

IPALMO



Institute for the Relations between Italy and the Countries of Africa, Latin
America, Middle and Far East

**BUILDING CAPACITIES OF PARLIAMENTARY INSTITUTIONS
AND PROMOTING CITIZEN PARTICIPATION IN ARAB
COUNTRIES AND THE MIDDLE EAST**

Pilot Phase

IRAQ – JORDAN – LEBANON

[Decentralization: The Experience of the Italian Parliament¹](#)

**Alessandro Sterpa
Ipalmo, Italy**

February 25, 2008

¹ I used here analysis and opinions included in others works about Italian regionalism, written by myself and in research groups where I worked, in the Italian and English languages, including *Strengthening Regional and Local Democracy in the European Union* (2004).

FORMS OF DECENTRALIZATION (AND TERRITORIAL SELF-GOVERNMENT AUTONOMIES)

In Italy there are three different levels of autonomy [to be intended as self-government] and three different orders of decentralization [intended possibility to organize the administrative capabilities using the sub-national territorial governments]: regions, provinces (and metropolitan cities) and municipalities.

It is very important to distinguish autonomy from decentralization: in the first case, any level of government can decide on policy matters; in the second case, which is easier to accomplish, the state or the regions, through legislative acts in the matters in which they have the capabilities, use the province and the municipalities for administrative functions.

In Article 114 of the Constitution, the Italian Republic has been defined as a unit composed of municipalities, provinces, regions and the state; Article 5 of the Constitution states that “The Republic, which is one and indivisible, recognises and promotes local autonomy. It implements extensive administrative decentralisation of public services and adapts its principles and methods of legislation to the requirements of autonomy and decentralisation.”

The regions are the territorial autonomies that were founded in 1948 with the new republican constitution after the Second World War. There are twenty regions: fifteen of them are ordinary and five have a special form of autonomy.

The special regions are: Valle d’Aosta, Trentino Alto Adige, Friuli Venezia Giulia, Sicily and Sardinia. The reasons for the special form of autonomy for these regions, comparing them to the situations of other countries where there are different forms of autonomy for the regions (also called states), are different. These reasons include poverty, economic problems and geographic situations (islands of Sicily and Sardinia) which created a real risk of secession for Sicily in the years after the Second World War, along with culture and language differences for the other autonomous regions where there are people who speak French, German and other local languages. For these reasons, the autonomy of these regions was formed by five constitutional laws².

² Article 131 of the Constitution: “The following regions have been established: Piedmont, Valle d’Aosta, Lombardy, Trentino-AltoAdige/Südtirol, Veneto, Friuli-Venezia Giulia, Liguria, Emilia-Romagna, Tuscany, Umbria, Marche, Lazio, Abruzzi, Molise, Campania, Puglia, Basilicata, Calabria, Sicily, Sardinia.” With regard to special statute regions, Article 116 (section 1 and section 2) provides that “Friuli-Venezia Giulia, Sardinia, Trentino-Alto Adige/Südtiröl and Valle d’Aosta are granted specific forms and conditions of autonomy under the terms of special statutes governed by constitutional law. The Trentino-Alto Adige/Südtirol region

Each Italian region has statutory, legislative, regulatory and administrative capabilities. Because of the new distribution of legislative and regulatory powers established under Constitutional Law 3/2001, a more thorough analysis of both of these capabilities will be necessary.

In the Italian Constitution, the legislative capabilities are organized by matters or groups of matters: some matters are reserved to the state (Art. 117, section 2), other matters are reserved to the “concurrent state-regional” authority (Art. 117, section 3, where the regions can approve acts in respect to state legislation principles) and other matters are reserved to the regions (Art. 117, section 4).

Article 117 includes a list of matters which fall under the exclusive authority of the state (paragraph 2): this is an innovation which was not present in the original Article 117. Article 117 further includes a much more extensive list of matters which are subject to concurrent legislation of both the state and regions (paragraph 3) and a final provision that assigns the exclusive legislative authority of the regions (also described as “residual” competences) to the matters not included in the two lists (paragraph 4)³.

is made up of the autonomous provinces of Trento and Bolzano.” The provinces of Trento and Bolzano can approve acts like the national Parliament and the councils of the others regions in matters where the statute gives them the capability.

³ Article 117 [State and Regional Legislative Power]

(1) Legislative power belongs to the state and the regions in accordance with the constitution and within the limits set by European Union law and international obligations.

(2) The state has exclusive legislative power in the following matters:

a) foreign policy and international relations of the state; relations of the state with the European union; right of asylum and legal status of the citizens of states not belonging to the European union;

b) immigration;

c) relations between the republic and religious denominations;

d) defence and armed forces; state security; weapons, ammunitions and explosives;

e) money, protection of savings, financial markets; protection of competition; currency system; state taxation system and accounting; equalization of regional financial resources;

f) state organs and their electoral laws; state referenda; election of the European parliament;

g) organization and administration of the state and of national public bodies;

h) law, order and security, aside from the local administrative police;

i) citizenship, registry of personal status and registry of residence;

l) jurisdiction and procedural laws; civil and criminal law; administrative tribunals;

m) determination of the basic standards of welfare related to those civil and social rights that must be guaranteed in the entire national territory;

n) general rules on education;

o) social security;

p) electoral legislation, local government and fundamental functions of municipalities, provinces and metropolitan cities;

q) customs, protection of national boundaries and international prophylactic measures;

r) weights, units of measurement and time standards; coordination of the informative, statistical and information-technology aspects of the data of the state, regional and local administrations; intellectual property;

s) protection of the environment, of the ecosystem and of the cultural heritage.

