

Local Self-Government in Italy

ROBERTO SCARCIGLIA

Abstract This paper deals with local self-government of municipalities in Italy. It analyses how the Italian legal system develops the principles mentioned in the European Charter of Local Self-Government. Italy ratified the European Charter of Local Self-Government on 11 May 1990 and the treaty entered into force in respect of Italy on 1 September of the same year. Recommendations that the Congress of Local and Regional Authorities of the Council carried out in 1993 and 2017 for assessing the application of the European Charter of Local Self-Government in Italy are a good starting point for this paper. The present essay aims to highlight the leading constitutional and legislative reforms, which have been significant development of the European Charter.

Keywords: • local self-government • history • legal foundation • European Charter of Local Self-Government • Italy

CORRESPONDENCE ADDRESS: Roberto Scarciglia, Ph.D., Professor, University of Trieste, Department of Political and Social Sciences, Piazzale Europa 1, I-34100 Trieste, Italy, email: roberto.scarciglia@dispes.units.it.

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1 Introduction and history

In 2018, the European Charter of Local Self-Government will celebrate its 30th birthday from entry into force in Italy. A survey of the state of the art within the different legal systems represents, not only an interesting opportunity for a comparative analysis, but also an hypothesis of circulation of this model beyond Europe (Himsworth, 2011). The Charter was opened for signature on 15 October 1985 and entered into force on 1 September 1988 and ratified by Law no. 439 of 30 December 1989 (Ratification and implementation of the European Charter of Local Self-Government, signed in Strasbourg on 15 October 1985). After depositing the instrument of ratification, the Italian government lodged the following declaration: “Concerning the provisions of art. 12, paragraph 2 of the European Charter of Local Self-Government, the Italian Republic considers itself bound by the Charter in its entirety”.

The process of formation of the local government is one of the most significant problems in Italian and European history. It develops in the period of the history of northern and central Italy that goes from the XI century to the Later Middle Ages. The decomposition of the feudal world and the strong immigration tendencies from the countryside to the cities involved a rapid expansion of urban aggregates and the transformation of existing economic and social structures. According to Calasso, “the cities create their Laws with full freedom, they give their Laws (*statuta*), exercise jurisdiction, impose taxes, mint coin, make political and economic pacts with other cities.” We agree that “from a legal point of view, it was a particular system in the orbit of the universal order of the Empire.” (Calasso, 1961: 169).

The municipalities were born as organizations of citizens (*cives*) – the only ones to be holders of political rights and charges – in a struggle with the old feudal lord recoiled in the countryside and with the Emperor, defending the rights that had conquered. Citizens chosen by the Consuls (*Consules*) – prominent figures in the city government up to the Peace of Constance of 1183 – carried out administrative tasks, such as a revenue and tax assessments, the management of the markets and legal documents. In the last years of the twelfth century until the beginning of the thirteenth century, the Italian municipality passed to a monocratic single magistrate (*podestà*), assisted by officers entrusted with the functions and for which he was responsible.

Another element of particular interest in the history of local government concerns the role of the cities in a monarchical system, with specific reference to the Norman-Swabian experience. The structure of this relationship between political power and administrative functions will characterize the history of the municipal system in Italy.

Many urban aggregates – developed with different characteristics, depending on the diversity of territorial and historical-social factors – lost their autonomy to the advantage of a centralized administrative organization. Despite the differences in the different historical situations, the various local realities conformed to a uniform administrative

model. The structure of the relations between the city administration and central power remained stable over time, despite the succession of different dominations, which tried to change this relationship, despite the uneven character of a political reorganization of the cities in the fourteenth century. An element to be considered in the progressive autonomy of the cities was the ability to adopt their norms. Over time, however, the autonomy of the cities ended up flattening towards the local sovereign's government.

