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The Italian Contribution to Comparative Regionalism

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Chapter 5

Financial relations in the Italian regional system

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5 Financial relations in the Italian regional system

Alice Valdesalici[1]

I. The rationale for reform and the significance of a legal investigation

The 2001 reform of the Constitution has started a process for reshaping financial relations in the Italian regional system.[2] Prior to 2001 the system of subnational financing was entirely grounded on central state transfers, which mostly came with strings attached. Besides that, resources were negotiated on a yearly basis with no chance of long-term planning from the part of the single subnational entity. Despite the fact that Italian regions have been progressively vested with relevant – mostly administrative – competences and as such significant spending responsibilities (50 per cent of overall public spending was in charge of territorial entities),[3] financial autonomy of subnational entities has remained untouched for years. Only in 2000 a partially different financing system was envisaged on paper (Law no. 56/2000) and certain taxes were assigned to the regions (i.e. a tax on business – the IRAP).

One of the major problems herein lies with the fact that subnational entities were not facing any responsibility in their financing. Giving rise to a large vertical fiscal gap, such a system failed to make territorial entities accountable for their decisions. This pattern brought over time to a duplication of administrative structures (and costs) together with an expansion in personnel spending. To this regard criticism can be drawn from the growing gap between decentralised public spending and the employees per level of government. It would be optimal if public employees were matched with the tier of government in charge for a specific public function. On the contrary, dating back to 1995, 54.3 percent of the public employees were hired by the State and the percentage has grown up to 57.4 percent in 2009, when the State was in charge of less than 50 percent of public spending (Palermo, 2011).

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2 On the concept of fiscal federalism in Italy, see among the many: Antonini, 2009; Antonini 2013; Bertolissi, 1997; Bertolissi, 2007.

3 In fact, from the late 1990s an incremental decentralisation process was started, culminating in 1999 and 2001 with two major constitutional amendments that considerably increased the political autonomy of ordinary regions.

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It is not by chance that one of the main drivers for reform was the enhancement of financial and political accountability. A new financial setting had to be envisaged which prompted a better match between the spheres of those who benefit, who decide, and who vote, in order to ensure democratic control and inject efficiency into the system. With this purpose in mind, the previous system mostly based on State grants had to be reshaped, as the recognition of autonomy on the revenue side was perceived to be conducive to more accountability for the regions. At the same time, the socio-economic cleavage between the northern and the southern part of the country made it impossible to opt for a genuinely competitive model of fiscal federalism. The recognition of a certain margin of autonomy on tax matters had to coexist with a wide-ranging system of equalisation (Antonini, 2014).

After the enactment of the 2001 constitutional reform, the federalism debate has been increasingly captured by the financial dimension of intergovernmental relations. The allocation of powers and the design of intergovernmental relations in fiscal and financial matters are pivotal for the very existence of every federal system. Nevertheless, in Italy the debate on 'fiscal federalism' has monopolized every aspect of the federalizing process. While the 2001 reform intended to comprehensively address the institutional design of a (quasi-) federal State, afterwards political attention was paid predominantly to the financial dimension.

This is all the more so since the outbreak of the economic and financial crisis, which has exacerbated the situation, due to the poor conditions the Italian system of public finance was facing. The need to comply with the EU-driven economic constraints has added an additional level of complexity in the management of public finance, dealing a severe blow to the subnational autonomy in general and to financial autonomy in particular. Consequently, the new pattern is at present far from being translated into practice and the current Covid-19 emergency represents another stress-test for financial relations and subnational autonomy.

This complex picture adds to the need to investigate financial relations from a legal standpoint. The subject is topical in the political agenda and in the academic debate of every federal system. Despite that, the interest of legal scholars has shifted to the topic only in the last two decades thanks to the emergence of a broad understanding of fiscal federalism.[4] Even though there is no unanimous agreement on a common definition, over time an expanded understanding of the phenomenon has taken hold, as referred to 'the division of policy responsibilities among different levels of government and with the fiscal interactions among these governments' (Wildasin, 2008, 405). All in all, the investigation shall include the allocation of taxing and spending powers, as well as of regulatory and revenue responsibilities and shall be integrated by a dynamic understanding of the rules at work through intergovernmental relations.

4 With a few exceptions of a non-comparative nature, e.g., Dam, 1977.

This holds particularly true within the European context, and it is not by chance that the scholarly interest has recorded an expansive trend after the outbreak of the economic crisis and the hardening of the EU obligations. The idea that fiscal federalism is essential in determining the way a federal system functions has steadily taken root. Not only the financial endowment of the different levels of government is instrumental for the discharge of their powers, but also, there exists a mutual interdependence between financial and institutional components (Carboni, 2014, 8). On the one hand, financial arrangements are conditioned by the institutional structure of the federal system as a whole. On the other hand, the allocation of powers in financial and fiscal matters is instrumental for the discharge of legislative and administrative responsibilities, as it ensures that subnational entities can make use of their constitutionally assigned margin of autonomy. As such, financial rules have frequently impacted the institutional components and their functioning, and in some cases can be considered responsible for their formal or informal change (Palermo, 2012, 2, 10).

