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The financial autonomy of Regions: a decisive but neglected chapter in Italian institutional system

SOMMARIO: 1. Constitutional system and accountability 2. Lights and shadows over the first systematic enforcement of article 119 Constitution 2.1 Regional fiscal autonomy 2.2 Expenditure autonomy and equal distribution according to standard costs and needs 3. Perspectives of regional finance into the constitutional reform

1. Constitutional system and accountability

Financial autonomy of Italian Regions (and, more widely, of Local Authorities) represents a decisive but neglected chapter in our institutional system. The importance of this topic cannot be undervalued: Hamilton, regarding the North-American system, had already emphasized the importance of fiscal autonomy: "A complete power, therefore, to procure a regular and adequate supply of [money], as far as the resources of the community will permit, may be regarded as an indispensable ingredient in every constitution".[1]

This is a self-evident issue, that shouldn't need to evocate the Federalist, as everybody remembers that Mortati, in his own Manual, defined financial autonomy as "the cornerstone of regional system".[2]

Nevertheless our institutional history developed a clear contradiction of these evidences. Our system indeed has been locked up for decades into the assignment finance: not even with the d. lgs. n. 56 of 2000, which shifted from an indirect finance system to a participation one, the indirect nature of the shared taxation has disappeared. Neither the following Law n. 42/2009 nor its implementing decrees have been able to question this pattern (and for multiple reasons, see *Infra*), to the point that D'Atena statement on this topic can still be considered as modern: despite our constitutional dictate, a singular shape of "representation without taxation" has implemented in our system, namely an institutional contest wherein Regions did not assume the political responsibility to ask resources to their electors. This situation actually has spoiled Regions of their democratic legitimacy.

Thus, we should return to reflect on this topic, and this might be a special plea for the constitutional academia, in search for solutions that nowadays are more likely to be taken in the new constitutional arena that relates resources, rights and democratic governance

[1] HAMILTON, *paper n.30*, in *Il Federalista*, Bologna, 1997, p.314

[2] MORTATI, *Istituzioni di diritto pubblico*, II, Padova, 1976, IX ed., p.906

patterns. To focus appropriately this issue, a short digression is needed, by presenting again some abstracts from the famous Holmes and Sunstein "The Cost of Rights" that throw a stone into the pool of both the liberal and the conservative cultural parties, which are reluctant - even though for opposite reasons - to admit self-evident truths sustained in the book, considered like "an offence to polite manners, or perhaps even a threat to the preservation of rights". [3]

On a more attentive analysis, Holmes and Sunstein highlight how the distinction between negative freedoms (assured by the State abstention from the original personal freedom) and positive freedoms (assured indeed by State intervention) exists only in theory while it is not confirmed by reality. All rights, both those derived from the negative freedoms, and those from the positive ones, entail a public system to enforce them. The most common right of the first generation, such as the property right, entails the existence of policy body, tribunals, judges and jails.[4] Without these structures, property wouldn't receive adequate protection. According to this view, rights are public goods financed by taxation. By contrast, the refusal of this evidence for the conservative party is functional to sustain the theory of the "Minimum State", as Nozick or Murray do, by denying that rights have their own costs. In a similar way, even if from an opposite perspective, the Liberal Party, as well, are uncomfortable with the problem of the cost of rights, since they consider rights as "ethically correct claims and almost irrefutable... rights concern principles and entail a sort of absolute and immovable intransigence". Fundamental rights are like "catch-all aces", to use Dworking words: they have to be considered as absolute and the State has no reason to justify a lack of protection. Regarding universal values such as human dignity, it appears like an insult to consider rights as money-conditioned and to believe that a judge can deny the endorsement of a right due to lack of resources.

The book of Holmes and Sunstein, highlighted these cultural taboo, points out some relevant patterns to explain the cost of rights: "a judge ... may compel a prison to improve living conditions for prisoners, but can that judge be sure that the money he or she commandeers for such ends would not have been used more effectively by inoculating ghetto children against diphtheria?"[5].

Again, the book presents the case DeShaney, in which the Supreme Court gives one of the "most shockingly and brutal decision in the modern Supreme Court history" disclaiming the cost of rights. [6]

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[3] HOLMES SUNSTEIN, *The cost of rights. Why liberty depends on taxes*, W.W. Norton & Company, New York, 2000, 27.

[4] Idem, 68.

[5] Idem, p. 41.

