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A short reflection on the implementation of article 9 of European Charter of Local Self-Government in Italian legal system after 30 years of the entry into force

ROBERTO SCARCIGLIA

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1. INTRODUCTION

This article aims to survey of the application (and of the developments) of the European Charter of Local Self-Government in Italian legal system.

The Charter was opened for signature on 15 October 1985 and entered into force on 1 September 1988 and ratified by Law no. 439 of 30 December 1989 (Ratification and implementation of the European Charter of Local Self-Government, signed in Strasbourg on 15 October 1985).

After depositing the instrument of ratification, the Italian government lodged the following declaration: “Concerning the provisions of art. 12, paragraph 2 of the European Charter of Local Self-Government, the Italian Republic considers itself bound by the Charter in its entirety”.

In Italy, in recent times, the Constitutional Act No. 3/2001 incorporated the principle of local autonomy into the Constitution, modifying Article 114, and, in particular, the paragraph 1, where it recognizes equal constitution-

al dignity to Municipalities, Provinces, Metropolitan Cities, Regions, and State. Moreover, the Municipalities, the Provinces, the Metropolitan Cities and the Regions are autonomous bodies with their statutes, powers, and functions, according to the principles established by the Italian Constitution (paragraph 2).

Important Laws for the life of local government were No. 243/2012 – which introduced the principle of the balanced budget¹ – and No. 56/2014 on Metropolitan Cities, Provinces and unions and mergers of municipalities².

However, the financial problem is the main problem for the development of the European Charter, despite its prediction that local authorities need resources to ensure their needs, and functions. The Italian government cuts 1.6 billion to the funds for the suburbs, approved by the vote of confidence in the Chamber of Deputies on September 14, 2018, without the prior consultation of local authorities. It certainly does not respect the principles according to article 9 of the Charter.³

¹ Law, No. 243, 24 December, 2012, concerning “Provisions for the implementation of the balanced budget principle pursuant to Article 81, sixth paragraph, of the Constitution.”

² Law, No. 56, 7 April, 2014, concerning “Provisions on metropolitan cities, provinces, unions and mergers of municipalities.”

³ Article 9 of the European Charter of Local Self-Government (Financial resources of local authorities) provides that: “1. Local authorities shall be entitled, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers. 2. Local authorities’ financial resources shall be commensurate with the responsibilities provided for by the constitution and the law. 3. Part at least of the financial resources of local authorities shall derive from local taxes and charges of which, within the limits of statute, they have the power to determine the rate. 4. The financial systems on which resources available to local authorities are based shall be of a sufficiently diversified and buoyant nature to enable them to keep pace as far as practically possible with the real evolution of the cost of carrying out their tasks. 5. The protection of financially weaker local authorities calls for the institution of financial equalisation procedures or equivalent measures which are designed to correct the effects of the unequal distribution of potential sources of finance and of the financial burden they must support. Such procedures or measures shall not diminish the discretion local authorities may exercise within their own sphere of responsibility. 6. Local authorities shall be consulted, in an appropriate manner, on the way in which redistributed resources are to be allocated to them. 7. As far as possible, grants to local authorities shall not be earmarked for the financing of specific projects. The provision of grants shall not remove the basic freedom of local authorities to exercise policy discretion within their own jurisdiction. 8. For the purpose of borrowing for capital investment, local authorities shall have access to the national capital market within the limits of the law.”

2. THE PROBLEM OF FINANCIAL RESOURCES

The problem of the financial autonomy of local authorities is essential for the development of the principles contained in the Charter.

Article 119 of the Italian Constitution of 1948, in its original text, attributed a financial autonomy only to the regions, and not to the other local authorities, codifying the aim for a revenue and expenditure autonomy, corresponding to the principle that all levels of local self-government should have independent financial resources (principle of fiscal federalism).

The constitutional reforms of 2001 introduced some tenets, primarily against this perspective, by a prolonged failure to enact the legislation necessary for the implementation the financial autonomy and to produce a change concerning the Government's measures taken, since 2008, in response to the global financial crisis.

A first, foremost, goal towards the implementation of art. 9 of the European Charter was the approval of Law No. 42/2009 on fiscal federalism, which establishes the fundamental principles of the coordination of public finance and the tax system.⁴ It also regulates the setting up of the *Equalization Fund* for areas with lower tax capacity per inhabitant as well as additional resources and the implementation of particular interventions pursuing the development of the under-utilized regions in the perspective of overcoming the country's economic dualism.

