

**POLITICAL AND ADMINISTRATIVE ORGANIZATION OF THE  
ITALIAN REGIONS**

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**1. THE CONSTITUTIONAL FRAME**

The reform of the Title V, Part. II, of the Italian Constitution, carried out by the Constitutional Act No. 3 of 2001, has modified the structure of the Republic, as was enacted by the Constitution of 1948: the new version of the art. 114 Cost. confers equal status to the different local government bodies on the inside of the republican's system, which are now characterized by a form of self-government. Therefore, nowadays the Italian Republic is formed by those bodies (comune, provincia, città metropolitane, Regioni e Stato) which formerly represented only a mere administrative division of the State.

In this way, the art. 114 Cost. fulfils the content of the art. 5 Cost., that “recognizes” and “promotes” the local government bodies, assigning them a specific autonomy, that before the reform was given only to the Regions.

Pursuant the combined provisions of art. 5 and 114 Cost., a new structure of the State has arisen, with pivotal consequences about the status of the local government bodies, the allocation of responsibilities between the different level of government and in general the system of the sources of law.

Therefore, an approach to the legislative frame about the political and administrative organization of the Italian regions cannot leave aside an (even briefly) analysis of the new Title V, Part. II of the Constitution.

With the changes provided in 2001 the Regions can choose the form of government, while the pivotal principles about organization and functioning (art. 123) assign to the Regions a general legislative power (art. 117, par. 2, 3 and 4) whereas before the reform the Regions could legislate only about a few specific areas. Besides, the new constitutional provisions annul the preliminary control of the Government about the regional legislation (art. 127); expand the power of the Regions about the regulation (art. 117, par. 6); redefine the whole administrative system, moving from the principle of the subsidiarity (art. 118) and promote the financial autonomy of the Regions and the local administrative bodies (art. 119).

Basically, the reform of 2001 focused on each local government bodies, giving them much more autonomy than before, so that the general power to legislate does not belong to the State any longer.

Actually, as we are going to see, the situation cannot be represented so straightforwardly, because the State maintains the exclusive power to legislate about some areas, crossing the regional competence. This can certainly affect the regional legislative power, even in those areas where the Constitution assigned to the regional exclusive competence. In this way, even after the reform, the State can still have a paramount role among the political levels which compose the Italian Republic.

The Constitutional Court, speaking about the health care system, says that there are no specific areas which belong to the exclusive competence of the State, but instead there is a general power of the State to legislate about all the areas, in order to guarantee the everybody's right to get the health care, throughout the Country, without that the regional legislative power can narrow that right (decision 26 June 2002, n. 282).

Moreover, the Constitutional Court considered that the art. 114 Cost. does not mean that all the different political bodies are equal and set at the same level (decision. no. 274 of 2003).

### ***1.1 The implementation of the vertical subsidiarity's principle***

It has been already passed ten years since the reform was approved, therefore it is time to see how the situation has evolved. It is pretty easy to recognize that the original purpose of the reform is different from the current scenario, firstly with reference to the vertical subsidiarity's principle.

Contrary to the general expectations, that principle could face the possibility not to be implemented in the legal order, keeping instead only a theoretical value, which the State is going to draw an inspiration from.

With the reform of the Title V, the municipalities ("Comuni", i.e. the basic local government) should have had the general administrative competence. The legislator thought that the implementation of the vertical subsidiarity's principle in the art. 118 Cost. would have been useful to protect the preminent role of the municipalities (Comuni) about the regulation of the administrative functions. In other words, with the reform of the art. 118 Cost., the power of the national and regional legislator should have become weaker than before, precisely because the power of the local governments should have become stronger, at least regarding to the administrative regulations.

Regarding the organizational structure, the Regions should have kept only those functions related with guiding and coordinating responsibility and not referring to any operative decisions. Therefore, the original idea was that the regional structure would have been simplified, because most of the offices would not have been useful any longer, given that many competences should have been conferred to the local governments.

Should be noticed, however, that the reform of 2001 states that the general administrative competence of the local government would not have operated automatically. Instead, the efficiency of the whole system was related with a double legal source: the State had to identify the regional and local competences inside of the areas which are exclusive competence of the State; the Regions had to implement the administrative functions regarding to those areas where both State and Regions can still legislate and to the areas where the Regions have an exclusive legislative competence.

In this way, the State and the Regions had the opportunity to postpone and in general make less intense the devolution of the administrative functions to the local governments. For this reason the State and the Regions are retaining some important administrative functions.

