

THE ITALIAN CONSTITUTION, CONSTITUTIONAL COURT JUDGMENTS AND THE DISTRIBUTION OF COMPETENCES ON MINORITY LANGUAGES

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Abstract

The first part of this paper examines the Italian Constitution (Article 6) and the distribution of competences between the Italian State and Regions (Article 117) regarding minority languages before and after the 2001 Constitutional Reform (Constitutional Law 3 of 2001).

The paper examines some Italian Constitutional Court judgments on minority languages to show how they were of paramount importance in developing legislation in this area.

In the second part, the paper narrows its focus to Italian Constitutional Court Judgment 159 of 2009.

Then it looks at the “Renzi Boschi” Constitutional Reform Bill and the distribution of competences regarding minority languages under this recent constitutional reform, which is not in force at the moment because it has to be approved by a referendum.

Keywords: Minority languages, Italian Constitution (Article 6), reforms, Constitutional Law 3 of 2001, “Renzi Boschi” Constitutional Reform (Article 70 and Article 117), Constitutional Court judgments, Italian Constitutional Court Judgment 159 of 2009.

CONSTITUCIÓ ITALIANA, SENTÈNCIES DEL TRIBUNAL CONSTITUCIONAL I LA DISTRIBUCIÓ DE COMPETÈNCIES SOBRE LLENGÜES MINORITÀRIES

Resum

La primera part de l'article examina la Constitució italiana (art. 6) i la distribució de competències entre l'estat italià i les regions (art. 117) pel que fa a les llengües minoritàries abans i després de la reforma constitucional del 2001 (Llei constitucional núm. 3, de 2001).

L'article examina algunes sentències del Tribunal Constitucional italià sobre les llengües minoritàries per mostrar com van tenir una importància primordial per al desenvolupament de la legislació en aquest sector.

A la segona part, l'article posa el focus en la sentència del Tribunal Constitucional núm. 159, de 2009.

Després es veu el projecte de reforma constitucional “Renzi Boschi” i la distribució de competències en relació amb les llengües minoritàries sota aquesta reforma constitucional recent, que de moment encara no està en vigor, ja que s'ha de sotmetre a referèndum.

Paraules clau: llengües minoritàries, constitució italiana (art. 6), reformes, Llei constitucional núm. 3, de 2001, reforma constitucional “Renzi Boschi” (art. 70 i 117), sentències del Tribunal Constitucional, sentència núm. 159 de 2009 del Tribunal Constitucional italià.

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1 Introduction: Article 6 of the Italian Constitution

In civil law countries the Constitutional Court plays the main role in interpreting legislation and may be of paramount importance in developing legislation on minority languages. This is the case in Italy, where several judgments by the Italian Constitutional Court have had a strong influence on legislation relating to minority languages.

The Italian Constitution contains an important article¹ regarding minority languages, Article 6, which states “The Republic safeguards linguistic minorities by means of appropriate measures”². However, Article 6 is vague, since there are no specific faculties attributed to the members of a minority. Instead, it aims to ensure the State has an obligation to protect the linguistic minorities as such, showing its programmatic nature.

In fact, Article 6³ is intended to ensure “minimum protection”⁴, easily accessible and not linked to the historical situation. This protection is revealed through the interpretation of the Constitution. The Constitutional Court is charged with judging whether the Law conforms to the Constitution. Consequently, its interpretation has paramount authority and is also binding. It is charged with giving an interpretation of the Constitution when there are norms open to discretion, in order to clarify the situation, and also with resolving conflicts between the State and the regions regarding the attribution of powers.

Article 6 of the Italian Constitution is different from provisions on language in some other European constitutions, which are more specific and do not have a programmatic nature. For example, the Spanish Constitution proclaims, in Article 3, that Spanish is the official language of Spain but that the other languages are also official in their respective autonomous communities. Moreover, this provision is more detailed compared to Article 6 of the Italian Constitution. Also, the Statute of Autonomy of Catalonia and those of some other Spanish autonomous communities contain several details regarding the use of minority languages within the territory of the autonomous communities in the public administration and in other domains.

The principle contained in Article 6, because of its programmatic nature and its ambiguity, required further legislation for its implementation (Constitutional Court Judgment 159 of 2009⁵, 15 of 1996⁶, 62 of 1992⁷ and 28 of 1982⁸)⁹.

For a long time there was a debate on who was responsible for implementing Article 6 of the Constitution, since the word “Republic” is generic and does not clarify whether it is the central State, the regions, or both the central State and the regions that need to take measures to implement the article¹⁰. In the 1960s the Constitutional Court solved the dispute by stating that only the central State was able to create norms on the protection of minority languages (Judgment 14 of 1965¹¹, 128 of 1963¹², 46 and 1 of 1961¹³, 38 of 1960¹⁴)¹⁵.