The 2015 legislation was useful for the performance of the financial statements of local authorities, as well as their cash flows. I refer, in particular, to Law No. 125 of August 6, 2015, on essential provisions concerning local authorities.

Until the entry into force of this Law, local authorities had to respect the Stability and Growth Pact, which establishes the rules that local authorities must follow to compete with the achievement of the public finance objectives set by the Financial Laws (now 'Stability Laws'), concerning the parameters of the deficit and public debt that derive from EU commitments.

The rewriting of financial rules was necessary for supporting the local investments. It took place between 2016 and 2017, also in the implementation of the amendment of the law on budget balancing, together with the input of resources (concerning financial space) useful to allow a higher capacity to use administrative surpluses accumulated during the years of the Stability and Growth Pact.

⁴ Law No. 42, May 5, 2009, concerning "Delegation to the Government regarding fiscal federalism, implementing art. 119 of the Constitution,

A composite range of direct support interventions, related to different priority sectors, followed these measures. Economic and Financial Document (DEF) 2019-21 recalls these interventions without however delineating the further actions necessary to consolidate the overall financial balance of the municipalities.

The extent of the effort required by the Municipalities in the period 2010-2017, amounting to over 9 billion euro of cuts in resources between 2011 and 2015 (besides 3.3 billion in the whole period for the public finance constraints).

The effects of these economic sacrifices were differentiated according to the characteristics of the institutions, inevitably affect their full involvement in the implementation of policies for economic growth and territorial development.

The obligation of the regions and local authorities to participate in the achievement of public finance objectives has recently taken on constitutional significance with the new formulation of Article 119 of the Constitution – made by Constitutional Law No. 1/2012 to introduce the principle of balanced budget in the Constitutional Charter – which, in addition to specifying that the financial autonomy of local authorities (Municipalities, Provinces, Metropolitan Cities and Regions), is ensured in compliance with the balance of the related budgets, at the same time, it requires these institutions to contribute to ensuring compliance with economic and financial constraints arising from the Law of the European Union.

Starting from 2019, the reductions of resources carried out by Decree 66/2014 will cease to affect the contribution of regions and local authorities (reduction of public spending review). It is a ‘return’ to the funds’ financial statements of € 563.4 million, the quantification of the annual cut for the period 2015-2018, operated directly on the Municipal Solidarity Fund.

Concerning staff costs, for more than a decade, local authorities have been applying stringent binding regulations to cover staff costs and turn-over limitations. Financial legislation has strongly compressed the capacity for local administrators to manage effective personnel policies. In a few years, it produced: a) a drastic reduction in the number of civil servants employed in the sector; b) a decrease in the average value of the individual salaries of the municipal staff; c) a significant increase in the average age of personnel. In recent years, the relevant legislation has reached a stratification level and unprecedented complexity, which makes an organic review of the subject indispensable and urgent.

As is clear from the graph below the expenditure by the staff of State and municipalities has drastically reduced from 2011 to 2016.

3. PERSPECTIVES ON IMPLEMENTATION OF THE EUROPEAN CHARTER

The Monitoring Committee of the Congress of Local and Regional Authorities Report 2017 on local and regional democracy highlighted some of the problems of the implementation of the European Charter of Local Self-Government in Italian legislation. From this point of view, the perspectives can be mainly two.

The first one is political, and concerns the uncertainty of the Italian situation after the adverse outcome of the constitutional referendum of December, 4th, 2016, and the formation of a new government in June 2017.

This uncertainty does not only affect national and regional policies but also, in many ways, the context of local self-government, guaranteed by the European Charter. The lack of constitutional reform is a negative element for the strengthening of local autonomies. There are many doubts that the current government can take the necessary measures to implement the European Charter.

In this regard, we can ask ourselves how the current Italian financial situation can allow us to find adequate solutions to implement the Charter with more resources and economic balance for local authorities. It will be inevitable that the Government adopts some measures because new abrupt cuts in the funding of the systems of territorial government may have the effect of breaching not only art. 9 but also arts. 3, 4, 5, 6 and others.

The contractual renewal costs for local staff – estimated at over one billion euro for the municipal sector only – cannot be left to the local authorities alone, which will have to finance this step exclusively with the annual resources of competence. Furthermore, the problem of the economic imbalance between the local bodies of the Center-North and those of the South remains unaltered.

