly to the American Senate in which votes are cast every two years with the replacement of 100 senators, also in the Italian Federal Senate the composition will be mobile in that the vote for its election will take place at the same time as that of the individual State Parliaments, with a constant, therefore, change of federal senators, the overall number of 220 remaining unchanged.

The election of the federal Senate is correlated to that of the individual State parliaments. Each elector votes for the members of the Federal Senate of his/her State of residence on the same day as the vote of his/her national Parliament: the elector of each individual State, when electing the Parliament of his/her State of residence (with a ballot), also elects (with another ballot) a certain number of candidates – coming from that same State – who will fill the role of senators, i.e. members of the federal Senate. Example: the elector of the Lazio State has two ballots, one to elect the Lazio State parliament and the other to elect the members of Lazio who will hold the position of senators in the federal senate; every time a state votes for its own State legislature, it also votes for its own component of senators from that State who will integrate the composition of the federal senate.

The minimum number of senators for each State must be no less than 5, with lower numbers for the States of Valle d’Aosta (1) and Molise (2).

Lastly, the Chamber of Deputies maintains the same duration as the current Assembly, i.e. five years, while it is inevitable that the Senate does not have a fixed duration, indeed, it does not really have a duration as it is in a continuous cycle, due to the fact that its composition changes every time the electorate of a State expresses itself to elect its own state Parliament, like the US Senate.

4. The Presidentialism⁷

An authentic epochal change requested for decades by the most heterogeneous political, institutional, cultural, academic and social environments is appearing on the Italian legislative scene: presidentialism.

Presidentialism means that form of government in which the role of representative of national unity, guarantor of the Constitution and supreme judiciary of the State (President of the Republic) and that of Head of Government are exercised in the same person – directly elected by the electorate – Premier (President of the Council of Ministers).

Broadly speaking, there are two types of presidentialism: the American-style (so-called “pure presidentialism”) which combines both powers and the French-style (so-called “semi-presidentialism”), in which the President of the Republic possesses a substantial part of government powers, while the Prime Minister appointed by him has the remaining minor share.

The constitutional reform presented by Sen. Vescovi imagines a presidential model like the US one, while the electoral systems that lead to it remain different: the President of the Italian Federal Republic is elected directly by the People while the Stars and Stripes Head of State by the “Great Electors” voted by US citizens.⁸

The constitutional bill puts down in writing the dual intuition of the proponent, presidentialism and federalism, made harmonious and balanced between them: with the first, the legislator responds to the centripetal (centralized) instances of governmental decision-making strengthening, also valuing the democratic method of designating the President of the Republic, also Head of Government, with his direct popular election; with the second, on the other hand, centrifugal (disruptive) forces are welcomed and governed, giving life to States where previously only Regions arose, with the consequent considerable increase in their powers, functions and competences, wisely correlated to the central ones.

Now let's see briefly what the news are, undoubtedly full-bodied.

⁷ Cfr. Giulimondi 2020.

⁸ For an in-depth survey of U.S. constitutional law and jurisprudence cfr. Bassu, Betzu, Clementi, and Coinu 2022.

The current election of the President of the Republic takes place in Parliament in joint session (at Montecitorio Palace all the deputies and senators meet, plus three delegates for each Region, with the exception of Valle d'Aosta which only expresses one): the President of the Federal Republic, with the reform in question, will no longer be elected indirectly but chosen through election by the national community.

Two rounds are envisaged (like in the electoral system foreseen for municipalities with a population of more than 15,000 inhabitants): it does not go beyond the first round if the candidate achieves the majority plus one of the voters; if the second round is accessed (two weeks after the first round) the introduction of the ballot takes place: the electorate must choose between the two candidates who obtained the most votes in the first round, but obviously not the absolute majority.

The name of a candidate for Vice-President of the Republic is linked to the name of a candidate for President of the Republic: the election, in the first or second round of a candidate for the Presidency of the Republic automatically determines the election of the Vice-President of the Republic linked to him.

The Vice-President replaces the President whenever the latter is unable to exercise his mandate received: the replacement lasts until the end of the five-year period in case of death, voluntary resignation or permanent impediment (for physical or mental causes) of the President, while it is exercised *pro tempore* until cessation of the (temporary) impossibility of the President to perform his duties, for example, due to a trip abroad or an illness of ordinary duration; the President of the Senate thus loses his current vicarial role of presidential functions.

