The Three Most Important Features of Italy's Legal System that Others Should Understand

Andrea Scella, University of Udine Faculty of Law, Italy

1) Constitutional system

Italy is a democratic republic. The choice for a republic was made in 1946 when, through a referendum, the Italian population abolished the monarchy in favour of the republic.

The Italian Constitution, which is the fundamental law for the Republic of Italy, entered into force the 1st of January 1948.

The Italian Constitution is a written, rigid and long one.

First of all, all the rules are listed in a written legal text. Besides, Italian Constitution is considered to be rigid; this means that in order to change its provisions, a more demanding process is needed (not being sufficient the usual majority) and that laws in contrast with the Constitution shall be removed at the end of a proceeding in front of the Constitutional Court. Last but not least, the Constitution is long, as it contains provisions regarding different aspects of civil living, not limiting itself only to list the sources of law. In this regard, it is important to say that constitutional provisions mainly belong to a programmatic scheme which is relevant only when it's time for the legislator to address.

The Constitution principles consolidation process, through their concretization into ordinary law, is known as Constitution enforcement. This process is not to consider finished yet. Moreover, our legislator has seldom decided to intervene to modify, integrate and extend some subjects by adopting constitutional provisions (Constitution integrations, to be approved with the same process of Constitutional revision).

Regarding Constitutional Provisions implementation and integration, it's important to recall, for example, that the Constitutional Court was established only in 1958 and ordinary Regions in 1970, and the abrogative referendum was founded with a law dated May, 15 1970 too.

The Constitution lists the fundamental principles of the Italian republic, citizens' rights and duties and it establishes the republic organization.

The President of the Republic is the State's head charge and it represents the national unity. He is designated every seven years by the Parliament's collective session, joined by the regional representers, and he has legislative, judiciary and executive functions, even if in practice his main prerogatives are representative. Nonetheless, the President of the Republic gains considerable powers if the State finds itself in institutional drifting.

Italy is a parliamentary republic, where the legislative power is held by a bicameral parliament, which consists of a Deputies Chamber (630 members) and of a Republic

Senate (315 elected members and life-senators, 5 of which are nominated by the President of the Republic and there are also the ancient Presidents of the Republic). The Parliament is nominated by the population by way of a proportional election system with a majority bonus. Legislature can only last 5 years.

The executive power is held by the Government, inside of which, according to art 92, section 1 of the Constitution, there are 3 different organs: the Ministers Council' President, the Ministers, and the Ministers Council, which assembles the first two organs mentioned. The Government structure is ruled concisely by art 92, section 2, art 93 and art 94 of the Constitution and by constitutional practices consolidated through time.

The judiciary power is displayed by the judiciary body as a whole. At the top of it, there is the Constitutional Court, which was introduced in the Italian legislation system by the Constitution; as a primary competence the Court has to judge over the constitutionality of laws, then there is the Judiciary Supreme Council (Consiglio superiore della magistratura), which has the Judiciary Body self government duty, and finally the Cassation Court, a French type supreme court which is unfortunately overloaded.

Public administration is shared among State, Regions, and Local Institutions (metropolitan cities, districts and councils) according to subsidiariness, differentiation and adequateness principles (art 118 Cost). The legislative competences exclusively given to the State are only the ones listed in the Constitution; some others that has to comply to the fundamental principles set by the State are listed, even if their actual execution is delegated to the Regions; all the subjects whose competence is not openly attributed to the State, are attributed to the Regions. The Constitutional Court is competent to judge over disputes between State and other local institutions.

2) Civil Code and contractual autonomy

The current Civil Code has been issued in 1942 and it includes sensibles differences from the model of the French and Italian 18th century customs. Beside these customs, it is influenced also by another model of civil code, more recent, which has been very influent for the Italian juridical science development in the first half of our century: the Bürgerliches Gesetzbuch.

The Italian Civil Code has a peculiarity among all the others European civil code: it contains both, civil law regulations and commercial law regulations, which used to belong to two different codes.