To a significant investment trend in the Center-North between 2015 and 2016, correspond the negative values of the South, and the most substantial growth among small and medium-sized organizations (only) in the North, both regarding commitments and payments. The municipal debt remains very low (only 1.8% of total public mortgages) and continuously decreasing (from 2.5% in 2011 to 1.8% in 2016). However, it also affects the budgets of broad groups of institutions in all areas of the country, having been contracted in periods of rates much higher than the current and subjected to very high penalties in the event of extinction.

Similar problems arise for the metropolitan cities where the overall size of the structural imbalance (between 200 and 300 million euro) reflects the underlying situation of the financial statements, due to the prolonged eco-

conomic suffering of the entire former provinces sector, from 2013 then, despite the substantial sterilization of the 2016 and 2017 incremental cuts. If the solution of financial problems is important, there are other issues – which also require interventions by the central government – that condition the implementation of the European Charter and the constitutional development of the local government.

The Decree of the Ministry of Economy and Finance, No. 182944, 23 July 2018⁵, introduces a positive element from this perspective, dealing with the question concerning the rulings of the Constitutional Court No. 247/2017 and No. 101 / 2018.

The two decisions, interpreting the art. 9 of the Law No. 243/2012, consider that the administrative surplus and the limited multi-year fund of the local authorities cannot be limited in its use since once realized a more significant entry is in the availability of the entity that obtained it. The Constitutional Court's orientation could allow local authorities to balance the budget and to overcome the internal stability pact.

At this time, government politics and financial uncertainty represent, together with corruption, and the presence of criminal associations, the main problems of local authorities. These problems also have consequences on the institutional set-up and the exercise of local functions.

The phenomenon is widespread especially in the Southern Regions, and has produced the dissolution of many municipal councils for mafia infiltration, pursuant to art. 143 of the legislative Decree No. 267/2000. From 1991 to May 2018 there was the dissolution of 306 municipal councils for mafia infiltration (i.e. Calabria: 105, Campania: 104, Sicily: 73, Puglia: 13).

Among the various functional areas, recent (and tragic) Italian events highlight, in particular, the theme of immigrants, the great public works, and the environment.

The Italian Government, since its establishment in June 2017 until today, has focused mainly on the issue of migrants. This problem touches on different aspects of the Charter, from the concept of autonomy to the sphere of local autonomy, from the adaptation of structures to the resources necessary for the exercise of functions to the guarantee of human rights in the local dimension.

The issue of the guarantee of human rights at the local level with particular reference to migrants and refugees represents a significant and constant criticality for Italy as the Monitoring Committee noted.

⁵ At: <http://www.rgs.mef.gov.it>.

According to data from the Ministry of the Interior, between 2016 and 2018, 218,392 migrants have landed in Italy⁶, with a drastic reduction in the last year. Although this is a national problem, as well as a European one, it mainly concerns local authorities.

The problem mainly concerns the Southern Regions where the main landing ports reached in 2018 are: Sicily (Pozzallo, Catania, Augusta, Messina, Lampedusa, Trapani, Palermo), Calabria (Crotone, Porto Empedocle, Reggio Calabria) and Sardinia (Cagliari), as well as the reception centers.

These structures are divided into first aid and reception centers (CPSA), reception centers (Cda), reception centers for asylum seekers (Cara) and identification and expulsion centers (CIE). The procedures for recognition and ascertainment of refugee status are unusually lengthy in Italy, and this produces tension in the local communities. First, due to the severe lack of resources allocated by the government to the municipalities to provide for the maintenance of sheltered centers and immigrants. Public order and economic problems complicate the life of local governments with regard to this issue.

For example, from the first point of view, many mayors make opposition to the government's plans for the redistribution of migrants in different Italian Regions, in the same way, it happens in some Countries of the European Union. Since June 2018, the Italian government received many criticisms for the prohibition of entry into the Italian ports of NGO ships that have collected migrants at sea. Even some city mayors with large ports have expressed their dissent on this policy.⁷

About the action of local authorities for the protection of asylum seekers and refugees we can point out the SPRAR Project⁸, created under Law No. 189/2002. It consists of a network of local authorities, which run reception projects for people forced to migrate with members of third-sector and ONG, within the limits of available resources.