If the Vice-President cannot exercise his functions for the same reasons (death, voluntary resignation or permanent impediment for physical or mental reasons), as no analogous legal institution is envisaged, it is the President of the Chamber of Deputies (who assumes, in this guise, a role greater than that held today) to provide for the calling of electoral rallies for the election of the President and Vice-President of the Republic, as the Marshal of the Sejm in the Polish constitutional system.⁹

⁹ Constitution of the Republic of Poland of 2 April 1997, Journal of Laws No. 78, item 483 as amended, Article 128, para. 2 [hereinafter: Polish Constitution].

The duration of the presidential and vice-presidential mandate is five years, like that of the Chamber of Deputies and unlike the current Tenant of the Quirinale which “expires” after seven years.

The latest novelty can be traced in the lowering of the age (comparing it to that of the passive electorate of federal senators) as a requirement for election as Head of State and Government: from 50 to 40 years.

There are no perfect constitutional systems, better or superior to others, but organizational formulas to a greater extent capable of providing solutions to conspicuous regulatory changes and equally considerable social “mutations.” There is no legal game change that does not inevitably involve far-reaching effects also on the field of the economy: the more the bar is raised in the direction of a better and more prompt decision-making capacity, of authentic respect for the popular will and a more intense approach of the “command” to the “commanded” people, the more lively will be the favorable effects on the real Italian economy, especially if the electoral system becomes majority-type.

This is truly an epochal change that has been required for decades by political, cultural, trade union, academic and social circles. An authentic evolution of the c.d. material constitution (that is, the living one that arose behind the scenes of the 1948 Charter) which finally finds its own written and official form. The Italy of the Vescovi constitutional reform, in addition to becoming authentically federalist, takes on the presidential form. The “new” President of the Italian Federal Republic, elected directly by the electorate, assumes the characteristics of the President of a Presidential Republic similar to that of the United States. The President of the Republic elected by the People, in addition to the prime ministerial powers that he acquires, maintains the profile (which he has had up to now) of representative of the unity of the Republic, this time, however, federal: he becomes the referent of the federation and of the States that compose it and expresses the uniqueness of the Italian federal state.

The federal government is presided over by the President of the Republic who, therefore, in addition to being the Head of State is also the Head of Government in the capacity of Prime Minister who, as such, directly appoints and dismisses the ministers, further members of the government structure.

The current Prime Minister has no real power over the ministers, since they are appointed, on his indications, by the President of the Republic. They are irremovable unless prior consultations with the majority parties and, in the event of their removal, with a considerable risk of government crisis. The President of the Federal Republic/Prime Minister – like the mayor of municipalities with over 15,000 inhabitants who appoints and dismisses the councilors – designates the ministers directly, dismissing them when he deems it necessary. The British Prime Minister possesses equal powers even if he does not hold the role of Head of State, a role that belongs to the Crown.

Next to the prime-ministerial presidential figure and representative of the federal unit appears that of the Vice-President, endowed with vicarious functions of the President whenever the latter is unable to exercise the mandate received: definitively in case of death, voluntary resignation or permanent impediment (due to physical or mental causes); temporarily when the President of the Republic is *pro tempore* unable, for example, due to a trip abroad or temporary illness; the President of the Senate – as mentioned above – loses his current role of replacing the President of the Republic.

On the other hand, in the event that the Vice-President is unable to exercise his functions for the same reasons as the President of the Federal Republic, as no further substitute role is envisaged, the President of the Chamber of Deputies (who assumes temporarily the duties and powers of the President of the Republic, as the Marshal of the Sejm – Article 131 of the Polish Constitution) announces within fifteen days the electoral rallies for the election of the President which will take place in the following sixty days, so determining the automatic election of the new Vice-President.

To be even more explicit, the President of the Republic and the Vice-President are elected by universal and direct suffrage, with contextual and connected elections. The election of the President takes place with a majority system and a possible round of run-off. In the first round, the candidate who obtains half plus one of the votes validly cast is elected President. If no candidate has obtained the required majority, on the fourteenth following day a run-off is held between the two candidates who obtained

the highest number of validly cast votes in the first round. In the run-off, the candidate who obtains the majority of validly cast votes is elected President. With the election of the President, the candidate connected to him is simultaneously elected Vice-President.

