

## 8 Italy

### Organisation and responsibilities of the local authorities in Italy between unity and autonomy

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#### 8.1 Introduction

##### *8.1.1 Local authorities and size of the local government in Italy*

In the Italian legal order the local authorities ('enti locali', lit. 'local entities') are the Municipalities, the Provinces, the Metropolitan Cities, the Mountain Communities, the Island Communities, and the Unions of Municipalities. The 'fundamental' local authorities are the Municipalities and the Provinces. Their 'fundamental' character finds its justification in historical reasons and in the fact that all 'other' local authorities are related to Municipalities and Provinces; the Union of Municipalities, the Mountain Communities, and the Island Communities result from a union of Municipalities; whilst the Metropolitan Cities should replace the Provinces in the exercise of their administrative functions (however, the Metropolitan Cities, instituted in 1990, have not been implemented, and for this reason they will not be analysed in this chapter).

It is useful to report some data relating to the number and size of Italian local authorities.<sup>1</sup> The Municipalities are about 8,000,<sup>2</sup> whilst the Provinces are 107. It is rather difficult to advise as to the exact number of the 'other' local authorities (Mountain Communities, Island Communities, and Union of Municipalities), however, from a 2008 legislative bill it emerges that at the time there were 365 Mountain Communities.<sup>3</sup>

1 See L. Vandelli, *Il Sistema delle autonomie locali*, Bologna, 2007, p. 86. See also the web site of the Union of the Italian Provinces <http://www.upinet.it/upinet/province.bfr> and of the National Association of the Italian Municipalities <http://www.anci.it/>.

2 The exact figure is difficult to determine. Indeed, the number of the Italian Municipalities is subject to frequent change. This is due to the creation of new Municipalities resulting from a 'merger' of two or more pre-existing Municipalities (see *infra* section 8.7).

3 See the introduction to legislative bill No. 73, entitled 'Law on the mountain', submitted to the Presidency of the Italian Senate on 29 April 2008. The document can be consulted at <http://www.senato.it/japp/bgt/showdoc/frame.jsp?tipodoc=Ddlpres&leg=16&id=404032>. From this source it also emerges that the Mountain Communities group together over 4,000 Municipalities whose territory is entirely or partly mountain. This figure is quite impressive

Provinces have an average size of 563,000 inhabitants, the largest being the Province of Milan (c. 3,700,000), and the smallest being the Province of Isernia (less than 90,000). One can see that the largest Province has a population which is 41 times the size of the smallest.

The heterogeneity amongst Municipalities is even greater. The average size is about 7,250 inhabitants. The largest Municipality is Rome (c. 2,600,000), whilst the smallest Municipalities (with about 30 inhabitants) are located in Lombardy (according to the 2001 census, the smallest Italian Municipality is Morterone, in Lombardy, with 33 inhabitants). The largest Municipality (Rome) has a population which is about 87,000 times the size of the population of the smallest Municipalities. It also needs to be pointed out that the number of Municipalities with more than 15,000 inhabitants is very low (only 636 Municipalities out of 8,000). This distinction (above or below 15,000 inhabitants) is important as some special rules on the election of the Mayor apply to Municipalities with more than 15,000 inhabitants (see *infra* section 8.5.6.).

The following analysis of Italian local authorities will focus on Municipalities and Provinces, as the 'other' local authorities do not have real 'own' autonomy; indeed, they result from a 'union' of Municipalities and Provinces.

### 8.1.2 *History of local government in Italy*

The 'fundamental' local authorities (that is, Municipalities and Provinces) have an ancient origin.<sup>4</sup> The Municipality is endowed with an autonomy which is 'original', as it can be traced back to prior to the formation of the Italian State. In other terms, the Municipality as an institution was not 'created' by the State authority, but is a spontaneous result of social realities.<sup>5</sup>

The Province is endowed with autonomy; however, it does not have 'original autonomy'. Indeed, it was 'created' by State authority, in accordance with the French model of the Department, as established by Napoleon Bonaparte.<sup>6</sup>

Since Municipalities are very ancient, it is difficult to identify their date of foundation.<sup>7</sup> In contrast, the Provinces of the Italian State have an official 'date of birth', as they were established by Law No. 2248 of 1865 (known as 'Legge

if one only thinks that it includes over the half of the Italian Municipalities and about 54 per cent of the national territory.

4 See G. Melis, *Storia dell'amministrazione italiana. 1861–1993*, Bologna, 1996; S. Cassese, *La formazione dello Stato amministrativo*, Milano, 1974; S. Tarrow, *Tra centro e periferia. Il ruolo degli amministratori locali in Italia e in Francia*, Bologna, il Mulino, 1977; M. S. Giannini (ed.), *I Comuni. Atti del congresso celebrativo del centenario delle leggi amministrative di unificazione*, Vicenza, 1967; A. Petracchi, *Le origini dell'ordinamento comunale e provinciale italiano*, Vicenza, 1962; C. Pavone, *Amministrazione centrale e amministrazione periferica. Da Rattazzi a Ricasoli (1859–1866)*, Milano, 1964.

5 See L. Gioenco and A. Romano, *L'ordinamento comunale*, Milano, 1994, p. 1.

6 See G. C. de Martin, *Un ente strategico, ancorché misconosciuto: la Provincia*, in *Federalismi.it* ([www.federalismi.it](http://www.federalismi.it)), published 9 September 2009.

7 See F. Calasso, *Comune (storia)*, in *Enciclopedia del diritto*, Vol. VIII, Milano, 1975, pp. 169 ff.

Rattazzi' ('Rattazzi Law'), after the proponent Urbano Rattazzi). This Law pursued the aim of creating an instrument for the 'administrative decentralisation' of State functions, as well as for the control of the Municipalities by the State.

Legal scholar Giulio Vesperini has recently singled out three stages in the historical development of the Italian local authorities (Municipalities and Provinces).<sup>8</sup>

The first stage begins with the passage of Law No. 2248 of 1865 and ends in 1948 with the coming into effect of the Constitution of the Italian Republic. This initial stage is characterised by a strong 'centralistic' aptitude. The Law of 1865 adopted the 'principle of uniformity', according to which the local authorities were subjected to an identical regulation in the whole national territory.<sup>9</sup> Such uniformity pursued the aim to endorse the political and social cohesion of the 'newborn' Italian State, whose unification had been achieved only four years before in 1861.

During this period, the local authorities did not have real 'autonomy', insofar as their powers were 'delegated' from the State and local authorities were seen as a 'manifestation' of the State. The top officials of the Municipalities and the Provinces were appointed by the State Government; the electoral suffrage was restricted to a limited number of local citizens; State bodies were entrusted with pervasive control powers over the acts of the local authorities; the Prefect (the State representative at local level) had a substantial supervisory power over local authorities.

A first significant turning point arose towards the end of the nineteenth century, when the office of Mayor and of President of the Province became elective. This goes hand in hand with the progressive extension of the franchise. However, despite these important developments relating to political rights, the actual space for the autonomy of local authorities ended up being restricted. This is due to the 'centralisation' of some important public services traditionally provided at local level.<sup>10</sup> Furthermore, the creation of a number of 'Local Offices' of the State ('Uffici Periferici', lit. 'Peripheral Offices') determined a radical reduction in the competences of local authorities, especially to the detriment of the Municipalities.

Giulio Vesperini includes the entire period of the fascist dictatorship (1925–1945)<sup>11</sup> within the first stage in the history of local authorities. When

8 See G. Vesperini, 'Enti locali', in S. Cassese (ed.), *Dizionario di diritto pubblico*, Vol. III, Milano, 2006, pp. 213 ff. In relation to the period prior to the Italian Constitution (1948) see M. Nigro, *Il Governo locale. Storia e problemi*, Roma, 1980, pp. 27–43, and L. Vandelli, 'I Comuni e le Province', in S. Bartole *et al.*, *Le autonomie territoriali*, Bologna, 1984, pp. 217–228.

9 See F. G. Scoca, 'La pubblica amministrazione come organizzazione', in L. Mazzaroli *et al.* (eds), *Diritto amministrativo*, Bologna, 2001, p. 458 and p. 468. See also U. Allegretti, 'Autonomia regionale e unità nazionale', in *Le Regioni*, 1995, pp. 9 ff.

10 See G. Vesperini, 'Enti locali', cited above footnote 8, p. 2214.

11 In 1925 all political parties (except for the National Fascist Party) were outlawed, and in 1945 the Italian Social Republic, allied to the Third Reich until the end of the war, was dissolved.

Benito Mussolini established the dictatorship, his authoritarian rule was extended to the local level.<sup>12</sup> Law No. 237 of 4 February 1926 suppressed the main organs of the Municipality (Council, Executive and Mayor) and repealed the principle that local offices had to be elected and representative. All the power within the Municipality was conferred to an individual, the 'Podestà' (lit. 'Power'), appointed by Royal Decree. In relation to the Provinces, in 1923 the office of President of the Provincial Council was abolished and, despite initial plans to abolish the Province as an institution, their number increased in the following years; in 1927 the number of the Provinces rose from 76 to 92.

During the fascist period the Unified Text of the Municipal and Provincial Law came into effect (Testo Unico della Legge Comunale e Provinciale, Royal Decree No. 383 of 3 March 1934; this act was a 'consolidation statute' of all the previous laws relating to Municipalities and Provinces). The Unified Text (despite a few amendments to make it compliant with the republican Constitution) remained in force until the end of the twentieth century.

The second stage in the historical development of the local authorities began with the entry into force of the republican Constitution of 1948 and ended in 1989, when Italy ratified the European Charter of Local Self-Government (approved in Strasbourg on 15 October 1985). During this stage a transition from a 'centralised' to a 'polycentric' State took place. The 'principle of autonomy' was included among the fundamental principles of the Constitution (Article 5). This principle is the right of the Municipalities and Provinces to autonomously determine their own policy objectives. The Constitution also instituted the Regions, to which legislative power was granted in the subject matters laid down by Article 117. However, the coming into effect of the Constitution did not ipso facto determine a transition to a 'polycentric' State due to the lack of implementation of this part of the Constitution for a number of years. Indeed, the first significant developments for the local authorities took place between the 1970s and the 1990s. The most significant episode during this period is the transfer of a considerable number of administrative functions to the local authorities (and to the Regions) by Decree of the President of Republic No. 616 of 1977.<sup>13</sup>

The third stage began in 1989 with the ratification by Italy of the European Charter of Local Self-Government and ended with the 2001 constitutional reform. After the ratification of the European Charter, a new comprehensive law on local authorities was passed (Law No. 142 of 1990). This law provided the 'skeleton' of the later Unified Text on Local Authorities of 2000 (Testo

12 See F. Fabrizzi, *La Provincia: storia istituzionale dell'ente locale più discusso. Dalla riforma di Crispi all'Assemblea costituente*, in *Federalismi.it* ([www.federalismi.it](http://www.federalismi.it)), published 18 June 2008.

13 See E. de Marco, *Comune*, in *Enciclopedia del diritto*, Vol. IV (Aggiornamento, 'update'), Milano, 2000, p. 258.

Unico degli Enti Locali, a ‘consolidation statute’ of all the previous laws relating to local authorities). During the 1990s the Italian Parliament passed two acts of paramount importance for the regulation of local authorities; Law No. 81 of 1993 and Law No. 59 of 1997. The first act (Law No. 81 of 1993) modified the election system of the Municipal and Provincial Councils in a way which makes it easier for the winning party (or coalition) to obtain a stable majority in the Council. The same act also introduced the direct election by voters of the Mayor (head of the Municipality) and of the President of the Province (head of the Province). The second act (Law No. 59 of 1997, known as ‘Legge sul federalismo amministrativo’, that is, ‘Law on administrative federalism’, or also as ‘Legge Bassanini’ (‘Bassanini Law’), after the proponent Franco Bassanini) initiated a vast transfer of administrative functions from the State to the local authorities. Also, this act introduced the principle of subsidiarity in the Italian legal order. The fundamental principle set by the Bassanini Law (and by the subsequent Legislative Decree No. 112 of 1998, known as ‘Decreto sul federalismo amministrativo’, ‘Decree on Administrative Federalism’) is that all administrative functions shall be conferred to the Regions and the local authorities with the sole exception of those ‘expressly’ reserved for the State. In 2000 the Unified Text on Local Authorities<sup>14</sup> (hereafter TUEL) came into effect. This is still the fundamental legislative act on local authorities. In 2001 the part of the Constitution regulating the local authorities (Title V, Part II, of the Constitution) was significantly amended in order to grant these authorities further autonomy.

### 8.1.3 *The local authorities in the 1948 Constitution*

With the entry into force of the 1948 Constitution, Italy became a ‘polycentric’ State.<sup>15</sup> The ‘polycentric’ nature of the State relies upon the ‘principle of autonomy’ (‘principio autonomista’), which enhanced the position of sub-national authorities (Municipalities, Provinces, Regions). The ‘principle of autonomy’ is embodied in Article 5 of the Constitution, according to which:

The Republic is one and indivisible. It recognises and promotes local autonomies, and implements the fullest measure of administrative decentralisation in those services which depend on the State. The Republic adapts the principles and methods of its legislation to the requirements of autonomy and decentralisation.

The ‘principle of autonomy’ grants considerable rights to local authorities. These authorities are the principal addressees of the ‘administrative

14 The full name is ‘Testo unico delle leggi sull’ordinamento degli enti locali’, approved by Legislative Decree No. 267 of 18 August 2000.

15 See M. Olivetti, ‘Lo Stato policentrico delle autonomie’, in T. Groppi and M. Olivetti (eds), *La Repubblica delle autonomie. Regioni ed enti locali nel nuovo Titolo V*, Torino, 2001, pp. 39 ff.

decentralisation' the State has to put in place. The State has to 'decentralise' to the greatest possible extent ('the fullest measure of administrative decentralisation'), that is, has to transfer its administrative functions to the local authorities and retain only those functions which cannot be performed at local level (for example, those relating to 'immigration', 'foreign affairs', 'public order', etc., which are traditionally performed by the State).

The 'principle of autonomy' has to be read together with another fundamental principle contained in Article 5 of the Constitution; the 'principle of unity' ('principio unitario').<sup>16</sup> This principle is embodied in the formula 'The Republic is one and indivisible' and implies the inviolability of the territorial integrity of the State. Accordingly, any initiative promoting the separation of a part of the national territory with the aim of declaring it independent from Italy is unconstitutional. However, the principle of unity goes beyond the prohibition of secession; it also implies that excessive differences between the different parts of the national territory are not permitted, as this would be in breach of the 'core content' of the principle. A detailed analysis of the relationship between the principle of unity and the principle of autonomy goes beyond the scope of the present chapter. What it needs to be pointed out here is that the two principles have to be 'harmonised'; indeed, the principle of unity implies a 'centralisation' of functions within the State, whilst the principle of autonomy implies a 'decentralisation' of functions to the benefit of the local authorities. It is therefore required to strike a balance between the two principles and more specifically between the functions which 'shall' be retained by the State and the functions which 'can' be transferred to the local authorities.<sup>17</sup> As noted by Giorgio Berti, the relationship between the two principles "shall not be translated into a rigid contraposition between State apparatus and autonomous entities".<sup>18</sup> Carlo Esposito pointed out that decentralisation cannot go as far as infringing the inviolable limit of the 'indivisibility of the Republic'; a different solution would lead to the "death of Italy" as a country.<sup>19</sup> It is fair to say that achieving equilibrium between the two principles is far from easy. This is especially due to the fact that the Constitution does not clearly define the content of the principle of autonomy. As a consequence, the equilibrium, instead of being determined in accordance with the Constitution, is the result of a political decision of the State (that is, one of the parties of the 'deal').<sup>20</sup>

16 See F. Modugno, 'Unità e indivisibilità della Repubblica come principio', in *Diritto e società*, 2011, p. 73 ff.

17 See C. Esposito, 'Autonomie locali e decentramento amministrativo nell'articolo 5 della Costituzione', in Id., *La Costituzione italiana, Saggi*, Padova, 1954, p. 71.