In the 2011-2013 period, 128 local authorities – of which 110 local authorities, 16 provinces, and two consortia of local authorities – took part in the project. In 2016, the municipalities that joined were 1017 out of 7898, of which the majority are in the southern regions.

⁶ At: http://www.interno.gov.it/sites/default/files/cruscotto_statistico_giornaliero_17-08-2018.pdf.

⁷ See Pianigiani, G., Horowitz, J. and Minder, R. (2018) Italy's New Populist Government Turns Away Ship With 600 Migrants Aboard, at <https://www.nytimes.com/2018/06/11/world/europe/italy-migrant-boat-aquarius.html>.

⁸ At: https://www.sprar.it/wp-content/uploads/2016/07/sprar_description.pdf.

From this point of view, if the financial resources of the local communities are not sufficient, it is evident that not even the funds transferred to the Italian State in the European context can contribute significantly to the solution of the problems linked to immigration.

However, if the main difficulties relate to intersubjective relationships, an opportunity can be given by solutions of a large area, from the management of reception facilities to the ports of metropolitan cities⁹

Another critical area for local authorities concerns the infrastructures of a particular size, located in the territory. Even if not the under the responsibility of local authorities, however, produce effects on the level of administrative functions, and consequences on citizens resulting from severe and tragic events, as happened for the collapse of Morandi Bridge in Genoa on August 14th, 2018.

The Decree of the Minister of Infrastructures and Transport of January 17, 2018, updating the technical standards for buildings – which revises the old technical regulations of 2008 – entered into force in March 2018. The question that is mandatory to apply regards the exercise of controls by the competent public (or private) subjects, considering that the local authorities do not have this competence.

However, without going into the merits, we can underline the great novelty of the Prime Ministerial Decree n. 76/2018 of May 10, 2018 (whose entry into force is August 24, 2018), implementing Legislative Decree 50/2016, which formalizes the operational participation of local communities in the design choices of major strategic works. This is perhaps one of the main implementations of Article 4, paragraph 6, of the European Charter, in the part where it provides for public consultation of local authorities.

Concerning the consultation of local authorities, before the approval of the state budget, it should be noted that the joint budget committees of the Senate and the Chamber of Deputies heard in the audience the Italian Association of Italian Municipalities to assess the financial needs for 2018. It remains to be seen whether the government's uncertainties about actions taken for political choices compromise the expectations of local self-government. Otherwise, the implementation of the European Charter itself could be jeopardized, as well as the guarantee of essential services to citizens.

The interruption of the constitutional reform process – after the failure of the last referendum consultation – had the effect of crystallizing the reform, for the profiles relating to the provinces and the entities of large area, accord-

⁹ At: <http://www.lavoro.gov.it/notizie/Pagine/Rapporti-sulla-presenza-dei-migranti-nelle-aree-metropolitane.aspx>.

ing to the Law No. 56/2014, determining, however, a condition of uncertainty, above all for the regulation of the institutional structures and the financial aspects of the entities involved in the reform.

With the disappearance of the planned abolition of the provinces, at least in the medium term, it seems necessary to impose, in public sector policies, the operation of these bodies (by arts. 114-118 of the Constitution as institutional subjects, recipients of their fundamental functions and functions conferred) no longer suffers the effects of this conditioned perspective. In regards to the severe deterioration of the structural equilibrium conditions of the related financial statements, which took place in the last two fiscal years, and to which the subsequent emergent interventions, partly unrelated to the regulatory system of local finance, that the previous governments didn't give a solution.

The consolidation of public accounts, the restrictive effects of the new accounting, the freezing of the maneuverability of the local tax lever, and the start of equalization, contributed to a substantial compression of the political and administrative autonomy of the municipalities. It also requested an exceptional effort for the adaptation to the new paradigms.

In this regard, we can point out that, even in the absence of further cuts in resources, the current-account tightening is continuing to occur due to accounting harmonization, due in particular to the gradual adjustment of the provision to doubtful receivables (FCDE), for several hundred million annually until 2021.

The analysis of the financial situation of the provinces and metropolitan cities offers a significant comparison with what was shown about the detrimental effects produced, on the one hand, by the multiple manoeuvres of public finance that affected the sector and, on the other hand, by the precarious situation connected to the uncertain implementation of the institutional reorganization process.

The government emerged since the elections of March 2018, does not seem to have among its priorities the problems of funding, and organization of local authorities, nor the implementation of the European Charter of Local Self-Government.