It is clear evidence that a series of numerous and macroscopic constitutional innovations of both a procedural and institutional nature have been pitted so far: 1) the current election of the President of the Republic takes place in Parliament in joint session (where deputies and senators sit together with the three delegates for each Region, except for Valle d'Aosta which chooses only one), with the quorum of the two thirds of the members in the first three sessions and of the absolute majority (50% plus one of the members) from the fourth onwards; 2) the Vice President is configured like the US Vice President; 3) the election of the (federal) President of the Republic is no longer indirect but direct, i.e. chosen by election by the electorate (as in France – semi-presidentialism – and as in the States – presidentialism – even if in the latter case the election is not really direct); 4) there are two rounds (somehow the mind turns to municipal elections with a population of more than 15,000 inhabitants): the first (and you don't go to the second) if a candidate reaches the majority plus one of the voters; if you move on to the second round (two weeks after the first round) the introduction of the ballot institute takes over: voters must choose between the two candidates who obtained the most votes in the first round (without having, of course, achieved the majority absolute); 5) the name of a candidate for Vice-President of the Republic is linked to the name of a candidate for President of the Republic: the election, in the first or the second round, of a candidate for the Presidency of the Republic automatically causes the election of the Vice-President of the Republic he connected.

The new presidential (and federal) Italy imagined by Vescovi adapts the form to a substance that has already changed for years, bringing Italy closer to legal systems, on a par with the North American, British, French and Germanic ones, which have shown efficiency since their inception in responding to citizens' requests and solving their problems.

5. The separation of the careers of judges¹⁰

“The jurisdictional function is exercised by ordinary magistrates, hired following a public competition, election or honorary appointment, established and regulated by the rules on the judicial system”: a Copernican reform carried forward by the new Article 102 of the constitutional reform presented by Sen. Vescovi, i.e. the possibility that alongside the nomination of magistrates who have won public and honorary competitions, the figure of the “elected” magistrate appears.

The competition is the main and almost exclusive tool for becoming magistrates. The only exception is represented by honorary magistrates, appointed without public selection between lawyers, academics, or other professionals.

Now with this reform the inclusion within the judiciary, also of those of elective origin is expected, as in the United States: the judges and the prosecutors can be elected by a specific territorially delimited electoral body. Close to the US legal system, we can see the remodulation of the Article 117 of the Constitution, which hands over to the exclusive legislation of the federal State the regulation of jurisdiction and procedural rules at the federal level, in addition to federal administrative justice, leaving the regulatory prescriptions for matters relating to the justice of that territory to the individual States (formerly Regions).

The insolvency system itself will receive strong jolts from the inclusion in the reform text of the subdivision of the judiciary into judges and prosecutors, as well as from the establishment of two distinct and autonomous Superior Councils of the Judiciary (judges and prosecutors): the bifurcation of the competition, one to become judges, the other to be appointed prosecutors.

The epochal changes do not end here and continue with the modifications of the articles 104, 105, 106 and 107 of the Italian Constitution.

¹⁰ For a comparative *excursus* in the various jurisdictional experiences of EU Member States on the separation of the careers of magistrates and their autonomy and independence cfr. Violini 2011.

The judiciary is divided, as already said, into judges and prosecutors. The autonomy acquired by the two magistracies entails the creation of two CSM (Superior Council of the Judiciary), one for the judges and the other for prosecutors, lasting four years, replacing the currently existing one.

The number of their members must be defined by law while the one in force is 30, to which are added the members by law, i.e. the President of the Republic who presides over it, the First President of the Court of Cassation and the Attorney General at the Court of Cassation.

The criteria and methods of composition of the CSM of judges are of two types: by law and by drawing lots among professionals with specific characteristics included in a list drawn up every four years by the federal Parliament; the First President of the Court of Cassation is a member by law.

Same speech, albeit with some variations, for the CSM of the prosecutors; the Attorney General at the Court of Cassation is a member by law. The expired member of the CSM of judges and prosecutors, after four years, cannot be part of the one that will take over, thus skipping a round.

The President of the Republic is no longer the head of the two CSMs, as their Presidents are elected by the respective CSMs from among the members identified by lot. The two CSMs are responsible for adopting provisions of all kinds regarding the status and events pertaining to the professional life of the judges and prosecutors, also with regard to the irremovability, since they are responsible for providing for the dispensation or suspension from service of the magistrates or their destination to other headquarters or functions.

Of great importance is the novelty that makes it impossible for judges and prosecutors to carry out political activity. Not only.

The old battle of the Minister of Justice Castelli (2001-2006) is transposed on the constitutional level, introducing into the Charter the separation of competitions and, therefore, of careers and, with it, the non-fungibility and the impossibility of osmosis between the judging and prosecutorial judiciary.

