The Italian 'Legislation-Cutting' Tool

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Abstract

The article offers an overview of the most ambitious operation of law revision ever attempted in Italy, retracing its phases in order to give an overview of some of the major constitutional questions it raised. The article will focus, in particular, on principles and criteria of the delegation to the Government – which represented the core of the entire operation – as well as on the use of emergency instruments for the same purpose. Two examples of errors or political use of law revision will also be analyzed.

Keywords: law revision, legislative scrutiny, codification, delegation.

A Introduction

The aim of this article is to offer a synthetic overview of the 'Italian way' for law revision,[1] in order to emphasize its points of interests. In order to do so, the article will retrace the phases of the so-called 'legislation-cutting' tool (*taglia-leggi*), which has proved to be the most significant operation in this field.

In a nutshell, it was an ambitious attempt to repeal thousands of laws on account of their asserted outdatedness, almost entirely delegated to the Government. Its centrality, acting both via a broad delegation and via the use of emergency instruments, raised constitutional questions that will be synthetically exposed.

As for its structure, the article will focus in particular on principles and criteria of the delegation and on the use of emergency instruments. Furthermore, some examples of errors or political use of the 'tool' will be analyzed.

B The Stages of the 'Legislation-Cutting' Tool (*taglia-leggi*)

Legge n. 246/2005 drew (Art. 14, paras. 12-24) an innovative process of 'thinning' of existing regulatory *stock*, divided into three phases.[2]

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1 *See* E. Albanesi, *The Mechanisms Used to Review Existing Legislation in the Civil Law System. Case Study – Italy*, in this issue.

2 *See* N. Lupo (Ed.), Taglialeggi *e* Normattiva *tra Luci e Ombre*, Padova, CEDAM 2012; P. Carnevale, *Le Cabale Della Legge*, Napoli, Editoriale Scientifica 2011; M. Cecchetti, 'Il "Taglio" delle Leggi tra Deleghe Legislative, Decretazione d'Urgenza, Clausole "Ghigliottina" e Abrogazioni Espresse', *in* S. Pajno & G. Verde (Eds.), *Studi Sulle Fonti del Diritto*, I, Milano, Giuffrè 2010.

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The first one, to be implemented within 24 months, involved the identification – delegated to the Government via a mechanism of *delega legislativa*[3] – of all the primary legislation actually in force at the moment, underlining the incongruities and contradictions within them. This phase resulted in a Report to the Parliament.[4] As a part of this recognition, every branch of Italian Government had been invited – under the threat of the 'legislation-cutting' tool, which proved effective for this purpose: see *infra* – to report all the applicable laws in their field, including each of them in an *ad hoc* database. At the same time, it was decided to carry out a similar survey, focused on private legal databases. From the report there emerged some 21,691 records, with a degree of approximation of the final results evaluated between 5% and 15%, inclusive of mere insertion errors or duplications. The large majority of the acts surveyed had come into force during the years of the Republic (1946-today) as opposed to those of the former Kingdom (1861-1946), 19,958 against 1,733.[5]

In the second phase, for which a further two-year term was laid down, the Government had to highlight in one or more *decreti legislativi* every single act of primary legislation published before 1 January 1970 (7,743 of the total of 21,691), albeit modified subsequently, for which it appeared essential that they remain in force.[6] Moreover, through these *decreti legislativi* the Government was also delegated the reorganization of the provisions still in force, especially in the light of their necessary coordination with laws approved after 1 January 1970.

At the end of this phase, a 'massive' repeal of all the state laws published before 1 January 1970 was scheduled, although modified by subsequent provisions. Excluded from such repeal (and thus remaining in force) were only the provisions included in a number of categories contained in the *legge* n. 246/2005, all in addition to those indicated in the above-mentioned *decreti legislativi*. Originally, this 'massive' repeal was planned for 16 December 2009, but it was postponed by one year by *legge* n. 69/2009.

A third phase was also planned, in which the Government was given (by *legge* n. 69/2009) the ability to enforce *decreti legislativi integrativi e correttivi*, in order to amend errors contained in the 'original' *decreti legislativi*.