[6] Idem, 129, ss.: "the two rival rationales for the decision show it that the understanding of basic rights, and therefore of the relation of the judiciary to the other branches of government, depends on a prior choice either to ignore costs or to take them into account. In its opinion the Court paid no heed to the question of scarce public resources. It could justify the state "inaction" it wished to defend as such only by declaring that a child beaten

Finally, the book seems to close with a call: "legal theory would be more realistic if it examined openly the competition for scarce resources that necessarily goes on among diverse basic rights and also between basic rights and other social values".[7]

At this point the digression can be concluded to focus a problem that is becoming more urgent: nowadays the topic of rights cannot be faced regardless resources availability. Financial and economic crisis striking western countries made a break in continuity, not reliable to the economic cycle: new structural stages are inaugurated.

It's appropriate to evaluate that both civil and social rights theories, historically, were born within western context, when the theme of the lack of resources was not central. At that time global prosperity was concentrated among those contexts, drawing such a different geography from now. Nowadays those theories excluding the cost of rights are out of game in the western countries: they are doomed by the process that introduced the principle of balanced budget into European Constitutions (which are the most developed in the field of the recognition of social rights).

To conclude, the new global scenario and the pivotal argument of the cost of rights change the basics of some classical principles. Nowadays the principle "no taxation without representation", originated to protect property rights, as well as the principle of balanced budget, are intended to protect more specifically social right (through the democratic control).

Nevertheless with D'Atena we have seen that this principle has been overturned during the implementation of the Italian regional system. The implications are remarkable on the field of the rights endorsement: just consider the recent introduction of a "ticket" (about 500 Euros) for assisted fertilization that is going to be provided by all Italian Regions (Lombardy excluded, where the cost for the citizens will be of about 1,500/4,000 Euros).

The purpose of this paper is then to investigate regional fiscal autonomy in order to identify which institutional sets[8] are more suitable to avoid that "collectively provided resources are ... channeled to secure the rights of some citizens rather than the rights of others".[9]

As a matter of fact, financial autonomy displays a renovated actuality because it represents the institutional solution to foster accountability and thus the democratic control over political discretion in the resources allocation, especially in time of limited resources.

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horribly after having been consigned to his cruel father's custody by court order and while under the government's custodial supervision suffered no violation of his basic rights. The result was one of the most shockingly brutal opinions of modern Supreme Court history. Shocking, brutal and altogether unnecessary".

[7] HOLMES SUNSTEIN, *cit.*,103.

[8] In this field, another dimension that might be evaluated is the one of the subsidiarity. Just consider, for instance, the institution of percentage legislation, that allow people to donate resources directly to the most deserving subjects, overcoming the political dimension. See, ANTONINI, *Sussidiarietà fiscale. La frontiera della democrazia*, Milano, 2007; as well as BERGO M., GOSETTI G., *Il 5 per mille "in transizione": la sussidiarietà fiscale vista da Est*, in *Federalismo Fiscale*, 1/2011, 151, ss. Si ricorda inoltra la importante pronuncia della Corte costituzionale, sent. n. 202 del 2007.

[9] HOLMES E SUSTEIN, op. cit., 19.

However, it's important to specify that in this peculiar set some other factors must be considered, like the gap between North and South Regions, most of all in constitutional frame characterized by equality and solidarity as basic principles.

2. Lights and shadows over the first systematic enforcement of article 119 Constitution

2.1 Regional fiscal autonomy

The Italian scenario is very peculiar: for a long time the Constitutional Court called attention for the implementation of new financial autonomy, as delineated by the 2001 Constitutional Reform (cost. l. n. 3/2001). The decision n. 370/2003 indeed asserted "it's self-evident that the implementation of the article 119 of the Constitution is compelling in order to realize the new Titolo V of the Constitution". Nevertheless this part of the Constitution has been a blank page for many years, until the law n. 42/2009 seemed to open a new season for our decentralized finance. This law, inspired by continuity with the previous government,[10] was welcomed by the best literature:[11] combining "the principle of autonomy with the one of unity in the budgetary policy" the law 42/09 could realize an impressive rationalization of a defective system.

In the 30 June 2009, the Government presented a Report to the Parliament, elaborated according to the Copaff findings (Technical Commission for the implementation of fiscal federalism),[12] where the first paragraph heading refers to the "twisted tree" and goes on exposing many systematic anomalies (despite the presence of some good experiences),[13] such as: the public funding sedimentation into the historical-expenditure principle; non harmonized nor transparent budget; non responsible shared taxations; ecc.

The whole process of fiscal federalism has been settled with the effort to reconcile the system, overturning the critical knots accumulated over the years. Although the implementation of law n. 42/09 produced to this day nine legislative decrees, [14] something in the process didn't work well.