For the first time since 2001, Article 117 of the Italian Constitution introduces the relationship between national legislative powers (state and regions) and European law and international acts. The principle is easy: national law has to respect both European and international obligations contracted by Italy and the Constitution as well.

As was the case in other European countries when the European Union was founded, Italy's Constitution was changed to produce a constitutional framework for the relations between the state and the European Union. France and Germany, for example, changed their constitutions just some years ago; in Italy, the Constitution changed only in 2001 and the regions have the capability for the implementation of European law in all matters where they have legislative capabilities.

In comparison with the other constitutional experiences in Europe, we can say that the difference between Italy and Germany, for example, is the presence of a special model of "concurrent legislation". In Germany there is concurrent legislation, but it does not mean that the state and the regions produce both one or more acts; in fact, in the German model of concurrent legislation (following the European Union model of concurrency that you can find in the EU Constitution), if the federal state approves an act, is impossible for the region (also called state) to approve a regional act.

This kind of Italian "concurrent legislation" produces a lot of problems in the relationship between Parliament and the regions, because it is very difficult to define the capabilities of each one. So we can conclude that a constitution that produces a high grade of division between the capabilities of the state and the regions is better.

If the capabilities are not clear in the framework, we can have the following problems:

- a) more degeneration of the relationship between the state and regions;
- b) more work for the Constitutional Court;

(3) The following matters are subject to concurrent legislation of both the state and regions: international and European union relations of the regions; foreign trade; protection and safety of labour; education, without infringement of the autonomy of schools and other institutions, and with the exception of vocational training; professions; scientific and technological research and support for innovation in the productive sectors; health protection; food; sports regulations; disaster relief service; land-use regulation and planning; harbours and civil airports; major transportation and navigation networks; regulation of media and communication; production, transportation and national distribution of energy; complementary and integrative pensions systems; harmonization of the budgetary rules of the public sector and coordination of the public finance and the taxation system; promotion of the environmental and cultural heritage, and promotion and organization of cultural activities; savings banks, rural co-operative banks, regional banks; regional institutions for credit to agriculture and land development. In matters of concurrent legislation, the regions have legislative power except for fundamental principles which are reserved to state law. (4) The regions have exclusive legislative power with respect to any matters not expressly reserved to state law.

- c) less protection of the rights of the people;
- d) fewer legal conditions for economic competition.

In Italy, like in the other European countries, the regulatory act can be approved (generally by the executive power) only if based on a law act (approved by the legislative power in Parliament or in the regional council) that authorizes it. The regulatory act, obviously, cannot introduce rules against the law act, but it has to produce the implementation of the legislative rules.

The regions have the regulatory capability in each matter where they have legislative capability (Article 117 of the Constitution) and any region can, with statute, decide which regional body approves the regulatory act: the executive power body (“*giunta*”) or the legislative body (council).

Before 1999, in every region the regulatory acts were approved by council, but it created a lot of problems. In fact, it was really strange when the same body (regional council) had to approve two different acts (law act and regulatory act). So, during the period of 1970-1999, regions approved only one act in their matters and in this act there were together regulatory and legislative rules. This *modus operandi* produced bad drafts of regional laws.

Now, after the 1999 Constitutional Reform and thanks to Constitutional Court decision (No. 313/2003), each region can organize the capabilities for the regulatory acts.

It is very important to remember that the 2001 Constitutional Reform changed the principles regarding the administrative activities of state, regions, provinces and municipalities.

For the first time in the Italian Constitution, there was a reference to the subsidiarity principle in Article 118 (section 1 and section 3, but also in Article 120) that is one of the elements of the “cooperative regionalist model” promoted by the 2001 Constitutional Reform.

The principle of subsidiarity is referred to in its vertical sense, with a preference for administrative functions being carried out by the local authorities that are closest to the citizen (Article 118, section 1).

You can image that an administrative capability could be allocated in one of these levels of government, from the largest (and among the people, the state) to the smallest (and really in the proximity of the people, the municipality):

- state
- region
- province (or metropolitan city)
- municipality

By the acts of the state (in the matters reserved to the state) or of the region (in the matters reserved to the regions), the administrative function (i.e. authorization for building, for new commercial activities or for other activities) could be located in the level of the subsidiarity where it is better. It depends on the demographic dimensions and the resources of each level of government in the different areas of the country.

The important role played by subsidiarity in Italy could be analyzed only by remembering the important role of this principle in the European Constitution since 1992 with the European Treaty of Maastricht.

Subsidiarity is also referred to in its horizontal sense, in that it promotes the public-interest initiatives of citizens, be they individuals or associations representing civil society. In this way, administrative functions are assigned to municipalities except in cases where the need for uniform practice requires that they be assigned to provinces, metropolitan cities, regions or the state, in accordance with the principle of subsidiarity. The state, regions, metropolitan cities, provinces and municipalities are to promote the independent initiatives of citizens, be they individuals or associations, in activities that are in the public interest, in accordance with the principle of subsidiarity⁴.

In Article 119 of the Constitution we read that “municipalities, provinces, metropolitan cities and regions have independent financial resources. They set and levy taxes and collect revenues of their own, in compliance with the Constitution and according

⁴ Article 118 [regarding the administrative functions]

(1) Administrative functions belong to the municipalities except when they are conferred to provinces, metropolitan cities, regions, or the state in order to guarantee uniform practice; the assignment is based on the principles of subsidiarity, differentiation and adequacy.

(2) Municipalities, provinces and metropolitan cities have their own administrative functions and, in addition, those conferred to them by the law of the state or the region according to their respective fields of competence.