18 See G. Berti, 'Principi fondamentali' (Article 5), in G. Branca (ed.), *Commentario della Costituzione*, Bologna, 1975, p. 278.

19 See C. Esposito, 'Autonomie locali e decentramento amministrativo', cited in *note 17*, p. 72.

20 See F. Manganaro, 'La storia paradossale della tutela dell'autonomia degli enti locali nella giurisprudenza costituzionale', in G. della Cananea and M. Dugato (eds), *Diritto amministrativo e Corte costituzionale*, Napoli, 2006, p. 209 ff.



The picture of the legal status of local authorities in the 1948 Constitution (until the changes introduced by the aforementioned 2001 constitutional reform) was completed by a few detailed provisions. Article 114 of the Constitution stipulated that the Republic is sub-divided into “Regions, Provinces and Municipalities”. In the light of this provision, the local authorities, together with the Regions, were seen as part of the State (or, which is the same thing, of the ‘Republic’).

The distribution of legislative and administrative functions formed the object of Article 117 and Article 118 of the Constitution. The basic criterion for the distribution of the administrative functions was the ‘principle of parallelism’. According to this principle, the tier of government (State or Regions) that had legislative power on a given subject matter, for example ‘town-planning’, also had (in principle) the administrative functions related to that subject matter. Article 118 allowed for two important exceptions to the principle of parallelism to the benefit of the local authorities. First, the State, in fields of “exclusive local interest”, had the right to confer administrative functions to Municipalities and Provinces. Second, the Regions were required to perform their administrative functions by delegating them to Municipalities and Provinces, or by using the offices of these authorities.<sup>21</sup> In reality, the Regions, instead of delegating their administrative functions to the local authorities, used to keep these functions at regional level.

Article 128 stipulated that “Provinces and Municipalities are autonomous entities within the framework of the principles established by general laws of the Republic determining their functions”. The fundamental rule that emerged from this legal provision was that Provinces and Municipalities were ‘autonomous entities’. Given that the ‘autonomy’ of the local authorities was established directly in the Constitution, this could not be repealed by a State law. At the same time Article 128 specified that the autonomy of local authorities, even if guaranteed by the Constitution, had to be regulated by “general laws of the Republic”, that is, by legislative acts regulating in general terms (with no detailed provisions) the organisation and the functions of the local authorities. The underlying assumption was that if State laws in this matter were too detailed, and not ‘general’, this would have impacted negatively on the autonomy of local authorities, as these authorities would have been deprived of the freedom to decide on their internal organisation, as well as on the performance of their administrative functions. In sum, Article 128 aimed to establish some degree of uniformity, limited to fundamental aspects of the local authorities, without imposing a total uniformity in their regulation.

Article 130 of the Constitution regulated the control on the acts of the Provinces and of the Municipalities. The power of control was allocated to a

<sup>21</sup> Article 118 of the Constitution. This aspect was reinforced by another constitutional provision, Article 129, according to which: “The Provinces and the Municipalities are districts for State and regional decentralisation.”

regional body, the Regional Control Committee ('Comitato regionale di controllo' [CORECO]). This body was abolished by the 2001 constitutional reform.

The Constitution originally did not grant the local authorities any power of taxation. This is another aspect that has been modified by the 2001 constitutional reform (see further details below at section 8.3.5.).

The illustrated constitutional provisions were a significant progress if compared with the situation prior to the entry into force of the Constitution, especially from a symbolic point of view, as the local authorities were included (together with the Regions) among the entities composing the 'Republic' (Article 114). However, these provisions failed to establish a considerable role for the local authorities in the Italian legal order.<sup>22</sup> In their relations with 'higher' tiers of government (State and Regions), the local authorities suffered from the absence of a constitutional provision that expressly regulated their 'fundamental functions' and the mechanisms of protection of their autonomy.

The lack of a fully satisfactory constitutional regulation allowed the State to act according to the political agenda of the day. As a result, in certain historical phases, the autonomy of the local authorities was significantly limited, whilst in other phases, the autonomy was expanded (for example, the Bassanini Law considerably expanded the powers of local authorities). Such 'limitations' or 'expansions' were equally possible because the State laws did not find any precise limit in the Constitution.

The described constitutional framework confirms the words of constitutional scholar Livio Paladin, who wrote that, in relation to local authorities, the 1948 Constitution was "a blank page which still needed to be written".<sup>23</sup> He meant that the 'empty space' left by the Constitution had to be filled by the State legislature. Interestingly, even after the 2001 constitutional reform, despite a number of changes to the position of local authorities, there are still numerous 'lacunae' in the constitutional regulation of these authorities. This situation may have a negative effect on the position of local authorities in the future.

## 8.2 The reform of the local government

### 8.2.1 *Law No. 142 of 1990*

For many years after the entry into effect of the Constitution, the regulation of the local government remained 'fragmentary'; there was no legislative act which regulated local government in a comprehensive and complete way. This situation generated confusion and uncertainty; in this field there were a

<sup>22</sup> See F. Manganaro, *La storia paradossale della tutela dell'autonomia degli enti locali nella giurisprudenza costituzionale*, cited F note 20.

<sup>23</sup> See L. Paladin, 'Problemi legislativi e interpretativi nella definizione delle materie di competenza regionale', in *Foro amministrativo*, 1971, III, p. 39.



number of legislative acts adopted at different points in time, which were not easy to harmonise.<sup>24</sup>

In 1990, this problem was resolved through the passage of Law No. 142 entitled 'Regulation of Local Autonomies' ('Ordinamento delle Autonomie Locali'). This law is an important milestone in the development of local authorities.<sup>25</sup> It laid down a comprehensive regulation of the local authorities and provided clarity through the 'consolidation' of all the previous laws on local government. This result was achieved through the repeal of a number of legal provisions 'scattered' in a number of earlier statutes and regulations.<sup>26</sup>

Law No. 142 of 1990 granted new powers to the local authorities. An important example of these new powers is the right of the local authorities to adopt their own 'constitution' ('statuto', lit. 'statute'). The local authorities were also given the right to call for a referendum for deciding matters of local interest.

Law No. 142 of 1990 was later repealed. In 2000 a new piece of legislation replaced it; this is the aforementioned Unified Text on Local Authorities (Testo Unico degli Enti Locali, TUEL, a 'consolidation statute' of all the previous laws relating to local authorities). A large part of the content of Law No. 142 is mirrored in the TUEL.<sup>27</sup>

### 8.2.2 *The 'Bassanini reform' as a 'foretaste' of the 2001 constitutional reform*

The Bassanini reform is the historical and logical premise to the 2001 constitutional reform.<sup>28</sup> Indeed, the cornerstone of the Bassanini reform is the principle of subsidiarity, which is also one of cornerstones of the later constitutional reform. For this reason, the constitutional reform can be understood only after explaining the important legislative reform (known as the Bassanini reform) promoted in 1997–1998 by Franco Bassanini, the Minister of Public Service of the Centre-Left Government in office at the time.

24 See G. U. Rescigno, *Corso di diritto pubblico*, Bologna, 1995, pp. 620–621.

25 See G. Vesperini, *La legge sulle autonomie locali venti anni dopo*, in *Rivista trimestrale di diritto pubblico*, 2010, 4, pp. 953 ff. The author portrays the historical development of the local authorities in Italy, highlighting advantages and disadvantages of Law No. 142 of 1990.

26 Cf. Art. 64 of Law No. 142 of 1990. Among other acts Law No. 142 of 1990 repealed the Unified Text of Municipal and Provincial Law ('Testo Unico della Legge Comunale e Provinciale', Royal Decree No. 148 of 4 February 1915) and the Unified Text of the Municipal and Provincial Law ('Testo Unico della Legge Comunale e Provinciale', Royal Decree No. 383 of 3 March 1934).

27 See G. Vesperini, *La legge sulle autonomie locali venti anni dopo*, cited f'note 26, p. 974.

28 See V. Cerulli Irelli, 'Consolidamento delle riforme amministrative e innovazioni costituzionali: problemi attuativi e di integrazione', in G. Berti and G. C. De Martin (eds), *Il sistema amministrativo dopo la riforma del Titolo V della Costituzione*, Roma, 2002, p. 19 ff.; A. Pajno, 'L'attuazione del federalismo amministrativo', in *Le Regioni*, 2001, p. 667 ff.

The Bassanini reform of 1997–1998 began with Law No. 59 of 1997,<sup>29</sup> that delegated to the Government the adoption of a legislative decree for the transfer of administrative functions from the State to the ‘autonomies’ (Regions and local authorities). This transfer has been called by legal scholars ‘administrative federalism’,<sup>30</sup> given that it was inspired by the principle of subsidiarity, which is considered as a typical element of federal systems (for example, of the German federal state<sup>31</sup>). The transfer is called ‘administrative federalism’ also because *all* administrative functions have been transferred to the Regions and the local authorities with the sole exception of those listed in Law No. 59 of 1997, which remained to the State. Indeed, the most important legal mechanism put in place by the Bassanini reform was the creation of a list of subject matters, which were reserved for the State and in which the administrative functions could not be delegated to the Regions or the local authorities. At the same time the Bassanini reform allowed for the transfer to the Regions and the local authorities of the administrative functions in all *other* (that is, ‘non-enumerated’) subject matters (Article 3 of Law No. 59 of 1997).

The criterion for determining the tier of government to which the administrative functions have to be transferred is the ‘optimal level for the exercise of a given function’. For this reason subject matters such as ‘foreign trade’,<sup>32</sup> ‘citizenship’, ‘immigration’,<sup>33</sup> ‘scientific research’,<sup>34</sup> were reserved for the competence of the State. The remaining subject matters (and the administrative functions attached to these subject matters) were transferred from the State to a different tier of government (Regions or local authorities).<sup>35</sup>

29 Law No. 59 of 15 March 1997, entitled ‘Delegation of legislative power to the Government for the transfer of administrative functions and duties to the Regions and the local authorities, for the reform of the Public Service and for the simplification of the administration’.

30 The topic of ‘federalism’ has been researched by many Italian legal scholars. See for example the seminal work G. Bognetti, ‘Federalismo’, in *Digesto delle discipline pubblicistiche*, Torino, 1991, Vol. VI, pp. 273 ff. Less frequently Italian legal scholars looked at the concept of ‘administrative federalism’. On the latter cf. A. Pajno, *L’attuazione del federalismo amministrativo*, cited F note 28. See also P. M. Vipiana Perpetua, ‘Osservazioni sul cosiddetto federalismo amministrativo nella sua evoluzione e nei suoi sviluppi’, in *Istituzioni del federalismo*, 2011, p. 395 ff.

31 On the German federal system after the constitutional reform of 2006 see C. Panara, *Il federalismo tedesco della Legge Fondamentale dalla cooperazione alla competizione*, Roma, 2008.

32 Art. 3 Lit. a of Law No. 59 of 1997.

33 Art. 3 Lit. f of Law No. 59 of 1997.

34 Art. 3 Lit. p of Law No. 59 of 1997.

35 Not all administrative functions are performed by a tier of government (State, Regions, local authorities). Some important administrative functions are exercised by the ‘functional autonomies’ (‘autonomie funzionali’). The ‘functional autonomies’ are the Universities, the Bank Foundations, the Professional Associations, and the Chambers of Commerce. These are autonomous public institutions with specific administrative duties. Some of them are recognised in the Constitution; for example, the Universities, whilst others, for example the Chambers of Commerce, lack constitutional recognition. For further details on this

It goes almost without saying that the illustrated criterion ('optimal level for the exercise of a given function') is closely linked to the principle of subsidiarity.<sup>36</sup> More specifically, Article 4(2) of Law No. 59 of 1997 stipulated that the 'transfers' of administrative functions have to be put in place according to the following guidelines: ". . . the generality of the administrative duties and functions [shall be transferred] to the Municipalities, the Provinces and the Mountain Communities" in accordance with their "territorial size", with the sole exception of those administrative functions that are "incompatible with that size".

The 'transfer' of functions from the State to the Regions and the local authorities took place through Legislative Decree No. 112 of 1998,<sup>37</sup> which also regulated the transfer to the Regions and the local authorities of the 'goods' and the 'human and financial resources' required for the adequate exercise of the new responsibilities.

It is essential to look at the role of the Regions in transferring administrative functions in accordance with the Bassanini reform. In the areas falling within the scope of their legislative responsibility, the Regions had to transfer part of the administrative functions that the State had previously transferred to them to the local authorities. Pursuant to the

type of authorities see S. Papa, *La sussidiarietà alla prova: i poteri sostitutivi nel nuovo ordinamento costituzionale*, Milano, 2008, pp. 191 ff., and F. Liberati, *Le autonomie funzionali quale espressione del divenire del pluralismo nell'ordinamento italiano*, in *Federalismi.it* ([www.federalismi.it](http://www.federalismi.it)), published on 16 December 2009. See also A. M. Poggi, *La autonomie funzionali «tra» sussidiarietà verticale e sussidiarietà orizzontale*, Milano, 2001, and D., 'Il riparto costituzionale delle funzioni amministrative', in S. Gambino (ed.), *Diritto regionale e degli enti locali*, Milano, 2009, pp. 157–158.

- 36 See A. Gentilini, 'La sussidiarietà appartiene al diritto mite? Alla ricerca di un fondamento giuridico per l'«attrazione in sussidiarietà»', in *Giurisprudenza costituzionale*, 2008, 02, pp. 1640 ff. The author notes that before 1997 the impact in Italy of the European Charter of Local Self-Government had been very limited (despite the fact the Charter had been ratified by Italy in 1989). Article 4(3) of the Charter contains a clear reference to the principle of subsidiarity: "Public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy." The reason why this legal provision received so little attention in Italy have been identified by S. Cassese, 'L'aquila e le mosche. Principio di sussidiarietà e diritti amministrativi nell'area europea', in F. Roversi Monaco (ed.), *Sussidiarietà e pubbliche amministrazioni (Atti del Convegno per il 40° della Spisa. Bologna, 25–26 Settembre 1995)*, Rimini, 1997, p. 83. In this essay Cassese argues that Article 4(3) of the Charter only covers the 'positive' aspect of subsidiarity (public responsibilities shall generally be exercised by those authorities which are closest to the citizen), and not the 'negative' aspect of the principle, that is, that a tier of government should abstain from exercising a responsibility which could be better exercised by a lower tier of government. On this topic see also V. Parisio, «Carta europea delle autonomie locali» e principio di sussidiarietà, in F. Roversi Monaco (ed.), cited in this f' note, p. 391 ff.
- 37 Legislative Decree No. 112 of 31 March 1998, entitled 'Transfer of administrative functions and duties of the State to the Regions and the local authorities, in application of Chapter I of Law No. 59 of 15 March 1997'.

principle of subsidiarity, the chief objective of the Bassanini reform was to bring the administration as close as possible to the citizens ('administrative subsidiarity', 'sussidiarietà amministrativa'). As a result, the Municipalities, being the authorities that are closest to the citizens, were expected to become the principal beneficiary of the transfer of administrative functions, including those functions currently exercised by the Regions. To achieve this objective,

Law No. 59 of 1997 provided that each Region, in the subject matters falling within their legislative competence, had to transfer by regional law to the Provinces and the Municipalities (or to other local authorities) all the functions which did not require uniform exercise at regional level.<sup>38</sup> In case a Region failed to transfer its administrative functions to the local authorities, the State had the power to substitute its action for that of the Region concerned and to transfer the regional functions to the local level.<sup>39</sup>

As said, the Government implemented Law No. 59 of 1997 through Legislative Decree No. 112 of 1998. In order to fully understand the complexity of this operation, one can consider that Legislative Decree No. 112 is composed of over 160 articles. These articles contain lists of subject matters that, in certain cases, are reserved for the State, in others, are transferred to the Regions and the local authorities, and, in other cases again, are areas in which there is at the same time a competence of the State, of the Regions, and of the local authorities.<sup>40</sup>

The 'transfer process' designed by the Bassanini reform is very complex. As demonstrated by recent studies, such complexity has determined that the reform has yet to be fully implemented.<sup>41</sup>

38 The Constitutional Court held this part of Law No. 59 of 1997 to be compliant with the Constitution. See A. Anzon, '«Leale collaborazione» tra Stato e Regioni, modalità partecipative e controllo di costituzionalità', in *Giurisprudenza costituzionale*, 1998, p. 3531 ff.