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[10] The legislative base of law 42/09 is made by many important previous works, in particular the decree-law Prodi on fiscal federalism (approved by the Council of Ministers, but never presented to the Parliament due to the fall of the Government); the debate with regions and Local Authorities was even decisive, until the unanimous approval by the Unified Conference occurred in October 2008.

[11] See, for all, F. GALLO, *I principi del federalismo fiscale*, in *Diritto e pratica tributaria*, n. 1, 2012, pp. 3 ss.

[12] The Parithetic Technical Commission for the implementation of fiscal federalism (here, Copaff) is provided by art. 4, l. 42/2009. Established by D.P.C.M. 9 July 2009 inside the Department for Economy and Finances has the aim to promote documents findings, consult for the fiscal organization of Municipalities, Provinces, Regions and Metropolitan Cities; send documents and reports to the Parliament.

[13] See L.VIOLINI, (eds), *Verso il decentramento delle politiche di welfare. Incontro di studio "Gianfranco Mor" sul diritto regionale*, Milano, Giuffrè, 2011.

[14] We are dealing with the following legislative decrees:

- *Federalismo demaniale* (d. lgs. n. 85/2010);

Thus, it's necessary to highlight first of all which transitory and structural problems made the change difficult, and secondly what have to be preserved among the things that have been done until now, and what has still to be done (or redone). On this perspective, it's also required to investigate which normative level has to be involved, in order to avoid throwing out the baby with the bath water. It seems to take consistency the belief that the crisis we are facing overcame the cause for decentralization. However this view doesn't appear so much persuasive: it's not conceivable to regret "Italian centralism" – wherein public debt and corruption exploded (just consider the phenomenon of "Tangentopoli") – as a lost paradise. Furthermore, health care models of many Italian Regions (e.g. Emilia Romagna and Veneto) represent a leading facility that probably couldn't exist within a centralized system. Instead, the point at issue is how the damaged experiences of some Regions can improve toward the virtuous paradigms. Nowadays according to Osce ranks, Italian healthcare system occupies the second place for quality (our life expectancy is higher than in Germany) and the eleventh place for costs (lower than 50% compared to USA).

Additionally there's a crucial question reliable on democracy: centralism and federalism have not the same democratic asset.

A first incidental factor that has to be considered concerns the extraordinary historical economic trends wherein crashed the reform of fiscal federalism, an epochal economic crisis certainly not favorable to a structural project. This economic trend leads from one side to central political behaviors neither always justifiable nor concealable; and from the other side to Local Authorities claims as affected by public budgetary policies. The season of initial heavy budgetary cuts -grossly made- started right during the editing of the first legislative decrees. The impressive linear cut made by the decree-law n. 78/2010 occurred, for instance, exactly after the Copaff determination on the conversion of central assignments into Regional power of taxation[15]. It would affected about 4 billions of Euros, placed out like the so called "Ex Bassanini" assignments, namely the assignments directed to finance new administrative functions given to Regions, decentralized with that reform. That amount of resources would

- *Ordinamento di Roma Capitale* (d. lgs. n. 156/2010) e *funzioni e finanziamento di Roma Capitale* (d.lgs. n. 61/2012);
- *Determinazione dei costi e fabbisogni standard di Comuni, Città metropolitane e Province* (d. lgs. n. 216/2010 in G.U. del 17.12.2010, n. 294);
- *Federalismo fiscale municipale* (d. lgs. n. 23/2011);
- *Autonomia di entrata di Regioni a statuto ordinario e Province nonché determinazione* di *costi e fabbisogni standard nel settore sanitario* (d. lgs. n. 68/2011);
- *Risorse aggiuntive ed interventi speciali per la rimozione degli squilibri economici,* attuativo dell'art. 16 della legge n. 5 maggio 2009, n. 42 (d. lgs. n. 88/2011).
- *Armonizzazione dei sistemi contabili e dei bilanci delle Regioni, degli Enti locali e dei loro enti ed organismi* (d. lgs. n. 118/2011)
- *Meccanismi sanzionatori e premiali relativi a Regioni, Province e Comuni* (d.lgs. n. 149/2011)

[15] We are talking about "La prima relazione sui trasferimenti" made by Copaff (8 June 2010) sent to Government on 16 June 2010.

have been sufficient to reduce the national Irpef (tax on people income) and to increase correspondingly the Irpef Regional surtax. Instead, in 2010, with the crisis explosion, the 4 billions, rather than being "regionalized" through fiscal power (in according to the law 42/2009 provisions), they have been brutally cut, so leading the regional hostility toward the reform direction.[16]

