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THE JOINT CONFERENCES AMONG THE STATE, THE REGIONS AND THE LOCAL AUTHORITIES

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1. GENERAL FRAMEWORK

In recent years a discussion has taken place in Italy over the possibility of transforming the Senate of the Italian Republic into a house representing autonomous local and regional bodies. Projects of this sort have been, however, unsuccessful. The institution of a "Federal Senate of the Italian Republic", elected on a regional basis, actually constituted one of the key points of the Constitutional Law approved in 2005 by the Italian Parliament. Yet the law failed to gain the consensus of the electorate in the referendum of 2006, and this caused the fall as well of that very provision for a Federal Senate.

Over time the tendency for the legislature to fragment administrative functions (and subsequently also political ones) has become deeply rooted, to the point that such functions have been dispersed among the various levels of government, making difficult the identification of the people responsible for taking decisions. In order to compensate for this

fragmentation, the law has provided for a number of mechanisms to link the various subjects involved. Such mechanisms are both of a procedural nature, (consider, for instance, protocols of understanding, agreements, consultations, etc); and of an organizational nature, with the formation of a multiplicity of agencies by sector, created to address the needs of individual areas of activity, composed of representatives of the national State, and of local and regional administrations, and located at the central level.

In short, from the first decades of the last century, and increasingly during the first forty years of the Republican era, the representative associations of municipalities and provinces (and more recently those of the mountain communities[1]) have played an important role in the management of the relationship between the State and the system of local authorities. Moreover, the national laws, on several occasions, have devolved to the latter specific tasks to be performed.

Having in mind these contextual elements, the events that, in almost twenty years, have brought the Italian juridical order to establish, define the tasks, and occasionally, to arm with constitutional protections a series of joint conferences, (and specifically those composed of representatives of the various governmental levels) can be easily understood. The conferences serve, at the same time, both a normative and an administrative purpose – in terms of the former, in a period of progressive transfer of the powers of the State to the regions and local authorities, they represent a substitute for the missing constitutional reforms; - in terms of the latter, these conferences may be helpful in rationalizing the offices connecting the various levels of government, and, as such, they also absorb the tasks of a number of preexisting agencies. Finally, the joint conferences serve a political purpose

[1] This refers to a public authority made up of several mountain and foothills municipalities, often belonging to different provinces. Their goal is to promote the value of mountain areas, and to perform functions assigned them as well as those assigned to municipalities.

as well, since they constitute the principal site of negotiation and of shared decision-making on common interests among the most important national public authorities.

We have three important confirmations of the importance that these joint conferences have assumed over time. First of all, the model of the joint conference - that is to say an agency which simultaneously represents of the levels of government below the central State and is a site of negotiations amongst one another - has been adopted at the European level, with the introduction in 1992 of the Council of the Regions. Moreover, the model has spread within the regions themselves; with the establishment of a series of joint agencies between regions and local municipalities, as well as those among various local governments.

Secondly, the functions assigned to the conferences have grown, significantly, over time. Since 1997 around 350 State laws have established consultation with (or the intervention of) a national joint conference, in order to define the technical aspects and/or the implementation procedures of State interventions. It is worth noting also the regional laws assigning functions to the joint agencies that they have established.

Finally, in addition to those governed by law, we can add those functions assigned to the joint conferences by the State, by the regions and by the local authorities. Among these, in particular, it is worth mentioning the use of the national conferences as a site of negotiation and of discussion between the national State and local/regional authorities on the interpretation, the implementation and the adjustment of the new constitutional provisions.

Moving from such a general framework, in what follows the joint conferences operating at the national level (Section 2) are analyzed, and subsequently those operating at the regional level are examined (Section 3).

2. THE NATIONAL JOINT CONFERENCES

The main permanent conferences operating at the national level are the State-Regions Conference, the State-Cities Conference, and the Unified Conference.

In chronological order, the first was the State-Regions Conference, established, first, by a 1983 Presidential decree, and later by a 1998 law. This Conference is chaired by the Prime Minister, or by a minister on his behalf; the presidents of the regions and the ministers concerned with the matters on the agenda for the day are also invited.