39 See Art. 4(5) of Law No. 59 of 15 March 1997: "... If a Region fails to act by the deadline, the Government, after hearing the non-compliant Region, is delegated to adopt by 31 March 1999 one or more legislative decrees allocating administrative responsibilities between the Region and the local authorities."

40 For example, Article 28(2) Lit. a of Legislative Decree No. 112 of 1998 deals with the subject matter 'energy'. This is defined as the array of administrative functions relating to "research, production, transport and supply of any form of energy". Article 29 stipulates that "scientific research in the field of energy" is a responsibility of the State. Article 30(5) of the same Decree includes among the tasks of the Regions "the supply of information to the public and the training of public and private operators in the fields of projecting, installing, running, and controlling thermic plants". Finally, Article 31(1) provides that the local authorities shall be responsible for the "administrative functions of control on energy saving and the rational use of energy".

41 See G. d'Alessio and F. di Lascio (eds), *Il sistema amministrativo a dieci anni dalla "Riforma Bassanini"*, Torino, 2009, pp. 117–170.

### 8.3 The 2001 constitutional reform

#### 8.3.1 *Preliminary notations*

The 2001 constitutional reform<sup>42</sup> is a ‘next of kin’ of the Bassanini reform of 1997–1998. It is accurate to say that the constitutional reform strengthened the powers of the local authorities and ‘upgraded’ the system created by the Bassanini reform to the constitutional level.<sup>43</sup>

However, the meaning of the constitutional reform, at least as far as the local government is concerned, is far from clear. Indeed, like in the original text of the 1948 Constitution, the ‘tier of government’ that received more attention is the Region. This is confirmed by the high number of constitutional articles dealing with the Regions; this number is far superior to the number of provisions regulating local authorities. In the light of this ‘disproportion’ it appears still true what Livio Paladin used to say about the 1948 Constitution; in relation to local authorities, the Constitution still is a ‘blank page’ which needs to be written (cf. above section 8.1.3.). For example, in the Constitution as amended in 2001, there is no specific provision determining the ‘fundamental functions’ of the local authorities. Furthermore, the election of the principle of subsidiarity as the basic rule for the allocation of administrative functions to the different tiers of government (cf. Article 118 of the Constitution) does not resolve the legal uncertainty. On the contrary, the uncertainty is increased, due to the ambiguity of the constitutional provision.

#### 8.3.2 *The myth of the ‘equality’ of the tiers of government which constitute the Republic (Article 114 of the Constitution)*

In the Constitution as amended in 2001 there are a number of provisions which attracted a great deal of interest among legal scholars. The most important – and almost ‘revolutionary’, if compared with the previous situation – is certainly Article 114(1) of the Constitution.<sup>44</sup> According to this article “The Republic is composed of the Municipalities, the Provinces, the Metropolitan Cities, the Regions and the State”; from this provision seems *prima facie* to arise that the different ‘elements’ the Republic is composed of are placed on an equal footing. This seems to imply the ‘revolutionary’ result that the Municipalities have the same ‘dignity’ as the Regions and the State. Also, the State seems to be only one among the different entities which form part of the Republic.<sup>45</sup>

42 Constitutional Revision Act No. 3 of 2001.

43 See A. Ruggeri, *Riforme costituzionali e decentramento di poteri alle autonomie territoriali in Italia, dal punto di vista della teoria della Costituzione*, in *Federalismi.it* ([www.federalismi.it](http://www.federalismi.it)), published on 8 November 2006.

44 Before the 2001 amendment Article 114 stipulated: “The Republic is sub-divided into Regions, Provinces and Municipalities.”

45 S. Gambino, *L’ordinamento repubblicano: fra principi costituzionali e nuovo assetto territoriale dei poteri*, in S. Gambino (ed.), *Diritto regionale e degli enti locali*, 2nd edn, Milano, 2008, p. 5.

In reality, things are not in these terms. Local authorities do not have the same legal status and the same political significance as the State or the Regions. This is due to a number of reasons; first, State and Regions, unlike Provinces and (maybe) Municipalities, cannot be suppressed, otherwise the Republic would be dissolved;<sup>46</sup> second, State and Regions, unlike Provinces and Municipalities, have legislative powers;<sup>47</sup> third, State and Regions, unlike Provinces and Municipalities, have the right to file a lawsuit before the Constitutional Court in order to defend their competences.<sup>48</sup> In sum, the local authorities are not on an equal footing as the State and the Regions. A different interpretation of Article 114 would be inaccurate, as it would go against what other constitutional provisions establish. Indeed, the Constitution assigns different roles and competences, i.e. different powers, to the different tiers of government and this determines a profound disparity between them.

### *8.3.3 The principle of subsidiarity (Article 118 of the Constitution)*

Article 114 of the Constitution can be ascribed a meaning consistent with the rest of the Constitution, if it is taken together with Article 118 on the principle of subsidiarity. Pursuant to this principle the administrative functions have to be, if possible, allocated to the tier of government which is closest to the community of citizens. Of all local authorities that form part of the Republic, the Municipality is definitely the closest to that community. For this reason it should be considered as the most important authority and it should be given priority in the allocation of the administrative functions in the context of the Republic.

The link between Article 114 and Article 118 of the Constitution stands out if one looks at the first paragraph of Article 118: “Administrative functions are attributed to the Municipalities, unless they are attributed to the Provinces, Metropolitan Cities and Regions or to the State, pursuant to the principles of subsidiarity, differentiation and proportionality, to ensure their uniform implementation”. The Municipality is therefore the ‘foundation’ of the legal order, insofar as it is the public authority which is closest to the community of citizens and it is the first branch of action of the Republic.

In the light of the principle of subsidiarity, Article 114 of the Constitution does not really place all the authorities which form part of the Republic on an equal footing. In reality, Article 114 contains a ‘preference’ for the allocation of administrative functions to the Municipalities, and, only if that is not

46 The Constitution does not provide the abolition of the State and of the Regions. Legal scholars agree that the regional form of the Italian State is a supreme constitutional principle which cannot be repealed.

47 See Article 117 of the Constitution.

48 See Article 134 of the Constitution.



viable, to the Provinces and the Regions, respectively. Such preference accorded to the Municipalities, though, raises the question of which public authority has the power to decide on the allocation of the administrative functions in accordance with the principle of subsidiarity.

This is the most controversial aspect of Article 118 of the Constitution. Indeed, the real protagonists of the decisions on the allocation of the administrative functions are the State and the Regions. The political decision on ‘whether’ a function requires ‘uniform implementation’, and on ‘which’ tier of government is better placed to exercise that function, i.e., can guarantee higher effectiveness and efficiency, is left with the State, or the Regions, in accordance with their legislative competences under Article 117 of the Constitution.<sup>49</sup>

Since the 2001 constitutional reform, State and Regions passed a number of laws allocating administrative functions to the different tiers of government. The constitutional justification of this power of the State and of the Regions is to be found in the principle of legality, as defined in Article 97 of the Constitution: “Public offices are organised according to the provisions of law, so as to ensure the efficiency and impartiality of administration”. The principle of legality implies that the distribution of administrative competences within the Republic (which is part of the ‘organisation of public offices’) is reserved for those authorities that are endowed with legislative power (that is, the State and the Regions).<sup>50</sup>

All in all, the entrenchment of the principle of subsidiarity in the Italian legal order and in the Italian Constitution, has not determined an ‘automatic’ and ‘full’ devolution of administrative responsibilities to the Municipalities. Indeed, the principle of subsidiarity only implies that the public authorities with legislative power have to decide ‘whether’ it is viable to allocate a certain administrative function to the Municipalities and, if this is not viable, ‘to which’ tier of government the function should be attributed. This operation is characterised by wide discretion and, according to the circumstances, this can lead to an increase or a decrease in the number and scope of the administrative responsibilities of the Municipalities and of the Provinces.

#### *8.3.4 The exclusive legislative competence of the State on local authorities (Article 117, paragraph 2, Lit. p, of the Constitution)*

An important constitutional provision relating to local authorities is Article 117, paragraph 2, Lit. p, which stipulates that “electoral legislation, governing

49 On the distribution of legislative competences between State and Regions in the Italian Constitution, see M. Ruotolo, ‘Il riparto delle competenze legislative tra Stato e Regioni, a dieci anni dalla riforma costituzionale’, in *Diritto e società*, 2011, pp. 113 ff.

50 Cf. D. Donati, ‘Il principio di sussidiarietà nell’ordinamento regionale: enunciazioni, effetti e connessioni’, in *Le Regioni*, 2010, pp. 1399 ff.

bodies and fundamental functions” of the local authorities are subject matters falling within the exclusive legislative competence of the State.

Two of the three aforementioned topics find their regulation in the TUEL; ‘electoral legislation’ in Articles 55–70,<sup>51</sup> and ‘governing bodies’ in Articles 36–54. The third topic (fundamental functions) is surrounded by a considerable degree of uncertainty. It is difficult to say what parts of the TUEL actually deal with functions that can be deemed ‘fundamental’. In 2003 the Law ‘La Loggia’ (so named after the Minister for Regional Affairs of the Centre-Right Government, Enrico La Loggia)<sup>52</sup> made an attempt to sketch out the ‘fundamental functions’ of the local authorities. It delegated the Government to adopt a legislative decree listing the “fundamental functions . . . essential for the functioning of the Municipalities, the Provinces and the Metropolitan Cities”.<sup>53</sup> However, despite a few extensions of the implementation deadline,<sup>54</sup> the legislative delegation expired at last on 31 December 2005. Given that “the good intentions of the Government remained on paper”,<sup>55</sup> the relationship between the 2001 constitutional reform and the TUEL (2000) is the following; the TUEL, even if passed one year before the constitutional reform, in actual fact specifies the content of the Constitution. In relation specifically to the ‘fundamental functions’ of local authorities, in the Italian legal order it still lacks a piece of legislation that identifies them in clear terms.<sup>56</sup>

### *8.3.5 Financial autonomy and taxation power of the local authorities (Article 119 of the Constitution)*

For a long time, the issue of the financial autonomy of the local authorities is the subject of a vivid debate which recently culminated in the passage of Law

51 In relation to the following three aspects; limits to the right to be a candidate in local elections (‘incandidabilità’), restrictions to the right of an elected candidate to take office after the election (‘ineleggibilità’), and incompatibility between the office of counsellor or administrator in a local authority and other activities (‘incompatibilità’).

52 Law No. 131 of 5 June 2003 entitled “Legal provisions for adapting the legal order of the Republic to the Constitutional Revision Act No. 3 of 18 October 2001”.

53 See Article 2(1) of Law No. 131 of 5 June 2003.

54 See Article 1 of Law No. 140 of 28 May 2004 and Article 5 of Law No. 306 of 27 December 2004.

55 The quote is from A. Ruggeri, *Riforme costituzionali e decentramento di poteri alle autonomie territoriali in Italia, dal punto di vista della teoria della Costituzione*, cited in f’note 43, at paragraph 4.

56 Art. 19 of the Decree Law No. 95 of 6 July 2012 (transposed into Law No. 135 of 7 August 2012), provided the first list of ‘fundamental functions’ of the Municipalities. This list includes (among others): organisation of public services of general interest in the territory of the Municipality; planning of the urban development and of the building regulation in the municipal territory; organisation and management of the services of waste collection, disposal and management; planning and management of social welfare at municipal level. This enumeration refers to broadly defined subject matters. The scope of the subject matters will need to be further specified by new legislative acts and, given that legal disputes are likely to arise, by court cases.

No. 42 of 5 May 2009. This important piece of legislation, which still needs to be fully implemented, will be analysed in further detail *infra* at section 8.5.4. This section will be devoted to the constitutional framework of the financial autonomy of the local authorities.

The new text of Article 119 of the Constitution, at paragraph 1, lays down the principle according to which the local authorities shall have financial autonomy.<sup>57</sup> In general terms this form of autonomy is composed of two elements; the first is the assertion that the local authorities shall have a certain amount of money at their disposal ('revenues', 'entrate'); the second is the right of the local authorities to use these financial resources to fund their functions ('expenditures', 'spese').

The first element of the notion of 'financial autonomy' (that is, the revenues) is further specified in paragraph 2 of Article 119 of the Constitution. According to this provision, the local authorities "shall have independent financial resources", "set and levy taxes and collect revenues of their own", and "share in the tax revenues related to their respective territories". The second element of the notion of 'financial autonomy' (that is, the expenditures) finds further specification in paragraph 5 of Article 119 of the Constitution. According to this provision, the revenues raised from all the aforementioned sources shall enable the local authorities "to fully finance the public functions attributed to them".

According to some legal scholars,<sup>58</sup> the new text of Article 119 of the Constitution introduced in Italy the principle of 'fiscal federalism'. This is expected to lead to a wider financial autonomy of local authorities. Indeed, the logic of fiscal federalism is that the power to levy taxes should (of preference) belong to the tier of government which is closest to the citizens (the taxpayers). That tier of government should also have the right to decide how to use the collected revenue. The local community would be well placed to control that the local authority uses its tax revenue in an appropriate way. From this point of view, it is apparent the link between the concept of 'fiscal federalism' and the principle of subsidiarity, the link being the fundamental principle 'no taxation without representation'.<sup>59</sup>

The illustrated interpretation in favour of the local authorities can be contrasted to a different interpretation not as supportive of the autonomy of local authorities.<sup>60</sup> According to this train of thought, Article 119 limited the financial autonomy of local authorities. Indeed, the entire Italian system of

57 On this topic see P. Bonetti, 'L'autonomia finanziaria regionale e locale come motore delle autonomie territoriali: un'introduzione dall'art. 114 all'art. 119 Cost', in *Le Regioni*, 2010, pp. 1161 ff.

58 See S. Musolino, 'Potestà legislativa statale di coordinamento della finanza pubblica e puntuali vincoli alla spesa delle regioni: la corte costituzionale boccia il legislatore statale', in *Corriere Giuridico*, 2006, 2, pp. 192 ff.

59 On this topic see P. Liberati, *Il federalismo fiscale. Aspetti teorici e pratici*, Milano, 2003.

60 See A. Villa, 'La legge delega sul federalismo fiscale', in *Giornale di Diritto Amministrativo*, 2009, 8, pp. 837 ff.

taxation should be construed in the light of Article 23 of the Constitution under which obligations of financial nature can only be imposed by law. It follows the impossibility to recognise a wide autonomy to local authorities in the field of taxation, for the simple reason that these authorities do not have legislative powers. Furthermore, the financial autonomy of local authorities is limited by budgetary policies imposed by the European Union,<sup>61</sup> as well as by State measures aimed to ensure the sustainability of the welfare state in the whole national territory,<sup>62</sup> and by the “equalisation of financial resources”.<sup>63</sup> Since local authorities need a legislative authorisation enabling them to levy taxes, it follows that it is the very concept of ‘fiscal federalism’ to be deprived of any real meaning. The funding of local authorities will originate from ‘revenues’ and ‘taxes’ regulated by State or regional law.<sup>64</sup>

It is submitted that the more credible of the two illustrated interpretations of Article 119 is the second. In actual fact, even after the 2001 constitutional reform, the funding of local authorities is still largely reliant upon the State.

#### 8.4 Local authorities in the regions with special autonomy

For the sake of completeness, it needs to be addressed the position of the local authorities in the five Regions with special autonomy. In actual fact, the above illustrated constitutional provisions on local government do not find application in these Regions. It is therefore required an explanation of the legal status of the Regions with special autonomy.