As a matter of fact, the way the crisis has been treated – more than its inner reasons – truly interfered with the implementation of the fiscal federalism. The financial and economic crisis should in fact foster, not weaken, the fiscal federalism cause, since this reform means to exalt local authorities' responsibility in the management of their budget, starting from sharing public resources between the different layers of government and among decentralized authorities, according to equity principles.[17]

A second factor that did not help the reform has been a certain federalism rhetoric that probably did not facilitate the comprehension of those developments. The rhetoric implicitly suggested the perspective of a competitive federalism that should have allocated more resources to the Northern Regions, regardless the fiscal effort. This perspective is certainly conflicting with the Italian arena, dominated by the gap between North and South. In addition to this rhetoric, a common belief among local administrators spread: the favor, after many decades of indirect taxation, to gain more expenditure power then more power over taxation. Just consider that the law 42/2009 has been already affected by this culture, allocating to State discretion some tax choices that could remain to Regions, as regarding tourist tax.[18]

Furthermore, as seen, a centralistic practice[19] compounded this rhetoric, and the State Government resorted to some dirigiste practices, as those of linear cuts: the cuts penalized the most improving facilities that should instead have been granted by the fiscal federalism.

Linear cuts - unless to allow some financial measures like the one implemented by the decree-law 201/2011 in order to compensate Regions for suffered cuts – lead to increase Irpef Regional surtax of 0,33% with a State government decision and not, as originally expected according to legislative decree n. 68/2011, with an autonomous regional decision starting from 2013.[20]

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[16] From that moment, indeed, Regional Presidents started to assume that the fiscal federalism reform's aim was giving out.

[17] See, on this meaning F. BASSANINI, *Una riforma difficile (ma necessaria): il federalismo fiscale alla prova della sua attuazione*, in www.astrid.it

[18] See art. 12 legge n. 42 del 2009, comma 1, lett d) which demands to legislative decree the "disciplina di uno o più tributi propri comunali che, valorizzando l'autonomia tributaria, attribuisca all'ente la facoltà di stabilirli e applicarli in riferimento a particolari scopi quali la realizzazione di opere pubbliche e di investimenti pluriennali nei servizi sociali ovvero il finanziamento degli oneri derivanti da eventi particolari quali flussi turistici e mobilità urbana".

[19] See BELLETTI, *Percorsi di ricentralizzazione del regionalismo italiano nella giurisprudenza costituzionale*, Roma, 2012, 213, ss.

[20] As decided by art. 6, comma 1, d. lgs. n. 68/2011.

Beside transitory problems, even structural factors complicated the enforcement of art. 119. The result of the Titolo V rushed reform has been, indeed, a largely incomplete system; fomenting conflicting localism, where veto power risks obstructing decision processes.

It's certainly significant that neither the XV nor the XVI legislature were able to hit the target of approving the so called "Autonomies' Chart": ten years of continuous crossed veto between Regions and Local Authorities could not lead to an adequate definition of "who does what" (that is an essential condition to proceed to a financial architecture definition). At constitutional level the unsolved knot between regionalism and localism makes almost impossible to achieve the task.

As a result, fragmentation and legal uncertainty are prevailing features of the system. The malfunctions of the actual system are self evident: nowadays, after more than ten years from the Titolo V Reform, an excessive fragmentation emerges from the competences allocation, that should be overcome on behalf of a more balanced legislative decentralization that could be functional to economic and social development.

Furthermore, too many transversal competences intersect every procedure and, more generally, these fragmentations together with the difficulty to conciliate the actors involved increase the costs. Today in Italy the cost for one km of rail network amounts to 50 millions of Euros, in opposition to 13 millions in France and 15 in Spain.[21] The orographical shape of Italian land does not alone justify differences in costs. Just consider, for instance, that the energetic costs in Italy are higher than 30% compared with other European Countries (probably also due to an administrative system that blocked for years investments in energy projects). Additionally, the local public transportation issue can be considered as a symbol of a systematic shift of the blame to the different levels of government in our Country. The theme "big transportation network" has been allocated to the shared competences between the State and the Regions (not even Canada made such a decentralized choice), although the local public transportation funding still derives from State allocation to Regions according to the historical-expenditure principle, that is consequently transferred in part to Provinces, in part to Municipalities; they have, in turn, to allocate this funds to transportations companies.

In a word: for two years Regions negotiated the amount of allocation with the State, with huge polemics among involved actors and the possibility to rationalize public spending seems far to be achieved. Moreover, if public transportation stops working because of the lack of fuel, the citizen doesn't know who to complain for inside the Municipality. Nevertheless federalism aim should be to make people more aware of which door to knock on if things don't work well; and, as a last resort, in case of unheard pleas, fiscal federalism should allow the possibility to change the address (the so called "voting by feet" phenomenon).