The Government was also delegated to adopt *decreti legislativi* to rearrange the remaining laws by their area of interest: in the event, only three of them were adopted, concerning military organization (*decreto legislativo* n. 66/2010, *Codice*

3 Art. 76 of the Italian Constitution states that the legislative power may not be delegated to the Government unless it is on the terms set out by the Parliament, which defines the principles and criteria of this delegation. The delegation must have a limited term and concern a strictly defined subject. *See* again E. Albanesi, in this issue.

4 *Relazione al Parlamento Sull'Attuazione Dell'art. 14, Comma 12, Della Legge 28 Novembre 2005, n. 246*, available at: <www.astrid-online.it>.

5 *Ibid*.

6 The choice of a date before which it is established a kind of absolute presumption of 'uselessness' is actually the result of a political judgement, which has never been explained in parliamentary works. A *ratio* for the date of 1 January 1970 can be found in the beginning of the implementation of Italian regionalism. More generally, it can be seen as a symbolic 'watershed' with respect to the implementation of fundamental constitutional provisions, primarily the *referendum*, in the subsequent years.

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dell'ordinamento militare), tourism (*decreto legislativo* n. 79/2011, *Codice della normativa statale in tema di ordinamento e mercato del turismo*) and consular offices (*decreto legislativo* n. 71/2011, *Ordinamento e funzioni degli uffici consolari*).

Whilst the delegated power was still alive, the effects of its implementation were partly anticipated by the Government through the *decreto-legge* n. 112/2008 (confirmed by *legge* n. 133/2008) and the *decreto-legge* n. 200/2008 (confirmed by *legge* n. 9/2009), which expressly repealed several thousand primary acts.

As shown in this overview, we are – first of all – faced with a paradox: an operation aimed at simplification has further complicated the system of the sources of law. Furthermore, as it will be explained later, it has led to a new type of abuse of emergency instruments.

C Principles and Criteria of the Delegation

In order to have a better comprehension of the 'legislation-cutting' tool, as well as the constitutional questions it raised, it is worth examining some of the principles and criteria of the delegation (to the Government) for the identification of the provisions to be subtracted from the massive repeal, listed from letter *a)* to letter *h)* under Para. 14 of Article 14, *legge* n. 246/2005.

Letter *a)* excludes from 'rescue' the provisions impliedly repealed: yet, despite the commendable intention, the expression that is used is at least questionable. In civil law tradition, the 'implied' repeal is the result of finding an incompatibility between the new provisions and the previous, that cannot be accomplished in its practical application[7]: it's up to the operator, to the interpreter, the actual 'protagonist' of the phenomenon, to compare two successive provisions in time. As a consequence, an implied repeal is a far cry from one that is explicit.[8] Thus, asking the Government to 'certify' an implied repeal means pushing it, as a delegated legislator, into invading a field that is not its own, inside which it has no rules – and no limits.

Moving on to letter *b)*, which 'condemns' the provisions that have exhausted their effective regulatory content, or are devoid of it or are otherwise obsolete, we again have a clear and appreciable *ratio*, which is very badly expressed in the arrangement. This provision copes with a typical question of civil law 'Kelsenian' systems: the split between the abstract validity of law and its actual effectiveness.[9] It is theoretically possible to assume the existence of objective criteria by which a law is formally in force but is actually unenforceable, for example, a law about the use of funds that do not exist anymore. But the *legge delega* we are examining does not say anything about them, leaving again the Government virtually free in its choices.

Perplexities then increase taking into account the 'obsolete' provisions: they are therefore in force, they are applicable in abstract but not applied anymore. It

7 *See* P. Passaglia, 'Le Fonti del Diritto', *in* R. Romboli (Ed.), *Manuale di Diritto Costituzionale Italiano ed Europeo*, Vol. III, Torino, Giappichelli 2009, p. 34.

8 *See* G.U. Rescigno, *L'Atto Normativo*, Bologna, Zanichelli 1998, p. 105.

9 *Cf. Ibid*., p. 94.