The 1948 Constitution built a State with Regions and local authorities. All the Regions are endowed with political, legislative, administrative and financial autonomy. The constitutional norms apply to fifteen Regions;<sup>65</sup> the Regions with ‘ordinary’ autonomy. Other five Regions (Sicily, Sardinia, Friuli-Venezia Giulia, Trentino-Alto Adige, and Valle d’Aosta) are granted ‘special’ autonomy, that is, powers (in the legislative, administrative, and financial

61 That is, by the Stability Pact, which implies the obligation for the Italian State to keep its budget deficit within a certain limit. See G. Fransoni and G. della Cananea, ‘Commento all’art. 119’, in R. Bifulco *et al.* (eds), *Commentario alla Costituzione*, Torino, 2006, pp. 2358 ff.

62 Vedi G. della Cananea, *L’insostenibile onerosità dell’attuale “federalismo fiscale”, gli accorgimenti per porvi rimedio*, keynote talk at the Seminario Svimez held on 4 December 2008, in *Quaderno Svimez*, No. 20, April 2009, pp. 9 ff.

63 See Art. 117(2) Lit. e and Art. 119(3) of the Constitution.

64 On this point see *infra* section 8.5.4., where Law No. 42 of 2009 will be discussed. A critical stance of the existing Italian setting is that of S. Pellegrini, ‘L’autonomia tributaria delle Regioni è condizionata dalle leggi statali di coordinamento’, in *Diritto e Pratica Tributaria*, 2005, 06, pp. 1291 ff.

65 The 15 Regions in question are: Abruzzo, Basilicata, Calabria, Campania, Emilia-Romagna, Lazio, Liguria, Lombardia (Lombardy), Marche, Molise, Piemonte (Piedmont), Puglia, Toscana (Tuscany), Umbria, and Veneto.

fields) wider than those of the other ('ordinary') Regions. Whilst the 'ordinary' Regions find their regulation in the Constitution, the 'special' Regions are specifically regulated by their own Statutes. Each regional Statute contains the basic norms for the Region concerned. In the case of the Regions with special autonomy the Statutes have the form of constitutional laws of the State (that is, of laws adopted with the same procedure required for amendments to the Constitution<sup>66</sup>).

In the Regions with special autonomy, the Statutes attribute the regulation of the subject matter 'law on the local authorities' to the regional law. However, this does not imply that the 'special' Regions have an unlimited power to regulate the structure and *modus operandi* of the local authorities within their own territorial jurisdiction. The Constitutional Court held that the 'special' Regions need to legislate in 'harmony' with the Constitution and must also respect the 'general principles of the legal order'.<sup>67</sup> Such restrictions rule out that the 'special' Regions can adopt regulations that are blatantly non-compliant with the Constitution.

Each of the five Regions with special autonomy adopted a specific regulation of the local government within the regional territory. In a seminal study legal scholar Luciano Vandelli examined the different regulations.<sup>68</sup> The author found that among the topics falling within the scope of the regional competence there are the following:

- instituting and suppressing the Provinces within the regional territory;
- regulating the election of the political bodies of the Municipalities and of the Provinces;
- allocating responsibilities to the different tiers of government within the Region;
- regulating forms of control on the local authorities;
- regulating the relations between the Region and the local authorities.

66 Cf. Art. 138 of the Constitution: "(1) Laws amending the Constitution and other constitutional laws shall be adopted by each House after two successive debates at intervals of not less than three months, and shall be approved by an absolute majority of the members of each House in the second voting. (2) Said laws are submitted to a popular referendum when, within three months of their publication, such request is made by one-fifth of the members of a House or five hundred thousand voters or five Regional Councils. The law submitted to referendum shall not be promulgated if not approved by a majority of valid votes. (3) A referendum shall not be held if the law has been approved in the second voting by each of the Houses by a majority of two-thirds of the members." The Special Statute of Sardinia was approved by Constitutional Law No. 3 of 26 February 1948; the Special Statute of Valle d'Aosta was approved by Constitutional Law No. 4 of 26 February 1948; the Special Statute of Friuli-Venezia Giulia was approved by Constitutional Law No. 1 of 31 January 1963; the Special Statute of Trentino-Alto Adige was approved by Decree of President of Republic No. 670 of 31 August 1972. The oldest Special Statute is that of Sicily which was approved by Royal Decree No. 455 of 15 May 1946.

67 See the Ruling of the Constitutional Court No. 230 of 2001.

68 See L. Vandelli, *Il Sistema delle autonomie*, cited f note 1, pp. 230–238.

This list shows the wide-ranging scope of the competences of the Regions with special autonomy. However, as previously stated, such a wide-ranging power of regulation meets some limits. For example, the Regions cannot abolish the participation rights of the local authorities in the regional legislative process when matters are discussed that belong to the competence of the local authorities.<sup>69</sup> Also, the local electoral system has to respect the requirements set by State legislation in relation to the right to be a candidate in local elections, as an inviolable restriction to the autonomy of the Regions with a Special Statute.<sup>70</sup>

## 8.5 The unified text on local authorities (TUEL)

### 8.5.1 *The relationship between the 2000 TUEL and the 2001 constitutional reform*

As mentioned above, the Unified Text on Local Authorities (TUEL) was passed in 2000.<sup>71</sup> Before dealing with it in further detail, it is necessary to explore an important profile; the compatibility between the TUEL and the constitutional reform. It is reasonable to assume that, being the TUEL the most important piece of legislation on local government, if it happened to be incompatible with the Constitution, it would have been ‘wiped out’ by the constitutional reform. The fact that the TUEL could ‘survive’ the constitutional reform demonstrates the little innovation of the reform in relation to local authorities. In order to provide an outline of the main features of local authorities (especially Municipalities and Provinces), it is therefore required to shed a close look at the detailed provisions of the TUEL.

### 8.5.2 *The autonomy of local authorities*

The first aspect that needs to be analysed is the autonomy of the local authorities. Article 3 of the TUEL, entitled ‘Autonomy of the Municipalities and the Provinces’, stipulates, at paragraph 1, that “The local communities, organised in the form of Municipalities and Provinces, are autonomous”. The second paragraph adds that the Municipality is the local authority which “represents, looks after the interests and promotes the development of the own community”. Finally, the third paragraph establishes (with a formula that resembles that of paragraph (2) that the Province is the ‘intermediate’ local authority between the Municipality and the Region, insofar as it “represents, looks after the interests, promotes and coordinates the development of the own community”.

<sup>69</sup> See the Ruling of the Constitutional Court No. 238 of 2007.

<sup>70</sup> See the Ruling of the Constitutional Court No. 105 of 1957.

<sup>71</sup> On the TUEL see R. Cavallo Perin and A. Romano (eds), *Commentario breve al testo unico sulle autonomie locali*, Padova, 2006.



Both Municipalities and Provinces ‘represent’ the respective communities and look after their interests; these authorities can be seen as ‘representative entities’ (‘enti esponenziali’) of the respective populations. This important mission that the TUEL assigns to Municipalities and Provinces justifies the autonomy granted to these authorities, in the sense that the autonomy is designed to accomplish their institutional mission.

In practice this implies that the local authorities have the power to create a ‘public service’,<sup>72</sup> that is, to decide what type of activity to perform in order to achieve the ‘social aims’ and to promote the ‘economic and civic development’ of the local community.<sup>73</sup>

A further consequence of the local autonomy is that both the Municipalities and the Provinces have the right to challenge before a court the validity of those administrative measures that negatively affect them.<sup>74</sup>

The autonomy is an instrument that aims to achieve those policy objectives which are independently chosen by Municipalities and Provinces. Paragraph 4 of Article 3 of the TUEL states that Municipalities and Provinces have an autonomy which is “statutory, regulatory, organisational, administrative, of taxation and financial” (“statutaria, normativa, organizzativa, amministrativa, impositiva e finanziaria”). This autonomy needs to be exercised in a way which is compliant with (municipal or provincial) Statutes, (regional and State) regulations and (regional and State) laws.

Three main elements emerge from Article 3 of the TUEL. The first is that Municipalities and Provinces are autonomous authorities. The second is that Municipalities and Provinces are endowed with different types of autonomy. The third is that such autonomy is aimed and required to look after the interests of the local communities. However, there is no legal provision clearly defining the concept of ‘autonomy’.

According to influential legal scholar Mario Nigro the notion of autonomy is “pretty obscure”.<sup>75</sup> To provide a reliable definition of ‘autonomy’, it is therefore useful to start from the etymology of the word. ‘Autonomy’ is a Greek word whose literal meaning is ‘one giving themselves their own law’. In the context of local government, this concept can be translated into ‘self-government’ (‘autogoverno’), that is, as the “guarantee of a space protected from interference of a higher authority”.<sup>76</sup>

72 Cf. Article 112 ff. of the TUEL.

73 Cf. Regional Administrative Court of Liguria, Second Division, Ruling No. 527 of 28 April 2005, in *Foro amministrativo*, TAR 2005, 4, pp. 1022 ff.

74 Cf. Regional Administrative Court of Marche, Ruling No. 1015 of 19 September 2003, in *Foro amministrativo*, TAR 2003, pp. 2604 ff. See also Council of State (supreme judicial authority on administrative matters), Fourth Division, Ruling No. 1559 of 24 March 2004, in *Foro amministrativo*, CDS 2004, p. 806.

75 See M. Nigro, *Il Governo locale*, Roma, 1980, p. 59.

76 See S. Romano, ‘Autonomia’ (1945), in *Frammenti di un dizionario giuridico*, Milano, 1983 (reprint), pp. 14 ff. See also A. Romano, ‘Autonomia nel diritto pubblico’, in *Digesto di diritto pubblico*, Vol. II, 1987, pp. 30 ff.

The concept of autonomy has been widely studied by Italian legal scholars. According to leading legal scholar Massimo Severo Giannini, ‘autonomy’ can only be understood if one identifies its object.<sup>77</sup> This authoritative guideline will be followed in the next sections of this chapter. More specifically, the next section will examine ‘regulatory autonomy’ and the ‘statutory autonomy’ (section 8.5.3.), whilst the following section will deal with ‘autonomy in imposing taxes’ and ‘financial autonomy’ (section 8.5.4.). As to ‘organisational’ and ‘administrative autonomy’, since they are not specifically regulated in the TUEL, it is sufficient to say that the first (‘organisational autonomy’) is the right of local authorities to choose their organisational structure, whilst the second (‘administrative autonomy’) is the right of local authorities to adopt administrative measures aimed to produce an external effect in relation to the local community.

### 8.5.3 *Regulatory and statutory autonomy*

In broad terms the concept of ‘regulatory’ autonomy includes both the ‘statutory’ and the ‘regulatory’ (strictly speaking) autonomy.<sup>78</sup> The term ‘statutory’ refers to the Statute of the Municipalities and of the Provinces. This is the basic law (a sort of ‘constitution’) of these authorities. Article 6 of the TUEL establishes that each local authority has to have a Statute. Such obligation originates from the first paragraph of the said Article, according to which Municipalities and Provinces “adopt” (“*adottano*”) their own Statutes.<sup>79</sup>

The Statute (municipal or provincial) has to regulate certain topics. The most important ones are “fundamental norms for the organisation of the authority”, “external representation of the authority”, “forms of collaboration between Municipalities and Provinces”, and “norms on equal opportunities of men and women”.

The Statute (both municipal and provincial) finds an important limit in the State law; in particular, the TUEL contains considerable restrictions to the ‘statutory’ autonomy of local authorities. For example, if one looks at the topic ‘fundamental norms for the organisation of the authority’, it emerges that the scope of the provision does not include all municipal or provincial bodies and offices, but only those bodies and offices which are not regulated by the TUEL. For example, the (municipal or provincial) Council, the (municipal or

77 See M. S. Giannini, ‘Autonomia’, in *Enciclopedia del diritto*, Vol. IV, Milano, 1958, pp. 356 ff.

78 The Constitution grants to local authorities both the ‘statutory’ autonomy, that is, the power to give themselves a Statute (‘*potestà statutaria*’), and the ‘regulatory’ autonomy, that is, the power to adopt regulations. The relevant provisions are Article 114(2) of the Constitution (“Municipalities, Provinces, Metropolitan Cities and Regions are autonomous entities having their own Statutes”) and Article 117(6) of the Constitution (“Municipalities, Provinces and Metropolitan Cities have regulatory powers as to the organisation and implementation of the functions attributed to them”).

79 The use of the verb ‘to adopt’ (‘*adottare*’) in the present tense and indicative form denotes a legal obligation.

provincial) Executive, and the Mayor (the head of Municipality) or the President of the Province (the head of Province), find a comprehensive regulation in the TUEL,<sup>80</sup> and, as a consequence, cannot be regulated in a different way by the Statute.<sup>81</sup> Other bodies and offices, whose regulation is not laid down by the TUEL, may be regulated in the Statute of the local authority.<sup>82</sup>

Despite the illustrated limits, the Statute of a local authority can be considered as a 'primary' source of law; in other terms, in those spaces the State law reserved for it, the Statute has a force equivalent to that of a State (or a regional) law.<sup>83</sup> A State law could certainly further restrict the space for municipal and provincial Statutes; however, no law could entirely cancel that space. This is due to the fact that the 'statutory' autonomy is entrenched in Article 114(2) of the Constitution ("Municipalities, Provinces, Metropolitan Cities and Regions are autonomous entities having their own Statutes").

The legal 'force' of the Statute does not only stem from the Constitution; it also derives from the procedure for its approval. The passage of the Statute requires a two-thirds majority within the (municipal or provincial) Council. In case such a majority is not achieved, the Statute will need to be approved twice by absolute majority.<sup>84</sup>

The power to adopt a Statute is the principal expression of the regulatory autonomy (broadly understood) of local authorities. The 'regulatory' autonomy (strictly understood), that is, the power to adopt local (municipal or provincial) regulations has a lower standing in comparison with the 'statutory' autonomy. Local regulations cannot contain provisions which are non-compliant with the Statute, otherwise the regulation can be 'set aside' or 'annulled' by a court, or by any administrative authority.<sup>85</sup>

Also the power to adopt regulations is entrenched in the Constitution. Article 117(6) of the Constitution states that "Municipalities, Provinces and Metropolitan Cities have regulatory powers as to the organisation and implementation of the functions attributed to them".<sup>86</sup> The basic provision on local regulations is Article 7 of the TUEL. From that provision it emerges the

80 Cf. Article 36 ff. of the TUEL.

81 Cf. Regional Administrative Court of Campania, Salerno, First Division, Ruling No. 943 of 4 July 2006, in the case *Onlus Aido v. Comune di Battipaglia*, in *Foro amministrativo*, TAR 2006, 7–8, p. 2619.

82 This is for example the case of the Civic Defender ('difensore civico', more immediately understandable as 'defender of the citizens'). According to Article 11 of the TUEL the Civic Defender can be instituted by the Statute of the local authority.

83 See Court of Cassation, United Civil Law Divisions, Ruling No. 12868 of 16 June 2005, in *Rivista giuridica tributaria*, 2005, p. 1015.

84 See Article 6(4) of the TUEL.

85 See Council of State, Fifth Division, Ruling No. 148 of 25 January 2005, in *Rivista della Corte dei conti*, 2005, 1, p. 302.

86 On the topic of State, regional, and local regulations see C. Tubertini, 'Riforma costituzionale e potestà regolamentare dello Stato', in *Rivista trimestrale di diritto pubblico*, 2002, pp. 935 ff. See also M. C. Romano, 'Spazi e confini dell'autonomia regolamentare: i regolamenti dei comuni nell'art. 117, VI comma, Cost.', in *Diritto amministrativo*, 2007, pp. 851 ff.

lower standing of local regulations in the hierarchy of norms, if compared with the position of the local Statute. Indeed, Article 7 stipulates that Municipalities and Provinces adopt their regulations “respecting the principles established by [State and regional] law and by the Statute”.<sup>87</sup>

Article 7 of the TUEL does not only create a ‘hierarchy’ between Statute and local regulations. It also specifies the topics that fall within the scope of the regulatory power of local authorities. These topics are “organisation” and “functioning” of local institutions, as well as of forms of participatory democracy, and, finally, of bodies and offices of the local authority.