Regarding to the national legislation, this effect has been caused partly by the Constitutional Court, with the famous decision no. 303 of 2003, where the Court established the so called “subsidiarity take over”. With this expression the Court said that, if the lower local governments (Comuni or Province) did not use properly the administrative functions, the upper bodies (Regions or State) could take over those functions from lower level, in order to guarantee the standard respect of the rights. In other words, the general administrative power belongs to the political level which is closer to the population (Comuni or Province), but – if it for some reasons is unable to operate – the next closer political level (Regions or State) is entitled to use that power.

This “subsidiarity take over”, however, cannot be focused only on the administrative functions, but can be related also with the legislative power. Once that State exercised the administrative function, the State itself could also provide the legislation in the same area.

In this way, the contraction of regional power may appear not so unreasonable, because otherwise would be impossible to exercise some essential functions.

Should be noticed that the “subsidiarity take over” is not automatic, but requires a procedure which involves both the State and the Regions. The public interest could be understood only with mutual consent and collaboration between the parties.

The meaning of subsidiarity, as appears in the decision no. 303 of 2003, has two different aspects. First, subsidiarity means that the legislative and administrative functions could be attracted by the upper political level (ascending attitude). Second, with the consent of the different political levels involved, subsidiarity has the capacity to make flexible the rigid order of the legislative competence stated by the art. 117 Cost (dynamic attitude).

The consent of the Regions (and the local bodies) became in several cases, an “essential element” (Constitutional Court, decision no. 233 of 2004) used to test the compatibility of national laws with the Constitution.

The analysis of the decisions provided after 2003 shows that the Constitutional Court has allowed increasingly the “subsidiarity take over”. The Court allowed the State to exploit the functions related with secondary regulation, and not only with the legislative power (decisions no. 214/2006, 168/2008, 76/2009), and also permitted the State to regulate the whole administrative regional procedure (decisions no. 88/2007, 165/2007).

From this point of view, the “subsidiarity take over” is not only an exceptional tool in order to guarantee the standard respect of the right throughout the country, but becomes an ordinary way used by the State to regulate functions which are formally already devolved to local government.

Moreover, there are some doubts about the use of the regional consent, which allows the State to take over relevant competences from the Regions. Specifically, it would be better if the law chose the criteria to identify how the Regions could effectively give the consent to use their power. Also, the law should decide when it is required a consultation with the Regions, or simply an advise, or instead when it would be necessary a proper agreement

between the Regions and the State. On the contrary, the Constitutional Court has used a criterion based on a case by case judgement in so far, even if it admitted that the Parliament should provide with a specific law (Constitutional Court decision 219/2005).

In this scenario, the regional legislation did not completely adapt itself to the new constitutional structure. This result is due to two main reasons: on one hand, the uncertainty created by the list of subjects of the art. 117 Cost. has caused many disputes between State and Regions; on the other hands, the lack of funds put a stop to the implementation of the financial autonomy, which is expressly recognized by the new art. 119 Cost.

This situation, as described above, seems to find confirmation even in the statistical data about the financial transfer from the Regions to the other smaller local governments (Comuni, Province e Comunità montane). In fact, this statistical data can be considered a revealing sign of the consequence of the constitutional reform. Actually, the results are very different from those expected when the reform was approved.

The financial transfers from the Regions to the local bodies, as average for the period 2006 – 2009, were 18,1% of the total amount of the expenditure. There are big differences not only between the Regions which have a particular form of autonomy under special Charters (13,7%) and the others (20,8%), but also between the different geographic areas.

Regarding the Regions with special autonomy, the most high rate is in the North Italy (21,9%, whereas in South Italy is only 9,3%), but should be noticed that this result depends on the fact that some Regions (Valle d’Aosta, Friuli Venezia Giulia e Province autonome di Trento e Bolzano) receive the transfer of the funds which are addressed to other local governments situated in their territories, whereas all the other Regions receive only their own funds.

On the opposite, the other Regions exploit the principle of subsidiarity more in Centre and South Italy (circa 24%) than in North Italy (16,9%). Also, the Regions with ordinary Charters used the subsidiarity more in the past, for example in the period 2002 – 2005: now we can see that the amount of financial transfers to local government is decreasing everywhere but in South Italy, where is it stable around 23%. According to this financial

transfer data, seems that during this years the principle of devolution has been carried out mainly in the Regions of the South Italy. This situation partly is caused by the fact that the Regions of South Italy began the devolution later than the Region of North Italy, which are used to doing that since 1970.

As described above, the regional legislation has not yet adapted to the changes provided with the reform of 2001. Another example of this situation is represented by the art. 117, par.2, lett. p), Cost., that entitle the State to exercise exclusive legislative competence about “electoral election, governance of local bodies”. There has been no implementation of this article, so the regional legislation is still the same.