1 This provision is among fundamental principles (Articles 1 to 12).

2 https://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf

3 See on this subject: A. Guazzarotti, *Article 6*, in S. Bartole, R. Bin, *Commentario Breve alla Costituzione*, Padova 2008.

4 Italian Constitutional Court Judgment 28 of 1982 <<http://www.giurcost.org/decisioni/1982/0028s-82.html>>.

5 Italian Constitutional Court Judgment 159 of 2009 <<http://www.giurcost.org/decisioni/2009/0159s-09.html>>.

6 Italian Constitutional Court Judgment 15 of 1996 <<http://www.giurcost.org/decisioni/1996/0015s-96.html>>.

7 Italian Constitutional Court Judgment 62 of 1992 <<http://www.giurcost.org/decisioni/1992/0062s-92.html>>.

8 Italian Constitutional Court Judgment 28 of 1982 <<http://www.giurcost.org/decisioni/1982/0028s-82.html>>.

9 http://www.cortecostituzionale.it/documenti/relazioni_internazionali/RI_20130606_LATTANZI.pdf

10 On this subject see: V. Piergigli, *Lingue Minoritarie e identità culturali*, Milano, 2001; E. Palici Di Suni Prat, *Intorno alle minoranze*, Torino, 2002; R. Toniatti, *Minoranze e Minoranze Protette: modelli costituzionali comparati*, in T. Bonazzi, M. Dunne (a cura di), *Cittadinanza e diritti nelle società multiculturali*, Bologna, 1993, A. Pizzorusso, *Le minoranze nel diritto pubblico interno*, Milano, 1967.

11 Italian Constitutional Court Judgment 14 of 1965 <<http://www.giurcost.org/decisioni/1965/0014s-65.html>>.

12 Italian Constitutional Court Judgment 128 of 1963 <<http://www.giurcost.org/decisioni/1963/0128s-63.html>>.

13 Italian Constitutional Court Judgment 46 of 1961 <<http://www.giurcost.org/decisioni/1961/0046s-61.html>>; Italian Constitutional Court Judgment 1 of 1961 <<http://www.giurcost.org/decisioni/1961/0001s-61.html>>.

14 Italian Constitutional Court Judgment 38 of 1960 <<http://www.giurcost.org/decisioni/1960/0038s-60.html>>.

15 U. H. Quercia, *La sentenza n. 170/2010 e la questione della competenza legislativa regionale in tema di tutela delle minoranze linguistiche*, in *Federalismi.it*, 2010.

Until Constitutional Court Judgment 312 of 1983¹⁶, the regions were not able to create laws on this matter¹⁷. With this judgment the Constitutional Court started to change its mind and the regions started to create laws for the protection of minority languages, especially in the 1990s¹⁸. The regional laws allowed the use of minority languages in the public and private sectors, in the media, in education, in the public administration and sometimes in the courts.

1.1 Italian Constitutional Court Judgments Linked to the Protection of Minority Languages

The jurisprudence of the Italian Constitutional Court has affirmed what the Constitution confirmed implicitly, that Italian is the only official language in Italy (Judgment 28 of 1982¹⁹), but very often it has also confirmed that the protection of linguistic minorities is a fundamental principle of the Italian Constitution, not only because there is an article, Article 6, on this subject but, in addition, this special protection is a manifestation of the principles of pluralism and equality, since language is an element of individual and collective identity that is of fundamental importance (Judgment 768 of 1988²⁰, 261 of 1995²¹, 15 of 1996²²). There have been several Italian Constitutional Court judgements linked to minority languages. This jurisprudential evolution culminated in Judgment 159 of 2009²³, which confirmed the outcomes of the previous judgments but, at the same time, clarified the distribution of competences regarding the protection of minority languages between the State and the regions. This judgment also provided an interpretation of Article 6 in the light of Law 482 of 1999²⁴.

There have been several judgments (Judgment 261 of 1995²⁵, 289 of 1987²⁶ and 312 of 1983²⁷) in which the Constitutional Court decided that regions and provinces may create norms for the protection of minority languages beyond the cases included in the regional statutes, but always respecting what was decided at national level. The hierarchy of norms, popular in the Italian system, must be respected, as usual. Following these new Constitutional Court judgments in the 1990s, some regions started to create norms in this field before Framework Law 482 of 1999²⁸. This phenomenon affected not only the regions with a special statute but also those regions with an ordinary statute.

