

II. LAW, LANGUAGE AND CULTURE

THE CHOICE OF TEACHING “ONLY IN ENGLISH” IN AN ITALIAN PUBLIC UNIVERSITY IS A SIGN OF INTELLECTUAL SUBJECTION AND IS CONTRARY TO THE PROPORTIONALITY PRINCIPLE

(An Answer to G. della Cananea*)

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The decision taken by the Polytechnic of Milan last year (via a resolution of the Senate upholding the three-year plan 2012-2014) according to which, starting from the academic year 2014/2015, "*the official language of the advanced two years' degree programs and of PhD programs is English, only*" was not a good step in the direction of internationalization of Italian universities. Such a decision was rather another clear sign of that intellectual subjection to the English native speakers' world, which affects at present time a large part of the Italian ruling class, also within the universities. But, most of all, the above mentioned administrative decision was wrong from a legal point of view and contrary to the principle of proportionality.

From this point of view it is pretty unfair to accuse of awkwardness the Administrative Court of Milan, because of its decision of May 2013¹, which annuls the administrative act adopted by the Academic Senate of the Polytechnic of Milan in 2012². As a matter of fact, the decision of the Administrative Court of Milan is nothing less than a correct application of the

* See Editorial, *Law, Language and Culture*, in IJPL, vol. 5, Issue 1/2013 (<http://www.ijpl.eu/>)

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¹TAR Lombardia, decision n. 1348/2013 of 23/05/2013.

²So does G. della Cananea in his Editorial in IJPL, Issue 1/2013, p. 2.

proportionality principle which, at present, is one of the most used general principles by Italian Administrative Courts when revising administrative acts³.

This principle implies that the concrete measure chosen by the Administration to put in execution law provisions needs not only to be appropriate for the attainment of the goal which it seeks, but it also needs to match the criterion of necessity, therefore not having to go beyond what is necessary to achieve the goal⁴.

From this point of view it must be taken into account that the law provision, which was the concrete point of reference for the decision of the Academic Senate of the Polytechnic of Milan, mentions "*the teachings in a foreign language*" as just one of the possible means to attain the goal of internationalization of the Italian university system and leaves broad discretion to the universities, in the choice of how to concretely achieve this goal⁵. Discretionary power of Public Administrations is not, however, "*freies Ermessen*"⁶ but rather a space of decision subject to review by the administrative courts, in particular through the review of proportionality.

³I cannot give an account in detail of the decision, which may, however, be found at: http://www.giustizia-amministrativa.it/DocumentiGA/Milano/Sezione%203/2012/201201998/Provvedimenti/201301348_01.XML

⁴See D.U. Galetta, *Il principio di proporzionalità*, in M. Renna, F. Saitta (Eds.), *Studi sui principi del diritto amministrativo* (2012) p. 389 ss.

⁵See law of 30 December 2010, n. 240 (law *Gelmini*) for the revision of the Statutes of Italian's Universities, art. 2, par. 2. It is one of the many cases in which the law *Gelmini*, respecting the statutory autonomy of universities, indicates only a very general set of criteria, with the aim of achieving a specific goal: the internationalization of the Italian university system. See on this point D.U. Galetta, *Autonomia universitaria e processi di internazionalizzazione degli Atenei dopo la legge n. 240 del 2010: una "anglicizzazione" necessaria? Riflessioni critiche dalla prospettiva del diritto (amministrativo)*, in *Giustizia amministrativa* (www.giustamm.it), Febbraio/Marzo 2013.

⁶I refer to that concept, historically dated, used in particular by the German speaking public law doctrine until about 1945, to indicate the area of substantial freedom that the public administration was to enjoy, both in front of the legislature and in front of the judicial power. See in particular the two well known contributions of F. Tezner, *Über das freie Ermessen der Verwaltungsbehörden als Grund der Unzuständigkeit der Verwaltungsgerichte*, (1892) e W. Jellinek, *Gesetz, Gesetzesanwendung und Zweckmäßigkeitserwägung*, (1913). See on this point S. Cognetti, *Profili sostanziali della legalità amministrativa*, (1993), 70 ss.

To be consistent with the principle of proportionality the concrete choice on how to achieve the goal of internationalization should have properly taken into account all other interests at stake, in order to allow the achievement of the goal of internationalization with the least possible sacrifice of other conflicting interests.

In particular, as the administrative Court’s decision stresses, the decision of the Academic Senate should have taken into account the interest of the Professors to be able to exercise their constitutionally enshrined right of freedom of teaching art and science (Articles 33 and 34 of the Italian Constitution), as well as the right of the students to an education in the language that our system identifies as the expression of the cultural and linguistic heritage of our state. Those rights cannot be subjected to a linguistic *diktat* such as the use of “solely English language” in teaching activities at university level: even if it is certainly true that in the Italian Constitution there is not a specific norm according to which Italian is “the” official language of our country, nevertheless a systematic interpretation unequivocally leads to this result⁷!

The principle of proportionality used by the Italian Administrative Court to revise the decision of the Polytechnic of Milan is the ripe fruit of a long time development of this principle within the case law of the EU Court of Justice. It is a clear sign itself of the fact, that Italian judges are not living in a close-minded world: most of them are open-minded to a trans-national debate, and do take part in the so called trans-national community of lawyers and judges⁸.

⁷I cannot agree with G. della Cananea’s point of view, according to which the strict constitutional analysis shows and emphasizes that in our Constitution there is not such thing as an explicit and univocal choice of language (Editorial, p. 3).

⁸Clear evidence of this are the meetings organized on a regular basis, for now almost twenty years, by the AGATIF (Association of German, French and Italian administrative judges). S. <http://www.agatif.org/>. See also the ACA (Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union), whose activity started already in 1963, thanks to the personal engagement of the President (at the time) of the Italian “Consiglio di Stato”, Bozzi. See in <http://www.aca-europe.eu/index.php/en/historique-en>

The Administrative Court's decision at issue is not "*excluding any possibility to teach law in English in our country*"⁹: it is only stressing the need, according to a correct use of the principle of proportionality, not to take such an administrative decision without taking into account all rights concretely at stake and without putting them into adequate balance. From this point of view, I must strongly disagree with Giacinto della Cananea's point of view: even if the use of "solely English language in teaching activities" at Italian Public Universities (financed with Italian public money) could be beneficial to create a common frame of reference for researchers and teachers (which is not at all sure and still needs to be proved), this is still not enough to overcome the objections regarding non-compliance with the principle of proportionality. That's why the Administrative Court decision is correct and is not at all an "institutional" one¹⁰.

To conclude, it is my opinion that the choice of neglecting our own language and our own legal culture would be a strong sign of cultural decline of our country. The process of internationalization of our universities - while necessary and desirable - can be considered compatible with our system only to the extent that it will not have the effect of placing the Italian language in a marginal position, compared to other languages: English cannot be an exception to this golden rule.

⁹This is rather the personal opinion of G. della Cananea (Editorial, p. 2).

¹⁰So G. della Cananea (Editorial, p. 4).