CHAPTER SEVEN

WHAT IT MEANS TO BE SPECIAL IN RELATIONS WITH THE CENTRAL STATE: INSTITUTIONS AND PROCEDURES

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South Tyrol has a peculiar position in the asymmetrical design of the Italian regional system; its particular features are a result of the constitutional implementation of Italy’s international obligations realized in a process of bilateral relations between the state and the autonomous province. However, by contrast with independence, even far-reaching autonomy requires some degree of integration into the larger context of the state. This chapter illustrates the peculiar institutions and procedures in the relations with the central state, which have to guarantee both, autonomy, by means of their adaptation to the specific situation for the sake of respecting diversity, as well as the compatibility of the special legal system in South Tyrol with the legal system of Italy (i.e., the integrative function). The relations between South Tyrol and the centre, however, are far from being static: the progressive and dynamic evolution of the Italian regional system often required innovative solutions, different from those applied to the other regions.

I. Introduction

According to the original outline in the Italian Constitution of 1948, the relations between the state and the regions were based upon the strict separation of their respective spheres of powers. Both the state and the regions were supposed to operate on different, separate and parallel tracks. Powers in legislation should also determine administrative functions (Art. 118 Constitution). However, in its practical realization, this theoretical approach was confronted very soon with the emerging (necessity and) practice of a ‘cooperative regionalism’, characterized—like the similar evolution in federal systems—by numerous interferences, overlaps and entanglements. This evolution favoured a dominance of interests rather than the respect of competence-lists for the determination of the competent level of
territorial government. Especially in the beginning, the flexible management of
the distribution of powers played into the hands of the central government, thus
weakening the autonomous areas of the young and inexperienced regions.

The evolution of Italian regionalism so far can be subdivided into five ‘seasons’;
the implementation of the South Tyrolean autonomy system is closely linked to
this larger context:

1. Of the 20 regions foreseen by the Constitution in 1948 (Art. 131), only four
‘special’ or ‘autonomous’ regions, including Trentino-South Tyrol, had been
established immediately. In the 1950s and 1960s, these remained the only
actors on the stage. Regarding South Tyrol, this was the period of the—unsat-
sisfactory—‘first’ autonomy, leading to mass protests and bombing attacks.
2. Only in the 1970s did the whole system unfold: in addition to the (then, five)自助
autonomous regions, 15 ‘ordinary’ regions were established in the late 1960s;
the first regional elections took place only in 1970 and financial resources were
transferred even later by the central government, which continued to control
also the transfer of powers. The new regions only had limited legislative power
in specific fields listed by the national Constitution (Art. 117), in which the
state could still legislate on principles. After consultation and acceptance of
the ‘Package’, this general, nationwide regionalization effectively supported
the transformation of the South Tyrolean autonomy from the region-based
‘first’ autonomy to the implementation of the ‘second’ Autonomy Statute
(AS) with the autonomous provinces as the main actors.
3. The 1980s were characterized, on the one hand, by continuous attempts at
central interference, as well as by increasing cooperation between the regions
and the centre, on the other. An important role was exercised by the Italian
Constitutional Court, which acted as an arbiter in numerous controversies,
thus developing a cooperative model of regionalism. As a result, a certain
emancipation of the regions can be registered. Running in parallel to this
was the development in South Tyrol: the full implementation of the ‘second’
autonomy took 20 years and was accompanied by numerous controversies and
litigation in front of the Constitutional Court.

3 Aosta Valley, Trentino-South Tyrol, Sardinia and Sicily; due to the international status of Tri-
este, Friuli-Venezia Giulia followed only in 1963. All autonomous regions have their own ‘basic
law’ (called: statuto, hereinafter, “Autonomy Statute”, AS), approved as a constitutional law of the
state. They enjoy considerable legislative, administrative and financial autonomy, including exclu-
sive legislative powers. These powers are different in each special region. The implementation of
their statutes is negotiated bilaterally with the national government in joint commissions. See the
chapter by Francesco Palermo in this volume.
4 Including Friuli-Venezia Giulia.
5 The statutes of these regions were less guaranteed, being formally approved by an ordinary law
of the state; all were thus close to identical in their governmental structures (a council elects the
executive).