At this point, what could be the remedies? Besides a reorganization of legislative and administrative competences, it mostly stands to reason the necessity to review the

[21] See L. ANTONINI, *Federalismo all'italiana*, cit., ...

bicameralism and to establish a "Chamber of Autonomies",[22] not only to introduce, *cum grano salis*, [23] a stage for political and legislative coordination, but also to realize the condition to make local authorities[24] responsible in a system that can only be inspired by a liable federalism[25] and so to keep funding with shared taxation.

As a matter of fact, federalism models can be classified into competitive and liable. The first (like the U.S.A. model) grounds on strong taxation powers allocated to federal bodies; the second is instead developed mostly on shared taxation (like in the German model). The risk in the second model is to create a parasitic financial system, with non-responsible local authorities, to whom is still allocated a significant part of the spending power. This risk actually occurred in Spain and in some measure also in Italy, mainly concerning some local bodies. In Germany, instead, the risk didn't occurred thanks to a system that doesn't involve only detailed constitutional rules on the Länder fiscal system, but also and mainly a real Federal Chamber – the Bundestrat, composed by regional governments representatives – that is functional to make the Länder responsible for all fiscal decisions (they stand up for the central taxes they share): taxes, shared taxes and public debt.

In Italy it's not possible to export a competitive federalism in the American style, with significant fiscal powers accorded to Regions. Just imagine what could happen if Lombardy Region could receive the power to introduce its own income taxation, as it happens in Texas or in Oklahoma. Lombardy fiscal capacity is enormously higher compared with that of the southern regions, therefore Lombardy could have higher financial opportunities than its own public spending or, on the contrary, could practice lower and more competitive income taxation. In this system, equalization, or solidarity among territories, wouldn't realistically be practicable: why Lombardy should allocate most of its own income taxation to finance Southern regions? Or, instead, why Lombardy couldn't reduce its income taxation instead of considering solidarity towards other regions? This issue has been misunderstood by those who believe that fiscal federalism would allocate fiscal powers not only to regions; realistically, the only constitutionally feasible route for Italy is a liable federalism or cooperative federalism, grounded into shared quotes of massive State taxes, limited local taxation powers (probably larger than the actual ones), and equalization.

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[22] See. L. Violini, *Bundesrat e Camera delle Regioni. Due modelli alternativi a confronto*, Milano, Giuffrè, 1989, *passim*

[23] The propositions contained in the draft for the constitutional reform presented by Government on March 12th, 2014 are not convincing (see www.governo.it).

[24] On this topic, see Author's conclusions in L.ANTONINI, *Federalismo all'italiana*, cit., ...

[25] See, F. GALLO, *Il federalismo fiscale cooperativo,* in *Rass, trib.*, 1999, 275; as well as F. GALLO, *I principi ... cit.*, where, in relation to the comprehensive draft of the l. 42/2009, the Author says: "La conseguenza positiva della costruzione di questo tipo di federalismo è, dunque, la definitiva espunzione dalla legge delega di quei modelli di federalismo fiscale fortemente competitivo proposti nel passato che riecheggiano soluzioni di tipo nord-americano e svizzero, secondo i quali ogni livello di governo, superiore a quello comunale o provinciale, avrebbe il potere di istituire liberamente qualsiasi tipo di tributo su qualsiasi base imponibile, previo solo un blando coordinamento dello stato federale e nel solo rispetto di un principio di territorialità latamente inteso e di quello di leale concorrenza tra enti".

However, this system should be completed together with an appropriate mechanism of political responsibility, otherwise it cannot work adequately.

According to this perspective, the federal chamber implemented by the last constitutional reform appears inappropriate, because more similar to the American Senate (suitable for a competitive federalism, but not for a liable federalism), than to the German one.

2.2 Expenditure autonomy and equal distribution according to standard costs and needs

Among the nine legislative decrees that implemented the law n. 42/2009, particularly relevant are: the one on standard costs (d. lgs. n. 68/2011); and the one on standard requirements (d. lgs. n. 216/2010). Until 2008, indeed, more than a hundred billion Euros were allocated to regions and local authorities substantially following the historical-expenditure principle. There has been a structural operation intended to modify the institutional system, with an impact on important themes of constitutional character: behaviors, responsibility, transparency, democracy and electoral control. The purpose of this reform was to allow the transition from the historical-expenditure (that finance services and inefficiencies indistinctively) to the standard requirements (that finance only services). The evolution towards standard costs and needs entails important constitutional implications. Standard costs and requirements, indeed, are linked to the equalization and thus to the principle of solidarity, allowing a whole enforcement of the principle of the equality.