This is the milestone of the changes that can only lead the system towards an improvement for the "Justice Service." The innovations don't end there.

The Legislator has provided for the extension of the possibility of appointing as judges, not only at the Court of Cassation (as it is today) but at any judging judicial office, full professors in legal matters and lawyers with at least fifteen years of practice. And finally the “atomic bomb”: (Article 112 of the Italian Constitution as revisited by the Vescovi constitutional reform): “The Public Prosecutor has the right to exercise the prosecution.” Faculty not duty.

This is an ancient controversy: the need or not to introduce and maintain in the Constitution the obligatory exercise of prosecution. In Anglo-Saxon countries, like the United States and the United Kingdom, the obligation of criminal prosecution does not exist, as well as it is not provided in the Spanish Charter (present, however, within the code of criminal procedure), likewise also in French-speaking countries (France and Belgium), in which there is the opportunity for criminal prosecution in compliance with the criminal policy guidelines dictated by the legislative assemblies.

In Italy there is the obligation of prosecution raised to the dignity of dogma, despite being, in the end, only a flashy simulacrum, residing only in the ink. In reality, the investigating magistrates choose every day – given the amount of “papers,” the scarcity of judicial, administrative and police personnel and the shortage of means and funds – whether to proceed or not: in the courtrooms the criminal action is already an option for some time (I wonder if it was ever really mandatory): this way the Article 112 is radically modified by finally intercepting the reality which, in its practical wisdom, had since that day thrown down the totem, between farce and tragedy, of such obligation.

6. The abolition of life senators

Currently one of the differences between the training module of the Chamber of Deputies and that of the Senate of the Republic is the presence in the latter of elected and co-opted senators: some senators are designated directly by the President of the Republic (so-called life senators by appointment), while others automatically become Heads of state once they leave office (due to resignation or natural expiry) (so-called life senators by law).

Pursuant to Article 59, para. 2, of the Italian Constitution: “The President of the Republic can appoint senators for life five citizens who have lent prestige to the country for outstanding merits in the social, scientific, artistic and literary fields.”

A first question to be addressed is whether each President of the Republic can appoint five senators for life during his mandate, or up to five, so that the total number of senators of presidential appointment is never higher than this figure: in the first case the power of appointment is attributed to the holder of the Office, while in the second case, impersonally, to the Presidential Office. The prevailing doctrine is in favor of the second solution, followed by most of the Heads of State.

The Constitutional law 1/2020 has made this current of thought its own by embracing the most correct and compliant interpretation of the text and spirit of the constitutional provision, replacing Article 59, para. 2, of the Italian Constitution in the following manner: “The total number of senators in office appointed by the President of the Republic cannot in any case exceed five.”

Now let’s see what the requirements for the appointment as a senator for life are. The President of the Republic enjoys a wide margin of discretion in the choice, having one only limit, also in the light of the requirements established by Article 59 (“very high merits in the social, scientific, artistic and literary fields”): not to be guided by political and partisan criteria.

The prerequisite of being Italian citizen is necessary in addition to the requirement of reaching forty years of age, on a par with elective senators, even if some constitutionalists argue the prevalence of the selective criterion of the “highest merits in the social, scientific, artistic and literary” (and, therefore, the senator for life could be under the age of forty).

The choosing of the persons to be appointed life senators – as mentioned – must be free from any political or partisan affiliation, or at least this should be the case, given that, otherwise, governments with particularly weak majorities could only be governed by the votes of “politically oriented” life senators. Senators for life must possess, both at the time of their appointment and throughout their mandate, the necessary impartiality and equidistance from all parties in the field, having the task of providing the Assembly with that extra quid of wisdom, poise, experience, and culture.

Appointments of senators for life made differently could undoubtedly bring out a restricted “President’s Party” which would make the difference in the face of certain political and parliamentary contingencies, even more so in a Senate of only 200 senators. This article also put an end to the aforementioned doctrinal debate on how many life senators the Head of State could nominate.

The “Great Reform” of Sen. Vescovi definitively closes the diatribe on life senators: the Article 59 is completely canceled and, consequently, the figure of the senator for life is totally suppressed.

Perhaps Reagan, Clinton, Bush and Obama, after completing their four-year or eight-year terms, have not returned to private life?