(3) State law provides for forms of coordination between the state and the regions in the matters referred to in letters b) and h) of Art. 117 (section 2); it also provides for forms of understanding and coordination in the matter of the protection of the cultural heritage.

(4) State, regions, metropolitan cities, provinces and municipalities support autonomous initiatives promoted by citizens, individually or in associations, in order to carry out activities of general interest; this is based on the principle of subsidiarity.

to the principles of coordination of public finance and the fiscal system. They receive a share of the proceeds of state taxes related to their territory”⁵.

The legal framework for the financial autonomy of public authorities is established not only by the Constitution, but also by “the principles of coordination of public finance and the fiscal system”. The Parliament, which has to approve these principles, did not do it, so the fiscal autonomy in Italy is paralyzed. The status quo of fiscal federalism and the instruments of control of state to regional balances are founded on the old legislative framework and they will be so until the Parliament will write new legislation.

Really, it is possible that Parliament will not approve the act for fiscal federalism because this act will give a lot of new strong power to the regions and will reduce the role played by the state in taxation and in the economic power of national administrative organization.

Regarding statutory autonomy, regions, provinces and municipalities have a statutory autonomy for the organization of their power.

It would be interesting to dedicate some words only to the statutory autonomy of the regions: new Article 123 (section 2) of the Constitution, after Constitutional Law 1/99, stipulates that statutes are to be approved twice by an absolute majority of the regional council at two separate sittings that are separated by a period not inferior to two months. The statute should be published following the second approval. If one fiftieth of the regional electorate or one fifth of the regional council so request, a referendum on the statute may be held within three months of publication. The statute will not be adopted

⁵ Article 119 [Financial Autonomy]

(1) Municipalities, provinces, metropolitan cities and regions have financial autonomy regarding revenues and expenditures.

(2) Municipalities, provinces, metropolitan cities and regions have autonomous resources. They establish and implement their own taxes and revenues, in harmony with the constitution and in accordance with the principles of coordination of the public finances and the taxation system. They receive a share of the proceeds of state taxes related to their territory.

(3) The law of the state establishes an equalization fund to the benefit of areas where the fiscal capacity per inhabitant is reduced, with no restrictions as to the allocation of its proceeds, (4) The funds deriving from the sources mentioned in the previous paragraphs have to enable municipalities, provinces, metropolitan cities and regions to finance in full the functions attributed to them.

(5) In order to promote economic development, social cohesion, and solidarity, to remove economic and social inequalities, to foster the actual exercise of human rights, to pursue ends other than those pertaining to the exercise of their ordinary functions, the state may allocate additional resources or carry out special actions to the benefit of certain municipalities, provinces, metropolitan cities and regions.

(6) Municipalities, provinces, metropolitan cities and regions have their own assets, assigned to them according to general principles established by state law. They may only contract loans in order to finance investment expenditure. State guarantees on such loans are excluded.

unless it is approved by a majority of valid votes. Furthermore, the referendum for the adoption of the statute is not subject to a turn-out quorum. The government may challenge the constitutionality of a regional statute by bringing it before the Constitutional Court within 30 days of its publication. With regard to the content of the new statutes, Article 123 identifies certain essential aspects that must “comply” with the Constitution. The concept of “compliance” has recently been defined by the Constitutional Court, which ruled that statutes “must comply with the precepts and principles that derive from the Constitution”.

Regarding statutory capabilities, each region has a statute to organize the relationships between the regional bodies: president of executive power, members of executive power, regional council and council of local autonomies where there is a representation of the local sub-regional autonomies.

In the statute, it is possible to introduce others regional bodies and in recent years regions have used this capability for the institution of different kinds of bodies.

Article 123 identifies six specific areas which are to be governed by the regional statutes: the form of government, the fundamental principles underlying organisation and administration, the right of initiative, referendums, the publication of laws and regulations, and the composition and organisation of the regional council (regional parliament).

The statutes of the region are not a local constitution, but only special regional laws that we have to consider in order to analyze Italian regionalism. In each statute we can find the government organization of the region (the relationships between presidents, members of the executive power and council...) and other important elements.

The Italian situation is different from the experience of Germany, for example, where the statutes of the regions (in Germany called states) make up “little local constitutions” and where there is a judicial body for the control of the respect of the statutes by the regional legislative acts. In Italy, there is only the possibility for the region to eventually have a regional body to consult for the respect of the statutes by the acts, but without judicial power to cancel the act.

The experience of regionalism in Italy really started in the 1970’s because of the resistance of traditional political parties. The implementation of Title V of the Constitution for the “ordinary regions” system began in 1970, when the first elections for regional councils were held. With two different legislative steps (1977 and 1997-1998), the state provided for the transfer of administrative competences from the state to the regions,

provinces and municipalities. During 1997-1998, with the “*Bassanini Acts*”, a lot of new administrative functions were given to the regions, provinces and municipalities and in Italy we used to say that we produce “an administrative federalism without changing the Constitution”.

Provinces and municipalities have been an element of Italian administrative organization since 1861 and they have represented the model of administrative government before Italy was founded as a state. For example, some Italian regions before 1861 were organized with provinces and municipalities.

The provinces are a sub-regional level of government with only statutory, regulatory and administrative competences: they cannot approve statutes or law. A short part of this work will be dedicated to the role of the provinces in the Italian system.

In 1990, a national law introduced a special form of province called “*città metropolitana*”, which we can translate as “metropolitan city”, in order to give a special form of organization to the biggest Italian cities that, as they grew, came to include some smaller surrounding municipalities in their urban lives. This was the case in Milan and Rome, but also in Turin, Naples, Bologna and Florence.