Against this background, the chapter pieces together the legal frame of reference of the 'Italian financial constitution'. The notion of a *financial constitution* is the literal translation of the term *Finanzverfassung*, coined by Austrian (Pernthaler, 1984) and German (Hellermann, 2010) scholars and referring to those constitutional provisions that establish the principles and rules of the system of public finance, and having particular regard to the determination, distribution, and use made of financial resources by the different levels of government (Valdesalici [b], 2018).[5]

After that the constitutional frame of reference is illustrated and the principles of the 'financial constitution' are investigated (par. 2); an overview of the implementing process (par. 3) and its specific regulations on paper (par. 4) and in motion (par. 5) are also provided. This is done going through the case law of the Italian Constitutional Court (hereinafter ItCC) in its evolution over time and paying exclusive attention to the subnational level of government, i.e. the regions. Against this composite legal scenario, the conclusive paragraph (par. 6) will try to make a balance and look at the way forward.

II. Framing the Italian financial constitution

The constitutional point of reference for outlining 'fiscal federalism in Italy' is Article 119. Accordingly, all territorial entities shall have financial autonomy both on the revenue and expenditure side. At the same time, autonomy has to be balanced with solidarity, cohesion and coordination as the Constitution provides for the overall coordination of public finance and for an equalisation mechanism, in order to ensure equality among all territories.

The provision further defines financial autonomy on the revenue side by setting the principle of self-sufficiency of territorial entities. As such regions – as well as

5 This is the terminology used, with little variation, by Italian and Spanish scholars as well. Among others, Salerno, 2007; Medina Guerrero, 2008, 98. The latter, indeed, makes specific reference to the 'territorial financial constitution'.

local entities – have to base their financing on 'autonomous resources', that is mainly through tax revenue linked to the territorial fiscal capacity [Art. 119(2) Const.].

It also provides for a taxonomy of the sources subnational financing shall rest upon by enumerating the different possible types (Bassanini, 2006). In sum, these include own and territorially shared taxes, plus non-earmarked equalisation transfers [Art. 119(2) and 119(3) Const]. Territorial entities can set and levy taxes and collect revenues of their own, in compliance with the Constitution and according to the principles of co-ordination of State finances and the tax system. They are also entitled to a share in the tax revenues related to their respective territories. For the sake of cohesion, solidarity mechanisms are also foreseen. State legislation shall provide for an equalisation fund – with no strings attached – for the territories with a lower per-capita fiscal capacity. The other State transfers shall be abolished.

Revenues raised from the above-mentioned sources shall enable entities to fully finance the public functions assigned to them (Art. 119(4) Const.). In searching for a balance between autonomy and solidarity, this provision is central in constraining the margin of manoeuvre of the legislature and imposing a system with a strong solidarity blueprint: if self-sufficiency cannot be reached with 'territorially-generated' resources, the State must guarantee an adequate financial endowment through equalisation.

This financing scheme is meant to cope with the physiologic functioning of the system. Additionally, specific-purpose grants can be reserved to single entities in extraordinary circumstances. Article 119(5) Const. explicitly lists some of these exceptional conditions, but it also introduces a general clause allowing a State intervention in all cases that go beyond the ordinary.

In 2012, the Parliament has amended several constitutional provisions (Articles 81, 97, 117, 119), constitutionalizing the principle of balanced budget as imposed by the so-called EU fiscal compact (const. law no. 1/2012). Taking into account the economic cycle, the State shall ensure the balance between revenue and spending, as well as the sustainability of the public debt (Art. 81 Const.). Territorial entities shall also contribute. As such, they have financial autonomy, while ensuring the equilibrium of their budgets and concurring to the enforcement of EU obligations [Art. 119(1) Const.]. The new rules impose limits to deficits and to the possibility to incur debts and, at the same time, they set strict limitations to regional overspending. Deviations from the equilibrium could occur, although entities may indebt only for investment expenditure and under the condition that the equilibrium is anyway reached by taking into account all territorial entities within the regional territory of reference (Ciolli, 2014).

For a proper understanding of fiscal relations, however, the analysis of the financial constitution shall also incorporate the entire block of constitutional provisions set forth by the 2001 revision of Title V of the Constitution to the extent that these are related to financial and fiscal issues (Groppi, 2008; Salerno, 2007). For a fully-fledged analysis, the reading of Article 119 must be integrated at best with Article 118 (distribution of administrative competences) as well as Article

117 (allocation of legislative competences).[6] These are of relevance as long as they stipulate on the allocation of legislative powers and administrative responsibilities in fiscal- and financial-related matters.