Its main functions are the following: first of all, it advises the government on the broad outlines of State legislation that is of direct interest to the regions; it also gives its advice on how to determine the goals of national economic planning and of financial and budget policy; on general guidelines for elaborating and implementing European Union acts concerned with regional functions; and on any issue of regional interest that the Prime Minister decides to present to it.

The conference also promotes and establishes understandings and agreements between the State and the regions; encourages the coordination between State and regional planning; designates the representatives of the regions in agencies relating to the State; insures the exchange of data and information between the government and the regions: determines the criteria for the distribution of financial resources that the law assigns to the regions: elects those responsible for authorities and agencies that carry out activities or provide services relevant to the exercise of functions shared by government and regions; endorses the pattern of agreement type to be used by both the State and the regions at State and regional offices. Decisions are taken by consensus with the government, and, according to the issue, either the unanimous or the majority consent of the presidents of the regions.

The second joint conference is that which, modeled on the first, brings together the representatives of the State and of the local authorities; this is the State-City Conference. Also similar to the other conference is the relevant legislation. It was established, first, by a 1996 Presidential decree and later by a 1997 legislative decree, that codified the rules fixed by the first decree. The conference is chaired by the Prime Minister (or by a minister

delegated by him) and the most important ministers assigned to local matters also take part. It also includes the presidents of three associations representing local authorities (the National Association of Italian Municipalities – ANCI; The Union of Italian Provinces – UPI; the National Union of Mountain Communities – UNCEM); as well as fourteen mayors and six provincial presidents, designated by the respective representative association.

The functions assigned to the State-City Conference are of four types: First, it coordinates the relationship between the State and local authorities. Second, it acquires information and encourages discussion between the representatives of the State and those of local authorities on the issues connected to the direction of general policy relevant to the functions of municipalities and provinces. Third, it discusses and examines problems regarding the kinds and functions of local authorities, finance, and personnel of the latter, and the management of and carrying out of public services assigned to them. Finally, the State-City Conference is expected to promote agreements between State and local officials.

The same1997 legislative decree establishes a third conference, the Unified Conference. This results from the union of the other two and constitutes, therefore, the principal site of unitary representation between regions and local authorities at the central level. The functions of the Unified Conference are similar to those of the two conferences that are part of it. It promotes and establishes understandings and agreements; it advises; it designates representatives to the agencies assigned to deal with matters of common interest to the regions, the provinces, the municipalities and the mountain communities. The Unified Conference then, is involved in the decision-making process for important choices for State policy. For example, it must give its advice on the most important economic and financial planning legislation; it must be consulted by the government on the general direction of the policies of local and regional public personnel; and also here, as in the previous cases, the Prime Minister can bring to the Unified Conference any other issue of common interest to the regions, the provinces, the municipalities and the mountain communities.

Also of interest are the rules that govern the Conference' decision-making processes. The principle is that these depend on a consensus of all three components of the Conference. The position of the regions and of the local authorities are determined internally by the respective groups. As a rule, the decisions are taken by unanimity. But where this is not possible, the will of the majority prevails. Therefore, to the rule of consensus among the representatives of the various levels of government, is added the practice of consensus (not imposed but sought) within and between each of the two subsets of local authorities.

In conclusion, let us consider the overall workings of these institutions.

The first important thing to note is intense activity. Between 1997 and 2010 the three conferences came together on average fifty times a year and have carried out altogether 5647 acts, of which half consist of advisements (2548 of them). These numbers are significantly differentiated, among the individual conferences: to the State-Cities for example, not more than 10% of the overall activity can be attributed, while the State-Regions conference thus far has been the most productive. Other data, however, confirm the growing importance of the conferences in the Italian constitutional order.

A second aspect regards the functioning of the conferences themselves. Most of the work is done, in fact, during special technical meetings between the State and regional administrative functionaries and the representatives of ANCI, UPI and UNCEM, that take place before the conferences. Every year, around three hundred meetings of this kind are held, and, it is in the course of these that, as a general rule, disagreements between the various administrations are settled. Because of this, the conferences, instead of representing effective forums for discussion between the representatives of territorial bodies, ratify the solutions already agreed to in preliminary hearings among the various interested parties.