The idea was to create a larger territorial dimension of autonomy to include the smaller municipalities in the same government because they all live with the same problems (transportation to the centre of the city, regulation of social services). After many years, the idea of metropolitan cities was projected, however it was not instituted.

The municipalities are the last level of government (in Italy there are about 8,300 municipalities and 54% of them have fewer than 5,000 inhabitants) with the same forms of autonomy as the provinces. For this reason, the province could play an important role in the administration.

The municipalities have an important role in the Italian political and administrative backdrop. They are the institution of closest proximity to the people and they offer many social services.

In each province, and in each municipality, there is a chief of executive power elected directly by the people and a council.

Overall in Italy, each level of autonomous government (regions, provinces and municipalities) and the central state have to organize the administrative activities using the other sub-levels of government; like the Constitution’s principle, for example, Article 5.

Article 5 of the Constitution states that “The Republic, which is one and indivisible, recognises and promotes local autonomy. It implements extensive administrative decentralisation of public services and adapts its principles and methods of legislation to the requirements of autonomy and decentralisation.”

In this way, the state and the regions, by law, can organize the regulatory and administrative functions using the provinces and the municipalities: this is technically called decentralization which is distinguished by autonomy and self-government.

We can make an example. The state controls the regulation of automobile driving. In this matter there is a national law, but the state can decide that some administrative functions be assigned to the provinces or municipalities, i.e. control of the local streets, control of environmental rules for the old cars, payment of taxes, etc. In this case, the provinces and municipalities play a role in place of the state, but they cannot choose the rules, they can only do what the state has decided. This is decentralization.

In Italy, we can say that there is a typical European multilevel governance. This means that parts of national territory are under more than one level of government: municipality, province, region, state and European Union and each level produces rules and regulations based on its system of capabilities⁶.

As for the relationship between the central and local governments, first of all, in the Italian Parliament there are two chambers (Chamber of Deputies and Senate), but no one represents the regional, provincial or municipal interests. Different from other regional or federalist organizations (i.e. Germany, USA and Spain), the territorial autonomies are not present in the national parliament.

The relationships between state and local powers are played out not in Parliament, but in a system of executive conferences where the members of the national government meet the components of regional government (State-Regions Conference) or the components of the provincial and municipal executive branches (Conference of Local Autonomies).

⁶ N. C. SIDENIUS, *Business governance structures and the EU: the case of Denmark*, in B. KOHLERE-KOCH, R. EISING, *The transformation of Governance in the European Union*, London, Routledge, 1999, pp. 173-188; PH. SCMITTER, *What is there to legitimise in the European Union... and how this might be accomplished*, European Commission 2004, *Le Grand Débat. Setting the Agenda and Outlining the Options*, Bruxelles, 15-16 October 2001; A. MCGREW, *Demokratie ohne Grenzen? Globalisierung und die demokratische Theorie und Politik*, in U. BECK, edited by, *Politik der Globalisierung*, Frankfurt am Main, Suhrkamp Verlag, 1998: “Staatliche Souveränität zwischen nationalen, internationalen und lokalen Mächten verteilt ist” (p. 379)

These cooperation forums are established by state legislation, and the role of agreements between the state and the regions. At present, the only permanent forums for cooperation between the state and regions on the one hand, and the state, regions and local authorities on the other, are the State-Regions Conference and the United Conference (the State-Regions Union and the State-Cities-Local Authorities Conference), whose functions were defined in the national government Legislative Decree 281/97. This decree also encompassed the State-Cities Conference as a forum for dialogue between the state and local authorities.

We have to note that the main shortcoming of such conferences is that only regional executive bodies are represented. In regards to the functions, the State-Regions Conference must be consulted on draft legislation and legislative decrees or government regulations that concern the competences of regions and autonomous provinces, whereas the United Conference meets to deal with matters and responsibilities that are common to regions, provinces, municipalities and mountain communities.

The State-Regions Conference and the United Conference are both authorised to promote and approve agreements between the government and the regions, in the first case, and the government, regions, provinces, municipalities and mountain communities, in the second case. These agreements are designed to coordinate the exercise of each authority's competences, to coordinate activities of united interest and to ensure the exchange of information between the authorities concerned.

The problem presented by state-region agreements is substantially a matter of where to situate them within the legislative framework. When national government Legislative Decree 281/1997 came into force, the state and the regions concluded important agreements on health, finance, tourism and governance. Analyzing some of these agreements, in order to understand the manner of cooperation between the state, regional and local governments, we can say that a large part of them regard social service and finance. The regions, for example, have 60% of their economic resources dedicated to health and social action. In some Italian regions, because of this, the regions have no control over the economic resources and the state has to play a role of control against the "political use" of this money to build electoral success.

Finally, we have to remember two other bodies: the Conference of Regional Presidents, which is the forum for the chief of regional executive bodies; and the

Conference for Presidents of the Assembly and Regional and Provincial Councils, which is the forum for the presidents of Italian regional councils.

The relationship between the state, regions, provinces and municipalities is formed by the principle of loyal cooperation. This principle, which is only referred to in Articles 118 and 120 of the Constitution, seeks to avoid formalistic separations of power between the two tiers of government in order to ensure that their respective functions are performed in as efficient and as coordinated a manner as possible, and in accordance with the constitutional principle of well-managed public administration. The principle is established by the Constitutional Court, because of the provision of Article 5 of the Constitution.

The principle of “loyal cooperation” is present in Legislative National Act 59/1997, where it was introduced for first time; but also in national government Legislative Decree 267/2000.