7. The right to happiness and the right to security

“According to the Guido Carli Foundation in order not to lose one’s course one must have ethics as a beacon and the right to happiness as a cardinal point [...] which should be included in art. 3 of the Constitution”.¹¹

In Article 3, para. 2, of the Vescovi’s constitutional reform, two new words are introduced, “security” and “happiness,” and, moreover, the expression “workers” has been replaced with “citizens.” The reformulation of the provision, therefore, appears to be the following: “It is the duty of the Federal Republic to remove the obstacles of an economic and social nature which, by effectively limiting the freedom, security, equality and happiness of citizens, prevent the full development of the human person and the effective participation of all citizens in the political, economic and social organization of the country.”

They are truly incisive innovations, not only of a legal nature, but also and above all of a cultural and psychological nature, as if they could determine an “atmosphere,” a “setting” such as to radically modify the reciprocal relations between citizen and State. The phrase “citizens” repeated instead of the term “workers” changes the perspective angle, placing at the center of Italian politics, economy, and society not “expressions” evoking the members of the Soviets, but active and industrious *cives* in a community between peers in which the best emerge.

¹¹ In “Corriere della Sera” (24.02.2021), p. 27.

Security and happiness are not distant from each other but two sides of the same coin or, perhaps, placed on the same face. Security brings about serenity, and serenity is coessential to happiness.

Safety approaches those Hellenic mythological figures whose bodies are composed of human portions and animal parts of various species. Security has a three-dimensional structure in which personal safety is accompanied by public and urban safety.

The safety of the person is understood as a “sphere of lordship” over one’s own corporeity and as a “right to intangibility” of the same against sensory and perceptive interferences; individual safety is violated not only by causing of an organic disease or physical pain, but also by putting it in danger.¹²

Public security, on the other hand, is broader, and mainly refers to the safety of citizens (as a whole) and the protection of property, while urban security is aimed at guaranteeing a good quality of life for citizens, also through the full enjoyment of a decent urban space with the removal of human, building and urban degradation.

Happiness shifts the Legislator’s attention from “everything,” from Marxist collectivism and the liberal-democratic community, to the psycho-physical well-being of the person, a factor not internal to the value and regulatory system of the legal system but external to it, the guiding star to follow, a port to reach, a goal to pursue, a drive to which every individual tends throughout his life and which could become a programmatic right covered by the constitutional umbrella.

The same organizational well-being – provided for by the regulations on the protection of health and safety in the workplace and on the subject of public employment between 2008 and 2017 – is an anticipatory element of the right to happiness by Vescovi wanted in “its” Constitution: “Organizational well-being is understood as the ability of an organization to promote and maintain the physical health, the psychological and social well-being of all male and female workers who work within it. Studies and research on organizations have shown that the most efficient structures are those with satisfied employees and a serene and participatory “internal

¹² *Ex pluribus* cfr. Canestrari and Cornacchia 2010.

climate”. Motivation, collaboration, involvement, the correct circulation of information, flexibility and people’s trust are all elements that lead to improving the mental and physical health of workers, user satisfaction and, ultimately, to increasing productivity.”¹³ Isn’t the phrase “organizational well-being” perhaps a different way of indicating a yearning for happiness, a metaphysical aspect that prevails over the physics of everyday life, and which the Government and Parliament have promoted for the world of Public Administration? And why not extend it to the private sector and to the entire nation?

The so called “right to happiness,” although undoubtedly having an individual character, cannot fail to be lowered into the collective sphere by virtue of Article 2 of the Constitution. Similarly, the possibility that the realization of one’s economic interest leads to an economic improvement for all, the well-being of the individual resulting from happiness could equally give rise to an advantage for the entire social group.

The right to the pursuit of happiness – as imagined by the Neapolitan philosopher Filangeri and included by Benjamin Franklin¹⁴ in the American Declaration of Independence in 1776 – as said previously, comes back to Italy.¹⁵

8. The meritocracy¹⁶

One of the obstacles to Italian economic development is the “bureaucracy,” perceived as pathologically ill, responsible for the slowness of decisions to the detriment of the work of businesses and citizens, who perceive it as something elusive and hostile.

¹³ In <https://www.miur.gov.it/benessere-organizzativo> [accessed: 12.02.2024].

¹⁴ Cfr. D’Agostini 2011.

¹⁵ In the Kingdom of Buthan (also referred to as Druk Yul, a small state located in the Himalayan area) King Jigme Singye Wangchuck, in the early 1970s, proposed constituting the GIH (Gross Internal Happiness) as the guiding principle of efforts to improve living standards, including spiritual prosperity and the preservation of cultural and environmental values, taking into consideration, among other things, air quality, citizen health, education, as well as the richness of social relations.