Another thorny issue, before Law 482 of 1999, was the individualisation of minorities recognised as having special protection. With Judgment 28 of 1982²⁹, the Constitutional Court stated that the Italian national Parliament had to decide measures to ensure protection for the Slovenian minority, because the Slovenian minority of Friuli Venezia Giulia and the minorities in Trentino Alto Adige and Valle d'Aosta were not treated equally as regards the use of minority languages in penal trials. The use of minority languages in

16 Italian Constitutional Court Judgment 312 of 1983 <<http://www.giurcost.org/decisioni/1983/0312s-83.html>>; see also <http://www.filodiritto.com/index.php?azione=visualizza&iddoc=728>.

17 See also L. Paladin, *Diritto Costituzionale*, (Cedam 1998) pp. 170-174. In the Constitution when there is the generic term 'Law' this means national Law not regional Law.

18 V. Piergigli, *La tutela delle minoranze linguistiche storiche nell'ordinamento italiano tra principi consolidati e nuove (restrittive) tendenze della giurisprudenza costituzionale*, in Rivista dell'Associazione italiana dei Costituzionalisti, 2010.

19 Italian Constitutional Court Judgment 28 of 1982 <<http://www.giurcost.org/decisioni/1982/0028s-82.html>>; Italian is the official language of the state according to Article 99 of the Special Statute of Trentino Alto Adige, Article 38 of the Special Statute of Valle d'Aosta and also Article 1 of the Framework Law 482 of 1999. There is no such proclamation in the Italian Constitution.

20 Italian Constitutional Court Judgment 768 of 1988 <<http://www.giurcost.org/decisioni/1988/0768s-88.html>>.

21 Italian Constitutional Court Judgment 261 of 1995 <<http://www.giurcost.org/decisioni/1995/0261s-95.html>>.

22 Italian Constitutional Court Judgment 15 of 1996 <<http://www.giurcost.org/decisioni/1996/0015s-96.html>>.

23 Italian Constitutional Court Judgment 159 of 2009 <<http://www.giurcost.org/decisioni/2009/159s-09.html>>; see also <http://www.federalismi.it/ApplMostraDoc.cfm?Artid=13087&edoc=22052009133817>.

24 On Law 482 of 1999: E. Palici di Suni Prat, *La legge Italiana sulla tutela delle minoranze linguistiche storiche nel quadro europeo*, in Dir. Pubbl. Comp. Eur., n. 1, 2000, p. 101; V. Piergigli, *La legge 15 Dicembre 1999, n. 482 ("Norme in materia di tutela delle minoranze linguistiche storiche") ovvero dall'agnosticismo al riconoscimento*, in Rass. Parl., n. 3, 2000, p. 623. See <http://www.associazionedeicostituzionalisti.it/giurisprudenza/decisioni2/autori/palermo01.pdf> and <http://www.dirittoregionale.it/regionemiliariomagna/estratto/visualizza.php?id=1271>.

25 Italian Constitutional Court Judgment 261 of 1995 <<http://www.giurcost.org/decisioni/1996/0261s-96.htm>>.

26 Italian Constitutional Court Judgment 289 of 1987 <<http://www.giurcost.org/decisioni/1987/0289s-87.html>>.

27 Italian Constitutional Court Judgment 312 of 1983 <<http://www.giurcost.org/decisioni/1983/0312s-83.html>>.

28 V. Piergigli, *Lingue Minoritarie e identità culturali*, Milano, 2001; E. Palici Di Suni Prat, *Intorno alle minoranze*, Torino, 2002.

29 Italian Constitutional Court Judgment 28 of 1982 <<http://www.giurcost.org/decisioni/1982/0028s-82.html>>.

penal trials was only allowed in the case of the latter group, not the former, according to Article 137 of the Penal Procedure Code (as it was at that time). Consequently, the Slovenian minority did not have the same status as other border minorities (French and German), despite an international treaty, the Osimo Treaty. The Court considered the Slovenian minority to be a recognised minority in the Italian State and thus eligible for the same treatment as the German and French minorities. This judgment is not really clear and it seems that, given there were many cases involving the linguistic rights of the Slovenian population, the Constitutional Court was trying to protect the linguistic rights of a border minority that received a lower level of protection compared to the other border minorities³⁰. Before Law 482 of 1999 the status of linguistic minorities was confused and dependent on international agreements instead of internal legislation.