The new structure of the Republic, as appears after the reform of 2001, requires a general and organic redefinition of the local government, and the first move, at this regard, is represented by the identification of the fundamental functions of the different political level. The redefinition of the local government as a whole has been felt by the Parliament, which on June 30, 2010 has approved a bill for the “Identification of the fundamental functions of Province and Comuni, simplification of the regional and local government legal order. Devolution.” This bill comes from the necessity to re-organize the local government, in order to reach the implementation of the art. 117, par. 2, lett. p) e 118. However, some pivotal points of this bill (called “Calderoli” from the Minister who proposed it) have been already overcome by other Acts (for example D.L. no. 78 of 2010), which makes more difficult the chance to get an implementation of the reform.

## **2. THE POLITICAL ORGANIZATION OF THE REGIONS**

The form of government of the Regions is deeply influenced by the Constitution, which provides a set of detailed rules on regional governance and regulate the relationships between decision-making centres operating at the regional level. In this way, although the art. 123 Cost. allows the Regions to choose their own form of government, in concrete the freedom of choice is not so wide.

First, the Constitution set the compulsory bodies of the Regions in Regional Council (Consiglio Regionale), the executive body of the administration (hereinafter simply “Giunta”) and its President. Even the name of this bodies cannot be changed, as the Constitutional Court provided with the sentences no. 106 and 306 of 2002.

There is another body, called Council of local autonomics (Consiglio delle autonomie locali), provided by art. 123 Cost. This new body is considered necessary to create a collaboration between the Region and its local bodies. According to the new Regional Charters already approved, the members of the Council of local autonomics are also members of the local government. Also, the new regional Charters say that the Council of local autonomics has a consultative function, which in specific cases can be so relevant to prevent the procedure from its finalization.

The new version of art. 123 Cost. (as modified by Constitutional Act no. 1 of 1999) set the election rules of the Region’s bodies, unless the regional Charters state in a different way. For the first time, the Regions can decide which kind of form of government they want, but always within the boundaries set by the Constitution. Actually the Constitution allows two possible models of government: a “standard” model, which is going to be used unless the approval of the new regional Charters, and a “derogatory” model. The first one is provided by the combined provision of art. 122, par. 5 e 126 par. 3 Cost: the President of the Giunta is elected directly the population. There is also a principle – *aut simul stabunt, aut simul cadent* – which says that if the President of the Giunta does not hold the office any longer (for resignation, retirement, removal), the Regional Council and the Giunta have to resign. However, this principle is working only if the regional statutory frame chose the direct election of the President of the Giunta. It is possible that the regional Charter chose a different rules about the election, as provides the art. 122 Cost.: even if in theory there are many possibilities, practically the only different solution appears to be that the President is nominated by the Regional Council.

Nowadays, all the Regions adopted the standard model, but some Regional Councils tried to pass Charters which could avoid the effects of the principle *aut simul stabunt, aut simul cadent*, but keeping the direct election of the President. The Constitutional Court



decided that there is no chance to avoid that principle, if the Regions want the direct election of the President (decision no. 304 of 2002, Charter of Region Marche, and no. 2 of 2004, Charter of Region Calabria). The only way to avoid the principle *aut simul stabunt, aut simul cadent* is that the President has to be nominated by the Regional Council.

The new electoral system about Regions, according to the new art. 122, par. 1, Cost (as modified by Constitutional Act no.1 of 1999), states that there are two different legal sources to determine the cases where the President or the other members of the Giunta or the Council are not eligible: the national law, which should provide a general framework, and the regional law, which should provide the specific rules. The Act n. 165 of 2004, the national law just described, identified the fundamentals principle about the electoral regional legislation and set in 5 years the duration of tenure of the elected members. The art. 122, par. 2, states that nobody could be at the same time member of another Regional Council or another Giunta or the European Parliament.

Nowadays not every Regions with an ordinary Charter approved their own electoral law: anyway, the Act. No.1 of 1999 stated that the election of the President has to be done when there is the election of the Regional Council; the candidates for the presidency are those who are the first in the electoral lists; the President is the candidate who is voted the most; the President belongs *de jure* to the Regional Council.

Regarding the transitional discipline, the sentence of the Supreme Court no. 16898 of 2006 (Corte di Cassazione) stated that the national law will be into force unless the Region will provide the case of ineligibility for the position of regional councillor.