3. THE REGIONAL JOINT CONFERENCES

Starting in the 1990s, in light of what happened at the national level, nearly all the regions instituted special permanent conferences among the regional and local executives. These, although called by different names, present common characteristics: they are presided over by the representative of the region; they let representatives of local authorities participate (these are chosen, in turn, by the regional organizations of ANCI, and of UPI); they have primarily consultative functions, and the rules for their functioning are somewhat informal.

In 2001, the need for a permanent structural contact between local and regional governments was given express constitutional recognition. In fact, Article 123, final section, requires the regional statues to regulate the council of local authorities, (hereinafter CAL), "as an agency of consultation between regions and local authorities". In the new regional statutes, CAL has either taken the place of, or, in some cases, has been added to the preexisting joint conferences. The new agencies, however, have become active only in about half of the regions, and have had too brief a lifespan for us to have a full understanding of the characteristics and problems related to their operations. To these, therefore, only a few lines are devoted, while instead some further consideration is given to regional regulation.

The new model of regional consultation is different in many ways from its predecessors. As far as its composition is concerned, all the regions have abandoned the formula of joint participation and are now oriented, in contrast, toward an agency restricted to representatives of solely local authorities.

Moreover, in the statutes, no reference is made to the representative associations of local authorities and only a few regional laws on implementation provide for their presidents the right to be part of the agency, or provide for their participation without voting rights. Therefore, unlike in the past, the local authorities directly elect their representatives to the CAL, without the mediation of ANCI and UPI.

Third, many regions, alongside the traditional consultative functions, assign to these agencies additional functions, such as those of regional legislative initiative; of proposing and of consultation; of naming or designating the local representatives to the regional agencies. Particularly interesting are the provisions of a few regions that assign to the CAL the power to ask the council and the president of the region to promote constitutional review in cases where a State law has violated a local function. The Italian Constitution, unlike its provisions regarding the State or the regions, precludes the municipalities and the provinces accessing the Constitutional Court directly in order to ask its protection of their role. Regional laws such as those mentioned do not resolve the problem (and cannot do so), because they leave to the regions the decision to develop further the request from local authorities; and also because they concern only injuries to the functions assigned to local governments by the State, not also those imposed by the regions themselves. But they represent, anyway, a tool that the local authorities can use to protect, within the limits allowed by the current constitutional frame work, the positions guaranteed them by the very Constitution. On a more general level, this is another example (alongside those of the conferences that function as substitutes with respect to the Federal Senate) of the use of joint conferences to act as surrogates for the unsuccessful proposals for constitutional revision.

A few quick words on how they work in practice. The CAL primarily carry out a consultative function (in general a successful one) on administrative measures and proposed regional laws. On the contrary instead, they rarely participate in the stipulation of understandings, conventions, and procedures for designating. The areas in which they primarily operate are those of tourism, education, commerce, fishing and land management.

Unlike what is provided by law, the representative associations of the local authorities continue to have a significant weight in these agencies. For instance, even in cases in which the regional law expressly assigns to the CAL the function of designating the members of a commission, the latter, in reality, follows the proposals of the presidents of ANCI and UPI. The development of CAL's advisement is still almost always preceded by the technical conferences (called by various names) in which the regional government and the associations representing the local authorities take part In general, it is the conclusion

arrived at in this forum that conditions the content of the advisement of the CAL. Therefore, even if formally they no longer take part, in reality, the associations of local governments nevertheless have a determining weight on the decisions of the CAL.

A last consideration needs to be made. If we compare the CAL and the national joint conferences, we can find common characteristics. First of all, both of them carry out primarily a consultative function in relation to state officials or regional agents, and they draft opinions which are nearly always favorable. Both are agencies for ratifying accords already reached between the executives (national, regional) and the representative associations of local or regional authorities in the course of special preparatory meetings. Finally, in both cases, in the dialogue of the local governments with the State or the regions, even if in different forms, the professional associations of local authorities are of primary relevance.