Really, after Constitutional Law 3/2001, there is another point of contact between the state and the regions, provinces and municipalities. The new element introduced by Constitutional Law 3/2001 concerning loyal cooperation is found in Article 11, whereby parliamentary standing orders may provide for the participation of representatives from regions, provinces and other local authorities in bicameral commission (in Parliament) proceedings that concern regional affairs.

Furthermore, under Article 11 of Constitutional Law 3/01, when the United Commission expresses a negative or not entirely positive opinion regarding amendments to draft legislation concerning matters of concurrent jurisdiction or federal taxation, and the examining commission has failed to reach a compromise, the final decision on the relevant passages rests with the Assembly, on the basis of an absolute majority.

Most legal commentators feel that these procedures are inadequate in ensuring proper regional participation.

In fact, several authorities emphasize the need for permanent cooperation bodies at a constitutional level, for instance a “house” or a “senate” of regions that could become the regions’ forum for dialogue between national, regional and local government.

It is really difficult say if the role of a “house of regions” would also ensure regional and local participation in the national authority, comparing the experience of Germany, Switzerland and the USA. We can say that, looking at the different countries, the problems that any state can find are:

- Which territorial autonomies have to be represented in the senate? All the territorial autonomies or only the regions that have legislative power? In the US, Switzerland and Germany only the autonomies with legislative power are represented in the senate.
- How to select the members of the senate? They could be elected by the people (like in the US) or nominated by the regional governments (like in Germany).
- How many members for each region? The number of the members could be defined by the population (i.e. Germany) or not (i.e. the US, where each state (region) has two members in the senate even if they are really different in population).
- What kind of capabilities should the senate have? Could it have a co-decision power with the first chamber or only an opinion power? It is possible to have a senate with only one or two capabilities?
- Which acts have to be approved both by the first chamber and the senate? For example, in Germany and the US some acts have to be approved by both the chambers; others acts can be approved only by the first chamber.

These are very important questions that have to be solved in different ways to build a good role for the senate in the federal or regional organization.

The description of the relationship between the levels of government is completed by the relationship between regions and the provinces and municipalities of each region. Article 123 (section 4) of the Constitution requires new regional statutes to set up a Council of Local Authorities as a forum for internal regional coordination, i.e. “a body for consultation between the region and the local authorities”. According to some legal authorities, “the revised constitution has paid greater attention to coordination between sub-national authorities than to state-region relations, even though the statutory provisions restrict the council to a consultative role”.

Before, Constitutional Law 3/01, Article 3 (section 5) of Legislative Decree 112/98 granted regions the authority to establish, within the framework of their legislative autonomy, “mechanisms and procedures for dialogue and coordination, which could even have a permanent nature, with a view to establishing structural and functional forms of cooperation that would ensure the cooperation to coordinate the respective activities of

regions and local authorities”. Many regions implemented this provision by establishing local government “conferences”.

In the Italian Constitution, there are also some instruments that the state can use when the territorial autonomies are not in order.

We can use examples starting from some real-life Italian situations. In the case of building an electrical power station to produce electricity, the legislative competence in this matter is “concurrent” between the state and regions. The regions have to decide where to build the station, but there is no region that wants to build because the people are against building and politicians do not want to lose the electoral competitions.

In another case, the state has to decide as we read in Article 120 of the Constitution: “Regions may not charge import or export duties, nor duties on transit between regions, nor adopt provisions which may hinder in any way the free movements of persons and goods between regions, nor limit the right to work in any part of the national territory”; “The [national] government may act as a substitute for regional, metropolitan city, provincial, or municipal authorities whenever those should violate international rules or treaties or community law, whenever there is a serious danger for the public safety and security, and whenever such substitution is required in order to safeguard the legal or economic unity of the nation, and particularly in order to safeguard the basic standards of welfare related to civil and social rights, irrespective of the boundaries of the local governments. The law defines appropriate procedures in order to guarantee that substitution powers are exercised within the limits set by the principles of subsidiarity and fair cooperation”⁷.

We have to speak about the constitutional court, too. Generally, in the federal or regional territories, the constitutional courts play an arbitral role in the relationship between the central state and the regions. When there is a question of capabilities, there is a court called to solve the problem and to decide “who has to do what”. In Germany, the US, Spain and Switzerland the national courts fulfil this role, as they do in Italy as well.

The Italian Constitutional Court⁸ decides if a legislative act of the region or of the state respects the division of competences; for example Article 117 of the Constitution. If a

⁷ Article 120 [Free Circulation and Substitution Clause]. We have to remember that the Constitutional Court decided that there is a substitution clause for the regions, too. The regions have this power for the administrative activities of provinces and municipalities.

⁸ Article 135 [Regarding the composition of Constitutional Court]

(1) The Constitutional Court consists of fifteen justices; one third being appointed by the president, one third by parliament in joint session, and one third by ordinary and administrative supreme courts.

legislative act is proved out of capability, it is cancelled by the Court with a final decision that no other body can change. After the 2001 Constitutional Reform, the work of the Constitutional Court in controlling whether the capabilities were respected is much greater, this is because the new constitutional articles are not clear and are difficult to apply.

Now in Italy, there is a large discussion about the composition of the Constitutional Court. Some political parties want to change the composition with an important innovation: half of the components of the Court would have to be elected by the regions.

In fact, according to the present Constitution, even if the Court decides on the conflicts between the state and the regions, it is composed only of people who are elected by national bodies: the President of Republic, the judicial powers and the national Parliament. The regions have no possibility of being represented in the Constitutional Court.

In other countries, such as Germany, the court represents the regions as well. It is possible to say that the regions (that have legislative competences like the state) should be represented in the court because the court cannot fairly decide on conflicts between the state and regions if it is composed only by “national” members.