After ten years since the approval of the Constitutional Act n. 1 of 1999, the Regions are still working on their organization. As it could be imagined, several Regions have dealt with the arrangement and the approval of the new regional Charters under art. 123 Cost., the review of the regulation order, the approval of the laws to create new statutory bodies (so called *Consulte statutarie e i Consigli delle autonomie locali*), the review of the electoral law. Some Regions have not yet approved the new Charter (Basilicata, Molise e Veneto), some other have instead modified their Charters (Piemonte, Emilia-Romagna, Toscana,

Umbria, Liguria, Marche e Calabria). Some Regions have approved changes in their internal organization and laws which have implemented their Charters; other regions have only modified the electoral law (Umbria, Campania, Toscana, Piemonte e Calabria. In Calabria, they have approved the primary election for the President of the Giunta.)

The Regions which modified their Charters have generally approved large reforms of their structure and internal organization, although the art. 123 Cost. would set only a few basic rules related with the form of government and fundamental principles. The Constitutional Court agreed with those actions, operating a distinction between the “compulsory content” and the “possible content” of the regional Charter (decisions no. 2/2004; 372, 379 e 379/2004).

The Constitutional Court defined the meaning of the art. 123, which states that the regional Charter has to be in “harmony with the Constitution”: it means that there must be no contrast between the regional Charter and the Constitution, avoiding the risk that the Charter would be respectful in theory, but disrespectful practically (decision no. 304/2002).

### **3. THE ADMINISTRATIVE ORGANIZATION OF THE REGIONS**

The Regions have a complex structure, whose design can be decided by the Regions by means of the Charter and the regional laws. Even under this point of view, the recent Constitutional reforms expanded the autonomy of the Regions. On one side, according to the art. 123 Cost., the fundamental principles of organization and functioning have been chosen by the regional Charter, even though they have to respect “the harmony of the Constitution”; on the other side, according to the new version art. 117, par. 4, Cost., the organization of the offices and the other local regional bodies belongs to the exclusive legislative power of the Regions, whereas before the reform the State could regulate this area with its own law.

Moreover, the new version of the art. 117, par. 2 Cost., confirms the extension of the regional legislative autonomy, when it is referring to the “administrative organization of the State and the other national bodies” (lett. g).

The Constitutional Court stated that this rule cannot allow the State to regulate all the public bodies operating in all the areas, but has to be referred to the specific functions assigned to the single public body and to the specific area in which it operates (sent. 270/2005) However, the national law can indirectly affect the regional autonomy: for example, speaking about the health care system, there are regional bodies (called “aziende sanitarie regionali”) which have been given that task. Since 1992, the national Parliament stated that these regional bodies belong to the regions, but in the meantime it has regulated their organizational structure. In Italy, the health care area is one of those that both the State and the Regions have the power to regulate. It means that, after the Constitutional reform of 2001, the Regions are entitled to regulate the organizational structure of health care system but always complying with the State rules, which contains the fundamental principles.

Another example of the fact that the State can set a limit to the regional autonomy is that the State can force the Regions to follow specific organizational rules when this is necessary for the safeguard of the general budget or the respect of a stability agreement (national or European).

Moreover, the Regions have to comply with the national law even about the status of the civil servants working for the Regions. For example the recent reform of this area, operated by the Act no. 15 of 2009 and no. 150 of 2009, appears to be binding on the regional organization.

Finally, all the Regions have a so called “direct and indirect” organization. The first one is represented by the organizational structures which are working for the executive branch (Giunta) or instrumental to its functioning, generally formed by departments and offices, related to single members of the executive board (“assessori”) and divided into line and staff categories. Also the Regional Council have its own autonomy and its own employees, so to guarantee its full independence from the regional executive branch. Another

distinction can be made between central and peripheral structure. Among the peripheral structures a specific reference has to be made to the regional liaison office with the European Union, which are established by all the Regions since 1996.

The “indirect” regional organization is pretty wide, formed by several bodies and agencies controlled by the Regions. The most part of the regional Charter approved after the recent constitutional reforms confirmed that the Regions exploited this “indirect” organization, without any relevant difference with the past. For this reason, the doctrine criticized that choices, with specific regard to the too wide “indirect” organization established by the Regions, while the Regions should only orient the actions of the local government instead of building their own organization in order to manage directly the administrative functions.

However, the regional administrative organization has been indirectly influenced by the reform of the national organization (privatization and, more generally, the decrease of the direct action of the State to the economy); in the last years, as a matter of fact, the national Parliament forced the Regions to decrease the public expenditure and to cut their instrumental bodies (Decree no. 78 of 2010), in order to guarantee the respect of the general balance and limit the public debt.

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