Often, among the academic debate this solution has been criticized, as considered too confused, supporting instead the criteria of the fiscal capacity.[26] However, the supporters of this thesis (like Giarda[27] and, during the working period of the Commission for reforms, Tabellini[28]) leave aside not only the obligation arising from art. 119 Cost., but also the constraints deriving from the principle of equality concerning social and civil rights. Equalization depending on fiscal capacity, indeed, disadvantages the areas with fewer resources, whereas equalization based on standard requirements activates efficiency and can valorize the principle of equality.

Furthermore it's useful to remind that Osce appreciates the system of standard requirements as the most developed, compared both with the historical-expenditure and with the fiscal capacity one.

It's appropriate also to focus the standardization on healthcare expenditure: this process has been different from the more sophisticated one applied for the standard requirements, and followed a top-down direction. This selection is justified by two reasons: first, to

[26] See, e. g., P. GIARDA, *La favola del federalismo fiscale*, in Quaderno n.35, Associazione per lo Sviluppo degli studi di Banca e Borsa, Università Cattolica del Sacro Cuore, Milano, 2009.

[27] P. GIARDA, *Le regole del federalismo fiscale nell'art. 119: un economista di fronte alla nuova Costituzione*, *Working paper* n.115/2001, Società italiana di Economia pubblica, http://www.economiataranto.uniba.it/aa_2006_2007/master/efapel/2_Giarda_02_SIEP_WP.pdf

[28] See TABELLINI in Presidenza del Consiglio dei Ministri, *Per una democrazia migliore*, Roma, 2013, 194, ss.

overcome the criterion of the historical-expenditure; second, for some deficiencies on regional accounting systems.[29] The methodology for healthcare standard costs is based on the selection of five Regions in substantial balanced budget; among the five regions, the State-Regions Conference identifies three Regions as a benchmark for the others. Only on December 5th, 2013 the Conference of Regions (subsequently ratified by the State-Regions Conference) chooses Veneto, Emilia-Romagna and Umbria as benchmark: the level of these regions will be used to allocate only partially the Health Agreement of 2013 and entirely the Agreement of 2014. This can be considered moreover an important achievement (despite the delay), because it allows to give more transparency to the waste of resources in regional systems and to overcome the current limits of the Health Agreement wherein empirical criterions of negotiations are applied in a political manner (e.g. the case of the so called lapis[30]).

Finally, standard costs and requirements represent a key point to rationalize the public spending, overcoming as well the odd practice of linear cuts to Regions and Local Authorities.

Accordingly to a recent and explosive decision of the Constitutional Court, a radical change is needed. The decision n. 193/2012, indeed, stated that the several billion in cuts resulting from latest legislative measures should be temporary, not structural and definitely (as law pretended to): they will last only until 2015. The decision declared the unconstitutionality of "August 2011 operation" for contrast with article 119 Const., in the point where it extended cuts also after 2014. The Court declared the illegitimacy not only for Special regions, but also for the Ordinary ones, by declaring the unconstitutionality of the parts of the law that introduces budget restrictions to ordinary Regions, Provinces and Municipalities without a deadline. In one word: the Constitutional Court has rewritten all local cuts operation because it provided only a starting line but not also a dead line (that is, "until 2014"). With this decision the Court activated a time bomb inside Italian public accounts, asserting a shareable criterion: the legislator can restructure public spending only through real reforms and not by improvised cut.

So, the only way out of this situation is the application of standard costs and requirements, which allow the quantification of Lep (essential levels of services): an essential stage to answer adequately to the Court decision. As a matter of fact, the legislator should define how many child nursery or how many residencies for the elderly are needed for a specific number of

[29] The Italian Court of Counts during the hearing on the draft decree, highlighted the lack of accuracy and the incompleteness of the information system provided for the process. The following passage is particularly relevant: "La scelta operata nel decreto di valorizzare l'esperienza maturata negli anni nella gestione della spesa sanitaria, se da un lato sembra ridurre l'impatto del riferimento ai costi standard nel nuovo meccanismo di definizione del finanziamento del settore, dall'altro ha il pregio di semplificare la gestione del sistema, garantendo, per altra via, il collegamento tra la programmazione di bilancio, la compatibilità di finanza pubblica, e l'analisi comparativa di quantità e qualità dei servizi erogati".

