Italian Republic

(Repubblica Italiana)

Capital: Rome

Inhabitants: 59.448.163 (2007)

Area: 301.318 km²

1. Introduction

The Italian State is a regional State, meaning it falls between a federal State and a unitary State. The specific character of the regional State consists in the allocation of legislative power to regions. The constitutional reforms of 2001 completely revised Article V of the 1948 Constitution regarding local authorities (regions, provinces and municipalities) with clauses that have been rather difficult to interpret. The number of appeals brought before the Constitutional Court by the state and regions has never been so great since these reforms were made.

Article 5 of the Constitution, in which "The Republic, one and indivisible, recognises and promotes local autonomy", represents the constitutional basis for the powers (normative, financial and organisational) recognised as belonging to local authorities. The 2001 reforms introduced the principle of subsidiarity (Art. 118). This principle concerns the distribution of administrative powers; it aims to extend the administrative authority of municipalities to the majority of administrative functions, unless the demands of a unitary character are not sufficiently justified for allocating said functions to other authorities, according to a hierarchy that places the State on the bottom rung.

The notion that comes close to the concept of local authorities within the Italian judicial system is that of *"ente locale"* ("local entity"). This category can be broken down between those public establishments for which the territory only forms the framework for territorial responsibilities and powers on the one hand ("local entities" in the truest sense, as is the case with Chambers of Commerce), and those local authorities who perform general tasks and respond to the interests of the population they represent ("territorial entities") on the other. However, the recent legislative trend is to refer indiscriminately to "local entities" in the broadest sense of the term, simultaneously combining local authorities, establishments created out of intermunicipal cooperation and other establishments with independent powers

which have set territorial responsibilities and powers (*"autonomie funzionali"*).

2. Territorial Structure

There are 20 regions (15 of which have ordinary status and 5 of which have a special status guaranteeing them more powers), 103 provinces and 8,088 municipalities. However, only 136 of these municipalities have a population greater than 50,000 inhabitants, while more than 92% of the municipalities have a population that does not reach 15,000 inhabitants (a total of 7,466 municipalities). This is why intermunicipal cooperation has developed, even though the results are still quite modest. Many public intermunicipal cooperation establishments have been legally instituted and are defined as "local entities" (such as the *unioni di comuni* or the *comunità montane*).

For the first time since Fascism, Law 142/1990 regulated the system of local authorities. This Law developed the principle of autonomy established in Article 5 of the Constitution by strengthening local powers; most notably their normative powers. Its clauses are integrated within a legislative decree (Leg. Dec. 267/2000) which codifies the operation and organisation of the local authorities.

According to Law 142/1990, this autonomy is at the same time normative, administrative and financial, and within the framework of laws on finance it allows for the exercise of certain fiscal powers. The municipality is the authority that "represents its community, safeguards its interests and works for its economic and social development", while the province is "the intermediate authority between the municipality and the region, which represents its community, safeguards its interests, works for its development and coordinates it".

Moreover, this Law has provided for the formation of "metropolitan cities" (*"città metropolitana"*: new local authorities) within the agglomerations of Turin, Milan, Venice, Genoa, Bologna, Florence, Rome, Bari and Naples by consolidating neighbouring communities that demonstrate a strong degree of urban, economic and social integration. After this law was passed the metropolis was supposed to replace the province, but no "metropolitan city" has been established since 1990. The regional powers, responsible for delimiting the constituency of these metropolises and fearing a loss of importance in relation to them, were hostile to the idea. Due to this failure, Law 265/1999 reformed the procedure regarding the establishment of these metropolises by allowing for the power of replacement by the Government; reform was then made to Article V to constitutionalise these new authorities. However, none of this has brought about any practical result. The formation of these authorities is still very complicated: an assembly of all the mayors from the towns/communities concerned must propose a statute, then a referendum must be held in each town that participates in it, and finally the region has to present the draft bill before Parliament for the metropolis to be definitively created. In the case of Rome, constitutional reforms provide that State law (Art. 114, Const.) fix its status as the capital of the Republic (a measure that has not been applied for the moment).