In defining the principles that guide the allocation of administrative competences, Article 118 ends up affecting the spending autonomy of territorial entities. In fact, the latter is only mandated as a principle, but it is not explicitly regulated either in the Constitution, or in the implementing regulation (see below par. 4). As such, spending responsibilities can be only implicitly inferred from the combined scope of the legislative and, mainly, administrative responsibilities vested with the subnational entities.

The distribution of legislative competences is even more central in understanding the new system in its functioning. While subnational entities have been vested with financial autonomy and solidarity duties (Art. 119), the State holds the exclusive legislative power over the State tax system, the equalisation mechanism and the 'harmonisation of budgets of all public entities'[7] [Art. 117(2), lit. e.], as well as over the 'determination of the essential levels of public services to be ensured in a uniform manner across the country' [Art. 117(2), lit. m.].

The centre is also responsible for the enforcement of 'the principle of balanced budget', that can be considered as a *sui generis* State competence. The latter is not listed in Article 117 Const., but can be drawn from Article 81 Const. and Article 5, constitutional law 1/2012 (Salerno, 2011) and inevitably conditions financial autonomy of subnational entities as these are bound to ensure that their budgets are in balance and shall contribute to the enforcement of EU obligations pursuant to Articles 119(1) and 97 Const. (Servizio studi del Senato e della Camera, 2017).

Finally, the State is responsible for defining the 'fundamental principles of coordination of public finance and of the tax system' [Art. 117(3)] while regions are vested with the power to determine the detailed regulation in the field as this is a concurrent competence title.

Due to the use made by the State of these legislative powers, the actual operation of these competences – either individually considered or in their interrelation with one another – is central in understanding the genuine dimension of financial autonomy and the functioning of financial relations. In this respect, the ItCC has played (and is still playing) a key-role in shaping the new financial constitution, also due to the long-lasting lack of implementation of the constitutional framework. Indeed, the Court, on the one hand, has urged for many years the legislature to give effective implementation to Article 119 of the Constitution (*ex plurimis,* judgments no. 370/2003, no. 37/2004, no.193/2007), on the other hand, has intervened, setting the milestones to orient the future legislator in the

6 Other provisions come also to the fore to the extent that they provide fundamental principles and values that inspire the system of territorial organisation in general (e.g., Article 5 Const.) and the tax system in particular (e.g., Article 23 and Article 53 Const.).

7 This title is included in the list of exclusive State competences only after 2012 (const. law no. 1/2012). Before 2012 it was included in the concurrent State-region enumeration.

implementation process (e.g., judgments no. 296/2003; no. 37/2004; no. 102/2008). In this respect, the Court has stated that the effective exercise of certain powers (such as the taxing powers) undergoes several limitations due to the lack of a prior legislative intervention of the State.

III. The implementation process and its main trajectories

The new financial constitution has remained on paper for eight years (2001–2009) and the model of State grants has been *de facto* confirmed. The delay has worsened the existing asymmetry between expenditure and revenue responsibilities, further deteriorating the condition of unaccountability of territorial autonomies.[8] Moreover, it has put under strain a proper interaction of the constitutional principles. In fact, pending the implementation of the reform, the central government has adopted ordinary legal acts that have undermined the financial autonomy of subnational entities.

Only in 2009 the national Parliament adopted the framework law no. 42/2009 providing for a new order of intergovernmental financial relations. The law innovates the subnational financing scheme with the aim to foster territorial accountability and to boost democratic control.

The recognition to the subnational entities of enhanced autonomy, especially on the revenue side, is conceived as instrumental in this respect. As such, one of the main pillars of the reform is the disabling of the 'State-transfer-based' system in favour of a 'tax-revenue-based' model.

In addition, the law prescribes the gradual dismantling of the current funding scheme, which grounds the transfers on the resources spent in the previous financial exercise (so-called historic spending). A set of criteria (so-called standard costs and needs) linked to pre-defined benchmarks as well as generally applied and neutral indicators should be introduced in its place with the aim to standardise territorial financing and foster efficiency and accountability (Antonini, 2009).

Major problems herein lie with the fact that law 42/2009 turned out to be rather ineffective in giving implementation to the new principles. Indeed, the law is nothing else than a delegation from the Parliament to the Executive of the power to adopt in two-year time several bylaws (i.e. enactment decrees), in order to allow the concrete functioning of fiscal federalism (Scuto, 2010).