[30] See C. ABBAFATI F. SPANDONARO, *Costi standard e finanziamento del Servizio sanitario nazionale*, in *Politiche sanitarie*, N. 2, Aprile Giugno 2011, 5 ss. Il cd. *Lapis* indicates the correction made in the allocation of healthcare fund, after Regions mediation on the equalization fund to reallocate the requirement, according to specific exigencies and equitable criteria.

citizens (essential levels of social services, indeed). The correspondent standard requirement could quantify the right amount of resources to ensure the efficiency of the service.

Whereas unavoidable demands of public finance impose a spending cut at local level, the national legislator would take charge of reshaping the essential levels of services.

Finally, since the 60% of public spending has been decentralized,[31] to remain inside a model of cooperative and liable federalism it's required to organize the system around a solid coordination center, founded on standard costs and requirements that can rationalize our spending system. The invitation to pursue this aim, as seen, comes also from the Constitutional Court: the exposed decision imposes to replace linear cuts with structural reforms. On this perspective, it's essential the full implementation of essential levels of services, both at the regional level (where recently the implementing process has just been started, but it's far from fulfillment, see *infra*) and at local level (where Lep are completely missing). The two levels are linked, because standard costs and requirements allow the correct Lea and Lep quantification. In the future, the State has to responsibly highlight that the system cannot no more maintain the nursery school costs for e.g. a thousand citizens: for this reason it's important to indicate the sustainable level of services, in order to calibrate funding for Local Authorities. This is different from the linear cuts approach that leads to the closure of many nursery schools, because Municipalities didn't receive enough resources. [32]

The missed implementation of Lea and Lep reveals that in our system a federalist rhetoric and a centralism practice prevailed. Recently, the Constitutional Court has pointed out this lack with the decision n. 273/2013. The Supreme Judges saved the State fund for local public transportation because of the missing implementation of fiscal federalism. This decision overturns a settled case law that forbids the establishment of State funds into regional residual competences. More specifically, the decision underlines that the Prime Minister decree is still missing: the article 13, c. 14, d. lgs. 68/2011 requires a Prime Minister decree to enforce the Lep among the fields of assistance, education, local public transportation, as article 8, c. 1, lett. c), law 42/2009 provides.

The whole process of Lep recognition, as well as the targets of service as stated by article 13, c. 6, d. l.gs. 68/2011 is assigned to the Society for sector studies – SOSE s.p.a., with the collaboration of ISTAT and the Technical structure of the Conference of Regions and Provinces, at the Interregional center of studies and documentation (CINESDO) according to the methodology of articles 4 and 5, d. lgs. 216/2010 (*Disposizioni in materia di determinazione dei costi e dei fabbisogni standard di Comuni, Città metropolitane e Province*).

[31] On the analysis of the regional expenditure, see E. LONGOBARDI, *Il lungo e lento cammino della finanza regionale: verso quale federalismo fiscale?*, in E. LOMGOBARDI, edts, *Regionalismo e Regioni in Italia 1861-2011*, Gangemi Editore, 2011.

[32] Indeed, the Italian Court of Counts recently sounded the alarm for the maintenance of Municipalities accounts, since in 2011, for the first time, they didn't match the target of public finance, with an increasing number of Municipalities in default (from 48 in 2010, to 119 in 2011). Moreover, the Court of Count underlined that State government usually tent to unload financial measures effects on Local Authorities.

The cited provisions, far from being completed, represent the condition for the achievement of the Local Authorities funding as stated by article 119 Cost. In other words, until this realization, the enforcement of article 119 is still undone.

The Constitutional Court call of duty underlines how much decisive the fiscal federalism implementation is, combining the enforcement of law 42/2009 with the Constitutional provision on Lea and Lep identification (article 119).

Furthermore, even equalization is still not implemented, but according to law 42/2009 this issue should be grounded on standard costs and requirements for the essential functions connected to Lea and Lep (almost 80% of total expenditures), and on fiscal capacity for other functions.

2. Perspectives of regional finance into the constitutional reform

The purpose of this paper won't embrace the issue of the necessity of a full revision of Titolo V and bicameralism. Nevertheless we have to consider a crucial aspect of the reform currently debated in the Deputies Chamber that is the new formulation of article 119 Constitution.

The Final Report by the Experts Committee asserts that "standard costs and requirements represent the basic principle for Regions and Local Authorities to fully finance their own competences, after the equalization process, matched with the fiscal capacity. This choice allows from one side to obtain a high level of solidarity and equality; on the other side to finance effective services, with an important impact in terms of responsibility". In order to grant more stability and guarantee on the resources allocated to local authorities, the Committee pointed out the need for a bicameral law to define the principles of coordination of public finance. In that stage could also be planned to compensate local authorities default with measures of compulsory administration. Furthermore, the Committee proposed that special-purpose assets (ex article 119) could be made toward all administrative bodies and not only toward selected ones, with a bicameral law at the identified conditions (to foster economic development, cohesion and social solidarity).