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is not difficult to recall a few examples, but we must take into account the fact that in general, at least in civil law systems, law scholars do not deal with this aspect, which is instead studied by sociologists of law, or – maybe – constitutional courts.[10] Indeed, if we reflect on this delegation to the Government we cannot see anything other than absolute discretion, having moved on evaluations likely to transcend the purely legal level. Letter *b)* is also questionable for the explicit mention of the idea of an 'obsolescence' of laws, which left the approach open to sharp criticism.[11] It is indeed well known that a key feature of statutory law is (not only in civil law systems[12]) that of not losing its force by mere disuse; that is to say, it continues to be fully effective until it is specifically repealed.[13]

As one of Italy's most respected scholars in this field stated, the provisions contained in a statutory law concern any fact in the future unless there is some impeding circumstance. These circumstances can include the repeal of the law itself, its 'exhaustion' (having achieved its sole purpose or having consumed the means that it was intended to use), or the termination of its object or the *de jure* or *de facto* requirements of its application.[14] In this order of ideas, the provision of the letter in question could be interpreted as meaning the ability to certify with certainty the occurrence of the situations mentioned earlier, other than the abrogation; still, once again, the Government is given the *ius vitae ac necis* without any (juridical) burden.

The criterion *sub c)* is even more perplexing since it prescribes that the Government identifies – thus excluding them from repeal – the "provisions whose repeal would result in a harm to the constitutional rights of citizens". First of all, it does not seem possible to find objective criteria since these constitutional rights are characterized by an (at least) uncertain definition and imputation.[15] It appears to be inappropriate to make the Executive arbiter of such a choice, which should rather be up to the Constitutional Court.[16] Moreover, since the exercise of the delegation is not compulsory for the Government, letter *c)* assumes a curious interpretation: it can be read roughly as "the Government may adopt *decreti legislativi* that identify provisions which, if repealed, would produce an infringement of constitutional rights of citizens." This means, ironically, that legitimately exercising its power not to implement the delegation, the Government is given the

10 *Cf. Ibid*., p. 95.

11 *See* P. Aquilanti, 'Abrogare le Leggi più Vecchie (e Anche Quelle di Mezza Età)', *Foro Italiano*, Vol. 128, No. 9, 2005, pp. 161-162, V, column n. 164

12 *See, e.g.*, C.R. Sunstein, 'What Did Lawrence Hold? Of Autonomy, Desuetude, Sexuality, and Marriage', *Supreme Court Review*, 2003, p. 27 *et seq*.; E. Encarnación, 'Desuetude-Based Severability: A New Approach to Old Morals Legislation', *Columbia Journal of Law and Social Problems*, Vol. 39, 2005, p. 149 *et seq*.

13 A. Pizzorusso, 'Disposizioni Sulla Legge in Generale. Delle Fonti del Diritto. Art. 1-9', *in* A. Scialoja & G. Branca (Eds.), *Commentario del Codice Civile*, Bologna-Roma, Zanichelli 2011, p. 248 *et seq*.

14 *Ibid*.

15 *See* R. Dickmann, 'Legge di Semplificazione e di Riassetto Normativo per il 2005: Alcune Questioni Sugli Interventi di Semplificazione Della Legislazione di cui all'Art. 14', *Foro Amministrativo*, 2005, p. 2781.

16 *See* Aquilanti 2005, column n. 165.

power to let these provisions remain in force, 'legitimately' undermining the constitutional rights of citizens! This is an example of how the legislative framework and its textual implications in this context have proved to be inadequately thought through.

Letter *d)*, which assigns to the Government the identification of the provisions "essential for the regulation of each sector", openly paves the way for absolute indeterminacy, not providing any additional criteria, and likewise does letter *g)*, concerning the identification of the provisions "whose repeal would result in even indirect effects on public finance".

The letters *e)*, "organization of the provisions to be maintained in force for homogeneous areas or subjects, according to the prescriptive content of each of them" and *f)* "guarantee of legal consistency" seem specific on their face but in practice are less than useful because of the breadth of their compass.

Now, the *ratio* of the above-mentioned principles and criteria is clear, and it is certainly a commendable purpose to improve the system by removing – using an old-fashioned but effective definition – "laws that had died from obsolescence or implied repeal but which had never received an official funeral".[17] Thus, as we will have noticed, the framework of the delegation contains several distortions of the delegation instrument itself, but it's true that the preparation of the 'rescue' lists implied a vast participatory phenomenon that involved all government departments (*i.e.*, the main operators and interpreters, apart from the judicial branch), who were required to report the actual *status* of laws pertaining to their area of intervention. It is also interesting to note that the *Commissione parlamentare per la semplificazione*,[18] and through it the other committees of the *Senato* and the *Camera dei deputati*, have been an important hub for managing integration requirements or changes to the lists of the provisions to be left in place.[19]

So, to conclude this section, it should be emphasized that the principles and criteria of the delegation were not written properly, and then the operation has already borne relevant 'manufacturing defects'. As noted above, the parliamentary committee did a lot of work also to remedy these errors, proving to be a significant actor in the entire operation.