(2) Justices are chosen from among magistrates including those in retirement, from among supreme ordinary and administrative courts, from among university full professors of law, and from among lawyers with at least twenty years of practice.

(3) Justices are appointed for nine years, their term beginning the day they are sworn in and with no re-appointment.

(4) At the end of this term justices have to leave office and may no longer exercise its functions.

(5) The court elects from among its members and according to rules established by law its president who shall remain in office for three years and may be re-elected, but not exceed the ordinary term of justices.

(6) The office of justice is incompatible with membership in parliament or in a regional council, with the exercise of the legal profession, or with any other position and office defined by law.

(7) When sitting to decide on a case of impeachment against the president, the court consists of sixteen additional members, who are drawn by lot from a list of citizens elected by parliament every nine years, from among those possessing the qualifications for election to the senate, by the same procedures as for the appointment of the ordinary justices.

Article 127 [regarding constitutionality of law, national and regional acts.]

(1) Whenever the government regards a regional law as exceeding the powers of the region, it may raise the question of its constitutionality before the constitutional court within sixty days of the publication of the law.

(2) Whenever a region regards a state law, another act of the state having the force of law, or a law of another region as infringing on its own sphere of powers, it may raise the question of its constitutionality before the constitutional court within sixty days of the publication of said law or act.

LEGAL FRAMEWORK

The Italian Constitution speaks about regions, provinces and municipalities in Title V of the second part (Article 114 ss.).

With Constitutional Laws 1/99, 2/01 and 3/01, the Italian constitutional framework is changed.

Because of Constitutional Law 1/99, the regional president (chief of executive power in the region) is elected by direct suffrage, even if each region can modify this form of election through the statutory autonomy. Constitutional Law 2/01, in turn, grants special statute regions the right to self-government, parallel to the amending legislation provided under Law 1/99 for ordinary regions.

Constitutional Law 1/99 overturned the previous model centring on a parliamentary assembly, and made a provision for regional presidents to be elected directly by the regional electorate. Although the presidents' capabilities have been enlarged, the form of regional government remains parliamentary in character. According to the terms of the new Article 126, certain events affecting the directly elected president of the regional cabinet (called *giunta*) could lead to the dissolution of the regional council and the resignation of the *giunta*: namely the dismissal, permanent incapacitation, death or voluntary resignation of the *giunta* president and a vote of no confidence. The revised text of the last paragraph of Article 126, however, prevents such action from being taken in cases where the regional statute has provided for a form of government other than the one proposed in the Constitution and based on the election of the regional executive power president by direct universal suffrage. In fact, whilst Constitutional Law 1/99 provides a model form of regional government based on the election of the president by direct universal suffrage, it nevertheless grants the regional statutes the right to opt for a different form of regional government, albeit within certain limits. According to the terms of the final paragraph of revised Article 122, the regional executive power president is to be elected by direct universal suffrage "unless the regional statute provides otherwise. The elected president shall appoint and dismiss the members of the *giunta*".

At this moment, only a few of the regions do not have a new statute, but none of the regions have changed the direct election of the regional president and none want to change it. With this way of election, in fact, there is a stronger relationship between the people and the regional executive power.

Hence, the regional statute is the source of law that governs the region's form of government and the fundamental principles underpinning its organisation and administration. Such statutes must comply with the Constitution, as specified in revised Article 123 (section 1) and confirmed by recent constitutional case law. Should regions opt for a form of government other than the one defined in the Constitution, they nevertheless remain bound by other constitutional provisions, in particular Article 126 (section 2) entitling the council to initiate a motion of no confidence against the *giunta* president. Furthermore, Article 126 (section 3) specifies in its final sentence that the voluntary resignation of a majority of the council's members entails the dissolution of the council and the resignation of the *giunta*.

In Constitutional Court ruling 2/04, concerning the constitutionality of the Calabrian regional statute, the Court went further in defining the limitations placed upon the regional statute's authority in deciding the region's form of government. In particular, making reference to its own case law on compliance with the Constitution, the regional president must be elected by direct suffrage and the region can no longer alter those constitutional provisions. Finally, given that the fiduciary bond is an inalienable aspect of regional government, it follows that a regional statute may not adopt a presidential or "directorial" form of government. A semi-presidential model is also excluded since the two-headed nature of its executive branch is its defining characteristic. Such a situation would be inadmissible at the regional level since the executive power president is also the regional president.

Finally, with Constitutional Law 3/01, the legislative powers of regions have been considerably extended, while government restrictions on regional legislation have been modified. A new legal framework for Italian governance has thereby been founded and new criteria have been established for the distribution of administrative duties amongst the state, regions, municipalities, provinces and metropolitan cities. The system of external controls by the state (for the matters reserved to the legislation of the state) and by the regions (for the matters reserved to the legislation of the state; Constitutional Court, 43/2004) have been changed. New provisions governing the financial autonomy of regional and local authorities have been laid down.

Finally, regional powers over relations within the European Union and at the international level have been redefined. The cooperative nature of the federal model chosen in the 2001 Constitutional Reform is apparent in the revised text of Article 118 of

the Constitution, upholding the principle of subsidiarity. However, the revised Title V has not given sufficient attention to the principle of loyal cooperation between the state and the regional authorities. The only permanent bodies that provide for coordination between the state and regions on the one hand, and between the state, regions and the local authorities, on the other, remain respectively the State-Regions Conference and the United State-Regions-Cities-Local Authorities Conference, which were most recently regulated by a legislative decree in 1997. Regarding the coordination within the regions, under the terms of Constitutional Law 3/01, the newly established regional statutes are designed to regulate the Council of Local Authorities, which is the body entrusted with the coordination between the region and the local authorities.