The aforementioned topics are also concerned by State (or regional) laws; one of those is the (State) Law No. 241 of 1990 on the decision-making process of administrative authorities.<sup>88</sup> The general principles of the decision-making process of administrative authorities are established by State law, whilst local regulations can only, within this ‘framework’, further specify the principles entailed by State law.<sup>89</sup> For example, a local regulation waiving the requirement (established by State law) that there must be a public official responsible for each decision-making process, would be invalid. Actually, Article 4 of Law No. 241 of 1990 establishes that requirement in relation to ‘all’ administrative decision-making processes.

Administrative courts dealt with the important question of whether local authorities are entitled to enact regulations also on topics other than those listed in Article 7 of the TUEL. The courts found that local authorities are indeed allowed to do so; being the local authorities ‘entities with general aims’ (‘enti a fini generali’, that is, entities which look after the overall interests and welfare of the local community), they are vested with the power to issue regulations also in fields not expressly attributed to them by State or regional law.<sup>90</sup> Such a wide-ranging regulatory power of local authorities is perfectly consistent with the ‘mission’ assigned to local authorities in the Italian legal order.

87 Cf. Article 7(1) of the TUEL. See Council of State, Fifth Division, Ruling No. 147 of 25 January 2005, in *Foro amministrativo*, CDS, 2005, 1, p. 118.

88 Law No. 241 of 7 August 1990 entitled ‘New rules on the decision-making process of administrative authorities and on the right of access to administrative documents’. On this piece of legislation see G. Fares, ‘Il procedimento amministrativo’, in G. Corso and V. Lopilato (eds), *Il diritto amministrativo dopo le riforme costituzionali*, Vol. I, Milano, 2006, pp. 563 ff., and, more recently, see also G. Falcon, ‘La legge sul procedimento amministrativo e i caratteri del “federalismo” italiano’, in *Le Regioni*, 2010, pp. 1227 ff.

89 See S. Civitaresse Matteucci, ‘L’autonomia istituzionale e normativa degli Enti locali dopo la revisione del Titolo V’, in *Le Regioni*, 2002, p. 472.

90 Cf. Council of State, Fifth Division, Ruling No. 6317 of 27 September 2004, in *Foro amministrativo*, CDS, 2004, pp. 2611 ff., and, more recently, cf. Regional Administrative Court of Sicily, Catania, Third Division, Ruling No. 258 of 4 February 2011, in *Foro amministrativo*, TAR, 2011, 2, p. 657. On this topic see M. Sias, *I regolamenti indipendenti e il nuovo Titolo V*, in *Federalismi.it* ([www.federalismi.it](http://www.federalismi.it)), 7 August 2003.

#### 8.5.4 *Autonomy in imposing taxes and the financial autonomy*

The forms of autonomy recognised for local authorities are not rigidly separated from one another. As shown in the previous analysis, the concept of 'regulatory' autonomy covers both the right to adopt a Statute and the right to issue regulations. Similarly, 'autonomy in imposing taxes' and 'financial autonomy' are closely linked. To be precise, 'financial autonomy' is the overarching category, whilst the 'autonomy in imposing taxes' is a component of it.

The financial autonomy (broadly understood) of Municipalities and Provinces is both the power of local authorities to impose taxes, as well as the right to decide how to spend the collected financial resources. However, as seen *supra* at section 8.3.5, the power to impose taxes does not imply that the local authorities are free to 'create' taxes and to decide their constitutive elements (who is going to be liable to taxation, object of taxation, tax rate). The regulation of all these aspects is reserved for the State. The power of local authorities in relation to taxation is therefore significantly limited by State law.

The financial autonomy and the powers of the local authorities in relation to taxation are mainly 'derived' from the State. In other words, a large part of the financial resources of the local authorities consists of sums of money transferred from the State budget to the local budgets.<sup>91</sup>

It is a State duty to dictate a uniform regulation of all taxes. Local authorities only have limited opportunities to modify the decisions of the State. For example, within certain limits they can modify the tax rate of those taxes whose revenue flows into their budget. They can also grant tax benefits to local taxpayers, determine the price of local services, and, finally, put in place an effective tax collection system of local taxes (through, for example, direct collection by local offices, or 'outsourcing' of this service to private companies<sup>92</sup>).

Article 149 of the TUEL specifies the meaning of 'financial autonomy'. This concept relies upon an assumption; the legal certainty of the financial resources of local authorities.<sup>93</sup> Such certainty puts the local authorities in a position to plan their policies without having to negotiate with the State on a case-by-case basis. According to Article 149(3) of the TUEL the local authorities shall have the right to impose 'duties' ('imposte'), 'taxes' ('tasse'), and 'tariffs' ('tariffe'), but only in relation to those aspect whose regulation is not reserved for State law.

It is useful to briefly explain the meaning of the three aforementioned items. 'Duties' are due from local taxpayers and fund a service or an

91 For further details cf. Senato della Repubblica, Dossier entitled *L'attuazione dell'articolo 119 della Costituzione: il federalismo fiscale*, No. 3, November 2008, in [http://www.senato.it/documenti/repository/dossier/bilancio/Documentazione\\_di\\_finanza\\_pubblica/DFP3agg.pdf](http://www.senato.it/documenti/repository/dossier/bilancio/Documentazione_di_finanza_pubblica/DFP3agg.pdf).

92 Cf. Council of State, Fifth Division, Order No. 3991 of 28 July 2000.

93 See Article 149(2) of the TUEL.

infrastructure for the local community (for example, public works in the local area). ‘Taxes’ are due from local taxpayers and fund a service requested by the individual taxpayer (for example, the tax on waste collection and disposal). ‘Tariffs’ are prices paid by local citizens for a good or an essential service provided by a public or private company (for example, the price of the ticket in the local transport).

In addition to ‘duties’, ‘taxes’, and ‘tariffs’, local finances are fed by “addenda to duties and shares of the revenue of duties”, “transfers of money from the State”, “transfers of money from the Regions”, “resources for investments”, and “other sources of income”.<sup>94</sup> These revenues provide the most part of municipal and provincial income and are mainly formed by pots of money the local authorities receive from the State and the Regions.

Local finance is the subject of an ongoing political debate known as ‘fiscal federalism’. The guidelines of that phenomenon can be found in Law No. 42 of 5 May 2009 entitled ‘Delegation of legislative power to the Government for the introduction of fiscal federalism in application of Article 119 of the Constitution’.<sup>95</sup> This Law, that still needs to be fully implemented, aims to abolish all the transfers from the State, except for exceptional circumstances.<sup>96</sup> Some scholars voiced the concern that the flag of fiscal federalism might become the ‘Trojan horse’ for cutting the public spending for local government.<sup>97</sup>

### 8.5.5 *The political organs of the local authorities*

Every local authority has three political organs. They remain in office for five years. In accordance with a model that can be traced back to the Rattazzi Law of 1859 (cf. *supra* 8.1.2), the political organs of the Municipalities are: the Municipal Council, the Municipal Executive, and the Mayor (Art. 36, paragraph 1, TUEL). In a similar way, within the Provinces, they are: the Provincial Council, the Provincial Executive, and the President of the Province (Art. 36, paragraph 2, TUEL).

However, it needs to be taken into account that the incumbent Italian Government, led by former EU commissioner Mario Monti, introduced important modifications in relation to the Provinces, especially in relation to their political organs and to the competences of the Provinces.<sup>98</sup> Such modifications will be analysed in the final part of this chapter (cf. *infra* at section 8.12). In the following paragraphs of this chapter, the internal

94 Cf. Article 149(4) of the TUEL.

95 R. Nania, *La questione del “federalismo fiscale” tra principi costituzionali ed avvio del percorso attuativo*, in *Federalismi.it* ([www.federalismi.it](http://www.federalismi.it)), published on 2 December 2009.

96 Like those referred to in Article 119(5) of the Constitution.

97 A. Villa, *La legge delega sul federalismo fiscale*, cited in f’note 60.

98 The modifications have been introduced through the ‘Rescue Italy’ Decree (decreto ‘Salva Italia’, Law Decree No. 201 of 6 December 2011, transposed into Law No. 214 of 22 December 2011).



organisation of the Provinces will be described as it was before the recent modifications. This will facilitate the full comprehension of the innovations introduced by the current Government.

In both the Municipalities and in the Provinces, there are two elected political organs. In the Municipalities these are the Municipal Council and the Mayor. In the Provinces these are the Provincial Council and the President of the Province.

#### *8.5.6 The electoral system in municipal and provincial elections*

The election of the political organs of the local authorities is regulated by the TUEL (cf. Article 38, paragraph 1, and Articles 71–75, TUEL).

The TUEL differentiates the election of the Mayor (Sindaco) in relation to the number of inhabitants of the Municipality. In Municipalities with less than 15,000 inhabitants the Mayor is elected in a single round ('first-past-the-post'); that is, the candidate who obtains the higher number of polls wins the office. A list of candidates to the Municipal Council (that is a party or, more commonly, a coalition of parties) is attached to each candidate to Mayor. The list attached to the successful candidate obtains two-third of the seats in the Municipal Council. The remaining one-third is allocated to the other lists of candidates in proportion to the number of votes.

In Municipalities with more than 15,000 inhabitants the Mayor is elected through a two-round system. If no candidate obtains the absolute majority of the votes in the first round, a second round of voting occurs between the two candidates who obtained the higher number of votes. One or more lists of candidates to the Municipal Council (that is, political parties or, less often, coalitions of parties) are attached to each candidate to Mayor.<sup>99</sup>

As mentioned above, in the Provinces there are two elected political organs: the President of the Province and the Provincial Council. In the Provinces the election of political organs happens in a way which is similar to the Municipalities with more than 15,000 inhabitants. The election of political organs of the Provinces is regulated in Articles 74 and 75 of the TUEL.

#### *8.5.7 The 'form of government' in Municipalities and Provinces*

The concept of a 'form of government' describes the relationship between the different political organs of a local authority. In Italian local authorities, the form of government has its cornerstone in the Mayor and in the President of the Province. This is due to the fact that "the Mayor and the President of

<sup>99</sup> The method for the distribution of seats within the Municipal Council is quite complicated as the method varies if the Mayor is elected in the first round or in the second round. However, it is superfluous to add further details about this aspect whose regulation can be found at Articles 72 and 73 of the TUEL.

the Province shall be elected by citizens by universal and direct suffrage” (Article 46, paragraph 1, TUEL).

The direct election of the ‘head’ of the local authority (Mayor for the Municipality, President of the Province for the Province) justifies the important powers that are attached to these roles and especially explains why the local form of government is described as characterised by a ‘presidentialist’ tendency.<sup>100</sup>

The Mayor and the President of the Province chair the Municipal and the Provincial Executive (Art. 50, paragraph 2, TUEL), appoint and revoke the members of the Executive (Art. 46, paragraphs 2 and 4, TUEL),<sup>101</sup> appoint the directors of the local offices and services (Art. 50, paragraph 10, TUEL).

However, the local form of government is only ‘basically’, but not entirely, presidential. The Municipal Council and the Provincial Council can actually pass a no confidence vote in order to oblige the Mayor or the President of the Province to resign. At the same time, if, as a consequence of, or independent of a no confidence vote, the Mayor or the President of the Province decide to (or have to) resign, the Municipal or the Provincial Council respectively are dissolved before the end of term. The essence of the relationship between the Municipal (or Provincial) Council and the Mayor (or President of the Province) is effectively summarised by the Latin expression ‘simul stabunt simul cadent’ (‘together they stand, together they fall’).

Despite the ‘simul stabunt simul cadent’ rule, in practice the head of the local authority (Mayor or President of the Province) is the cornerstone of the local authority. The (Municipal or Provincial) Executive is no more than a body of ‘collaborators’ of the Mayor or of the President of the Province (cf. Art. 48, paragraph 1, TUEL). The only important act which falls within the exclusive competence of the Executive is the approval of the Regulation on the Organisation of the Offices and Services, which is an act regulating the tasks of the directors of the different offices and departments of the local authority (Art. 48, paragraph 3, TUEL).

In addition to the power to vote on a no confidence motion, the (Municipal or Provincial) Council has the right to adopt the (Municipal or Provincial) Statute and all the Regulations of the local authority, with the sole exception of the Regulation on the Organisation of the Offices and Services. Consistent with the ‘presidentialist’ nature of the local form of government, the (Municipal or Provincial) Council does not have the power to intervene in all

100 Cf. M. Volpi, ‘Enti territoriali, forma di governo e sistemi elettorali: estensione e limiti dell’autonomia’, in *Diritto pubblico comparato ed europeo*, 2007, No. 3, pp. 1182 ff., at pp. 1194–1195.

101 According to the Administrative Court of Lombardy, Milan, First Division, Ruling No. 7480 of 9 December 2010, in *Foro amministrativo*, TAR 2010, 12, pp. 3768 ff., the appointments which fall within the responsibility of the Mayor and the President of the Province reflect a judgment of the head of the local authority, based on individual trust. The consequence is that when the head of a local authority leaves the office, also the appointed person has to leave their office.

subject matters. In other terms, it lacks 'general competence'. The competence of the Council is limited to those 'subject matters' expressly provided for at Article 42 of the TUEL.<sup>102</sup>

In practice the power of the (Municipal or Provincial) Council is limited by the circumstance that the Mayor (or the President of the Province), thanks to the electoral system, is usually supported by a large majority within the Council. This guarantees a solid support for the proposals and the initiatives of the 'head' of the local authority.

### 8.5.8 *The Mayor as Government Official*

The organisation of the Municipalities and of the Provinces is very similar. However, an element is different; the position of the Mayor (the head of the Municipality) as Government Official, that is, as official of the State.

The status of the Mayor can be traced back to the 'centralistic' Napoleonic tradition of local government in Italy. According to this tradition, the Mayor holds a 'double hat'; the first as head of the Municipality, and the second as Government Official. In his capacity as Government Official, the Mayor has a number of competences which are exclusively attached to this 'hat', and which do not belong to his other 'hat', that is, to the role as representative of the local community.

Among his responsibilities as Government Official there are; 'civil status', 'register office', 'public security' (Art. 54, paragraph 1, TUEL). Pursuant to these responsibilities, the Mayor will be entitled to officiate at civil weddings and to manage the recruitment in the military. Finally, in his capacity as Government Official, the Mayor can adopt urgent measures (in the form of ordinances) aimed to tackle exceptional situations affecting the public safety. This power has been further expanded, insofar as the Mayor has been given the authority to adopt ordinances even outside the requirements of 'urgency' and 'exceptionality', especially with a view to tackle a possible lack of security within the territory of the Municipality.<sup>103</sup> However, in 2011

102 Article 42(2) of the TUEL states that: "The Council has a competence which is restricted to the following fundamental acts . . ." (for example, approval of the Statute, approval of plans and strategies of the local authority, conventions with other local authorities, etc.). The Council of State, First Division, in its Ruling No. 3894 of 21 October 2010, in *Foro amministrativo*, CDS 2010, 10, pp. 2249 ff., held that the competence of the Municipal Council is limited to the 'fundamental acts of the local authority', that is, acts outlining plans and policies, whilst all acts referring to the functions of governing bodies shall be left with the Municipal Executive. In a similar way cf. Administrative Court of Calabria, Catanzaro, First Division, Ruling No. 463 of 4 April 2011, in *Foro Amministrativo*, TAR 2011, 4, p. 1392.