First, the law basically replicates the constitutional principles and sets only very general criteria that shall regulate the new financial regime, further postponing the actual implementation. Second, with the legislative act the Executive is vested with the task to delineate the concrete functioning of 'fiscal federalism'. Due to the undetermined nature of both the constitutional framework and of law no. 42/2009, the setting in motion of the system remains the responsibility of the political

8 The deterioration of public finance is extensively described in: Italian Government, Report on Fiscal Federalism, June 30, 2010. http://www.astrid-online.it/static/upload/protected/Rela/Relazione-Federalismo-fiscale_30_06_10.pdf (accessed August 4, 2020).

majority (Scuto, 2010), although the need to reach a broader consensus would have been expected for a matter of constitutional relevance. From a comparative perspective this is quite unusual. In European federal systems, the financial settings are typically either designed in detail in the Constitution (e.g., in Germany and Switzerland) or in a normative act vested with constitutional (Austria) or quasi-constitutional (e.g., in Spain and Belgium) binding force (Parolari, 2018). Third, the involvement of territorial entities has been marginal and not assisted with adequate guarantees: the approval of the enactment decrees must follow a complex and derogating procedure, which aims at guaranteeing a minimum involvement of territorial forces. A prior agreement with territorial entities is prescribed, however no consequence is connected to the failure of the negotiations, apart from the need to motivate the dissent.

Finally, the decrees as a source of law have turned out to be rather inadequate for the purpose. The result has been a series of uncoordinated measures, providing for fragmented and desultory regulation of the new system, lacking the necessary comprehensiveness and consistency. It is not by chance then that key aspects, such as the regulation of the new equalisation system, have been almost overlooked, further delaying the concrete regulation and above all its successful entry in force.

As such, doubts are expressed about the prescriptive force of the enactment decrees. Most of these bylaws are not self-executing: either they need further integration by means of administrative rules, or they postpone the definition of essential aspects. Regarding the first point, other decrees were expected to correct possible malfunctioning or to integrate deficiencies, while the second problem can be traced back to the existing normative gaps. The Executive failed in effectively coordinating the adopted measures, and they turned out to be rather inadequate and ineffective in reorganizing the system in a comprehensive and rational way. This is for instance the case of the new equalisation concept based on standard criteria. The Government provided only a fragmented regulative scheme and did not tackle core elements: it failed to calculate the new financing criteria, but also to define the methodology to be applied.

IV. The rules from paper to practice

A. Ordinary regions

A comprehensive analysis of the implementing regulations discloses that the reform resulted at most in the design of a new scheme of subnational financing, which rests on two main trajectories: the national legislator retains almost exclusively the legislative power to tax, and a wide-scope equalisation system is confirmed, though according to a new ‘standardized’ concept.

Having regard to financial autonomy on the revenue side, the most significant change concerns the abolition of all central transfers, with the sole exception of non-earmarked equalisation transfers and specific-purpose-grants for extraordinary circumstances (Art. 119(5) Const). Pursuant to Article 119(4) Const, territorial entities shall have to fully finance their functions by means of own-tax sources, shared taxes and equalisation transfers.

Despite linking regional financing to the tax revenue generated from the territory of reference (eventually and substantially corrected by means of equalisation transfers for the entities with lower fiscal capacity), no other dramatic change has taken place.

Under the new scheme, territorial entities keep most of the tax-revenue they had under the previous system (Muraro, 2011). As to ordinary regions, 'regional' taxes can be classified in three categories. First, 'devolved taxes' that are set by a national law, but both the revenue and a limited varying power are devolved to the regions. Second, 'regional surtaxes' that are on top of those national taxes in relation to which regions can impose an extra charge, within the limits set forth by the State law. Third, 'own-taxes' that are set by a regional law on a tax-base not pre-empted by the State. Against this classification, the most relevant regional sources belong to the first and second groups and include the revenue from a tax on business (IRAP – i.e. regional tax on productive activities) and the surtax on the Individual Income Tax (IRPEF). The latter consists of a basic rate of 1.23 per cent (since 2011), plus an optional rate (up to 2.1 per cent as of 2015) to be applied within certain limits. Regions may also vary the tax rate of the IRAP and eventually reduce it to zero. Instead, own-taxes are very few (e.g., the special tax for the landfill of waste) and the yields are marginal.

Though taxing powers of the regions have been somehow reinforced, the tax system remains mostly centralized. The State holds the power to set and levy the most significant taxes, while own-taxes of the regions remain an exception (Buglione and Jorio, 2011; Immordino, 2011). Even though regions would in theory be vested with exclusive competence in those tax matters not expressively reserved to the State and with reference to tax-bases linked to the regional territory.

The persistent non-implementation of the reform, together with the fact that the national legislator has frozen the regional powers to apply surtaxes or vary the rates for years (with minor exceptions, e.g., the tourism tax), have been decisive in this respect. On top of that, the established doctrine of the ItCC has further limited the scope of regional autonomy in tax matters. On the one hand, regional taxes are only those set and regulated by a regional law, i.e. very few, as the tax room is almost entirely pre-empted by the State (judgments no. 296/2003, 297/2003; 216/2009). On the other hand, the regional power to tax may be exerted only in compliance with the principles of financial and fiscal coordination set forth by the national legislature. Furthermore, the Constitutional Court has upheld an extensive interpretation of the State competence to define the basic principles of coordination of the tax system. The way the centre can make use of this power has *de facto* nullified the regional room in tax matters (e.g., judgments no. 37/2004, 199/2016). The constitutional adjudications have stretched out the State interference on sub-national autonomy and, at present, it is mainly the centre that sets a tax and then decides on the powers and shares to be conferred to the regions. As such, tax autonomy of the regions remains a declared principle, but far from operating in practice.

