A Diachronical Overview of the Italian Constitutional Language

1. Introduction
The present study focuses on the diachronic evolution of the Italian Constitutional language through its main changes. The language of the constitutional text enacted in 1948 (hereafter called ‘the original text’) will be analyzed in a comparative perspective with the one in force nowadays (hereafter called ‘the amended text’), taking into account the most remarkable amendments adopted by the legislator. This comparison aims to verify if the exemplariness (Mortara Garavelli 1988: 165, 2001: 78; Valter Deon 1998: 194) of the first version of the Italian constitution marks the text in force, and if the high linguistic consciousness, that characterized the drafting made by the Constituent Assembly, is still inspiring the actual legislator at least in constitutional amending.

2. Readability level
Over almost 62 years of republican history, the Italian Parliament approved 32 modifications of its Chart in accordance with the rigid procedure specified in Art. 138 of the same constitutional text. As it can be seen in Figure 1, the laws of constitutional amendments being highlighted in red boxes, the first modification affects articles 56, 57 and 60 dating back to 1963, and the last one regards article 27, enacted two years ago.

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As a note on the legal terminology used in this study, it has to be clarified that the most authoritative dictionary for legal translation from Italian into English – that is the ‘De Franchis’ – suggests solutions partially different from the ones chosen here: for example, ‘articolo’ should be rendered as article in legal documents such as contracts, and as section in statutory documents such as acts. It’s the same about paragraph and subsection. Concerning terminology, where uncertainty has been encountered, it was solved using as parameter the Inter-Active Terminology for Europe database (IATE, http://iate.europa.eu).

* M. Laura Pierucci
Dip.to Ricerca Linguistica, Letteraria e Filologica
Università di Macerata
Italy
pierucci@unimc.it
The readability score is 49.5% vs. 48.5% in the examined texts. The sentence average length is 18.88 vs. 20.43 words respectively, and the word average length of 5.52 vs 5.53 letters, respectively. According to the Gulpease Index, the Constitutional texts – both the original one and the amended one – fall within the ‘easy’ range for people with a high level of education, the ‘normal’ range for people with an intermediate level of education, and the ‘difficult’ range for people with a low level of education. In other words, on the basis of the last census released by Italian Central Statistic Institute, the Italian Chart is ‘easily readable’ for the 33.35% of the population, ‘difficult to be read’ for the 30.12% and ‘hardly readable’ for the 36.52%.

<table>
<thead>
<tr>
<th>ITALIAN CONSTITUTION</th>
<th>ORIGINAL VERSION</th>
<th>AMENDED VERSION</th>
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<tr>
<td>readability score</td>
<td>49.5%</td>
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<tr>
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<tr>
<td>total number of words in</td>
<td>2,128</td>
<td>3,453 (± 62.3 %)</td>
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<td>the selected parts</td>
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Source: Index Gulpease (www.eulogos.net/)

Table 1. Readability scores

These scores indicate the lack of statistically reliable difference as for the readability level between the original version of Italian Constitution and the amended one. Consideration has to be given to the length of the articles in the original version and the length of the amended ones: the number of the articles being equal, the total number of words in the selected parts is 2,128 and 3,453, respectively, with an increase of 62.3% in the amended textual portions, while their readability score increases up to 54% too. In Art. 48, amended by the constitutional law on 17 January 2000, the modification added a paragraph to the article doubling the number of words (58 words > 107 words); in Art. 56 amended by the constitutional law on 23 January 2001, the modification added to the article two paragraphs, increasing twice the number of words (44 words > 100 words); in Art. 111, amended by the constitutional law on 23 November 1999, the modification quadruplicate the number of words (76 words > 294 words); in Art. 117, amended by the constitutional law on 18 October 2001, the modification sextuple the words (139 words > 614 words), etc. On the other hand, four Articles were repealed: 124, 128, 129, 130.