103 On this point see S. Villamena, 'Le ordinanze di «ordinaria amministrazione» del Sindaco (spunti problematici)', in *Nuove autonomie*, No. 2/3, 2009, pp. 637–673. Legal scholarship dealt with this issue extensively. See for example the special issue of the law journal *Le Regioni*, 2010, pp. 15–449, with 24 papers on this topic.

the Constitutional Court declared unconstitutional such a wide-ranging power of the Mayor to issue ordinances beyond situations of 'urgency' and 'exceptionality'.<sup>104</sup>

## 8.6 The functions of local authorities

### 8.6.1 *Difficulty of the subject*

The identification of the administrative functions of the local authorities is quite a complex exercise. Such complexity originates from a few elements; the principal being the lack of a comprehensive regulation of the functions of the local authorities. Such lack has created a great deal of confusion and has caused conflicts between the different tiers of government around the allocation of a certain power; in a number of subject matters it is still unclear 'who' is supposed to do 'what'.

The problem stems from the 'poor' quality of legislation on local government and, more recently, also from the legal recognition of the principle of subsidiarity. The introduction of the principle of subsidiarity in the Italian legal order (see *supra* section 8.1.2 and section 8.2.2) further complicated the division of administrative competences between the different tiers of government. The concept of subsidiarity by nature implies a 'flexible' allocation of administrative functions. The law no longer attributes the functions to the Municipalities or the Provinces in a 'rigid' and 'uniform' way. On the contrary, the allocation of a function depends on the 'adequacy', that is, on the efficiency, of the local authority.<sup>105</sup>

As pointed out by legal scholar Luciano Vandelli,<sup>106</sup> subsidiarity embraces, but it is not limited to, the concept of 'proximity'. Accordingly, subsidiarity does not automatically imply that higher tiers of government have to transfer their administrative functions to the authorities which are closest to the citizens. Subsidiarity also implies that a local authority has to be able to implement the tasks and to achieve the objectives which it has received. Subsidiarity should be read in conjunction with the principle of 'adequacy'; that is, the 'closest' local authority should be transferred an administrative function, only if it is able (that is, it is 'adequate') to perform it in a way which is efficient and economic.<sup>107</sup>

In the Italian legal order it is complicated to apply the principles of 'subsidiarity' and 'adequacy', because the local authorities (especially the

104 Cf. Constitutional Court Ruling No. 115 of 4 April 2011.

105 See for example Article 7(1) of Law No. 131 of 5 June 2003, entitled "Legal provisions for adapting the legal order of the Republic to the Constitutional Revision Act No. 3 of 18 October 2001".

106 See L. Vandelli, *Il Sistema delle autonomie*, cited in f'note 1, p. 131.

107 See G. M. Salerno, *L'efficienza dei poteri pubblici nei principi dell'ordinamento costituzionale*, Torino, Giappichelli, 1999.

Municipalities) are very different from one another; for example, there are Municipalities with a few hundred and Municipalities with a few million inhabitants (cf. *supra* section 8.1.1). Therefore the implementation of the principle of subsidiarity requires a ‘differentiation’ in the allocation of the administrative functions between the local authorities belonging to a same ‘tier of government’, in order to ensure that an administrative function is exercised in the best possible way. This makes it very difficult to specify which functions belong to a given tier of local government. The State (or regional) law should attribute the administrative functions on a ‘case-by-case’ basis, taking account of the specific characteristics (size and organisation) of each Municipality or Province.<sup>108</sup> This is the essence of the principle of ‘differentiation’.<sup>109</sup>

The existence of Regions in the Italian legal order further complicates the allocation of administrative functions. In the subject matters falling within its legislative competence, a Region may choose to transfer a regional function to local authorities within the Region. However, other Regions could choose to keep the same function to themselves. As a result, each Italian Region could put in place a different scenario in relation to the number and the type of administrative functions devolved to local authorities.

In light of the above, it is impossible to provide a fully-fledged framework of the allocation of administrative functions to Provinces and Municipalities. Such framework could only be provided by analysing the laws in force in each Italian Region.

### 8.6.2 *The functions of local authorities*

Despite the aforementioned difficulties, it is possible to provide a generic outline of the administrative functions which are traditionally attached to the local authorities. This is easier in relation to the Provinces, as Article 19 of the TUEL lays down a list of ‘subject matters’ which (used to) fall within the remit of the Provinces. As mentioned above (see *supra* at section 8.5.5), the responsibilities of the Provinces have been recently modified by the

108 See L. Vandelli, *Il Sistema delle autonomie*, cited in F note 1, p. 131. The author explains that “striking a balance among these criteria [subsidiarity, proximity, adequacy, and differentiation], and their practical implementation, is a task of the State or the regional law in accordance with their respective competence”.

109 The principle of differentiation is the opposite to the principle of uniformity. Article 118 of the Constitution, by expressly recognising the principle of differentiation, denies any parallelism or correspondence between the different tiers of government and their functions. This implies that the landscape of the distribution of administrative functions varies according to time and geographical location in order to ensure the best possible execution of administrative action. Cf. E. Griglio, *Principio unitario e neo-polcentrismo. Le esperienze italiana e spagnola a confronto*, Padova, 2009, p. 80. On this point see also M. Cammelli, ‘Amministrazione (e interpreti) davanti al nuovo Titolo V della Costituzione’, in *Le Regioni*, 2001, p. 1282.

Government led by Mario Monti. However, within this section of the work, the remit of the Provinces will be described as it used to be prior to the 'Monti reform'. Unlike for Provinces, neither the TUEL nor any other piece of State legislation outline with comparable clarity the 'subject matters' which fall within the scope of the competence of the Municipalities.

According to Article 19 of the TUEL the functions of the Provinces are:

- (a) land protection, protection of the environment, prevention of natural disasters;
- (b) maintenance and exploitation of water resources and sources of energy;
- (c) maintenance and exploitation of the cultural heritage;
- (d) roads and transport;
- (e) protection of flora and wildlife, protected areas and nature reserves;
- (f) hunting and fishing in internal waters;
- (g) waste management, regulation of wastewater and of sounds' or gases' emissions;
- (h) healthcare services;
- (i) tasks relating to the organisation of public high schools, artistic education, vocational training, school buildings;
- (j) collection and analysis of data and technical or administrative assistance to (other) local authorities.

This list of 'subject matters' does not cover the entire scope of the competences of the Provinces. State or regional law can actually attribute further competences to the Provinces in accordance with the principle of subsidiarity.

In order to add further details on the 'functions' of the local authorities, including those of the Municipalities, in the following part of this chapter section I will adopt the classification proposed by Luciano Vandelli.<sup>110</sup> He identified three 'comprehensive areas' which match those outlined in the State legislation that transferred the administrative functions to the State and to the Regions, that is, mainly, the Decree of the President of Republic No. 616 of 1977, Legislative Decree No. 112 of 1998, and the TUEL. These three 'comprehensive areas' are:

- 1 economic development and industrial activities;
- 2 land, environment, infrastructures;
- 3 services for the person and the community.

The first area (economic development and industrial activities) includes: 'agriculture', 'woodland', 'craftsmen', 'energy', 'job market', 'trade'. In relation to 'trade', for example, the Municipalities are responsible for authorising the opening of new shops and for deciding the opening times for the sale of groceries and drinks. Important functions belong to the Provinces in the

110 See L. Vandelli, *Il sistema delle autonomie*, cited in f'note 1, pp. 138–146.



field of 'energy'; planning and authorising the creation of new power plants; monitoring the efficiency of the existing power plants. The Provinces also have important responsibilities in the 'job market' field; promoting the match of demand and supply of work; providing vocational guidance and training.

The second area (land, environment, infrastructures) includes: 'town planning', 'environment', 'roads', 'transport'. In the field of 'town-planning', for example, one finds the adoption of the town-planning scheme by the Municipality (namely, by the Municipal Council). In the same field the Provinces have the power to adopt a provincial coordination plan (that is, a plan coordinating all town-planning schemes) and to monitor the correct implementation of the municipal town-planning schemes. In the field of 'transport', the Municipalities have the task to adopt the road traffic plan in towns and cities. In the same field the Provinces plan the road-network outside towns or cities and regulate the driving schools.

The third area (services for the person and the community) includes: 'health protection', 'social services', 'education and support of schooling', 'cultural activities'. The Municipalities perform a major role in the field of 'social services'. This field includes support of persons (or families) who are in need for economic or psychological assistance. In the same field the Provinces play an important role in relation to 'education and support of schooling', and especially in relation to the maintenance of school buildings.

It is submitted that new (State or regional) laws would be required in order to clearly define the remit of the local authorities.

### *8.6.3 The 'networks' for the exercise of the 'functions' and the supply of the 'services' of the local authorities*

The performance of functions and the supply of services by an 'association' of local authorities is a problem widely debated in Italian law and politics. This problem is due to the existence of a large number of local authorities whose size is small. More specifically, the majority of the Italian Municipalities have very little population and territory. Mutatis mutandis the situation of the Provinces is similar to that of the Municipalities.

This situation limits the ability of the local authorities to perform their tasks adequately. The TUEL devotes Articles from 30 to 35 to the 'forms of association', that is, to the arrangements that can be put in place to ensure the joint performance of local 'functions' and 'services'. Article 30 regulates the 'Conventions' ('Convenzioni'), Article 31 the 'Consortiums' ('Consorti'), Article 32 the 'Unions of Municipalities' ('Unioni di Comuni').

The objective pursued through these 'forms of association' is to ensure a cheaper and more efficient performance of tasks which would normally fall within the remit of a single local authority. A classic form of joint administrative action of local authorities is the 'convention' between a few Municipalities for the appointment of a common Secretary of the Municipality (Segretario

Comunale). In this way, one Secretary of the Municipality provides his “legal and administrative assistance”<sup>111</sup> to more than one Municipality.

Associations are typically set up in the field of ‘waste management’ and ‘public transport’ (usually these ‘associations’ are in the form of a ‘Convention’, Art. 30 TUEL, or of a ‘Consortium’, Art. 31 TUEL). An important form of cooperation between different local authorities and different tiers of government is the cooperation for executing public works (roads or telecommunication networks) which require “integral and coordinated action by Municipalities, Provinces and Regions” (“azione integrata e coordinata di Comuni, Province e Regioni”).<sup>112</sup>

### 8.7 Establishment, territorial modification and merger of Provinces and Municipalities

Both the Constitution and the TUEL contain provisions on the ‘establishment’ and the ‘transformation’ of Municipalities. In order to establish a new Municipality (or in order to modify the district or the name of a Municipality), Article 133(2) of the Constitution lays down two basic rules: first, the competence belongs to the Region where the Municipality is located; second, the regional decision (in the form of a regional law) follows a “consultation with the populations involved”.

On several occasions the Constitutional Court had the opportunity to deliver its interpretation of the expression “populations involved” used at Article 133(2) of the Constitution. In a first judgment the Court held that the required consultation should be limited to the “populations directly affected”, that is, the population residing in the portion of territory which is subject to transfer from a Municipality to another.<sup>113</sup> More recently, the Court overruled its earlier jurisprudence and established that “the detachment from a Municipality of a portion of its district, no matter the size, may have an impact on the interests of the entire Municipality and of its entire population”.<sup>114</sup> In other words, according to the Court, the expression ‘populations involved’ includes also those people who do not live in the detached portion of territory, but who may still face any direct consequence from the detachment of part of the municipal district.<sup>115</sup>

The TUEL pursues the objective to prevent a further ‘disintegration’ (‘polverizzazione’, lit. ‘reduction to a powder’) of the Italian territory. Article 15(1) of the TUEL stipulates that all new Municipalities shall have a minimum

111 See Article 97 of the TUEL.

112 This is the ‘Program Agreement’ (‘Accordo di Programma’) of Article 34 of the TUEL.

113 Cf. Constitutional Court Ruling No. 453 of 27 July 1989.

114 Cf. Constitutional Court Ruling No. 94 of 7 April 2000.

115 On this topic see E. Leotta, *Note minime sull’istituzione di nuovi Comuni in Sicilia: referendum parziale o totalitario?*, in [http://www.giustizia-amministrativa.it/documentazione/Leotta\\_Istituzione\\_di\\_nuovi\\_comuni\\_in\\_Sicilia.htm](http://www.giustizia-amministrativa.it/documentazione/Leotta_Istituzione_di_nuovi_comuni_in_Sicilia.htm).

of 10,000 inhabitants. This limit does not apply if the new Municipality is the result of a merger of two or more previously existing Municipalities. Special financial benefits are allocated to those Municipalities which decide to merge.

Article 132(2) of the Constitution regulates the case of one or more Municipalities (or Provinces) which request to be detached from a Region and incorporated in another (this phenomenon is known as ‘migration’ of local authorities). In such a situation the procedure is more complex than for the establishment of new Municipalities. First, a referendum is required which obtains the majority of the populations of the Municipality or Municipalities (or Provinces) concerned. Second, after the detachment has been approved by referendum, a State law is required for its final approval. A recent example of ‘migration’ is that of the Municipalities located in Alta Valmarecchia. Law No. 117 of 3 August 2009 authorised their migration from the Region Marche to the Region Emilia-Romagna. According to the Constitutional Court, the migration of local authorities is rooted in a right of local communities to self-determination.<sup>116</sup> However, the recognition of this right seems to be in conflict with the constitutional right of the Regions to preserve their cultural, political and social identity.<sup>117</sup>

Changes in provincial boundaries and the institution of new Provinces within a Region are proposed by the Municipalities and require a State law passed after consultation with the Region concerned (cf. Art. 133(1) of the Constitution). The Constitution does not contemplate the merger or the suppression of Provinces. The lack of a specific procedure leads to believe that a Province can be suppressed only through the constitutional revision process of Article 138 of the Constitution.<sup>118</sup>

## 8.8 The relations between the different tiers of government

### 8.8.1 *The forms of coordination of the action of the different tiers of government*

After the 1997–1998 Bassanini reform and the 2001 constitutional reform, the Italian system has become ‘polycentric’ (cf. *supra* section 8.1.2). A number of State competences have been transferred to the local authorities and, as a result, also the relations between the different tiers of government have

<sup>116</sup> Cf. Constitutional Court Ruling No. 334 of 10 November 2004.

<sup>117</sup> See T. E. Frosini, *Da una Regione a un'altra. Il percorso costituzionale dei comuni*, in *Federalismi.it* ([www.federalismi.it](http://www.federalismi.it)), 20 January 2010.

<sup>118</sup> Cf. B. Caravita, *Abrogazione o razionalizzazione delle Province?*, in *Federalismi.it* ([www.federalismi.it](http://www.federalismi.it)), 20 September 2006. A different opinion is held by M. Renna, *Brevi considerazioni su province e altri enti "intermedi" o di area vasta*, in [http://www.astrid-online.it/~le-trasf/Note-e-con/Renna\\_Area\\_vasta\\_15.9.06.pdf](http://www.astrid-online.it/~le-trasf/Note-e-con/Renna_Area_vasta_15.9.06.pdf).

increased. This part of the paper will be devoted to the relations between State and local authorities and between Regions and local authorities.

### *8.8.2 Relations between the State and the local authorities*

In order to coordinate the action of the State with that of the local authorities, the Decree of the President of the Council of Ministers of 2 July 1996 instituted the State-Cities-Local Autonomies Conference (Conferenza Stato-Città-Autonomie Locali). Originally, this Conference was built as a 'permanent table for study and discussion' aimed to favour the exchange of information and the resolution of problems between the State and the local authorities. Later, Legislative Decree No. 281 of 28 August 1997 reshaped the Conference as a more structured organisation.

Article 8 of Legislative Decree No. 281 regulates the composition of the Conference. It is composed of the President of the Council of Ministers (this is how the office as Italian 'Prime Minister' is called), a few Ministers,<sup>119</sup> the President of the National Association of Italian Municipalities (Associazione Nazionale Comuni Italiani, ANCI), the President of the Union of Italian Provinces (Unione Province d'Italia, UPI), six Presidents of Provinces nominated by UPI, fourteen Mayors nominated by ANCI, and, finally, representatives of State bodies, of local authorities and of public institutions.