In 2001, Constitutional Law 3 of 18 October 2001³¹, enacted after a referendum, modified Title V of the Italian Constitution to allow the devolution of powers from the central government to the regions. In the new Article 117 of the Constitution, there is a list of matters reserved for the State (“exclusive State competence”), another list of matters reserved for both the State and the regions (“concurrent legislative competence”), and all matters not included in these lists which are reserved for the regions (“residual competence”). Because the protection of minority languages is not mentioned in either list, it looks, at first glance, as though this matter falls within the powers of the regions and it was initially considered to do so³². However, the Constitutional Court gave its interpretation again, especially with Judgment 159 of 2009³³, making it clear that the situation of minority languages is more complex³⁴. The Court stated that the implementation of Article 6 of the Constitution has created a model for the division of competences between the State and the regions which does not match that of the other categories included in Title V of the second part of the Constitution, before and even after the constitutional reform of 2001³⁵. As a result of this judgment, the State seems to have the power to determine the list of protected minority languages, the rules for deciding which languages are minority languages and to balance the different interests involved³⁶.

Regional competence is limited by the specific purpose (as in the second paragraph of Article 117 of the Constitution); the regional law has to implement the national law (in the case of minority languages there is a framework law to implement, Law 482 of 1999). This is the interpretation of the Constitutional Court in Judgment 159 of 2009. Another judgment, Constitutional Court Judgment 170 of 2010³⁷, confirmed this interpretation and the restrictive orientation regarding the regional promotion of dialects not included in the list of historical minority languages of Law 482 of 1999³⁸. It is clear that the norms which are in the special statutes have a hierarchical position higher than the national legislation and regional legislation since the special statutes were approved under constitutional law. Consequently, only the special statutes of autonomy approved with a constitutional law can maintain specific rules that are different to Law 482 of 1999.

National Law 482 of 1999 is the implementation of Article 6 of the Constitution. At the same time, it was inspired by the documents of European and international organisations. This law established the territoriality

30 E. Palici Di Suni Prat, *Intorno alle Minoranze*, (Giappichelli 2001) pp. 62-72.

31 <http://www.parlamento.it/parlam/leggi/010031c.htm>.

32 U. H. Quercia, *La sentenza n. 170/2010 e la questione della competenza legislativa regionale in tema di tutela delle minoranze linguistiche*, in *Federalismi.it*, 2010.

33 Constitutional Court Judgment 159 of 2009 <<http://www.giurcost.org/decisioni/2009/0159s-09.html>>.

34 E. Stradella, *La Tutela delle Minoranze Linguistiche Storiche tra Stato e Regioni davanti alla Corte Costituzionale*, 5 *Le Regioni*, 2009, p. 1150 <http://www.mulino.it/edizioni/riviste/scheda_fascicolo.php?isbn=13018> and <http://www.forumcostituzionale.it/site/images/stories/pdf/documenti_forum/giurisprudenza/2009/0025_nota_159_2009_stradella.pdf>.

35 See E. Stradella, *La Tutela delle Minoranze Linguistiche Storiche tra Stato e Regioni davanti alla Corte Costituzionale*, 5 *Le Regioni*, 2009, p. 1150; R. Toniatti, *Pluralismo sostenibile e interesse nazionale all'identità linguistica posti a fondamento di "un nuovo modello di riparto delle competenze" legislative fra Stato e Regioni*, in *Le Regioni*, 2009. L. A. Mazzaroli, *La tutela delle minoranze linguistiche nella Costituzione del nuovo Titolo V*, in *Le Regioni*, 2003.

36 Constitutional Court Judgment 159 of 2009 <<http://www.giurcost.org/decisioni/2009/0159s-09.html>>.

37 Constitutional Court Judgment 170 of 2010 <<http://www.giurcost.org/decisioni/2010/0170s-10.html>>.

38 U. H. Quercia, *La sentenza n. 170/2010 e la questione della competenza legislativa regionale in tema di tutela delle minoranze linguistiche*, in *Federalismi.it*, 2010; P. L. Geti, *Federalismo linguistico, tutela delle minoranze ed unità nazionale: un nemis a l'è tròp e sent amis a basto nen*, in *Rivista dell'Associazione italiana dei Costituzionalisti*, 2010, <http://www.cortecostituzionale.it/actionSchedaPronuncia.do?anno=2010&numero=170>; http://pisa.academia.edu/PeterLewisGeti/Papers/310659/Federalismo_linguistico_tutela_delle_minoranze_ed_unita_nazionale_Un_nemis_a_le_trop_e_sent_amis_a_basto_nen.

principle of protection. This means that people, even small groups, who claim to receive special protection, can follow a procedure to obtain protection, but only in the territory where they live.