3. Comprehensibility level

Concerning the selected parts, the difference between the length of the original text and of the amended text approaches significance in relation to the comprehensibility level: as Piemontese (2000: 237) stated, it would be a proper methodological choice to separate ‘readability’ from ‘comprehensibility’, being the former a necessary condition for the latter, but not the only component. There may be other obstacles to an effective comprehension of a text, especially a legal text, such as logical connections or quantity and quality of the inferable information, that is the information the author presumes in the reader’s knowledge, and so on. Actually, a number of fac-

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2 The readability scores are calculated thanks to a word processing tool specifically designed for the Italian language, the Gulpease Index, available at [www.eulogos.net/](http://www.eulogos.net/). We have to point out that De Mauro (2006: XXI), using the same software, retrieved different scores for the same text.
tors can contribute to comprehension or frustration at one’s (in)ability to understand complex wording or sentence structure: a number of studies claim the importance of the information structure (Halliday 1967, Lambrecht 1994) or information packaging (Chafe 1976), while, according to Prince (1981), information packaging has to do with “the tailoring of an utterance by a sender to meet the particular assumed needs of the intended receiver”. We believe that the real difference between the first constitutional legislators, and the text they produced, and those who drafted the amendments lies in such parameter.

Sala (2006: 164) stated that “wording of a legal text is crucial: such formal attention may also account for the prototypicality of the text (Swales 1990) – that is, its correspondence to the formal/structural canon represented by similar or parallel texts, such as […] the Italian Constitution. A textual feature of this nature, in terms of genre analysis, is instrumental to the recognition of the communicative purpose of the text and [is] functional to its adequate interpretation”.

The effective sentence structure of a legal text deals with two main aspects: complexity (i.e., syntactic discontinuity) and organization (word order). These aspects are related to each other because word order is the primary device to express the interrelationship of ideas in a sentence. Sornicola (1994: 28) pointed out that in word order “no factor is absolutely dominant […] Special attention should be paid to the different incidences of the various factors in the various text types […] Roughly speaking, one could say that syntax and pragmatics play a major role in scientific prose, while in unplanned spoken texts the situation is much more difficult to describe”.

Masson/Waldron (1994: 77) demonstrated that “simplifying drafting style increases comprehension”. But which drafting changes produce the greatest effect in terms of comprehensibility? Comprehension of parts of the document containing legal terms is not greatly improved by explaining such technicalities, for example introducing ‘definitions’. Concerning the Italian Constitution, in terms of Basic Vocabulary of the Italian language¹, the score of the original as well as that of the amended text is about 89%: this means that the lexis used is relatively ‘easy’. Technical terms, most of them nominalizations, occur frequently, as a characteristic of the legal language generally speaking, but the presence of explicative definitions, or ‘redefinitions’, is not statistically reliable mainly due to the fact that for the most part constitutional texts contain principles, general rules.

Moreover, although using more familiar words may make the document aesthetically more pleasing, in order to make real gains in reader’s comprehension, modifications should radically reduce the complexity of language and syntax: very little is achieved by simply removing archaic terms and legalese, but, using shorter sentences means placing fewer demands on working memory capacity.

According to Bowers (1989: 338): “The process of reading is generally seen as one in which the reader first scans a sentence, organizing it into its semantic-syntactic grouping, and next reduces the organization into a semantic whole for storage in the memory as the succeeding sentence is scanned”. Such a theoretical point of view suggests that there are two stages in the process of reading and comprehending: short-term memory and long-term memory. The first one stores up the ideas contained in a sentence. Once the sentence has been read, its meaning is pulled out from the reader’s mind and stored in long-term memory. In case of a complex sentence, it can be assumed that it strains short-term memory to the limit, requiring the reader to reread the sentence more than once in order to achieve a complete understanding. Rereading means dividing the sentence into units more easily handled by reader’s memory.

Then, provided that plain language drafting alone take us only part way to the goal of making the law more broadly understood, the readability score (about 50%) and the increased total length of the amended parts of the constitutional text allow us to assume that, in terms of comprehension, what makes the greater demands on the addressee, that is the simple citizen, could be the arrangement, the thematic organization of the discourse. Here are some examples to verify our hypothesis.