In the middle of the 1990s, boosted by the separatist political party *Lega Nord*, important administrative reforms were approved (Law /1997 and the Leg. Dec. 112/1998). These reforms ceded a large share of administrative responsibilities and powers from the central authority to the

local authority. Certain specific administrative responsibilities and powers were left in the hands of the State, while all the other administrative responsibilities and powers were delegated to the regions, provinces and municipalities. In terms of legislative power, a similar process was accomplished in 2001 with the reforms to Article V of the Constitution, which overturned the meaning of Article 117: henceforth, the State would hold legislative responsibility and the power of allocation, while the regions responsibilities and powers would be residual.

With these constitutional reforms, the status of local authorities also changed greatly. The purpose of the new Article 114 is to place all the local authorities under the same plan and on parity with the State as essential parts of the Republic: "The Republic consists of municipalities, provinces, metropolitan cities, regions and the State" (paragraph 1). Nevertheless, the Constitutional Court declared that the State remain exceptional, giving it more important powers than those of the local authorities (Const. C. 274/2003). The second paragraph of Article 114, also allows that "Municipalities, provinces, metropolitan cities and regions are autonomous entities with their own statute, powers and functions according to the principles defined in the Constitution". By fixing their organisational structure and functions, the status of the local authorities is thereby given a constitutional base in comparison to regional and State laws.

3. Local Democracy

The electoral process for regions, "provinces" and municipalities are regulated by different laws: Law 81/1993 for municipalities and provinces, and Law 43/1995 for regions that have not exercised the ability that allows them to establish their own electoral processes, as was introduced by constitutional reform (Art. 123, Const.). However, the electoral processes produced by the regions (Tuscany, for example: 1.r. 74/2004) are quite similar to those found in the Law of 1995. They present substantial homogeneity to such a point that we may speak of an "Italian electoral model" characterised by a proportional system with a majority effect. This model results in a combination between a proportional system, the allocation of a bonus (in seats) to the majority coalition and the direct election of a local executive leader. On the one hand, this mechanism favours bipolarisation and stability among executives; on the other hand, it favours political fragmentation and heterogeneity among the coalitions themselves (and therefore, paradoxically, stasis). In fact, not only are alliances formed between parties with completely different political ideologies, but in certain cases new parties are formed with purely electoral aims, with the goal of enlarging the political field simply in order to win the bonus.

Municipal and "provincial" elections enter a second round if no coalition has obtained an absolute majority in the first (the bonus is given after the second round), while regional elections are composed of only one round (the bonus is given to the coalition that gains the majority vote, according to percentage obtained). A majority system is applied in municipalities with less than 15,000 inhabitants. The candidate who receives the largest number of votes is elected and the list of candidates that receives the largest number of votes obtains two-thirds of the seats in the municipal council, while the others share the remaining third.

The statute should provide for the means of direct civic participation (Art. 8 Leg. Dec. 267/2000): consultation with the population (a sort of public survey) and the possibility for citizens and associations to

present petitions and proposals for administrative action. The statute is free to provide for the terms a local referendum or not, but most municipal statutes have provided for them (for example, the Municipality of Rome has not only included a consultative referendum in its statute, but also an abrogative referendum for administrative action; on the other hand, the statutes of Naples and Milan only include a consultative referendum).

With regard to regions, the opposite is observed. Article 123 of the Constitution obliges the statues to regulate the organisation of regional referendums for abrogation of regional laws as well as administrative actions.

4. Relations between central and local authorities

Currently, the most important problem is to know who has power to legislate over the local authorities. Before the reform to Article V, the matter was clear: people did not doubt the fact that the state was the only competent entity (former Art. 128, Const.), and the system of local authorities was uniform throughout national territory.
With the reforms of 2001, the situation completely changed. Article 117 (paragraph 2, p) established that the State has exclusive legislative powers concerning "electoral legislation, local bodies and the *fundamental functions* of municipalities, provinces and metropolitan cities". This means that apart from the functions that can be qualified as fundamental, a distinction must be made. If these functions are reserved for legislation by the State as per Article 117, the competent source would be State law; however, if they are ceded to regional legislation, then regional law would be competent. National and regional law should not be too detailed: first, there are the statutes of local authorities, which are provided for in the Constitution from now on; second, Article 117 (paragraph 6) has constitutionalised a reserve of regulatory power in favour of the local authorities. In fact, this Article provides that the municipalities, provinces and metroplian cities "hold regulatory power to organise and fulfil the functions assigned to them".
Furthermore, Article 118 (paragraph 2) of the Constitution provides that they are responsible for their "own administrative functions" and those that are "conferred" to them by national or regional law. Therefore, within the system of their "own" administrative functions, the normative powers of the local authorities are broader. As a consequence, there is no longer an exclusively hierarchal relationship among the national and regional laws and the local sources (norms and statutes). Local sources are only subordinate to State or regional laws to the extent that the latter are entitled to intervene in the organisation and functions of the local authorities.