After the 1999-2001 Constitutional Reforms, Parliament approved the “*La Loggia Law*” (Act n. 131/2003) with a national regulation for the transition from the old order to the new constitutional regulation of the territorial autonomies.

The more interesting decisions of Law 131/2003 can be identified in one core goal: to simplify the actuation of the new constitutional provisions.

For this reason, the law decided to:

- a) authorize the national government to approve a list of the national principles in the concurrent legislation to help the regions to approve acts for the new capabilities;
- b) modify the national rules about provinces and municipalities;
- c) to organize the implementation of Articles 118 and 119 of the Constitution.

After more than four years, we can say that Law 131/2003 has failed because the Constitutional Court cancelled some of the rules and because the national government did not realize the new provisions.

We just analyzed Article 119 of the Constitution, saying it failed due to its need to be enforced by a national act.

In Parliament, the draft of a national act on Article 119 of the Constitution is not on the agenda, because this act is not among the most important drafts according to the MPs. We have to say that until the new Article 119 is implemented, regional funding will continue to be regulated by the state law that was in place when the reform of Title V entered into force. In 1999, a radical and systematic reform of regional funding was introduced by Law 133. This established Legislative Decree 56/00 which superseded the previous regional funding legislation and provided for:

- a) the abolition of state transfers to “ordinary” regions, with the exception of those made in the national interest or in response to natural disasters;
- b) the allocation of a share of VAT revenue to regions, being not less than 20% of the total yield of the penultimate year preceding the one under consideration. The amounts to be allocated to individual regions are based upon predetermined criteria, such as population size, fiscal capacity, health-service needs and geographical dimensions;
- c) the setting-up of a national equalisation fund, funded by VAT revenue and, should this be insufficient, by a share of petrol excise duties;
- d) the setting-up of an interregional solidarity fund, reviewed every three years, to help poorer regions;
- e) fixing each region’s VAT revenue share, the poorer regions’ share of the interregional solidarity fund, and each region’s share of the national equalisation fund by September 30th of each year. The figures are established by DPCM, in agreement with the State-Regions Conference;
- f) an increase in the petrol excise duty due to “ordinary” regions in effect since 2001. This will be increased from 242 to 250 Italian lire for every litre of petrol sold;
- g) an increase in the regional surtax rates on income tax, in effect since 2000. These rates, currently fixed at 0.5% and 1%, will be increased to 0.9% and 1.4% respectively;
- h) a change in the criteria for allocating IRAP110 funds (Legislative Decree 446/97) to regions;
- i) the setting-up, within the Treasury, of a special guarantee fund financed by state transfers to compensate regions when IRAP and income-tax surtax revenues fall short of regional DPEF forecasts;
- j) suppression of the municipalities’ and provinces’ share of IRAP revenue.

PARLIAMENT, DECENTRALIZATION AND SELF-GOVERNMENT

During these last 15 years, many times MPs, political party leaders and regions have proposed drafts of constitutional laws to modify Parliament and to introduce the Senate as a chamber for the national representation of local and regional interests.

It could be useful to make a short analysis of the drafts and opinions of MPs during this time, but also by members of the regional council and the Executive Branch. In this work, we only can say that the resistance of traditional political parties in the development of territorial autonomies and decentralization in Italy after 1948 has really changed after 1990.

After 1990, *Lega Nord* (the Northern League) is beyond doubt the political movement that proposed federalism as its political priority. Analyzing the rule of *Lega Nord* in Parliament for the “devolution” in Italy, we can say that the different economical and cultural situations of northern and southern Italy are the background of the political success of *Lega Nord*. This party is voted for by business social classes that live in Lombardia, Piemonte, Veneto and Friuli Venezia Giulia.

The 1999-2001 Constitutional Reforms took place during the XIII Legislature, when the ruling coalition was oriented to the centre-left. *Lega Nord* was not a member of national government during the period of the 1999-2001 Reforms, but it was in the centre-right coalition that governed in Italy in the XIV Legislature in 2001-2006; during this time Parliament approved the “*La Loggia*” Law Act 131/03.

In the Italian Parliament, during the XIV Legislature, MPs proposed other drafts of constitutional laws to again modify Title V of the Constitution in order to put political pressure on the parties with a large part of political success in the northern part of the country (*Lega Nord* and *Forza Italia*).

By analyzing of the organization of parliamentary groups during the XIII, XIV and XV Legislatures, we note that there is not only the *Lega Nord*, but there are other parties that proposed regional-federalist reform during these years, even if in different ways and with different strengths in different times.

We have to remember that the Italian party system is formally composed of national parties, but it is really composed of many “ultra-regional parties”; some parties, in fact, have an electoral success only in 4 or 5 regions and others party have votes only in one or two regions. So, we can say that only the *Partito Democratico* (centre-left) and *Forza*

Italia (centre-right), with the 25-30% for each one, are national parties; the other parties have a very strong non-national vocation.