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¹ In accordance with the notion proposed in De Mauro 1997.
art. 96.
Il Presidente del Consiglio dei ministri e i ministri sono posti in stato d’accusa dal Parlamento in seduta comune per reati commessi nell’esercizio delle loro funzioni.

art. 96 (*)
Il Presidente del Consiglio dei ministri ed i ministri, anche se cessati dalla carica, sono sottoposti, per i reati commessi nell’esercizio delle loro funzioni, alla giurisdizione ordinaria, previa autorizzazione del Senato della Repubblica o della Camera dei deputati, secondo le norme stabilite con legge costituzionale.

(*) According to Art. 1 constitutional law 16 January 1989, n. 1.

Table 2. Example of different thematic organization in the original text and in the amended one.

Art. 96 in the original text has one main sentence made up of 26 words, when the ideal sentence length in terms of readability varies from 20 to 25 words per sentence. The amended version is composed of one main sentence made up of 40 words and a parenthetic non-finite clause – highlighted in bold (anche se cessati dalla loro carica) – of 5 words. Such an embedded clause separates the subject from the verb, in the passive voice, followed by a qualification inserted in between two commas – highlighted in red – which is unnecessary to the arrangement of the discourse. In fact, the punctuation pattern in the original text is used syntactically, that is, punctuation, most of all commas, are used functionally, to separate independent sentences or to break them up when the sentences are too long. Then, on the one hand, as a result of such a syntactic complexity, the two main elements, subject and verb which are both semantically and grammatically related, end up distanced from each other in the structure of the sentence, and the close relation between them becomes less directly inferable.

Qualificational insertions are meant to answer juridical questions and doubts offering clarifications about various aspects of the main provision: “the main function of these inserted qualifications or conditions is to make the legislative provision precise, clear, unambiguous and all-inclusive” (Bhatia 1993: 117)4.

Actually, paragraphing and indexing too are typing means useful to a proper and clear packaging of the information: as Lötscher (2008: 137) claimed, “The iconic principle works most obviously on the typographic level. When you can see a structure on paper, you can detect the content structure of the text much more quickly. This is the concept on which the lay out organization of legal texts in most countries is based, for example, the structuring of the units of a text into sub-parts such as sections, subsections, articles, paragraphs, letters etc.; and the typographical rules that make such subdivisions visible”. Practically, one can find the same suggestions in all the Directives adopted since 1993 by Italian Public Administration as a way of simplifying its language.

Such a formal attention is not always paid in the amended articles, like in art. 117 (see table 3), where subsections – structured according to the iconic principle – would have been more functional to the clarity and the comprehensibility of the institutional message transmitted in a 132 words sentence.

4 For a more detailed discussion see Bhatia 1994.
Sono materie di legislazione concorrente quelle relative a: rapporti internazionali e con l’Unione europea delle Regioni; commercio con l’estero; tutela e sicurezza del lavoro; istruzione, salva l’autonomia delle istituzioni scolastiche e con esclusione della istruzione e della formazione professionale; professioni; ricerca scientifica e tecnologica e sostegno all’innovazione per i settori produttivi; tutela della salute; alimentazione; ordinamento sportivo; protezione civile; governo del territorio; porti e aeroporti civili; grandi reti di trasporto e di navigazione; ordinamento della comunicazione; produzione, trasporto e distribuzione nazionale dell’energia; previdenza complementare e integrativa; armonizzazione dei bilanci pubblici e coordinamento della finanza pubblica e del sistema tributario; valorizzazione dei beni culturali e ambientali e promozione e organizzazione di attività culturali; casse di risparmio, casse rurali, aziende di credito a carattere regionale; enti di credito fondiario e agrario a carattere regionale.

Table 3. Art. 117, paragraph 3 amended in accordance with Art. 3 constitutional law on 18 October 2001, n. 3.

This kind of linguistic device can be seen operating even more heavily in art. 116, paragraph 3, where the first two qualifications are inserted in between the subject and the verb, and the other four operational qualifications, arranged consequently one after the other, make the text quite hard to understand.

Ulteriori forme e condizioni particolari di autonomia, concernenti le materie di cui al terzo comma dell’articolo 117 e le materie indicate dal secondo comma del medesimo articolo alle lettere l) [1], limitatamente all’organizzazione della giustizia di pace, n) e s) [2], possono essere attribuite ad altre Regioni, con legge dello Stato [3], su iniziativa della Regione interessata [4], sentiti gli enti locali [5], nel rispetto dei principi di cui all’articolo 119 [6].