National Law 482 of 1999 follows the principle of territoriality and not personality. In addition, according to the Constitutional Court³⁹, not only does the proclamation in Article 1, paragraph 1 of Law 482 of 1999 on the Italian language as the official language of the Republic have a formal function, it also acts as a general interpretative criterion for all norms regarding minority languages. It shows that the minority languages are not an alternative to Italian⁴⁰ and these languages cannot sideline the Italian language. The national law cannot be modified by the regions. The national law cannot change the special norms which are in the special statute. However, the more favourable norms, which are in Law 482 of 1999, can be applied.

Article 6, guaranteeing specific norms for the protection of minority languages, is the basic article in this area. The Italian Constitution entered into force in 1948 and Italy waited until 1999 to enact a law to protect minority languages: Framework Law No 482 which came into existence on 15 December 1999.

2 Constitutional Court Judgment 159 of 2009

Judgment 159 of 2009⁴¹ is very important because, with this, the Constitutional Court expressed its opinion and gave its interpretation on the subject of minority languages and Italian legislation. All regional legislation on this subject has to be interpreted in this light since its interpretation is authoritative. It is also important to underline that the Special Statutes of Autonomy (Friuli Venezia Giulia, Trentino Alto Adige, Valle d'Aosta, Sardinia and Sicily), as well as the international treaties, have a higher hierarchical position than national legislation (for example, Law 482 of 1999) or regional legislation (for example, Law 29 of 2007).

The Italian Constitutional Court declared that six articles contained in Regional Law 29 of 17 December 2007, are “constitutionally illegitimate”. The Court judges largely accepted the issues raised by the Cabinet of Ministers (the case was brought before the Court by the central government) in 2008.

In the government’s view, this law exceeded the powers attributed to the Friuli Venezia Giulia region by Article 3 of the Special Statute, which concerns the protection of minority languages in the region, and also by Legislative Decree 223 of 12 September 2002, which contains the norms for the implementation of the Special Statute of Friuli Venezia Giulia⁴².

The regional legislation has to implement the norms of Law 482 of 15 December 1999, which is a framework law that implements Article 6 of the Constitution. The government sought to annul Articles 6(2); 8(1 and 3); 9(3); 11(5); 12(3); 14(2 and 3) of Regional Law 29 of 2007. The Constitutional Court ruled these norms did not comply with the Constitution. Accordingly, the ruling has invalidated most of the articles that provided further protection for the Friulian language.

For example, according to Article 6 of Regional Law 29 of 2007, there was a general duty, for all public authorities throughout the Friuli Venezia Giulia region, even in areas excluded from the territory of the Friulian language group, to answer in Friulian all those citizens who prefer to use this language. The same applied to written administrative communications and to publications for the whole region. This article, according to the government, was inconsistent with Article 9, paragraph 1, of Law 482 of 1999, which limits the use of the minority language to the municipalities where the minority group is settled. According to the framework law, the system of protection is based on the principle of territoriality⁴³.

In addition, according to Article 9, paragraph 3 of Regional Law 29 of 2007, members of the assemblies who do not understand Friulian may have the presentations repeated, or be provided with the written translation

39 Constitutional Court Judgment 159 of 2009 <<http://www.giurcost.org/decisioni/2009/0159s-09.html>>.

40 See also R. Toniatti, *Pluralismo sostenibile e interesse nazionale all'identità linguistica posti a fondamento di "un nuovo modello di riparto delle competenze" legislative fra Stato e Regioni*, in *Le Regioni*, 2009. L. A. Mazzarolli, *La tutela delle minoranze linguistiche nella Costituzione del nuovo Titolo V*, in *Le Regioni*, 2003.

41 Constitutional Court Judgment 159 of 2009 <<http://www.giurcost.org/decisioni/2009/0159s-09.html>>.

42 Ibid.

43 Ibid.

in Italian. For the Italian government this part is inconsistent with Article 6 of the Italian Constitution and Article 7 of Law 482 of 1999 which, in paragraphs 3 and 4, states that, when one or more members of a committee declare that they do not know the minority language, an immediate translation in the Italian language must be guaranteed and, if the public records are in both languages, only the Italian version has legal value. Article 8 of Law 482 of 1999 states that, if the publication of records is allowed in the minority language, the Italian version has legal value. The Friulian regional law is, according to the government, inconsistent with National Law 482 of 1999, as it seems to imply the Friulian version has legal value because the Italian version does not appear to be compulsory⁴⁴.

The region responded by arguing that Article 6 does not work *rationae materiae*, but indicates a task, a duty for all parts of the Republic. This duty also applies to the Friuli Venezia Giulia region which, in Article 3 of its Special Statute of Autonomy, proclaims equal rights for all citizens, without any differences based on the group they belong to⁴⁵.

