NATIONAL REPORT – ITALY

MOVIMENTO PER LA GIUSTIZIA

Once again a report on the state of Justice in Italy must record profound dissatisfaction and preoccupation on part of the judiciary.
Dissatisfaction is mandatory since the Government in charge, backed – it must be reminded – by a vast parliamentary majority, has not undertaken one single initiative concerning the long-since denounced malfunctions of the Italian justice system.
Preoccupation derives from the latest developments concerning the proposed reform of the judiciary organization. As has been pointed out in the report sent out after the meeting in Prague at the end of June, this seems to be the only response of the Government headed by Mr. Silvio Berlusconi to the state of extreme difficulty in which the Italian justice system finds itself. The bulk of the proposed reforms has been shaped in the first months of life of this Government, and has been given the form of a statutory proposal in Parliament, whose main guidelines, as summarized in our previous report, are: 1) the separation of judges from prosecutors, establishing the need to pass an exam to switch from one function to the other; 2) the reform of the organization of prosecutors' offices, introducing a hierarchical structure (which, as such, opens the possibility of undue influence on investigation by the government); 3) the reintroduction (after they had been abolished in the 1960's) of examinations for advancements in career for both judges and prosecutors; the examining committee should consist of judges from the Supreme Court, lawyers, and external components nominated by the Minister of Justice; 4) competence regarding initial and in-service training should be turned over to the Supreme Court, instead of the Consiglio Superiore della Magistratura (Supreme Council of the Judiciary) as is today; 5) in general, reduction of powers of the Consiglio Superiore della Magistratura in fields such as organization of judicial offices or evaluations linked to advancements in career of judges and prosecutors.

This statutory proposal, fiercely adversed not only by Associazione Nazionale Magistrati (judges' and prosecutors' syndicate) but also by the parliamentary opposition, vast sectors of the academic world, and, at least to some extent, by the corporation of lawyers, has been approved at the beginning of September by the Justice Commission of the Higher Chamber of Parliament (Senato), thus receiving its first official scrutiny by the law-making authority.
Not one of the objections raised to the proposal by Associazione Nazionale Magistrati, or any other subject among those mentioned above, has been taken into serious consideration, nor has there been any formal or informal consulting with the representatives of the judiciary, first and foremost the Consiglio Superiore della Magistratura.
Instead, after brief debate within the Justice Commission – undeniably insufficient, considering the importance of the issues at stake – further innovations have been introduced by representatives of parliamentary majority. Among these may be highlighted: 1) the prohibition for judges and prosecutor to become members of, or participate in, organizations "having political ends", or in activities different from those of "scientific, recreational, athletic or charitable" scope; 2) the prohibition for single judges or prosecutors to have direct contacts with press organs, which should instead be administered solely by the heads of offices; 3) the prohibition for judges to "interpret the law in a way not compatible with its wording or spirit", with specific interdiction of "creative interpretation" of laws; the violation of such principle can lead to disciplinary action on part of the Ministry of Justice.

Especially the latter rule has raised widespread criticism in as far as it collides with any naturally accepted notion of the role of judges, and jurists in general: it is difficult to deny that any conception of such role originating from intellectually honest intentions cannot obliterate the vital function of interpretation, and sometimes extensive or creative interpretation, in the development of a living juridical system. It is also evident that the rough wording of the rule is in itself unclear, as the notion of "spirit of the law" has in itself

no precise meaning: curiously enough, any application of the rule would therefore itself have to pass through a preliminary interpretative activity.

Nevertheless, the notion synthesized in the above rule is not isolated, but has instead recently found a second consecration, although concerning a specific sector of Italian law. At the beginning of October a global reform of labour contract law has been approved: apart from carrying out a massive deregulation of the matter, it contains a provision prohibiting judges before whom any employment contract is invoked for application to (re)qualify it according to the substantial aspects of the worker-employer relationship, regardless of the formal denomination such contract has been given.
On the side it might be noted that the formulation of the above mentioned reform has been delegated by Parliament to the Government (as provided by art. 76 of the Constitution): it is evident that such law-making procedure, massively employed by the present parliamentary majority, inhibits drastically any form of political control over the content of statutes, a limitation all the more serious in the case of a reform ample in scope such as this particular one.

The overall aim of the proposed reforms concerning the judiciary is clearly punitive in scope: there can be no other reasonable interpretation to rules so crudely revolutionary in respect to Italian "judiciary tradition" other than the intent to avoid for the future that a judiciary too independent should challenge, as has been in the past, sectors of local and national administration and politics, as well as of the entrepreneurial world, riddled with wide-spread corruption.
The concept of magistrate outlined is that of an obeying bureaucrat, subject in some way or another (through direct or indirect influence) to the executive power and therefore to parliamentary majority: a concept in evident friction with the guarantees of independence bestowed on the Italian judiciary by the Constitution, which are not an end to themselves but instead have been introduced in 1948 as a direct reaction to the abuses perpetrated by the last dictatorial rule Italy has had in its history.

On part of Associazione Nazionale Magistrati, the situation outlined above has reinforced the widespread opinion that initiative has to be taken – and taken promptly – to inform public opinion, both in Italy and abroad, on the dangers which the proposed reforms carries with itself: a first, and certainly not last, step in this direction has been the indiction of a nation-wide protest of judges and prosecutors which will take place on November 22nd, including a general assembly of magistrates in Rome.

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