17 R. Dickerson, 'The codification of military law', *American Bar Association Journal*, 1952, p. 1038.

18 *See* E. Albanesi in this issue, Section G.

19 The *Commissione parlamentare per la semplificazione* – a committee composed of 20 members of the *Camera dei Deputati* and 20 members of the *Senato della Repubblica* – was created by *legge* n. 246/2005, which gave it a form of oversight on the 'Legislation-cutting' operation. The draft of each repealing or 'saving' act had to go through the *Commissione* before taking effect; the *Commissione* could suggest amendments, yet the Government was not obliged to comply. The *Commissione* also choose to send the drafts to the other specialized committees of both Houses, thus involving them in its scrutiny. *See* F. Pacini, 'L'Apporto delle Commissioni Permanenti al Parere della Commissione Parlamentare per la Semplificazione nell'Iter di Formazione del d.lgs. n. 179 del 2009', *in* E. Rossi (Ed.), *Studi Pisani sul Parlamento V*, Pisa, Pisa University Press 2012, p. 289 *et seq*.

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D Can Law Revision Be an 'Emergency'?

Between 2008 and 2009, the Government issued two *decreti-legge* in order to repeal thousands of laws on account of their asserted outdatedness. Aside from the delicate problem of labelling as 'obsolete' an act that is still formally in force (see above), it is an interesting issue to determine the legitimacy of employing emergency measures – in spite of the fact that their provisions can only be secured by Parliamentary approval – to pursue the general policy of simplifying the legal system.

In 2008, the operation of the 'legislation-cutting tool' – started in 2005 – seemed to be confirmed, given in particular the provision in the new government of a Minister for Regulatory Simplification (*Ministro per la semplificazione normativa*). He was given the task, among others, to manage the "coordination of the activities to implement Article 14, Para. 12 and following of the *legge* n. 246/2005" (see Art. 2 of the *decreto del Presidente del Consiglio dei Ministri* of 13 June 2008).

However, shortly after it took office, the Government stated, using an emergency act (Art. 24, Para. 1 of *decreto-legge* n. 112/2008), the repeal of 3,574 acts approved between 1864 and 1997, listed in an annex to the act. Acting at that time, with the instrument of the *decreto-legge*, in the context of regulatory simplification through repeal, the Executive 'legislator' has given rise to a series of problems, which Parliament has sought to remedy during the *conversione con emendamenti* (parliamentary approval with amendments) of the emergency act, made by *legge* n. 133/2008.

In addition to reviewing the list of provisions to be repealed, reducing them, it extended from 60 to 180 days the time limit for the repeal to take effect. It introduced then a coordination clause with the 'legislation-cutting tool': repeals arranged by the amended *decreto-legge* are "subject to the application of Paras. 14 and 15 of Article 14 of *legge* n. 246/2005". This clarification is important to remove any doubt about an implicit withdrawal of the delegation itself, given the overlap of the scope of the two operations.[20]

Just before these repeals were produced, the Government intervened with another *decreto-legge* (n. 200/2008) entitled 'Urgent provisions on regulatory simplification'.

In its 'original' version, Article 2 of the latter *decreto* repeats the formula of Article 24 of *decreto-legge* n. 112 of 2008, stating that the provisions contained in Annex 1 were (or otherwise 'remained') repealed as from the sixtieth day after its entry into force, that is 28,889 acts approved between 1861 and 1947. Under Article 3, several acts (included in Annex 2) were deleted from the list annexed to *decreto legge* n. 112 of 2008, and so their repeal did not occur. In amending the *decreto-legge* n. 200/2008, *legge* n. 9/2009 worked relevant changes on it, post-

20 *See* N. Lupo, 'Dalla Delega ai Decreti-legge "Taglia-leggi": Continuità o Rottura?', *Giornale di Diritto Amministrativo*, No. 7, 2009, p. 705 and P. Carnevale, 'La Legge di Delega Come Strumento per la Semplificazione Normativa e la Qualità della Normazione: il Caso del Meccanismo del c.d. "Taglia-leggi"', No. 12, 2009, p. 26 *et seq*., available at: <www.federalismi.it>.