Italian regional parties came into being after the Second World War, and for the most part are still in existence. Their emergence is closely linked to the end of fascism and its nationalistic policy. In the case of Alto Adige (South Tyrol/Südtirol) and the Valle d'Aosta/Vallée d'Aoste, where the majority of inhabitants are German and French-speaking respectively, the first regional parties were founded at the time of the liberation of Italy. The *Südtiroler Volkspartei* and the *Union Valdôtaine* were founded in 1945 to promote the autonomy of these regions and to safeguard their ethno-linguistic identity. Also in 1945, and for the same reasons, the Association for Regional Autonomy Studies was established in Trentino. This gave rise to various political movements including the *Partito del Popolo Trentino Tirolese* (Party of the Tyrolean Population of Trentino), which evolved into the present-day *Partito Autonomista Trentino Tirolese* (Tyrolean autonomist party of Trentino) (Paat Statute, 1999, Article 1). On the main Italian islands (i.e. Sardinia and Sicily), local parties defending their geographic and ethno-linguistic particularities had already come into existence before the end of the Second World War. The establishment of the *Movimento Indipendenza Sicilia* (Sicilian Independence Movement) (MIS) coincided with the landing of allied troops in Sicily in 1943, whilst the *Partito Sardo d'Azione* (Sardinian Action Party) (PSDAZ) dates back to 1921. In 1946, when the Constituent Assembly met to draw up the future Italian Constitution, the MIS and PSDAZ were represented by four and two members respectively. Given the geographical, political and ethno-linguistic peculiarities of these islands, the Constituent Assembly had already envisaged a special autonomy regime for them.

Political and administrative elections in recent years reveal a rather patchy picture in regards to regional parties. In the central and northern regions (i.e. Piedmont, Liguria, Lombardy, Veneto, Emilia-Romagna, Tuscany and Umbria), the *Lega Nord* has wide representation. The *Lega Nord* includes the *Liga Veneta*, *Lega Lombarda*, *Piemont, Autonomista*, *Union Ligure*, *Alleanza Toscana-Lega Toscana-Movimento per la Toscana*, and *Lega Emiliano-Romagnola* (*Lega Nord* Statute 2002, Article 4). In the other ordinary statute regions, in particular Abruzzo, Basilicata, Calabria, Campania, Marche, Molise, Lazio and Puglia, there are no regional parties whose defining ideology is autonomy.

Now, in Parliament, the regional parties have a very small presence.

Finally, we have to say that in Italy, members of regional, provincial and municipal councils or of the Executive Branch cannot be MPs, because of the Constitution (Art. 122) and the National Act 165/2004. For Article 122 (section 1) states, “the electoral system, the cases of ineligibility and incompatibility of the president and other members of the regional cabinet and the regional council are defined by the laws of the region within the limits of the fundamental principles determined by a state law also specifying the term of elected organs”.

In the same article we read that, “nobody may be at the same time a member of a regional council or a regional cabinet and of either chamber of Parliament or of another regional council or another regional cabinet or of the European Parliament”.

These normative provisions produce very important consequences for the role of MPs in the relationship between Parliament and the regions, provinces and municipalities.

Even if there is this kind of normative regulation, we have to say that “*cursus honorum*” of MPs is very important in understanding which kind of local and regional political roles they played by before being invested as MPs.

The consequences of this normative regulation are clear: the MPs have a connection with the territorial autonomies and with the local government bodies only if they are constricted by the electoral system: with a proportional system, in fact, there is not a strong network between the territorial autonomies and the MPs, because of this the MPs can search for personal votes in a large part of the national territory. With the majority system, the network is stronger because the electoral competition is between candidates for a small part of the territory that can send only one person to Parliament.

In the others countries, generally, it is impossible to be a member of parliament and to be member of legislative or executive regional powers.

It is different for the persons who are members (or chief) of executive or legislative powers in sub-regional territorial autonomies and, in fact, a lot of MPs are also elected into local power.

SHORT BIBLIOGRAPHY

Various authors, (2003), *Il nuovo ordinamento della Repubblica*, Commento alla Legge 5 giugno 2003, n. 131 (La Loggia), Giuffrè, Milan

Ferrara, A. (edited by.), *Verso una fase costituente delle Regioni?*, Giuffrè, Milan

Anzon, A., (2002), *I poteri delle Regioni dopo la Riforma costituzionale*, Giappichelli, Turin

Bassanini, F., (2003), *Legge la Loggia*, Commento alla Legge 5 giugno 2003, n. 131 di attuazione del Titolo V della Costituzione, Maggioli, Rimini

Caravita, B., (2002), *La Costituzione dopo la Riforma del Titolo V. Stato, Regioni ed Autonomie tra Repubblica ed Unione europea*, Giappichelli, Turin

Caravita, B., (2003), *Perchè il Senato delle Regioni*, in *Quaderni costituzionali*, No. 3, pp. 636-638

Caravita, B., (2006), *Lineamenti di diritto costituzionale federale e regionale*, Giappichelli, Turin

Chiappetti, A., (2004), *Il rebus del federalismo all'italiana*, Giappichelli, Turin

Chiappetti, A., (2005), *La Costituzione della Seconda Repubblica: la fine del mito del federalismo*, Giappichelli, Turin

Mangiameli, S., (2000), *La nuova potestà statutaria delle regioni davanti alla Corte costituzionale*, in *Giur. Cost.*, pp. 2358-2365

Mangiameli, S., (2000), *Aspetti problematici della forma di governo e della legge elettorale*, in *Le Regioni*, No. 3-4, p. 572 et seq

Martines, T., Ruggeri, A. and Salazar, C., (2002), *Lineamenti di diritto regionale*, Giuffrè, Milan

Olivetti, M., (2002), *Nuovi Statuti e forma di governo delle regioni. Verso le costituzioni regionali?*, Il Mulino, Bologna

Paladin, L., (2000), *Diritto regionale*, 7th ed., Cedam, Padua

Pitruzzella, G., (2002), *Problemi e pericoli del federalismo fiscale in Italia*, in *Le Regioni*, p. 978 et seq

Web Site: www.federalismi.it