The result of this is that the principle of uniformity of the system of local authorities was abandoned: not only is State law authorised to provide for different systems based on the principle of differentiation (Art. 118), but the sources that might intervene in this issue are diverse (national and regional laws, statutes and norms created by the local authorities), thereby allowing for many problems of interpetation.

A draft bill is being prepared to modify the fundamental text on local authorities (Leg. Dec. 267/2000) with the aim of adapting it to the constitutional reforms of 2001 (a large number of these clauses are not related to "fundamental functions").

The constitutional reforms of 2001 significantly modified the system of control over local authorities. Prior to this, the principle of territorial hierarchy allowed for State control over the administrative and

legislative actions of a region, and regional control over the administrative actions of other authorities (municipalities and provinces), but then the Constitutional Articles that provided for these powers (Art. 125 and 130) were repealed. Nevertheless, control over these actions had already been drastically reduced by the reforms of 1997 (Law 59 and 127/1997, codified in Leg. Dec. 267/2000). The only ones remaining are: 1) control over the bodies (municipal, provincial and regional councils, as well as their corresponding executives) that can be used to dissolve or unseat them; 2) administrative control that takes place completely within the local authority concerned.

To fill the void, Law 131/2003 (Art. 7, paragraph 7) strengthens the powers of control over management of the regional sections of the State Audit Office (Law 20/1994). However, this control does not affect the validity of the actions; it leads to the drafting of a report by the local authority's financial management office, which is then passed on to its council. The council is the only one that can eventually adopt the measures.

At present, the dominant opinion is that there needs to be a "reform of the reforms" of 2001 because of the dysfunctions they have provoked. In fact, a great effort to harmonise them with the first part of the Constitution was pursued by the Constitutional Court, which has moderated the most radical aspects of the reform. Ruling 303/2003 substantially rewrote Article 117 of the Constitution, which regulates the distribution of legislative responsibilities and powers between the State and the regions. The constitutional judge established that the State may also intervene in those sectors where it has no express legislative responsibilities or powers when demands of a unitary nature so require. Therefore, the Court re-established the supremacy of the State in relation to the regions and other authorities, as well as—in certain cases and depending on certain conditions—the hierarchal relationship between national law and the norms produced by the regions and other local authorities.

At the beginning of the new legislature (the 15th) all the political parties declared their desire to correct the excesses of the reforms. Although propositions for constitutional bills have been presented before Parliament aiming to clarify the distribution of responsibilities and powers between the State and regions, the precariousness of the Italian political scene did not allow them to see the light of day.

5. Local responsibilities and powers (functions)

With regard to material responsibilities and powers, the municipalities manage industrial and commercial public services and social services. Moreover, they have decisive responsibilities and powers on the issue of territorial planning (Art. 13 of Leg. Dec. 267/2000), as well as the issue of economic development. The provinces (Art. 19 of Leg. Dec. 267/2000) hold responsibilities and powers when it concerns planning on a large scale (territorial growth, environmental and economic development). The "*comunità montane*", intermunicipal cooperation establishments, hold responsibilities and powers particularly with regard to territorial planning, economic infrastructure and development; these responsibilities and powers are added to the ones that are specifically delegated by the municipalities that participate in them. Finally, according to the constitutional model, the regions hold responsibilities and powers concerning legislation (Art. 17 Const.) as well as large-scale scheduling. The current trend in

recent legislation (Leg. Dec. 152/2006) is heading in the direction of transferring responsibilities and powers over certain public services (such as water and waste) to intermunicipal unions in order to allow for economies of scales. In most cases, the constituency of these unions is the same as that of the provinces. The usefulness of the provinces is disputable, because they do not directly manage important services. As for scheduling, it seems they are duplicating work performed in the regions.