The tasks of the Conference are listed at Article 9 (paragraphs 5–7) of Legislative Decree No. 281. Among those, there is the "study, information, and dialogue" relating to those general political guidelines which may affect the functions of the Provinces and of the Municipalities. This activity ("study, information, and dialogue") is the basis for a coordination of the relations between the State and the local authorities. Indeed it gives the Conference the opportunity to issue informed opinions on how to best balance the interest of the State and those of the local authorities. The position of the Conference is legally 'quasi-binding'; that is, an administrative measure which is in breach of an opinion issued by the Conference may be void on grounds of a 'misuse of powers' ('eccesso di potere', which derives from the 'bad', or 'incorrect' exercise of administrative discretion). It needs to be pointed out that the Conference, in addition to 'administrative' coordination (that is, the coordination of the administrative activities of the different tiers of government), also ensures 'political' coordination between State and local authorities.

Legislative Decree No. 281 instituted another organisation coordinating the action of the State with that of the other tiers of government. This organisation is the Unified Conference (Conferenza Unificata), which 'merges' the State-Cities-Local Autonomies Conference and the State-Regions Conference (Conferenza Stato-Regioni). The State-Regions Conference is a forum for

119 The Minister of Interior (or the Minister for Regional Affairs), the Minister of Treasury, State Budget, and Economic Planning, the Minister of Finances, the Minister of Public Works, and the Minister of Health.

cooperation between the State and the Regions.<sup>120</sup> It is apparent how the Unified Conference has the role of bringing together all the different tiers of government under one 'roof', when there are issues that need to be discussed which affect all the tiers of government.

It is thanks to the described 'system of conferences' that a dialogue between the representatives of the State and of the other tiers of government has become possible. This dialogue produced 'agreements' on various topics in accordance with the method of 'loyal cooperation' as developed by the Constitutional Court.<sup>121</sup> The 'system of conferences' is not the only way in which a link between State and local government is established. In addition, there are also other bodies which ensure the link; the Civil Administration of the Department of Interior, the Economy Department, which is responsible for the funding of local authorities, and the Prefect. Over the last few years the role of the Prefect has become quite important,<sup>122</sup> insofar as it performs tasks relating to the maintenance of public order and public security, and coordinates the action of the Local Offices of the State with that of the local authorities.<sup>123</sup>

### 8.8.3 *The relations between the Regions and the local authorities*

In matters falling within the scope of their legislative competence, the Regions have the power to allocate the administrative functions to local authorities in accordance with the principle of subsidiarity (cf. *supra* section 8.3.3). It is therefore understandable that a structured dialogue needs to take place also between the local authorities and the Regions.<sup>124</sup>

Article 123 of the Constitution stipulates that each Region shall have a consultative body on relations between the Regions and local authorities; the Council of Local Authorities (Consiglio delle Autonomie Locali, CAL).<sup>125</sup>

120 The State–Regions Conference is composed of the President of the Council of Ministers, the Presidents of the Regions and the Presidents of the Autonomous Provinces of Trento and Bolzano. According to the Italian Constitutional Court (Ruling No. 116 of 31 March 1994) the State–Regions Conference is the privileged forum for the discussion and negotiation of policy between the State and the Regions.

121 Cf. F. Merloni, 'La leale collaborazione nella repubblica delle autonomie', in *Diritto pubblico*, 2002, p. 827 ff.

122 Cf. M. R. Ingenito, *Il rappresentante dello Stato e della Conferenza permanente*, in *Federalismi.it* (www.federalismi.it), 8 April 2009.

123 On the coordination role of the Prefect cf. the Decree of President of the Republic No. 180 of 3 April 2006.

124 On this topic see P. Bilancia (ed.), *Modelli innovativi di governance territoriale. Profili teorici e applicativi*, Milano, 2011.

125 See T. Groppi, 'Un nuovo organo regionale costituzionalmente necessario. Il Consiglio delle autonomie locali', in *Istituzioni del federalismo*, 2001, No. 6, pp. 1057–1078; G. U. Rescigno, 'Consiglio delle autonomie locali e Costituzione', in *Politica del diritto*, 2003, pp. 243 ff.; M. Cosulich, 'Il Consiglio delle autonomie locali come strumento di raccordo fra Regioni ed enti locali: un possibile modello?', in R. Balduzzi (ed.), *Annuario DRASD 2010*, Milano, 2010, pp. 117–135.

Regional Statutes and regional laws have implemented the constitutional provision relating to the CAL.<sup>126</sup>

It follows a summary of the contents common to most regional regulations of the CAL:

- It consists of the Presidents of the Provinces and of the Mayors.
- It is a consultative body expressing 'non-binding' opinions on regional legislative bills relating to matters of local interest.
- In some Regions the CAL has the power to introduce a legislative bill before the Regional Council.
- It is a forum where 'agreements' and 'understandings' between Regions and local authorities from that Region can be achieved.
- In some Regions (for example, Emilia-Romagna and Lazio) the CAL can request the Region to challenge a State law before the Constitutional Court on grounds of a violation of the constitutional autonomy granted to the local authorities.

#### *8.8.4 The control on the action of the local authorities*

In this part of the paper on the relations between the different tiers of government, it is appropriate to deal with the control on local authorities. Actually, the State and regional control on local authorities is a form of State or regional intervention on local authorities and has an influence on those authorities.

Italian legal scholars distinguish three types of administrative activities: 'active', 'consultative', and 'control' activities.<sup>127</sup> The first is the actual action of public authorities, that is, the action aimed to achieve the institutional goals of public authorities. The second is aimed to deliver opinions on proposals (for example, this is the case of the Conferences; cf. *supra* section 8.8.2). The third is a check of various profiles of the action carried out by public authorities.

The control on the administrative action of local authorities formed the focus of the reforms of the 1990s and of the 2001 constitutional reform (cf. *supra* section 8.1.2). The part of the TUEL which was most affected by the 2001 constitutional reform is that relating to the control on local authorities. After the reform several forms of control have been abolished due to their incompatibility with the constitutional reform.

The constitutional basis of control is in Article 97 of the Constitution. According to this provision the administrative action is bound to abide by two fundamental principles: 'efficiency' ('buon andamento') and 'impartiality'

126 Cf. Regional Law of Calabria No. 1 of 1997; Regional Law of Liguria No. 13 of 2006; Regional Law of Piedmont No. 30 of 2006; Regional Law of Puglia No. 29 of 2006 and finally Regional Law of Sardinia No. 1 of 2005. On this topic see L. Vandelli, *Il Sistema delle Autonomie Locali*, cited in Fnote 1, pp. 226–230.

127 See A. M. Sandulli, *Manuale di diritto amministrativo*, Napoli, 1989, pp. 589 ff.



(‘imparzialità’). With specific reference to local authorities, another important provision was Article 130 of the Constitution, later repealed by the 2001 constitutional reform. This Article stipulated that “In conformity with State law, a regional body exercises in a decentralised manner a control on the legality of the acts of the Provinces, of the Municipalities and of the other local authorities”. This ‘regional body’ was the Regional Control Committee (Comitato Regionale di Controllo, CORECO). With the repeal of Article 130 also the provisions of the TUEL relating to the CORECO (Articles 126–136) were impliedly repealed.<sup>128</sup>

Other forms of control on local authorities remain in place. The TUEL distinguishes three categories of control; on the ‘acts’, on the ‘organs’ and on ‘administration’ (‘gestione’).

The first category (control on the acts) largely constituted a competence of the CORECO and was abolished by Article 130 of the Constitution. Within this category only the control provided at Articles 137 (“Government’s substitute powers”) and 138 (“Extraordinary annulment”) of the TUEL survived the 2001 constitutional reform. These forms of control were actually deemed compatible with that reform, as they are fully consistent with Article 120(2) of the Constitution.<sup>129</sup> The element that the substitute power and the extraordinary annulment have in common is that they are tools for the protection of the national interest in the context of a State in which a considerable number of administrative functions have been transferred to local authorities (Bassanini reform). When the local authorities fail to act, the national Government has the power to intervene through the substitute power, and when the local authorities adopt illegal acts, through the power of extraordinary annulment. These two powers counterbalance the enhanced role of the local authorities after the Bassanini reform. At the same time, in order not to diminish the constitutional status of the local authorities, these powers shall be exercised by the Government only in exceptional situations. This explains why the administrative courts have surrounded this power of a number of guarantees in favour of the local authorities.

The second category (control on the organs) is regulated by Articles 141–146 of the TUEL. This type of control mainly applies to the political organs of local authorities (for example, the Mayor and the President of the Province). In case a political organ is found responsible of serious violations

128 A few rulings state that the abolition of the administrative control on local authorities is due to the principles of autonomy and subsidiarity provided by Article 118 of the Constitution. Cf. Regional Administrative Court of Abruzzo, Pescara, Ruling No. 302 of 6 March 2003.

129 Under Article 137 of the TUEL the national Government can act for local authorities when it ascertains the inertia of the local authorities in performing their administrative functions, if from such inertia derives: the “non-compliance with the obligations stemming from membership in the EU”, or the “risk of a serious damage to the national interest”. The “extraordinary annulment” of an act by the Government (cf. Article 138 of the TUEL) pursues the objective to strike down illegal measures issued by local authorities.

(for example, ‘acting in breach of the Constitution’ or ‘serious and repeated infringements of the law’), the person in office can be suspended or removed by the Minister of Interior. Once again, in order to protect the constitutional status of local authorities, suspension and removal shall take place only in exceptional circumstances.

The third category is the control on administration. This form of control can be further sub-divided into two sub-categories: ‘internal control’ (when the control activity is carried out internally, that is, within the local authority) and ‘external control’ (when the control activity is carried out by an external authority). The first form of control (internal control) is the result of an evolution from the original pattern of a control of legality to the current pattern of control of the quality of the administration. The new type of control (control of the quality of the administration) does not focus on a single administrative measure but on ‘administration’ in general and assesses the results of administration.<sup>130</sup> This new pattern of control draws inspiration from private companies. The principal aim is to guarantee ‘efficiency’ and ‘effectiveness’ of administrative action through a balanced relationship between ‘resources used’ and ‘results achieved’.

The second form of control (external control) finds its regulation at Article 148 of the TUEL. According to this legal provision, the Court of Accounts (Corte dei Conti) carries out a control on the “sound financial administration” of the local authorities and, more specifically, on the achievement of a “balanced budget” in relation to the Internal Stability Pact (between State and local authorities), and in relation to the constraints deriving from the EU.<sup>131</sup>

#### *8.8.5 Other forms of control: popular action, class action, Civic Defender*

Article 9 of the TUEL stipulates that “Each voter is entitled to file to court any lawsuit pertaining to the Municipality and the Province”. This right is a form of control by citizens (or, in broader terms, by the ‘people’) in support of a local authority. The citizen can actually act for a local authority which failed to take legal action and can bring a case before a court in the interest of that local authority. This is an exception to the general rule; that an applicant can only take legal action if he or she has a legal interest in doing so. The Council of State (the supreme judicial body in administrative matters) held that the described ‘popular action’ (‘azione popolare’) is a form of ‘acting for’ local authorities by the citizen. The action is actually “aimed to enforce the rights and interests of the [local] authority in case of inertia of its representatives”.<sup>132</sup>

130 See Articles 147, 196, 197, and 198 of the TUEL.

131 See Article 7, paragraph 7, of Law No. 131 of 5 June 2003.

132 Cf. Council of State, Fifth Division, Ruling No. 2889 of 28 May 2001. More recent judgments are: Council of State, Fifth Division, Ruling No. 2457 of 29 April 2010, and Council of State, Fourth Division, Ruling No. 4130 of 9 July 2011.

More recently, another legal remedy has been introduced; the ‘class action’ against the public administration.<sup>133</sup> Like for the ‘popular action’, also the ‘class action’ is a tool for improving the quality of administration rather than a form of protection of the rights of the claimant citizens. This clearly emerges from Legislative Decree No. 198 of 20 December 2009. Article 1 of the Decree states that the ‘class action’ shall pursue the objective to “restore the correct performance of a function or the correct provision of a service”. Along the same lines Article 1(6) of the Decree establishes that the citizens bringing a ‘class action’ before a court shall not be entitled to receive compensation. An interesting example of ‘class action’ is the action taken by a few associations of consumers, parents and pupils against the Department of Education (a branch of State administration) in relation to the ‘chicken coop classrooms’ (‘classi pollaio’); that is, those public schools’ classrooms with a number of pupils above the legal cap. The Administrative Court upheld the claim and ordered the Department of Education (a branch of State administration) to comply with the legal cap.<sup>134</sup>

Another instrument for the control of the legality of the administrative action of Municipalities and Provinces is the Civic Defender (‘Difensore Civico’).<sup>135</sup> Article 11 of the TUEL defines the ‘mission’ of the Civic Defender. His role is to ensure the ‘efficiency’ and ‘impartiality’ of local administration by combating “abuses”, “malfunctions”, “deficiencies”, and “delays” by the local authority (these are all manifestations of ‘maladministration’, which in Italian is called ‘cattiva amministrazione’). The TUEL does not provide any additional detail as to the role of the Civic Defender. The specific regulation of this organ is left with the Statutes and the regulations of the single Municipalities and Provinces. The Statute needs to regulate the election system, the eligibility criteria for the office, the cases of incompatibility with the office, and, especially, the ‘access’ to the Civic Defender by the citizens.

In practice the most important ‘power’ of the Civic Defender is to warn the political organs of the Municipalities or of the Province (especially, the Mayor and the President of the Province) of any episodes of ‘maladministration’. This ‘warning power’ promotes awareness of maladministration by the local authority and puts the local authority in a position to address the issue in a timely way (this phenomenon is known as ‘self-defence by an administrative

133 Legislative Decree No. 198 of 20 December 2009, entitled “Implementation of Article 4 of Law No. 15 of 4 March 2009, on legal remedies aimed to promote the efficiency of public authorities and of providers of public services”.

134 Regional Administrative Court of Lazio, Roma, Third Division, Ruling No. 552 of 20 January 2011.

135 On the Civic Defender in Italian and comparative perspective see S. Villamena, ‘Mediatore europeo e «buona amministrazione» (Profili ricostruttivi della tutela del Mediatore europeo attraverso la buona amministrazione comunitaria)’, in A. Contieri *et al.* (eds), *L’interesse pubblico tra politica e amministrazione*, Vol. 2, Napoli, 2010, pp. 251–270.

authority', 'autotutela amministrativa', which is when a public authority rectifies a previous mistake).

Being an organ of the local authority, the Civic Defender is theoretically able to check the administrative action 'from inside'. His particular position may actually enable the Civic Defender to flag up serious episodes of maladministration. The position of the Civic Defender is further strengthened (in principle) by his power to investigate a matter on his own initiative, without necessarily waiting for a complaint to be put by a citizen against the local authority.<sup>136</sup> The potential strong role of the Civic Defender 'scared' most local authorities. Indeed, a few of them decided not to establish a Civic Defender at all, whilst others decided to limit his independence through a system of election that links the Civic Defender to the majority party within the Municipal or the Provincial Council.<sup>137</sup>

A recent development needs to be flagged up. In order to cut the public spending, the national Parliament (by Law Approving the State Budget for 2010<sup>138</sup>, 'Legge finanziaria per il 2010') established that the Municipalities shall abolish the Civic Defender.<sup>139</sup> However, the effects of this law are unclear as the cited Law did not expressly repeal (or amend) Article 11 of the TUEL. According to some scholars the Municipalities, with the approval of the respective Region, may still decide to keep their Civic Defenders.<sup>140</sup>

## 8.9 The associations of local authorities

Both the Provinces and the Municipalities created private associations<sup>141</sup> with the task of representing their interests at national level. The Provinces are members of the Union of Italian Provinces (Unione Province d'Italia, UPI).<sup>142</sup> Its Statute (that is, the 'constitutional charter' of the association), at Article 4, lays out the aims of the UPI. Its principal aim is "to represent the Provinces vis-à-vis the Parliament, the Government and the other

136 Article 11(1) of the TUEL.

137 In almost all Municipalities and Provinces the Civic Defender is elected by the Municipal Council by absolute majority. It is not hard to guess that the majority party (or coalition of parties) will not normally elect an 'enemy'. It is submitted that this possible lack of independence is the most significant problem in relation to the Civic Defender.