These phenomena characterized the Italian states that arose after the municipal age. In the eighteenth century, the idea of a unitary regulation of the activity of the municipalities to be imposed from above by the central power began to circulate. Examples of this are the reform of Carlo Emanuele III in Piedmont (and extended from 1751 to the Sardinian municipalities), of Maria Teresa in Lombardy in 1755, followed by Tuscany in 1772. According to Calasso, the animating principle of these reforms was mainly economic and "it was particularly evident in the prevalence criterion in public administration recognized to the classes of landowners, most burdened by taxes." The French Revolution did not substantially change the structure of local institutions, notwithstanding a resolution by the French Constituent Assembly in December 1789 of the reorganization of the national territory, according to the principles of unity, indivisibility, decentralization and the electivity of the organs. During the Napoleonic period, the French administrative system provided a rational subdivision of the national territory and the creation of uniform administrative circumscriptions to which corresponded as many levels of power: the departments, the districts, the cantons and the municipalities. This model circulated in the states occupied by the Napoleonic troops, including some Italian territories. However, if the Decrees of December 1789 followed a perspective of administrative decentralization, the Napoleonic legislation promoted, on the contrary, the widest declination of the centralization of the state.

The pivotal figure of this system was the prefect (the officer in the Ancient Regime) who was the head of each department, flanked by a departmental general counsel and a prefecture board. The hierarchical line of power descended from the Minister of the Interior, passed to the prefect (and the sub-prefect) and arrived at the mayor. Prefect and mayor were, at the same time, representatives of the local body and delegates of the government, while the organs exercised a limited representation of the local communities. The main rule governing this model was the Law of 28 'Piovoso' year VIII (February 7, 1800).

The hierarchical and centralized Napoleonic order found a rapid reception in the Italian peninsula, especially in Piedmont - in 1802 annexed to the French Empire and therefore directly underwent the legislative legal system - in the Kingdom of Italy (direct emanation of the Cispadana Republic, of the Cisalpine Republic and of the Italian Republic) and in the Kingdom of Naples. The military occupation of the peninsula by the French armies imposed, in fact, a close imitation of the 1800's legislation. In Piedmont, divided by Decree of 8 June 1805 in circumscriptions, which reproduced both the four levels of government of the French model (the departments, the districts, the cantons and the

municipalities), the figure of the prefect became central in the administrative organization. Similarly in the Kingdom of Naples, on August 8, 1806, the Napoleonic model was introduced, which included the figure of the provincial intendant.

The fall of the Napoleonic Empire and the Restoration did not cancel the administrative institutions created during the French domination. In Piedmont, there was the hybridization between the institutions of the Ancient Regime with those of Napoleon. On 10 November 1818 the Royal Decree No. 859 by Vittorio Emanuele I confirmed the division of the territory into divisions, provinces, mandates, and communities.

In the Kingdom of the Two Sicilies the Laws of May 1 and December 12, 1816, determined the administrative organization, keeping almost unaltered the Napoleonic model. The subdivision of Sicily followed the centralized, hierarchical model of the French circumscriptions. The island, traditionally divided into three geographical-military zones without administrative consistency (Mazara, Dromedary and Noto valleys), including 7 offices. The process of administrative rationalization undertaken in 1812-1813 was thus completed with the creation of 23 districts and with the elimination of the fief as an element of the official definition of the territory.

In Lombardy, after the Restoration, the model previously in force created by the Napoleonic legislation was reintroduced. It derived from a consolidated tradition of local autonomy promoted by Maria Theresa of Austria with the reform of December 30, 1755. In the Austrian model, the municipalities represented, on the one hand, the last link of the central administration and, in the other one, a self-governing institution of the local community with elective representation.

The Royal Committee on 7 April 1815 united Lombardy and Veneto in a single kingdom, called Lombardo-Veneto, divided into two government territories, separated by the river Mincio. Each government was divided into provinces, districts, and municipalities, while a governor and a government college, residing in Milan and Venice, exercised the political power. A Royal Delegation applied the administration of the provinces while the administration of the districts belonged to the chancellor of the census that depended on the Royal Committee. The division of the municipalities into three classes, provided by the Napoleonic Italian legal system, remained in force. From the first phase of the Restoration, two models of local order contrasted: the Austro-Lombard and the Franco-Piedmontese models. The latter, through successive modifications, and by the political-military role played by the Savoy dynasty during the Risorgimento, will constitute the backbone of the local order of united Italy.