The Italian Civil Code consists of 2969 articles divided into six libri or books. The Civil Code is organized as follows:

Libro I	Delle Persone e della Famiglia	Individual Rights & Family Code
Libro II	Delle Successioni	Succession Law (Italian Inheritances)
Libro III	Della Proprietà	Real & Personal Property

Libro IV	Delle Obbligazioni	Contracts
Libro V	Del Lavoro	Labor & Corporations
Libro VI	Della Tutela dei Diritti	Protection of Individual Economic Rights

Nearly all of the current Italian codes are dated back to the fascism time, and so is the civil code: for the fascist regime, the codification was a type of juridical monument to be left to future generations, as the Code Napoleon was for French people. Several legislative modifications summed to International agreements and European Union set of rules have deeply modified and integrated the code physiognomy: sometimes they were only added, to the point that a conspicuous civil set of rules is to be found somewhere else.

In the Italian legal system, the parties' contractual autonomy is not a constitutional value, but only one among all the possible demonstrations of the power to decide on personal sphere, both personal and economical. Therefore, it only receives indirect protection, as freedom of economic enterprise object, according to art 41, with which it is instrumental.

Freedom of economic enterprise, and contractual autonomy with it, have to stand back to superior nature issues: in the current judiciary system, the old rule according to which is the individual who can be the only absolute arbiter of his relationships' fate, is not accepted anymore. The individual has freedom of action, but it has to be applied among certain limits.

3) Criminal system

No doubt that the criminal field has a special importance in a juridical system: there are sanctions which deprive citizens of their personal freedom, there are criteria which allow to state their responsibility, there are different proceedings to crime finding and to sanctions commination, and also, there are different crime's patterns from which we understand a particular values hierarchy, and all of them make it possible to determine a precise frame of State and citizens' relationships in a certain time.

The first element which characterize the Italian situation is that the current Criminal Law Code dates back to the fascism time (1930) and therefore, its original framework was expression of an antithetic political system of the one later outlined by the Republic Constitution. It is important to underline the fact that the fascist regime imposed a considerable twist to criminal law, loading it up with authoritative contents and defensive tasks which were diverted from rights and societies and given to the State, which made them effective with a strong emphasis on the criminal justice repressive circuit and intimidatory task. Thanks to the Constitutional Court, the most questionable aspects of the criminal code have been gradually removed.

Today' s system most crucial points regard the disproportionated legislator appeal to the criminal law (so called criminal inflation) and the rising of sections' regulations where we can only find eccentric solutions. Indeed, aggravated penalties and special rules fill the Italian criminal experience and impose themselves as one of the firmest peculiarity: exceptional laws, which should only be temporary, are usually extended,

or renewed, because the reason why they were issued has not been resolved yet. Their main goal seems to be a reason for their confirmation. And even when they are not enforceable anymore, they leave significant marks in the legal system, by introducing principles and legitimizing long lasting practices.

Criminal Procedure Code represents the only example of a code thought and approved after the Republic Constitution. A key feature of the Criminal Procedure Code of 1989 is the disappearance of the investigating judge (giudice istuttore) and the emergence of the prosecutor as the principal actor in the pre-trial stage. The system of compulsory prosecution has been relaxed and a system of plea agreement is explicitly accepted. The trial process has also become more adversarial, ascribing to the presiding officer a predominantly passive role of ensuring respect for the new rules of evidence; a court may adduce additional evidence after the parties have closed their cases only when it is "absolutely necessary". Trial is preceded by a thorough pretrial investigation conducted by the public prosecutor, who at that stage is expected by the law to act in an "objective" fashion and to also investigate facts favoring the suspect. Before a case can go to trial, the results of the pretrial investigation must be submitted to a magistrate; he or she determines whether there is sufficient evidence against the suspect and whether the case can be resolved — if the defendant consents — by convicting and sentencing him on the spot, without trial.

The crisis in the expeditious completion of proceedings, which prompted the reform, has not been solved. This has been attributed not to the new procedure, but to the chronic incapacity of the politicians to devote adequate resources to the system coupled with the equally chronic incapacity within the system to organize itself, given the available resources.