138 Law No. 191 of 23 December 2009.

139 Article 2, paragraph 186, Lit. a), Law No. 191 of 23 December 2009.

140 See E. Frediani, 'La funzione di tutela procedimentale del difensore civico e degli istituti ad esso affini nella più recente legislazione regionale', in *Giurisprudenza italiana*, 2011, pp. 6 ff., who makes reference to two important regional pieces of legislation: Law of the Region Tuscany No. 19 of 27 April 2009 ("Regulation on the regional Civic Defender"), and Law of the Region Lombardy No. 18 of 6 December 2010 ("Regulation on the regional Civic Defender").

141 As such, they are regulated in the Civil Code.

142 With the sole exception of the Provinces of Trento, Bolzano, and Aosta. The official web site of the UPI is <http://www.upinet.it/upinet/province.bfr>.

bodies of the State, as well as vis-à-vis the Community institutions . . . and the Regions”.

The majority of the Italian Municipalities (about 7,000) are members of the National Association of Italian Municipalities (Associazione Nazionale Comuni Italiani, ANCI).<sup>143</sup> This association represents the interests of the Municipalities as a ‘tier of government’ at national level. According to Article 1(4) of its Statute the ANCI nominates the representatives of the Municipalities within the State-Cities-Local Autonomies Conference (Conferenza Stato-Città-Autonomie Locali) and within the Unified Conference (Conferenza Unificata).

### 8.10 Implementation of EU law at local level

Like any other public authority, the local authorities are bound to abide by EU law and are involved in their implementation and application within the domestic jurisdiction. In recent time this role of local authorities has grown significantly due to a few new legislative innovations; the most important being the introduction of the subsidiarity principle in the Constitution.

As previously stated (see *supra* section 8.2.2), this principle implies that the administrative functions need to be allocated preferably to those local authorities which are closer to the citizen. As a result, a number of administrative functions, which are regulated by EU law, end up being performed at local level by Municipalities and Provinces.<sup>144</sup> A few examples can be provided; ‘local public services’, ‘public contracts’,<sup>145</sup> ‘trade’ (especially in relation to aspects regulated by EU competition law).

Article 137 of the TUEL provides that in case of inertia causing “non-compliance with the obligations deriving from EU membership” the Government is entitled to use their substitute power and to act for the local authority.

Integration in the EU has pushed local authorities to establish ‘links’ between themselves and the EU institutions. A number of Municipalities have created ad hoc offices, whose role is to provide accurate information on EU policies affecting the local authority, and especially on funding made available by the EU.<sup>146</sup>

<sup>143</sup> The official web site of the ANCI is <http://www.anci.it>.

<sup>144</sup> See for example Article 1 of Law No. 241 of 7 August 1990 entitled “New rules on the decision-making process of administrative authorities and on the right of access to administrative documents”, according to which, after the constitutional reform introduced in 2005, “administrative action” shall be compliant with the following criteria “appropriate cost-benefit assessment, effectiveness, impartiality, publicity and transparency” (“economicità, di efficacia, di imparzialità, di pubblicità e di trasparenza”), as well as with the “principles of the Community legal order” (“principi dell’ordinamento comunitario”).

<sup>145</sup> Cf. Article 192 of the TUEL.

<sup>146</sup> For example the Municipality of Bologna has created such an office (<http://www.iperbole.bologna.it/europedirect/>).

## 8.11 The reform of local government

In Italy the reform of local government has been the subject of a vivid but not always very fruitful debate. For a long time, the opinion has been voiced that the Provinces should be suppressed.<sup>147</sup> However, paradoxically, in the last few years the number of the Provinces has grown.<sup>148</sup> In relation to this aspect something new happened following the arrival of the Monti Government in late 2011.

The main problem with the reform of Italian local government is that most proposals lack 'vision'. Indeed, far from engineering a new system of local government, most proposals are mere attempts to tackle the economic crisis and to comply with EU-determined budget constraints. This is not a good method for reforming the system (haste makes waste!). A credible reform of local government demands a thorough debate in Parliament and in the country.

The reduction in the public sector's expenditure is the real objective of all recent legislative interventions affecting local authorities.<sup>149</sup> One example is the attempt to diminish the number of the Mountain Communities with the related aim to lower the State funding of these authorities.<sup>150</sup> The Constitutional Court struck down this 'mini-reform' with the argument that the topic is not a State competence but a regional competence.<sup>151</sup>

A second example is the recent reform of the Provinces.<sup>152</sup> Faced with the political impossibility of suppressing the Provinces and with the absolute need for cutting their cost, the Monti Government (incumbent)

147 See the legislative bill No. 1587 of 17 June 2009, available at <http://www.senato.it/leg/16/BGT/Schede/Ddliter/33740.htm>.

148 On this point, see S. Civitarese Matteucci, 'La garanzia costituzionale della Provincia in Italia e le prospettive della sua trasformazione', in *Istituzioni del federalismo*, 2011, pp. 467 ff.

149 See F. Merloni, 'Il sistema amministrativo italiano, le Regioni e la crisi finanziaria', in *Le Regioni*, 2011, p. 599 ff., and G. G. Carboni, 'Il coordinamento dinamico della finanza pubblica negli ordinamenti decentrati, tra limiti costituzionali e vincoli economici', in *Le Regioni*, 2011, pp. 605 ff. In order to overcome the problem of their debt, a number of local authorities have chosen to resort to derivative instruments of finance, that is, exactly those instruments that led many banks to bankruptcy. Law No. 448 of 28 December 2001 allowed local authorities to issue bonds and to take loans. Quite often these 'tools' have not been used in a proper way. On this topic, see A. Luberti, 'Strumenti finanziari derivati: legittime le limitazioni all'autonomia negoziale degli enti locali', in *Giurisprudenza italiana*, 2010, pp. 10 ff.; and S. Vesentini, 'Il giudice civile si pronuncia sui derivati utilizzati dagli enti locali: l'up front nei contratti di Interest Rate Swap', in *Responsabilità civile*, 2010, 12, pp. 821 ff.

150 See Article 2, paragraphs 17–26, of Law No. 244 of 24 December 2007 (Budget-Setting Law for 2008, 'Legge finanziaria per il 2008').

151 Constitutional Court Ruling No. 237 of 24 July 2009, No. 27 of 28 January 2010, and No. 91 of 21 March 2011.

152 The reform is contained in the 'Rescue Italy' Decree (decreto 'Salva Italia, Law Decree No. 201 of 6 December 2011, transposed into Law No. 214 of 22 December 2011). This reform also applies to the Provinces of the Regions with special autonomy.



made the existing Provinces 'lighter', both in terms of responsibilities and organisation.<sup>153</sup>

In terms of responsibilities, the Provinces shall now be attributed solely the functions relating to 'direction and coordination' ('indirizzo e coordinamento') of the activities of the Municipalities.<sup>154</sup> In terms of organisation, the Provincial Executives (see *supra* section 8.5.5) have been suppressed,<sup>155</sup> the number of seats within the Provincial Council has been capped at ten,<sup>156</sup> and the President of the Province shall be elected by the Provincial Council among its members<sup>157</sup> (whilst before the reform he was directly elected by citizens). In sum, the Provinces have been deprived of a large part of their authority.<sup>158</sup>

Law No. 42 of 5 May 2009, concerning primarily the implementation of Article 119 of the Constitution, has been the basis for the adoption of a number of legislative decrees (cf. *supra* section 8.5.4). The first of them is the Decree allocating to Municipalities and Provinces, as well as Regions, real properties owned by the State.<sup>159</sup> This decree was followed by the Decree conferring special autonomy to Rome as the capital city of Italy.<sup>160</sup>

Later, three legislative decrees were approved which can be traced back to the concept of 'fiscal federalism'. The first decree is concerned with the "Standard financial needs of Municipalities and Provinces".<sup>161</sup> The second is concerned with the implementation of 'fiscal federalism' at the level of the

153 However, the recent Decree Law No. 95 of 6 July 2012 (transposed into Law No. 135 of 7 August 2012) paves the way to a possible reduction of the number of the Italian Provinces. Art. 17 and Art. 18 of the Decree stipulate that, through a series of measures passed at central and at regional level, the number of the Italian Provinces will be reduced. Only the larger Provinces (both in terms of territory and of population) will remain. The 'reshuffle' of the Italian Provinces should be completed by the end of 2013. It should lead to the survival of 'only' 51 Provinces in the 15 Regions with ordinary autonomy (slightly above the half of the current total number). No reduction is provided for the Provinces of the 5 Regions with special autonomy.

154 Art. 23, paragraph 14.

155 Art. 23, paragraph 15.

156 Art. 23, paragraph 16.

157 Art. 23, paragraph 17.

158 By 31 December 2012 both the State and the Regions will have to transfer to the Municipalities all those functions of the Provinces which are not 'direction and coordination' (cf. Article 23, paragraph 18). Should the Regions not execute the transfer on time, the State will be entitled to act for them ('substitute power' pursuant to Art. 8 of Law No. 131 of 5 June 2003).

159 Legislative Decree No. 85 of 28 May 2010. On this piece of legislation see A. Police, 'Il federalismo demaniale: valorizzazione nei territori o dismissioni locali?', in *Giornale di Diritto Amministrativo*, 2010, 12, p. 1233 ff., and A. Lezzi, 'Federalismo demaniale. Prime riflessioni sul decreto legislativo 28 maggio 2010, n. 85', in *Rivista giuridica dell'ambiente*, 2011, 2, p. 229.

160 Legislative Decree No. 156 of 17 September 2010.

161 Legislative Decree No. 216 of 26 November 2010.

Municipalities.<sup>162</sup> The third decree is concerned with the implementation of ‘fiscal federalism’ at regional level and more specifically with the cut to public spending for the public healthcare system (which is mainly within the responsibility of the Regions).<sup>163</sup>

More recently, three legislative decrees have been enacted relating to:

- 1 provision of resources for the economic inequalities among the different areas of the country;<sup>164</sup>
- 2 harmonisation of accounting methods and budgets of the Regions, Provinces, and Municipalities;<sup>165</sup>
- 3 penalties and prizes for Regions, Provinces and Municipalities.<sup>166</sup>

Overall it emerges from all the mentioned new legislative acts that there is a trend towards the establishment of a system in which the local authorities, instead of receiving all (or the major part of) their funding from the State, collect (at least part of) their own financial resources within their own territory and community.<sup>167</sup> For example, the aforementioned decree on the introduction of ‘fiscal federalism’ at the level of the Municipalities (Legislative Decree No. 23 of 14 March 2011) establishes at Article 2(1) that taxes on mortgages and rents relating to real properties located within their municipal district should be attributed to the Municipalities. By the same token, the same decree (cf. Article 4) allows the Municipalities to impose a “tax on temporary stay” on those people (mainly tourists) staying in hotels, bed & breakfast, etc. located within their district. The income from this tax should be used for funding interventions for promoting tourism, protecting the cultural heritage and the environment, or funding local public services.

The implementation of the illustrated principle (enhancement of the financial self-sufficiency of the Municipalities) may lead to unacceptable inequalities in the provision of some basic public services (public schools, public healthcare, social welfare, etc.), if Municipalities (especially those from the South of Italy) are incapable of offering the same standard of services supplied in other (richer) areas of the country. However, the resignation in late 2011 of the Berlusconi Government, which had proposed the introduction of ‘fiscal federalism’ as an essential part of their political manifesto, and the

162 Legislative Decree No. 23 of 14 March 2011.

163 Legislative Decree No. 68 of 6 May 2011.

164 Legislative Decree No. 88 of 31 May 2011.

165 Legislative Decree No. 118 of 23 June 2011.

166 Legislative Decree No. 149 of 6 September 2011.

167 On the topic of the sources of funding and the expenditures in the different Italian Regions see B. Baldi, ‘I “numeri” del federalismo fiscale: un confronto fra le Regioni’, in *Istituzioni del federalismo*, 2010, pp. 495 ff. See also S. Civitarese Matteucci, ‘Sistema regionale-locale e finanziamento delle autonomie’, in *Istituzioni del federalismo*, 2010, pp. 81 ff.

presence in office of the Monti Government may well delay the implementation of 'fiscal federalism'.

In 2009, the (Berlusconi) Government prepared a legislative bill with the aim of determining the 'fundamental functions' of Municipalities and Provinces in accordance with Article 117(2), Lit. p, of the Constitution (see *supra* section 8.3.4). Article 2 of the bill identifies 21 fundamental functions of the Municipalities, including "local public services", "trade", "town planning", "roads", "social services", "school services". Article 3 of the bill identifies 19 fundamental functions of the Provinces, including "civil protection" (that is, protection against natural and man-made disasters), "environment", "public transport", "job centres and vocational training". Last but not least Article 13 of the bill delegates the Government to adopt the "Charter of local autonomies" in order to "bring together and coordinate" all the State laws on local government. The legislative bill (dated 19 November 2009) has been thoroughly examined by parliamentary committees but has not yet become law.<sup>168</sup> However, as previously stated (cf. f'note 56), Article 19 of the Decree Law No. 95 of 6 July 2012 contains the first legal enumeration of the 'fundamental functions' of the Municipalities.

In January 2012, the Government led by Mario Monti approved the 'Decree on the liberalisations' ('decreto sulle liberalizzazioni'),<sup>169</sup> which aims to establish competition in a few economic sectors traditionally administered by the Municipalities; for example, the issue of taxi licences (Article 36), and the sale of newspapers and magazines (Article 17, paragraph 4).

## 8.12 Conclusion

Since the coming into effect of the Constitution of 1948, the local authorities have gained a significant political and legal status. However, the Italian system could implode due to the plethora of public bodies, including over 8,000 Municipalities.

Good administration is extremely difficult to provide in a system with so many Municipalities and in which very big Municipalities (with a few million inhabitants) co-exist with very little Municipalities (with only a few hundred inhabitants). Certainly, the introduction in the Constitution of a principle as controversial as subsidiarity did not help determine a clear allocation of responsibilities between the different tiers of government.

168 Articles 2 and 3 of the Government's legislative bill dated 19 November 2009 containing "Identification of the fundamental functions of Municipalities, Provinces and Metropolitan Cities, simplification of the legislation on the Regions and on the local authorities, and delegation to the Government of the transfer of administrative functions [to local authorities], [of the implementation] of the Charter of Local Autonomies, and of the rationalisation of the Provinces and of the local offices of the Government. Reorganisation of public authorities and decentralised institutions".

169 Decree Law No. 1 of 24 January 2012 "Urgent provisions on competition, development of the infrastructures and competitiveness".

Because the number of Municipalities remains so high and the Municipalities are so different from one another in terms of inhabitants, resources, personnel, etc., it will be very difficult to pass a comprehensive and coherent reform of municipal government.

A possible solution could be to oblige the Municipalities to merge or to associate in order to manage their functions in a more efficient and economical way. This objective can be achieved through the provision of financial incentives; for example, by granting extra-funding to those Municipalities which decide to merge and by reducing the funding of those Municipalities which refuse to do so.

The Government's policy to reduce public expenditures deserves a positive evaluation. However, until now, the Government's initiatives have affected only the Provinces (as well as the citizens, via higher direct and indirect taxation) and not the Municipalities. It appears that the reform of local authorities in Italy finds a nearly insurmountable obstacle in the traditionally strong municipal tier of government, which cannot be easily reduced or cancelled.

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