The Friuli Venezia Giulia region adopted a previous law, Regional Law 15 of 22 March 1996 on norms for the protection and promotion of Friulian language and culture and the creation of the regional and minority language service. In addition, Friulian is on the list of Law 482 of 1999 among the recognised and protected languages.

The defendant, Friuli Venezia Giulia, despite admitting that Law 482 of 1999 implemented Article 6 of the Constitution, also denied that this law is the only possible implementation of Article 6 since Regional Law 29 of 2007 could, according to them, also be considered a legitimate implementation of Article 6 of the Constitution⁴⁶. Regarding Article 6 of Regional Law 29 of 2007, this norm prescribes the right to use the minority language throughout the territory of the region, if citizens so wish. Consequently, Friuli Venezia Giulia adopted the criterion of personality and not that of territoriality, a principle which, according to the defendant, is not required in Article 6 of the Italian Constitution. In addition, the defendant recalled another judgment of the Constitutional Court, according to which, in implementing Article 6 of the Constitution, the legislator has discretion (Constitutional Court Judgment 406 of 1999) and, according to the defendant, the personality principle is a part of the discretion allowed by the Law⁴⁷.

The Constitutional Court clarified the matter with Judgment 159 of 2009⁴⁸, stating that the implementation of Article 6 of the Constitution has created a model for the distribution of competences, between the State and the regions, which does not match the other categories included in Title V of the second part of the Constitution⁴⁹, before and even after the Constitutional reform of 2001. The State seems to have the power to determine the list of protected minority languages, the rules on how to decide which are the minority languages, to balance the different interests involved (for example, the interests of people who do not speak or understand the minority language and/or who have to suffer because of the financial onus) and so on.

Regional competence is, by contrast, limited and not exclusive (as in the second paragraph of Article 117 Constitution) but the regional law has to implement the national law. It is clear that the provisions in the Special Statutes of Autonomy (for example, those of Valle d'Aosta, Trentino Alto Adige and Friuli Venezia Giulia, which have provisions regarding minority languages) have a higher hierarchical position than those

44 Ibid.

45 Ibid.

46 Ibid.

47 Ibid.

48 Ibid.

49 Ibid, see also V. Piergigli, *La tutela delle minoranze linguistiche storiche nell'ordinamento italiano tra principi consolidati e nuove (restrittive) tendenze della giurisprudenza costituzionale*, in Rivista dell'Associazione italiana dei Costituzionalisti, 2010, F. Palermo, *La Corte "applica" il Titolo V alle minoranze linguistiche e chiude alle Regioni*, in Rivista dell'Associazione italiana dei Costituzionalisti, 2009, R. Toniatti, *Pluralismo sostenibile e interesse nazionale all'identità linguistica posti a fondamento di "un nuovo modello di riparto delle competenze" legislative fra Stato e Regioni*, in Le Regioni, 2009, L. A. Mazzarolli, *La tutela delle minoranze linguistiche nella Costituzione del nuovo Titolo V*, in Le Regioni, 2003, U. H. Quercia, *La sentenza n. 170/2010 e la questione della competenza legislativa regionale in tema di tutela delle minoranze linguistiche*, in Federalismi.it, 2010, P. L. Geti, *Federalismo linguistico, tutela delle minoranze ed unità nazionale: un nemis a l'è tròp e sent amis a basto nen*, in Rivista dell'Associazione italiana dei Costituzionalisti, 2010, E. Stradella, *La Tutela delle Minoranze Linguistiche Storiche tra Stato e Regioni davanti alla Corte Costituzionale*, 5 Le Regioni, 2009, p. 1150.

of national legislation (Law 482 of 1999) and regional legislation. The same is true for international treaties, such as the Treaty of Paris and the Treaty of Osimo. Consequently, national law cannot have negative repercussions on special statutes of autonomy or international treaties. National Law 482 of 1999 implements Article 6 of the Constitution and, at the same time, draws inspiration from the documents of European and international organisations. This law establishes the principle of territorial protection, which means that people who claim to receive the special protection follow a procedure to obtain that protection but only in the territory where these groups live, even if in small groups. It is therefore not possible for a Friulian speaker, for example, to ask for special protection for the Friulian language in Sardinia or even in a part of Friuli Venezia Giulia where there are not a sufficient number of speakers, since this special protection can only be requested in the areas where these groups live⁵⁰.

The national law follows the principle of territoriality⁵¹ and not that of personality. In addition, according to the Constitutional Court, in its Judgment 159 of 2009, the proclamation in Article 1, paragraph 1 of Framework Law 482 of 1999, on Italian as the official language of the Republic, not only has a formal function but also a general interpretative criterion for all norms regarding minority languages⁵². It shows that the minority languages are not an alternative to Italian.