poning the deadline for the operation of the repeal (to 16 December 2009) and introducing a coordination clause with the 'legislation-cutting' delegation. Moreover, the lists of both Annexes were revised, and a deadline was imposed on the Government for the adoption of the above-mentioned recognition of sub-primary sources which – together with an explanatory memorandum – were to be transmitted to *Senato* and *Camera dei Deputati*. Another significant novelty was introduced by *legge* n. 9/2009: the transmission to *Senato* and *Camera dei Deputati*, by 30 June 2009, of a report by the *Ministro per la Semplificazione* concerning the impact of the planned repeals with reference to the various fields of competence.

Now, the major question is: What prompted the Government to act on this issue with emergency instruments, considering the presence of a pending delegation to the Government itself? The declared purposes were essentially two[21]: on the one hand, the need to force the various branches of the administration to carry out, in a short time, an investigation on what legislation was actually in force; on the other hand, the realization of an official database of legislation avoiding, through the repeal, the inclusion of 'unnecessary' provisions.

Both these statements appear unsatisfactory. The first comes in the area of the 'legislative-cutting' delegation, which aims – by a different route – to achieve the same goal; therefore, we have a paradigmatic case of a *decreto-legge* used to sidestep limits provided in a legislative delegation. As far as the second requirement is concerned, scholars had an easy play in highlighting the gross misunderstanding the legislator ran into[22]: this kind of repeal is effective only for the future, while the database must be able to provide the current text to any date entered by the user, which would mean that repealed laws would still have to be included within the system.

To these concerns, remarkable ones must be added about the lack of evidence of extraordinary need and urgency (required by Art. 77 of the Constitution) of the two *decreti-legge*: nothing can indicate the presence of these requirements.[23] The best way for the Government to affirm the will to take action would just have been to implement the delegation of 2005, or to use the means at its disposal to change it.

Interestingly, Article 14 of *legge* n. 246/2005 was amended in 2009 (by Art. 4 of the aforementioned *legge* n. 69/2009), and the Government agreed not to use again the *decreto-legge* for this kind of purpose, after several formal requests from both Houses. In the perennial unfolding of regulatory simplification, with the timing in the hands of the Government, the Parliament appears as the *cabinet de réflexion* where little is created, nothing is destroyed but everything changes; hopefully, for the better.

21 R. Zaccaria & E. Albanesi, 'Il Contributo del Parlamento nel Processo di Semplificazione Normativa Mediante Abrogazione Nella XVI Legislatura', *Giur. Cost*., No. 5, 2009, p. 4101.

22 M. Cecchetti, 'Politiche di Semplificazione Normativa e Strumenti 'Taglia-leggi' (Criticità e Possibili Soluzioni di un Rebus Apparentemente Irresolubile)', No. 8, 2010, p. 91, available at: <www.federaslismi.it>.

23 G. D'Elia & L. Panzeri, 'Sulla Illegittimità Costituzionale dei Decreti-legge "Taglia-leggi"', *Giur. Cost*., No. 1, 2009, p. 505.

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E The Implementation of the Delegation: The 'Legislation-Saving' *decreto-legislativo*

Delegation of the power to identify primary law which was to remain alive was implemented through a single *decreto legislativo* (n. 179/2009), which came in force on 15 December 2009, the day before the expiration of the term for the delegation itself. As mentioned earlier, *legge* n. 69/2009 had – providentially – separated the time of the expiry of the delegation from the (dooms)day of the massive repeal, placing a whole year between them.

The *decreto legislativo* n. 179/2009 consists of a single article – significantly entitled 'Scope and definitions' – with two annexes. The first paragraph of the sole article reads as follows: For the purposes and effects of Article 14, Paras. 14, 14-*bis* and 14-*ter* of *legge* n. 246/2005, in the Annex n. 1 of this *decreto legislativo* are identified state laws, published before 1 January 1970, although modified by subsequent resolutions, which must remain in force.