Despite these criticisms, over time regional fiscal autonomy has been somehow strengthened and tax flexibility has been reinforced. In 2016, regional taxes

considered as a whole (i.e. autonomous and devolved) amounted to 45 per cent of the regional budget, while only to 14.8 per cent in 1990 (Istat, 2016).[9] Although tax competition is low, the territorial differentiation in terms of tax pressure is becoming somehow noticeable, though limited to the devolved taxes, such as the regional tax on productive activities and the regional surtax on individual income. As to the latter, regions have exercised the varying power over the tax rate in different ways, in certain cases introducing a single rate for all income levels, while in others opting for a progressive tax rate. As to the first, differences are even more significant, as regions have the option to intervene on the tax rate, but also the authority to differentiate it because of the involved sector or taxpayers' category, as well as to introduce tax benefits (Court of Auditors, 2019).

Besides own- and devolved taxes, regional finance includes a share of tax revenue on a territorial base. This is the case of the VAT: ordinary regions are entitled to 67.07 per cent (2018), and the revenues thereof are then distributed according to the statistical data of the final consumptions of families, calculated on average on a regional base. *De facto*, the related revenues are not assigned to the single region, but they finance the healthcare equalisation fund that is still in place, despite the reform. Accordingly, at a first stage, the revenues are calculated based on the derivation principle but are then corrected in accordance with the prescribed equalising formula. Depending on the region at stake, the share of VAT covers between 65 and 92 per cent of the regional spending for healthcare (Bordignon and Ambrosanio, 2020).

The other trajectory of the new funding scheme consists in the gradual overcoming of the criterion of the 'historical spending', which grounds the transfers on the resources spent by a specific administration in the previous financial exercise. The equalisation parameter shall be progressively replaced by a set of objective criteria linked to predefined benchmarks and to generally applied and neutral indicators. The so-called 'standard costs and needs' approach should be applied to the redistribution of regional resources so as to ensure the full coverage of the 'essential levels of public services' in the field of healthcare, education, social assistance, and public transport (for capital spending only). These types of services shall be fully financed at the levels defined by the national legislator (pursuant to Art. 117(2), lit. e. Const., the State has the exclusive legislative jurisdiction to stipulate on that). However, this results *de facto* in a partial equalisation as the related transfers shall not be based on the effective needs, but on the standard needs, i.e. based on efficiency and not on actual spending. Put differently, inefficiency-related cost in the management of functions shall not be equalized.

The new concept should allow a standardisation of territorial financing, while fostering efficiency and accountability and correcting the drawbacks of the 'historic spending' approach: as a parameter, the latter enhanced inefficient and irresponsible spending, as the more a region spent and accumulated debt, the more

9 This result is also due to the fact that in the last decade the resources of subnational entities have been cut by the State in order to comply with EU obligations in time of crisis.

the State allocated to its funding the following year (Jorio, Gambino, and D'Ignazio, 2009).

In addition, the new solidarity mechanism is complemented by a second pillar that applies to all other (residual) regional functions. In this case, the single region decides on the level of services to be provided: no common standard is prescribed by the centre and the transfers are designed so to guarantee only a partial equalisation. In fact, the parameter is the per capita fiscal capacity and the related differences are reduced up to 75 per cent.

The complete implementation of both schemes is still pending and the previous 'transfer-based' system is still to a great extent in force. This is mainly due to the delayed implementation of the 2001 constitutional reform and foremost to the fragmentation and uncompletedness of the implementing legislation adopted insofar: neither have the standard costs and needs been calculated yet, nor has the national legislature completely determined the essential levels of services to be guaranteed throughout the country, with the partial exception of the healthcare sector (Bordignon and Ambrosanio, 2020). The economic crisis is frequently spotlighted as the responsible of the stalemate, neglecting the fact that the new equalisation concept should be considered as part of the solution to the Italian problems rather than the cause of them.

By contrast, the implementation process is concluded on the side of fiscal discipline. At present, all territorial entities are bound to respect the principle of balanced budget. Law no. 243/2012 (as amended by law no. 164/2016) imposes limits to deficits and to the possibility to incur debts for all territorial entities. At the same time, it sets strict limitations to overspending. Hence, deviations from the equilibrium could occur, although each region must ensure the recovery of the deficit through the adoption of a loan repayment plan. Surpluses shall be used either to cover the existing debts or for investment expenditure. To this end, an agreement between the region and the centre should be reached, to ensure the balance between revenue and expenditure, considering all entities within the region (including the region itself). For guaranteeing the enforcement of the principle as well as the transparency and the comparability of the different budgetary documents, the State has also adopted the rules for the harmonisation of the budgets of all public entities (decree no. 118/2011).