Regional Law 29 of 2007 is the implementation of the national law but, according to the Court, it had several norms which went beyond the national framework law. Law 482 of 1999 allowed the use of minority languages only in the area where the linguistic group lives. Regional Law 29 of 2007 went beyond the national law since it stated a duty for all public authorities throughout region, even outside the areas where the Friulian group live, areas delimited according to Article 3, to answer in Friulian all those citizens who prefer to speak in Friulian, write documents in the minority language and so on. Consequently, it goes against Article 9, paragraph 1, of Law 482 of 1999 (which is the implementation of Article 6 of the Constitution)⁵³. Thus, part of Article 6 of Regional Law 29 of 2007 is void⁵⁴.

Another regional law also went beyond Framework Law 482 of 1999 and the central government brought the case before the Constitutional Court. This is Regional Law 11 of 7 April 2009, of the Piedmont Region, on the protection, use and promotion of Piedmont's linguistic heritage⁵⁵, which allowed the use of the Piedmontese dialect in the public offices of Piedmont. It contains some provisions that the Constitutional Court ruled were inconsistent with Judgment 170 of 13 May 2010⁵⁶. The reason is that Piedmontese is not one of the historical languages recognised by Law 482 of 1999; it is a dialect, so some provisions of Regional Law 11 of 7 April 2009 violated the Framework Law 482 of 1999. The regions cannot go beyond Law 482 of 1999 which is a national law. As an ordinary national law (not a constitutional one), Law 482 of 1999 cannot modify the special norms which are in the Special Statutes of Autonomy. However, more favourable norms, contained in Law 482 of 1999, can be applied even in the regions with special statutes of autonomy⁵⁷.

2.1 "Renzi Boschi" Constitutional Reform Bill: Minority Languages

The recent Constitutional Reform Bill, named after Reform Minister Maria Elena Boschi, which is not in force at the moment because it has to be approved by a referendum, contains provisions to overcome

50 Ibid.

51 F. Palermo, *La Corte "applica" il Titolo V alle minoranze linguistiche e chiude alle Regioni*, in *Rivista dell'Associazione italiana dei Costituzionalisti*, 2009.

52 V. Piergigli, *La tutela delle minoranze linguistiche storiche nell'ordinamento italiano tra principi consolidati e nuove (restrittive) tendenze della giurisprudenza costituzionale*, in *Rivista dell'Associazione italiana dei Costituzionalisti*, 2010.

53 Ibid.

54 Ibid.

55 Piedmont is a region with ordinary statute.

56 See U. H. Quercia, *La sentenza n. 170/2010 e la questione della competenza legislativa regionale in tema di tutela delle minoranze linguistiche*, in *Federalismi.it*, 2010; Constitutional Court 170 of 2010 <<http://www.cortecostituzionale.it/actionSchedaPronuncia.do?anno=2010&numero=170>> and <http://www.forumcostituzionale.it/site/images/stories/pdf/documenti_forum/giurisprudenza/2010/0022_nota_170_2010_delledonne.pdf>.

57 See also another recent Judgment: n. 88 of 2011 regarding the Law of Friuli Venezia Giulia n. 5 of 17 February 2010 (Venetian dialects); Italian Constitutional Court Judgment 88 of 2011 <<http://www.cortecostituzionale.it/actionSchedaPronuncia.do?anno=2011&numero=88>>; Regional Law 5 of 17 February 2010 <<http://lexview-int.regione.fvg.it/fontinormative/xml/xmllex.aspx?anno=2010&legge=5>>.

perfect bicameralism, reduce the number of members in the new Senate and contain institutional operating costs, and suppress the CNEL (National Council for Economy and Labour) and the provinces. Title V Part II (the part of the Italian Constitution devoted to Regions, Provinces and Municipalities) is reviewed again, following the reform of 2001.

The new Constitutional Reform aims to overcome “perfect bicameralism” by replacing the two chambers with only one chamber plus the Senate of Autonomies, representing the regions and other local authorities. The Senate of Autonomies does not vote on confidence in the government and only legislates with the other chamber on some important issues. According to the new Article 70 of the Italian Constitution, the Chamber of Deputies has the power to adopt Acts of Parliament (without the approval of the Senate of Autonomies) and “...legislates with the other chamber in order to adopt legislation to revise the Constitution, other Constitutional legislation and only to adopt legislation which implements the constitutional provisions regarding protection of minority languages...”. The meaning here is not clear. Does it refer to all legislation regarding minority languages or just legislation which implements Article 6 of the Constitution, such as Law 489 of 1999⁵⁸? What does “only” mean?