6. Personnel

The system of public employment was privatised in the 1990s, with the exception of the armed forces, magistrates and university professors. From then, on in the public sector as well as in the private sector, the work relationship is defined by a private law contract rather than a public law contract, the competent judge in such matters being the judicial authority. This reform was ruled in compliance with the Constitution in the Constitutional Court according to which the privatisation of the public employment system does not by itself pose a breach to the impartiality of civil service (Art. 97, Const.; Const. C. 11/2002) even though it emphasised that this privatisation could not be complete, because the civil servant must always respect the principle of impartiality and represent the public interest (275/2001, 193/2002).

With regard to the local authorities' administrative management posts, it is necessary to distinguish between the municipalities and the provinces on the one hand, and the regions, which hold legislative responsibilities and powers on issues of regional civil service, on the other.

The reforms made to administrative operations started with the Law of 1990 on Local Authorities (142/1990, Art. 51), which simultaneously established administrative functions and weakened the traditional guarantee of employment for the first time in Italian legal history. Next, State legislation (Leg. Dec. 29/1993; Law 127/1997, called "Bassanini Law II"; and Leg. Dec. 267/2000) greatly modified the legal status of municipal and provincial secretaries, who had been State civil servants until 1997, charged with guaranteeing that local authorities respect the law. After 1997, the secretaries left the framework of State administration to become civil servants belonging to an autonomous agency (Art. 97, Leg. Dec. 297/2000), and all municipal and provincial secretaries appeared on a list managed by the latter (Art. 97, Leg. Dec. 267/2000). Secretaries are appointed directly by the head of the administration (mayor or president of the province), who may also revoke them after the deliberation of the "*junte*" (local executive) (Arts. 99 and 100, Leg. Dec. 267/2000). Moreover, the mayor and the president of the province can appoint a "city manager", who is attached to the secretary, recruited from outside the framework of the authority's administrators (and even from civil service) and employed via a set contract to implement the objectives established by the executive (Art. 108, Leg. Dec. 267/2000).

With regard to the regions, the management system is determined by regional laws which fall along the same lines.

It is clear that this system has created a strong level of politicisation among leaders (municipal and provincial secretaries, as well as the leaders of local authorities), which threatens the impartiality of the civil service. The Constitutional Court recently declared that the State and regional laws that allow for the broad application of a "spoils system" are unconstitutional (Const. C. 103/2007, 104/2007).

7. Financing for local authorities

Today, the financial autonomy of local authorities depends on Article 119 of the Constitution issued in the 2001 revision, according to which their revenue must allow them to completely finance the functions allocated to them. According to this clause, municipalities, provinces, metropolitan cities and regions enjoy financial autonomy with regard to revenue and expenditure, and have their own resources. Article 119 defines the three components for regional and local revenue:

- their own taxation system ("*tributi propri*"): the authorities may establish the taxes and rates themselves within the framework and according to the principles of public finance as defined by national law;
- participation in collecting national taxes in the territory of each authority;
- finally, national law may provide for transfers to territories with lower fiscal capacity (balancing funds), which the authorities can spend freely; to this can be added other resources or special interventions by the State into certain authorities for specific ends.
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The autonomous regions and municipalities may establish their taxes in compliance with the Constitution and the principles of public financial coordination. The Constitutional Court has specified that regions may not use their autonomous powers on fiscal issues in the absence of this law (Const. C. 26 January 2004, No. 37).

With regard to the regions, Legislative Decree 56/2000 introduced a new system of financing the health sector, anticipating the 2001 constitutional reforms. Whereas the former system relied mostly on State transfers, the new one rests on regional participation in State taxes (in this case, VAT) collected in the territory. Also, a balancing fund was established for regions with lower fiscal capacity. However, the parameters that determine the allocation of this fund have already brought about many objections. In fact, its application has produced a paradoxical effect: less financing for the poorest regions and more financing for the richest regions.

With regard to municipalities and provinces, their resources relied on the exercise of a fiscal power spread throughout the framework of national law until the start of the 1970s (in 1971 municipalities' own fiscal systems were 54.7% of the total resources, transfers 28.4%, non-fiscal revenues 16.9%). Law 825/1971 and Legislative Decree 638/1972 organised the centralisation of the local financing system (in 1977, municipal revenue represented 15.1% of the total, against 65% in transfers and 19.9% from non-fiscal revenue) (Giannone: 2006, 161).