B. Special regions

The asymmetrical design of Italian regionalism is particularly evident when it comes to financial relations and related rules and procedures (see Palermo in this volume). As a rule, the two-track asymmetry – ordinary and special regions – is confirmed, though the 2001 reform introduced important changes concerning the distribution of legislative and administrative powers between State and regions. Indeed, the reform aimed also at reducing institutional disparities between special and ordinary entities, offering the latter powers similar to those enjoyed by the special regions from the 1950s onwards. However, the political aim of progressive 'assimilation' failed, largely due to non-implementation of the 2001 reform of

financial relations, but also due to the coexistence of different systems of financing for special regions. In fact, the new financial rules do not apply to special regions, but they have been asked to reform their systems according to the same basic principles.

The specific regulations thereof have to be agreed between the single region and the State in bilateral negotiations. As such, every special region has its own financial constitution that is entrenched in the statute of autonomy and can be changed only after agreement with the interested parties.

All in all, special regions enjoy a higher degree of financial autonomy, but their systems differ from one another. Each entity has developed the scope of its self-government in a different way on the basis of territorial peculiarities and this impacts the degree of spending and revenue autonomy. This notwithstanding, a few common features can be identified and are outlined below.

Their financing systems are based mainly on a share of State taxes referable to the territory. The main differences among them concern the sharing percentage and the type of taxes that are shared. As a matter of fact, the percentage varies from a minimum of 25 per cent (e.g., Friuli-Venezia Giulia) to a maximum of 90 per cent (Trentino-South Tyrol and Aosta Valley), while for certain taxes some entities receive the entire amount of revenue referable to its territory.

The tax-combination can potentially encompass all State taxes. Usually, these are explicitly listed in a specific provision of the statute of autonomy. As a rule, the share is higher for those special regions which have been vested with major spending responsibilities – such as Trentino-South Tyrol and Aosta Valley (Valdesalici [a], 2018).

In addition to the prominent role vested by shared taxes, own sources of special regions encompass both devolved and autonomous own-taxes. As for ordinary regions, 'autonomous' own-taxes are residual, even though the constitutional case-law has accorded them a more extensive taxing power (judgment no. 102/2008). Furthermore, they receive the whole amount of a few other taxes (so-called devolved taxes), including the regional tax on productive activities (IRAP). Interestingly, most of the special regions have a rather extensive tax-varying power, enhancing fiscal flexibility. As such, they have been vested with the power to increase or decrease the rate over several State taxes (i.e. devolved taxes and surtaxes). Within the maximum tax-rate set by the State, they can introduce exemptions, deductions, tax reliefs or whatsoever alteration. Contrary to what happened for ordinary regions, the ItCC has accepted an extensive interpretation of their tax varying power, opening the way to regionally differentiated fiscal policies (judgments no. 357/2010; no. 323/2011; no. 2/2012).

State grants tend to be generally less consistent in special regions than in ordinary regions. Nevertheless, even in this case, regional discrepancies can be profound. In general terms, while the special regions of the North rely much more on revenue linked to taxation, the two islands (Sicily and Sardinia) tend to depend more on State transfers. To a certain extent, the varying relevance of these different components seems to reflect the existing cleavage in the respective economic performance (Cerea, 2010).

Although the reform does not directly apply to special regions, it had an impact on their system. In fact, law no. 42/2009 (Art. 27) mandates that each special entity agrees with the State upon its contribution to equalisation and to the recovery of public finance (including obligations imposed by the EU). Even in this case no 'one solution fits all' is possible. Though all of them have entered into agreement with the State for defining their contribution to EU obligations and the recovery of public finance (i.e. have reduced the revenue at disposal), only a few (Trentino-South Tyrol and Aosta Valley) have seized the opportunity to consolidate their political and financial autonomy further on (e.g., expanding their administrative and legislative jurisdiction as well as their overall financial autonomy).

V. The financial constitution in motion

Besides the complexity resulting from the openness of the constitutional framework and the piecemeal implementing legislation, unexpected economic and political drawbacks have challenged the very essence of the reform. As a result, at present it is still rather difficult to give evidence of the *status quo* of its (non-)implementation.

In this respect, the examination of the above-illustrated legal framework provides for a partial insight only. Among the many, the advancements of the new system have been marked by the grinding economic crisis and the stringent EU constraints to national finances, the rocketed spread (that made interests on State's debts more expensive than in the past), and the financial markets' pressures. These factors have indirectly impacted subnational budgets and strangled subnational autonomy, dismantling the progresses made insofar towards a comprehensive implementation of the new financial constitution.

Since 2010 the national Government has approved several measures aiming to rationalize public finance. The main driver has been the economic and financial crisis, and the efforts have predominantly targeted the balancing of the budget (Palermo and Valdesalici, 2014).

In challenging the constitutional guarantees of autonomy, the result has been a counter-wave of recentralisation. To understand the impact of these State 'austerity' measures on the 'regional system of public finance to-be', it is necessary to go through the case-law of the ItCC.