Some powers return to the central State such as energy, relevant infrastructure, and so on. A redefinition of “exclusive” State competence and “residual” competences attributed to the regions leads to the elimination of “concurrent” legislative competences. According to the new Article 117 of the Italian Constitution, “Regions have legislative competence regarding the representation of minority languages”. It is not clear what that means. The previous draft of the bill said “representation of minority languages in the Parliament” (which chamber, the Chamber of Deputies or the Senate of Autonomies?). “In the Parliament” was deleted but it is still not clear what “representation of minority languages”⁵⁹ means: Parliament or Regional Council?

These articles create problems of interpretation and it may take future judgments by the Constitutional Court to clarify this matter⁶⁰. The paragraphs regarding minority languages in the new Articles 70 and 117 create confusion rather than simplify the matter.

3 Conclusions

Italy is a civil law country⁶¹ with a Constitution which has been reformed several times. Since it was first approved, Article 6 of the Italian Constitution has promoted special protection for minority languages.

Until the 1990s, Italy’s regions were not allowed to create laws regarding the protection of minority languages. For a long time there was a debate about who was empowered to implement Article 6 of the Italian Constitution, since the word “Republic” is generic and does not clarify whether the central State or the regions as well have the power and responsibility in this regard.

Until Italian Constitutional Court Judgment 312 of 1983,⁶² the regions were not able to create laws on this matter.

Later, in 2001 the Italian Constitution was revised (Constitutional Law 3 of 2001).

58 V. Piergigli, *Le minoranze linguistiche nel testo della Riforma costituzionale: non soltanto un problema di “coordinamento mancato*, Osservatoriosullefonti.it, 2015.

59 U. De Siervo, Una prima lettura del progettato nuovo Article 117 Cost, in *Rivista dell’Associazione italiana dei Costituzionalisti*, 2016; G. Serges, La potestà legislativa delle Regioni nel progetto di Riforma della Costituzione, in *Rivista dell’Associazione italiana dei Costituzionalisti*, 2015.

60 V. Piergigli, *Le minoranze linguistiche nel testo della Riforma costituzionale: non soltanto un problema di “coordinamento mancato*, Osservatoriosullefonti.it, 2015.

61 In the UK, common Law country, legislation is different than civil Law countries, and this difference also results in some differences in the approach taken to the protection of minority languages. Furthermore, the UK has no single written constitutional document, and there is no legal instrument of a constitutional character in the UK which mentions an official language, whereas, Italy, civil Law country, does have constitutional documents. In the UK, for this reason, the courts have not played a significant role, and this may be due in part to the lack of a constitutional document and the constitutionalisation of language, which allows for legislation in support of minority languages to be challenged on constitutional grounds.

62 Italian Constitutional Court Judgment 312 of 1983 <<http://www.giurcost.org/decisioni/1983/0312s-83.html>>.

Recently, the Constitutional Court has also expressed its opinion regarding the protection of minority languages. For example, it declared in Judgment 170 of 2010⁶³ that some parts of Regional Law 11 of 7 April 2009⁶⁴ on the protection, use and promotion of Piedmont's linguistic heritage were illegitimate, but it has also given its interpretation of the use of minority languages (in this case Venetian dialects) in Judgment 88 of 2011⁶⁵ regarding the Friuli Venezia Giulia Law 5 of 17 February 2010⁶⁶.

Constitutional Court Judgment 159 of 2009 was of paramount importance in the interpretation of legislation in favour of the protection of minority languages. However, the recent Constitutional Reform Bill made the distribution of competences between the Italian State and the regions less clear.

The paragraphs regarding minority languages of the new Articles 70 and 117 of the Italian Constitution create confusion rather than simplify the matter. They create problems of interpretation and it may take future judgments of the Constitutional Court to clarify the matter again⁶⁷.

⁶³Italian Constitutional Court Judgment 170 of 2010 <<http://www.cortecostituzionale.it/actionSchedaPronuncia.do?anno=2010&numero=170>>.

⁶⁴Regional Law 11 of 7 April 2009. <<http://arianna.consiglioregionale.piemonte.it/base/coord/c2009011.html>>.

⁶⁵Italian Constitutional Court Judgment 88 of 2011 <<http://www.cortecostituzionale.it/actionSchedaPronuncia.do?anno=2011&numero=88>>.

⁶⁶Regional Law 5 of 17 February 2010 <<http://lexview-int.regione.fvg.it/fontinormative/xml/xmllex.aspx?anno=2010&legge=5>>.

⁶⁷See V. Piergigli, *Le minoranze linguistiche nel testo della Riforma costituzionale: non soltanto un problema di "coordinamento mancato"*, Osservatoriosullefonti.it, 2015.