Table 4. Examples of qualification insertion (numbered) and intertextuality (in bold) in art. 116, paragraph 3 amended according to Art. 2 constitutional law on 18 October 2001, n. 3.

Inter-textual as well as intra-textual devices, if too frequently used, turn to be somewhat bizarre in such a type of legal text.

Attested in the amended parts of the constitutional text are four cases of intra-textuality, three of which in art. 116 paragraph 3 (see Table 4) and one in the art. 118, paragraph 3.

There are two examples of logodeixis (highlighted in bold) in the amended text: in the art. 57, paragraph 4 (previa applicazione delle disposizioni del precedente comma), and in the art. 119, paragraph 4 (Le risorse derivanti dalle fonti di cui ai commi precedenti). The term ‘comma’ (paragraph) does not appear in the original text, where it has been introduced by the constitutional law on 27 December 1963, n. 3: the legal drafting directives recommend to avoid these expressions, as they can mislead the readers, confusing the lay ones, being the absence of such references an element suitable for legal text comprehensibility.

Even though it doesn’t reach the blamed complexity of certain legislative or administrative texts, such a complexity is unusual in the original Chart, where this paragraph lacks completely. This could suggest that such detailing all-inclusive devices, although somehow characteristic of the legal language in general, were consciously avoided by the Constituent Assembly which was well aware of the role of the Constitutional text among the sources of law: that is, that of laying the principles down in a manner as clear and ‘flexible’ as they could, in order to make the text comprehensible to lay people, on the one side; to give chance to experts to interpret the provisions accordingly to the changing needs of our society through the time, on the other. Here ‘flexibility’ means semantic and pragmatic generative potential of the constitutional text, that is the capacity of its language to function as a resource for meaning differently drawn from different co-texts or contexts.

As a matter of fact, constitutional language possesses linguistic properties of its own that differentiate it from legal language. These peculiarities affect the semantic aspect of the constitu-
tional terms as well as their pragmatic and performative force. Indeed, constitutional language presents various points of generative potential that differ even from legal language, precisely because the terms and utterances are part of the structure that underpins the legal system, as underlined by Brugnoli (2006).

The fundamental characteristic of the Chart as an open text implies, on the semantic level, the so called vagueness. But legislation is to be both stable and flexible, so institutional communicative strategies are required to apply linguistic as well as textual means to these sociolinguistic aims. As Endicott (2005: 28) argued, “[…] vagueness […] is a central technique of normative texts: it is needed in order to pursue the purposes of formulating such texts. Not all norms are vague. But vagueness is of central importance to the very idea of guiding conduct by norms”. The power-delegation function he gives to the legal language can be seen as strictly tied to the nature of the constitutional language, provided that the latter send its message to all citizens, no matter what level of education they have, while the former has specialized readers as main addressees of its message.

Readability and comprehensibility are multifaceted and multileveled concepts: sentence structure is one of the most important factors affecting these two aspects of legal textuality. In fact, the above mentioned readability studies indicated that generally improvements in sentence structure, as reducing syntactic discontinuities, have a greater impact on comprehensibility than the elimination of obscure terminology, as it seems to be the only device used by newer constitutional drafters.

Finally, we can say that legal language and the language of the Italian Public Administration have lots in common, mainly due to an uninterrupted exchange between the two, where legal language, as well as constitutional language, has been increasingly induced to use the structures common to the administrative texts (Rodotà 1983: 55). At the same time, Ainis (1997: 189-190) has gone as far as to state that the language of bureaucracy ruins the legal language, corrupting it in its semantic and syntactic aspects: in Ainis’s opinion, most of the vices of Italian legislative language depend on the fact that it is a branch of the bureaucratic language, both because the bills are quite often designed in the cabinet and the law itself nowadays has to rule minute, trifling questions, once exclusively pertaining to the administrative domain.

REFERENCES


Sala, Michele 2006: Versions of the Constitution for Europe: Linguistic, textual and pragmatic aspects. In Linguistica e filologia 22, 139-167.