The reforms of the 1990s (Law 142/1990, Leg. Dec. 504/1992, Leg. Dec. 446/1997) and the 2001 constitutional reforms decentralised local financing once again. However, since the legal framework for principles of public finance provided for by Article 119 had still not been adopted (a draft bill voted on by the government 3 August 2007 was not successful), the Constitutional Court ruled that one could not yet speak of self-financing ("*tributi propri*") because that would assume that the taxes directly originate in local and regional normative actions, which still cannot be the case. For the local authorities (but not the regions), one needs to be able to speak of ("*tributi propri*") as specified by national law, with the framework in which local authorities can exercise autonomous normative powers on the one hand, and the relationship between national law and regional law within this domain the other (37/2004).

According to the positive law currently in effect (Leg. Dec. 267/2000, Art 149), municipal revenue is made up of "*tributi propri*", contributions to the national taxation system, taxes on public services, national and regional transfers, revenue for investment and from natural heritage. Yet this notion of "*tributi propri*" leads to divergent interpretations: for some, it presupposes the involvement of normative powers; for others only the destination of fiscal revenue matters.

Positive law provides for a plurality of local revenues of a fiscal nature over which local authorities have the right to exercise power within the framework of national law. This is the case of the "*addizionale*" on the IRPEF (individual income tax - Leg. Dec. 360/1998 modified by Law 296/2006, Art. 1, paragraphs 142 and 143), the "*addizionale*" on electricity (Law 20/1989), and municipal property tax (ICI - Leg. Dec. 504/1992), whose rates are fixed by municipal regulation[i]. For some other fiscal revenue, authorities' powers are more extensive, as is the case with "town planning charges" ("*oneri di urbanizzazione*": a contribution that private citizens must pay to obtain building permits).

Statistical data retain a broad definition for "*tributi propri*": they comprise all fiscal revenue from the local authorities free of transfers. According to the ISTAT database, the ISAE distinguishes between fiscal autonomy ("*autonomia tributaria*") and financial autonomy ("*autonomia finanziaria*"). In 2005, while the former, which corresponds to fiscal revenues collected directly by the municipalities,

Table 1: Municipal finances (2003-2006)

(Millions of euros)	2003	2004	2005	2006
Current total expenditure	***41,032***	***42,829***	***44,105***	***45,405***
Total capital expenditure	***16,876***	***18,973***	***17,248***	***17,265***
Total expenditure	***57,908***	***61,802***	***61,353***	***62,670***
Revenue				
Net income	*6,843*	*7,290*	*7,715*	*8,059*
Interest collected	*306*	*306*	*327*	*364*
Dividends	*91*	*100*	*122*	*126*
Operating income	*1,735*	*1,856*	*1,979*	*2,067*
Indirect taxes	***14,146***	***14,847***	***15,104***	***15,525***
Direct taxes	***3,014***	***3,229***	***3,065***	***3,156***
Effective social contributions	*33*	*26*	*22*	*22*
Funded social contributions	*308*	*304*	*277*	*289*
Public Transfers	***16,000***	***17,293***	***17,374***	***18,256***
Diverse current transfers	*3,651*	*4,169*	*4,169*	*4,248*
Total current revenue	***46,127***	***49,420***	***50,154***	***52,112***
Fiscal revenue from the capital account	*0*	*435*	*390*	*0*
Contributions to investments	*7,097*	*7,512*	*7,297*	*7,064*
Other transfers to the capital account	*489*	*747*	*557*	*459*
Total revenue from the capital account	***7,586***	***8,694***	***8,244***	***7,523***
TOTAL REVENUE	***53,713***	***58,114***	***58,398***	***59,635***

Source: ISTAT: http://www.istat.it/salastampa/comunicati/non_calendario/20070612_00/)

reached 41% of the current revenue, the latter, which also includes participation in the IRPEF, rose to 61% (S. Lorenzini: 2006).

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Total public expenditure	*745,558 (50.5% of GDP)*
Local public expenditure	*75,689 (5.15% of GDP)*
Municipal public expenditure	*62,670 (4.25% of GDP)*
Provincial public expenditure	*13,019 (0.9% of GDP)*
GDP 2006	*1,475,401*

[i] On this point it should be specified that one part of the local revenues from the IRPEF is considered a transfer (the "*compartecipazione*"), whose rate is established by the State, while another part is considered own revenue (the "*addizionale*"), whose rate is fixed by the municipalities according to the limits set by law).