Annex 1 contains the list of 2,375 acts published before 1 January 1970, which are then subtracted from the generalized repeal arranged by the *legge delega*. The article of the *decreto legislativo* n. 179/2009 also establishes (Para. n. 2) that the provisions specified in its Annex n. 2 are subtracted from the repeal stated by the above-mentioned *decreto-legge* n. 200/2008. Annex n. 2 has the same structure of the other, but with a smaller list ('only' 861 acts).

The *decreto legislativo* n. 179/2009 was followed by the 'corrective' *decreto legislativo* n. 213/2010. This act consists of only two articles: with the first one, it amends Annex 1 of the *decreto legislativo* n. 179/2009 in three different ways. In particular, it adds to the list of 'rescues' the provisions specified in its Annex A (36 acts), it expunges those indicated in Annex B (466 acts) and replaces those listed in Annex C (several tens of acts, usually redefining partial repeal).

Moreover, in parallel to the *decreto legislativo* n. 213/2010, the Government approved the *decreto legislativo* n. 212/2010, laying down the list of the acts repealed by the 'legislation-cutting' tool. Acknowledging demands coming also from many scholars, *legge* n. 69/2009 had amended the original delegation by providing, in Para. 14-*quater* of Article 14, the adoption of *decreti legislativi* for the express repeal of provisions that would fall under the categories referred in the aforementioned letters *a)* and *b)* of Para. 14.[24]

Ultimately, the implementation of the delegation has led – at the minimum – to the preparation of lists of old acts that must be considered repealed, giving a contribution to legal certainty. Risks due to bad writing of the enabling act seem not to have occurred: the Government has shown a certain self-restraint, explicitly repealing just old and no longer 'functioning' laws.

However, at least in two cases major faults have occurred.

24 Letter *a)* excludes from the 'rescue' the provisions which have already been impliedly repealed; letter *b)* 'condemns' the provisions that have exhausted their effective regulatory content, or are devoid of it or are otherwise obsolete.

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F Feel the Dark Side: Two Examples of the Misuse of Law Revision

The complex operation of the 'legislation-cutting' tool has also resulted in some cases in which – by mistake or through (bad) political will – the premises of the operation itself have been betrayed. In the end, even after very long disputes, the *Corte costituzionale* had to intervene.

For example, the *Provincia autonoma* of Bolzano referred to the *Corte costituzionale* complaining about the breach of several constitutional, statutory and international principles by the *decreto legislativo* n. 179/2009, so far as it subtracts from the generalized repeal the *regio decreto* n. 800/1923, converted by *legge* n. 473/1925. The *regio decreto* related to place names, and basically consisted in a replacement of all the German place names, in order to 'Italianize' by force the German-speaking areas that had been 'redeemed' after the World War I. It had been feared – albeit in error – that a fascist measure that had lain dormant (in fact, practically dead) for decades would come back into force.

In its judgement (*sentenza* n. 346/2010), the *Corte costituzionale* noted a split between the formal legislative nature of the *decreto legislativo* n. 179/2009 and its being devoid of an autonomous prescriptive force: it can 'save' old laws from being repealed but it surely cannot 'bring them back to life'.

It may also be significant to mention another 'incident', which raises several questions about the political nature of law revision and the risks attached to it. The above-mentioned *Codice dell'ordinamento militare* contains (Art. 2268) a list of more than 1,000 expressed repeals, among them (n. 297) the *decreto legislativo* n. 43/1948, "implementation of the constitutional ban on military-related associations pursuing, even indirectly, political purposes" (see Art. 18 of the Italian Constitution), since well before the establishment of the *Codice* many activists of a movement close to the *Lega Nord*, the secessionist party of the then Minister for 'regulatory simplification' (*Ministro per la Semplificazione normativa*), were subject to criminal proceedings in several courts because of the offence described in the *decreto legislativo* n. 43/1948.

Despite the willingness manifested by the Ministry of Defence to correct what was described as a mere error, the Legislative Office of the *Ministro per la Semplificazione normativa* expressly opposed the proposal, claiming that the correction needed the opinions of the *Consiglio di Stato* and the *Commissione per la semplificazione*.[25] Furthermore, since the 'legislation saving' *decreto legislativo* n. 179 of 2009 had included the *decreto legislativo* n. 43/1948 among the provisions to be 'saved' from repeal, the 'corrective' *decreto legislativo* n. 213/2010 had expunged it, thus confirming its repeal. Thus, at the coming into force of the *Codice dell'ordinamento militare* we had the *abolitio criminis* relative to the offence with its procedural consequences, obviously favourable for the activists.