One of the major constraints to financial autonomy can be traced back to the concurrent State-region competence on the coordination of public finance. In the Italian Constitution the concurrency-ratio recognizes to the State the power to legislate on the fundamental principles, while the regions provide for the detailed regulation.

On this point, especially as of 2010, the intervention of the national legislator has often gone beyond the determination of the fundamental principles by introducing detailed regulations. This behavior has given rise to plentiful conflicts in front of the ItCC, which has mostly given an extensive interpretation of the State powers in the field at the expense of both financial and political autonomy of the regions (among the many, judgments no. 198/2012, 262/2012, 236/2013, 23/2014, 38/2016, 69/2016, 154/2017).

The main arguments upholding the constitutional validity of the State acts are linked to the acknowledgement that this is not to be considered a 'competence-title' in the traditional understanding. Instead, the Court has recognized that public finance coordination is a purpose-oriented task (among the many, judgments no. 8/2013, 38/2016; no. 69/2016). This approach has allowed for the increasing expansion of the margin of State intervention to the detriment to subnational autonomy, with a trend that further consolidated after the constitutional entrenchment of the principle of balanced budget (e.g., judgment no. 188/2014). Whenever the State legislation has forced the boundaries of the decentralized competences, the Court has gone along with this trend, legitimating such interferences in the light of the contingency moment (Di Marco, 2011).

If any, a safeguard to protect subnational autonomy could be found in the principle of loyal cooperation (see Woelk in this volume). Accordingly, the State must make all possible efforts to reach an agreement with subnational entities, when a decision affects their (financial) interests (e.g., judgments no. 88/2014 and no. 129/2016). Despite the settled case-law, the involvement of territorial interests in the decision-making process is still at an embryonic stage, suffering from the procedural limits inherent in the Italian system of intergovernmental Conferences.

Over time the case law has also developed a set of criteria that under certain conditions worked in holding off the State interference on subnational autonomy. In sum, the Court deems the constitutionality of the austerity decrees only if they pursue the rationalisation of public finance by means of merely transitional and time-limited measures and set the overall objectives alone, leaving to subnational entities a margin of choice on both the instruments and the way of proceeding (judgments no. 193/2012; 232/2011; 43/2016; 141/2016). Another restriction refers to the need to ensure an adequate correspondence between revenues and functions. The State measure is not valid if it severely impairs this ratio or make it impossible for the region to carry on the assigned functions (e.g., judgments no. 10/2016; 188/2015).

The exclusive State power as to 'the determination of the essential levels of public services to be guaranteed throughout the national territory' [Art. 117(2), lit. m. Const] exemplifies another emblematic restraint to subnational autonomy. Also in this case the ItCC has upheld an extensive reading of the State margins of action, reflecting the acknowledgment of the cross-cutting nature of this competence. As such the compliance with the standards set by the national law for well-determined essential rights must be ensured, even if the matter falls within the regional competence. Therefore, whenever the case for guaranteeing a uniform (minimum) level of public functions and services throughout the national territory is at stake, the State law is valid even if it interferes with areas of regional responsibility. An additional expansion of this clause has been later acknowledged by the Court in the light of 'the exceptional socio-economic circumstances' (i.e. the economic and financial crisis the country was facing) the State had to cope with (e.g., judgment no. 62/2013).

It is not by chance, then, that the situation has been further exacerbated with the constitutionalizing of the principle of balanced budget back in 2012. From

that moment, the State powers and responsibilities to enact the principle and to ensure the sustainability of public debt have increasingly precipitated their impact on intergovernmental financial relations. Again, the decisions of the ItCC are crucial in understanding how and to what extent this principle intersects with subnational autonomy. In a landmark judgement (no. 88/2014), the Court explains that the regulation thereof is inseparably interwoven with the other central competences in the field of financial coordination as well as of harmonisation of public budgets. This occurs as the latter two competence-titles are conceived by the Court as instrumental to prevent budget deficits, to preserve the economic-financial balance and to guarantee the economic unity of the Republic (judgment no. 175/2014).

In addition to that, the fact that the rules are meant to give implementation to EU obligations further strengthens the State supremacy in the field. The result is a wide margin of maneuver from the part of the centre, strengthened by the Court's assumption that the 'homogeneity of the rules is inherent to the logic of the reform', otherwise the State could fall short of the goals pursued (Valdesalici, 2019).

Special regions embody a partial exception to this pattern. According to law no. 42/2009 and their statutes of autonomy, conditions and rules for ensuring the coordination of their financial systems with the national system of public finance have to be negotiated with the State on a bilateral basis. Put simply, all State acts, which apply to ordinary regions, do not apply to special entities. Between the State and each special region an agreement has to be reached, which identifies the specific obligations and limits the single region shall comply with.