¹⁶ Cfr. Giulimondi 2022b.

Bureaucracy, a sort of mythological creature, represents an orderly dimension – made up of men and women, labyrinthine places, laws, procedures, rules and practices – not easily photographable, almost impalpable and, therefore, difficult to regulate.

The plurality of subjects who intervene in a proceeding for the issuing of a provision often leads to its being adopted late. The accumulation of cumbersome and poorly written legislation and regulations, even incomprehensible to professionals, in addition to slowing down the implementation times and the effectiveness of public intervention, often makes it useless.

The excessive prudence and reticence of the managers in making decisions, increasingly intimidated by the threat of possible criminal accusations (starting from the abuse of office) and reassured only by the comfort zone of the “precedent,” completes the depicted picture.

“Time” is important only for citizens and businesses, while for the bureaucracy it is an infinite resource that should be countered with simplification, a culture of objective, a draconian reduction of the laws to be drafted in a qualitatively better way and, not lastly, through digitalization which certainly reduces procedural lengths.

First, however, a sensitive diffusion of awareness of the value of the “public” is needed. What is “public” is not a *res nullius* that belongs to no one and that, consequently, can be mistreated by anyone.

The “public” is an offshoot of the private sphere, an extension of personal assets that can also be used by others, a continuation of the private that can be enjoyed *pro quota* by the community, albeit with different legal provisions: if I throw a cigarette butt on the pavement I dirty something that is not only mine but belongs to everyone; if I serve in a ministry I must be aware that my determinations expand beyond those walls, affecting the lives of flesh and blood people.

Not only from above with the norms, but also from below with ongoing training, it is possible to give breath to a new administrative action that is more incisive and adequate for a transnational era. Thus, the value of public work increases by increasing the attraction of technically equipped personnel towards it.

Our Constitution cannot remain unscathed, of course, from all this upheaval. The constitutional “Great Reform” filed in the Senate on July 4 in 2020 by Sen. Vescovi positivizes, among other things, this new hypostasis of conception of Public Administration and public employment, thanks to the addition of a fifth paragraph to the Article 97 of the Constitution: “The remuneration of public administration employees is determined on the basis of merit. Career advancement occurs only through merit and goals.”

Sen. Vescovi places a fixed point of a constitutional nature on the development of the “Result Administration” which arose with the Brunetta law in 2009. The amendment of Article 97 of the Constitution constitutionalizes a new administrative architecture, no longer based on “time,” on working and service hours, but on the results obtained within a certain period of time.

Time is no longer a structural element of the employment contract but constitutes the framework in which the objective must be achieved. The result replaces time: the former becomes an essential element of the employment relationship replacing the latter, which is weakened, degraded to an accidental element of the employment contract.

Structural element becomes the objective, while time is only a border delimiting the ambit of public action. The inevitable result, which also constitutes the vital breath of the constitutional novelty, is the merit. The time spent in the office no longer counts but only what is produced and, thus, merit becomes the true, and only, compass that qualifies the employee’s working action, establishing itself as a paradigm for evaluating professional commitment.

The Constitution imagined by Vescovi adopts the principle coined by the University of Bologna: “entrepreneurship.” Every public employee commits himself as if he were working for himself, feeling part of a gear, perceived as his own, to which he wants to contribute.

The public manager like the clerk participates, each for their own portion, in the decision-making conclusions attributable to Italy. Italy poses and builds itself as a State, a nation, a homeland and a company.

This new vision of public work is strengthened by the integration of Article 4, para. 1, Constitution inserted in the Vescovi reform: in addition

to the right to work (whatever form and organization it possesses) the (federal) Republic also independently recognizes the exercise of the business activity.

The combined provisions of the amended Articles 4 and 97 of the Constitution performs not only a programmatic function, but also a prophetic and pedagogical one: the classic model of the work is strongly revisited and, in some way, deconstructed and unhinged like a cubist painting, to reach, or at least pass through, a scheme contractual, public or private, where the worker (in the guise of Janus not two but three-faced) will assume the role of employee, combined, however, with the guise of a freelancer and, finally, even of an entrepreneur, associating a new individual professional well-being to an epochal change, expected for decades, in the world of public employment.

A new vision of work accompanied by a valorization of merit and competence that will lead, with their constitutionalization, to the inversion of relations between capable and incapable people. No longer “downward cooptation,” in which the incapable calls as his collaborators as incapable as or worse than himself, but the recognition by the legal system of the principle of “upward cooptation,” in which the best calls the best.

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