This series of events – denounced at the time by an opposition party – has led to the presentation of a motion of no confidence against the *Ministro per la Sem-*

25 V. Pupo, 'L'Abrogazione del Decreto Legislativo che Vieta le Associazioni di Carattere Militare', 2010, available at: <www.giurcost.org>.

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plificazione normativa, which was put to the vote but rejected by the *Camera dei Deputati* on 22 December 2010.

A few months later, with a *coup de théâtre*, the *decreto legislativo* n. 20/2012 provided for the repeal of Article 2268, Para. 1, n. 297 and the *decreto legislativo* n. 43/1948 was explicitly brought back into force, being also subtracted from the abrogative effect of *decreto legislativo* n. 213/2010.

So, in a nutshell, from October 2010 to March 2012 (the date of entry into force of the amending decree) the *decreto legislativo* n. 43/1948 had been repealed, and then it resumed full force, unchanged in its provisions. Still, its 'new force' could only be *pro futuro* so as not to infringe the principle of non-retroactivity of criminal laws and sanctions.

Even after the publication of the latter decree, the Court of Verona and, shortly after, the Court of Treviso, sued the *Corte costituzionale*. This time the Court (sent. n. 5/2014) ruled in a more incisive way, declaring the unconstitutionality of the contested provisions, due to the violation of Article 76 Cost, stating that the Government was not empowered to repeal the *decreto legislativo* n. 43/1948.[26] It is true that the *Codice* derives from the delegation to the simplification and reorganization that included the 'massive' repeal of all provisions published before 1 January 1970, which had not been 'saved' by the Government, or covered by certain categories. Nonetheless, the same principles and criteria had been imposed precisely to prevent the repeal in the event that they were necessary for the implementation of a constitutionally protected right (see above). Furthermore, the reorganization operated by the *Codice* relates to a subject – the 'official' military organization – which has nothing to do with the *decreto legislativo* n. 43/1948.

G Final Remarks

To sum up, the article has tried to retrace the phases of the 'legislation-cutting' tool – focusing in particular on principles and criteria of the delegation and on the use of emergency instruments – in order to give an overview of some of the major constitutional questions it raised.

First of all, the absolute centrality of the Government in the delegation framework: even if, at the end, it proved to be capable of self-restraint, in the implementation of the 'legislation-cutting' tool there was always the temptation to demonstrate its power, even at the risk of jeopardizing the achievement of the goals of the operation itself. This attitude of the Government tried to generate ephemeral acclaim, using emergency instruments into the bargain: but the result invariably gave rise to deep and widespread scepticism.

26 *See* E. Rossi, 'La Corte Costituzionale Boccia l'Abrogazione del Decreto Legislativo Sulle Associazioni Paramilitari', 2014, available at: <www.quotidianogiuridico.it>; F. Pacini, '*"Abrogatio" non Petita, Accusatio Manifesta*: la Corte Costituzionale Interviene Sulle Vicende del d.lgs. n. 43 del 1948', No. 7, 2014, available at: <www.federalismi.it>.

The Government has also proven adept at exploiting the law revision measures to deliver, surreptitiously, questionable or unpopular decisions. Obviously, this has further nurtured the widespread scepticism.

As underlined by scholars, no 'tool' can be effective if it is not animated by an open and honest intent of its actors.[27] Right here it is one of the points of greatest tension of law revision (and regulatory simplification as well), in the joint – creaky but necessary – between the technical and the political moment.

Moreover, the mix of technics and politics is an indispensable component of law revision: it is above all the technique with which to handle law as a material, the political material *par excellence*.

In conclusion, a connecting institution between Parliament and the Government appears to be needed: only if such a commission becomes the channel for an ongoing 'conversation' between the various actors of law revision can it effectively be – at the same time – the core and the 'watchdog' of any operation of that sort.

27 F. Dal Canto, 'La Qualità Della Normazione e i Suoi Custodi', *in* M. Cavino & L. Conte (Eds.), *La Tecnica Normativa tra Legislatore e Giudici*, Napoli, Editoriale Scientifica 2014, p. 89.

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