Additionally, in relation to the financial system of Special Statute Regions, the Committee emphasizes the need to reduce unjustified differences among ordinary and special regions, defining some criteria bounding all Regions (e.g. the number of components for administrative bodies and their benefits), as well as the general terms to integrate Special regions in the national system of fiscal federalism and equalization. In this perspective, the Committee proposes to modify article 119 specifying that the territories considered for the equalization fund are, generally, "the Republic territories".

Compared with the Committee statements, the text approved by the Senate gathered very little: certainly the constitutionalisation of standard costs and requirements has been a key issue. They have been named *"indicatori di riferimento di costo e di fabbisogno che promuovono condizioni di efficienza"* in order to avoid English words like "standard".

However, despite some indications remained dead letter, the reform transferred into the exclusive state competence the matter of "public finance coordination": the new formulation of article 119 Const. states *"Stabiliscono e applicano tributi ed entrate propri e dispongono di compartecipazioni al gettito di tributi erariali riferibile al loro territorio, in armonia con la Costituzione e secondo quanto disposto dalla legge dello Stato ai fini del coordinamento della finanza pubblica e del sistema tributario"*. This choice represents an important backward step that reminds the early formulation of article 119.

Furthermore, thanks to the Senate intervention, the Government text has been modified in the field of regional competences with the inclusion of regulation based on specific agreements and on financial statements between Region's local bodies to grant programmatic objectives of public finance. Without this amendment, virtuous experiences like the regionalization of the Stability Pact would be swept away.

Instead, stability exigency has been completely neglected, despite numerous interventions on Local body's ability to plan have shaken the territorial finance condition (specifically the local one, with the tormented IMU affair).

These conditions aren't the most suitable to operate a responsible fiscal autonomy: the premises for the stability endorsement are needed. According to the German Constitution, the taxable amounts allocated to Commons and Lander are enumerated in the Part dedicated to the Autonomies funding system (art. 105 ss. G.G.). A similar solution is not applicable in the Italian Constitution where, probably, only a Bicameral Law could define the fundamentals of Autonomies funding, obtaining the stabilization by this way. In a scenario composed by a Senate representative of the Autonomies, detached by the relation with the Executive power, the choice of a Bicameral Law could allow to achieve what the system really need.

This solution follows the Spanish LOFCA case: the Bicameral Law should enumerate the fundamental lines of the financing system, for instance: what shared taxations or what taxable amounts to be assigned to Local Authorities; the fundamental structure of taxes and of equalization; the general principles for the system coordination.[33] Moreover, ordinary law could then modulate tax rates and the amount of shared taxations, both for ordinary interventions and to face unexpected exigencies of public finance, but could not alter the system as defined by the bicameral law.

As additional proposal, the reference to the public finance coordination contained in the article 117, c. 3, Const. should be removed, in order to insert a reserved competence for the bicameral law within art. 119 Const. The enumeration of essential elements for the bicameral law could be demanded to a State law (for instance, the determination of tax rates for a shared tax like Iva) or a Regional law (for instance, the creation of a regional tax over an amount free from State taxes), according to the reciprocal competence.

[33] On the distinction between general principles and basic principles, see the important analysis of F. GALLO, *I principi ... cit.*, 3 ss., who declines theory and structural concepts in a very conceivable way.

Finally, there are no changes instead with reference to the fiscal privileges accorded to Special Regions, which nowadays appear no more suitable with the basic principles of the Constitution (spec. articles 2 and 3). On the contrary, regarding Special autonomies, the reform contemplates that "*Le disposizioni di cui al capo IV della presente legge costituzionale non si applicano alle Regioni a statuto speciale e alle Province autonome di Trento e di Bolzano fino all'adeguamento dei rispettivi statuti sulla base di intese con le medesime Regioni e Province autonome*" (art. 38, c. 11).

As a matter of fact, this provision, from one side enforces the Special statutes adjustment to the new Titolo V structure; from the other side provides no deadline to accomplish the changes.

This legislative technique is foremost questionable, because nobody knows if and when this provision could ever be enforced, since a real implementation of art. 38, c. 11 would represent the end of special autonomy, despite article 116, c. I and II, Cost. is untouched.[34]

In any case, during the - probably very long - intermediate stage, the gap between ordinary regions (highly depowered) and special ones (not adequate) is destined to broaden besides any resilience of the system.

[34] On these issues, see the documents contained in L. ANTONINI, *Federalismo all'italiana*... cit., 178, ss.