Nevertheless, when as of 2011 the situation of public finance further deteriorated, the State austerity measures have anyhow addressed special regions, tightening up their obligations. In this regard the ItCC argues that special regions shall give their contribution to the recovery of public finance, even though as a rule the State has to respect the very essence of their autonomy by defining their constraints and contributions in bilateral agreements (among others, judgments no. 82/2007; no. 133/2010; no. 193/2012; no. 198/2012). This trend has been amplified since the constitutionalizing of the principle of balanced budget in 2012. The Court argues in this respect that the constitutional amendment legitimizes the State to introduce common and detailed rules for all autonomies (including special entities), even if these are more rigorous than the ones of the respective statute of autonomy. A different conclusion would contradict the very rationale of the reform (judgment no. 88/2014). After all, for the Court these measures are lawful, even if in relation to special regions the agreement should be favoured as a solution. In exceptional cases, however, the State may derogate from the principle of bilateral cooperation and determine unilaterally but provisionally the related contribution to the financial recovery, if it proves that this is indefectible to ensure the success of the financial measures of concern (e.g., judgment no. 19/2015).

VI. Making a balance: recent trends and emerging challenges ahead

Despite the process of decentralisation going on for three decades, the centre is not ready to give up its dirigiste approach. The evolution of financial relations

between the State and the regions is telling in this respect. Except for special regions, the State ultimately determines the degree of financial autonomy, and regions have almost no guarantee in this respect. A counter-wave of recentralisation has been in place for ten years and the current Covid-19 emergency will probably exacerbate this trend further.

The wind of change has been blowing for too long a time and seems to be running out of strength. In the past years, several revisions of title V of the Constitution have been initiated but all have failed.

The story of the so-called 'differentiated regionalism' also points in the same direction. Right after the failure of the 2016 constitutional reform that intended to reduce the overall scope of regional autonomy, some regions have opted to start the process provided by Article 116(3) Const. (see chapter by Palermo). If certain budget criteria are met, an ordinary region can negotiate with the State an additional scope of legislative autonomy. The transfer of legislative competences can cover up to 23 subject matters including matters like education, environment, energy, and transport, and the related intergovernmental agreement has to be approved by absolute majority in Parliament. While keeping the basic distinction between ordinary and special regions, this provision allows, at least on paper, an additional layer of constitutional asymmetry, from here the term 'differentiated regionalism'.

So far, no agreement has been reached, though several regions have already started the negotiations three years ago. Among other things, the discussions have reached a stalemate precisely on financial matters.

The logic of fiscal federalism is reflected in the assumption that finance has to follow functions. Beyond being essential to political autonomy, the financial dimension plays an instrumental role making it possible for a subnational entity to carry on its constitutionally assigned competences. In the Italian case, however, this rationale suffers from the deficient implementation of the reform of financial relations, having particular regard to the new equalisation mechanism. The uncertainty associated to one of the backbones of any financial regime makes it impossible to reach an agreement for additional autonomy and the entire process is doomed to be frozen for an indefinite period of time.

In addition, in the Italian debate the distortive narratives on fiscal federalism are putting the entire process of decentralisation more and more at risk, financial relations included. All too frequently, the concept of fiscal federalism is considered equal to that of a competitive model of federalism, in which subnational entities would make use of their financial powers to compete with each other. As a result, there are many opponents to the new system, considered the profound socio-economic cleavage that characterizes the country: indeed, in Italy only a few regions (mainly of the North) stand out for their socio-economic performance.

Beyond the absence of any real understanding of the theory and practice of fiscal federalism, the regional panorama reflects a widespread lack of a truly federal culture, or at least of a 'culture of autonomy' (Palermo, 2018). If the implementation of fiscal federalism has not been within the political priorities of the national governments (indeed, rather the opposite is true), also the regional governments have not pressed for reaching this objective.

Finally, there is another criticism that has emerged in a striking way during the Covid-19 emergency, but it was already palpable during the past years of economic and financial crisis. Italian regionalism is lacking effective instruments of shared rule if regional interests are at stake: institutions providing for the involvement of territorial entities in the decision making at central level are very weak, and there are no mechanisms of participation to the constitutional reform processes. The lack of an institutional dimension of federalism shows all the weaknesses of the decentralizing process, as it results not only in serious difficulties in the implementing process but also in frequent intergovernmental conflicts when decisions are unilaterally imposed by the centre, especially if they determine a reduction of resources. The consequence is a general lack of guarantees for subnational autonomy and an effect of de-responsibilisation of the subnational entities, as it is always and ever the State that responds to the European Union for the compliance of the obligations originated by the EU system economic governance.

In view of this situation it is arduous to make an optimistic prognosis. Anyway, once the current pandemic is over, a reflection on the status of Italian regionalism will be urgent and should not be further extended. This notwithstanding, if a concrete project providing for a systemic review of financial relations (and beyond) will not be able to reach a broad political consensus, federalism will again be doomed to become a political flag, instead of being intended as an instrument for governing the territorial pluralism that characterizes Italy.

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