One of the novelties of the Savoy Kingdom was the establishment of the province and the creation of the provincial council as a new organ (Royal Patent Letters, 31 December 1842 which constituted, in fact, the regulation for the execution of the Royal Patent Letters, 25 August 1842). On 7 October 1848, after the granting of the Albertine Statute of March of the same year, the Savoy parliament approved the municipal and provincial Law. It

applied the principle of direct election for all local bodies, on the one hand, it paved the way for a new form of political representation and, on the other, reinforced the administrative centralization that started a series of increasingly strict controls on local bodies. Furthermore, in 1848 – during the process of national unification – there was a remarkable turn from the administrative point of view by applying ‘the representative principle.’ The possibility of being elected at the same time in the municipalities, provinces, and divisions produced a dense network of personal interests and in fact deferred the distinctions between the various administrative bodies.

After the Italian unification, some Laws succeeded to regulate the territorial articulations of the State: the Municipal and Provincial Law of the Kingdom of Italy of 20 March 1865, which divides the Kingdom into provinces, districts, mandates, and municipalities. The subsequent Laws issued during the pre-Fascist¹ and Fascist² period did not substantially change this structure until the 1948 Constitution came into force. The constitutional reform project aimed at eliminating the rules dating back.

2 Constitution and legal foundation for local self-government

The first of the questions to be analyzed in this report is whether the Constitution recognizes the principle of local autonomy, as indicated in Article 2 of the European Charter of Local Self-Government and its implementation in the national legislation. The 1948 Italian Constitution introduced a new conception of local authorities, as subjects of autonomy with relief and constitutional guarantee, representative of the respective communities and endowed with relative independence concerning the choices of the State. (De Marco, 2015: 9). The Constituents introduced the Franco-Piedmont model of the legal uniformity of the municipalities, rather than the Austrian model of differentiation. According to the combined provisions of Articles 5 and 128 of the Constitution, we can reconstruct the original autonomous design, subsequently partly modified by legislative reforms starting from the Nineties.

Article 5 of the Constitution provides the principles of unity and indivisibility of the Italian Republic, promoting local autonomies, and implementing the fullest measure of administrative decentralization in those services which depend on the State. In the draft Constitution this principle, which was in Part Two of Title V on local self-government, is moved among the fundamental ones to indicate that it is an integral part of the constitutional characterization of the legal system (Vandelli and Scarciglia, 1995: 1). This premise, to which the Constituents give development in the original Title V of the Constitution, where the art. 114, stated that Regions, Provinces, and Municipalities – necessary and autonomous entities, according to the provision of art. 128 – composed of the Italian Republic.

¹ Consolidation Act on ‘The Municipal and Provincial law’: Royal Decree, February, 4th 1915, No. 148.

² Consolidation Act on ‘The Municipal and Provincial law’: Royal Decree, March, 3rd 1934, No. 383.

The Constitution establishes the extent of local autonomy within the framework of the principles set by ordinary Laws, which determine its functions in compliance with the impassable limit of the same constitutional principle. The Italian Constitutional Court decision No. 52/1969 interpreted the provision of art. 128 in the sense that it is necessary to ascertain, from time to time, that the legislative requirements remain within the strict framework required to satisfy general needs, guaranteeing to the local authorities the powers of its constitutionally recognized autonomy. On the other hand, it appears evident that the constitutional principle of municipal autonomy cannot lead to an autonomous and unjustified elimination of all powers of a State's legislative intervention, within the general principles, according to the Italian Constitutional Court decision No. 118/1977.

Always regarding art. 128, we can further observe that the Constitution defined as 'general Laws' affirm the reference to the same discipline for all the local bodies of the same typology.

The implementation of the Constitution has been very slow since the experience of the Italian Regions began only after twenty-two years and the implementation discipline of the local government just in 1990.

In the Mid-Seventies, the Decree of the President of Italian Republic No. 616/1977 defined the regional competencies, and the Act No. 833/1978 on Health Care System, exercised a significant impact on the functions and structures of local administrations. The draft proposal launched by a group of legal scholars at University of Pavia ("Gruppo di Pavia") was the starting point of a process involving professors, civil servants and politicians, that culminated in the enactment of a structural reform of the local government system, better known as the Act No. 142/1990³ (Vandelli, 1990: 307).

What were the key points of the legislative reform?

One of the most significant innovations that characterized the 1990s local government reform was the provision of a statutory autonomy (Article 4). It was the first time that a Law recognizes that local authorities have the power to acquire a supra-regulatory normative source, which contains the basic rules for the organization of the local entity, the competences of the political bodies, the organization of public offices and services, the forms of decentralization and access of citizens to information and administrative procedures. The Law No. 142/1990 determined the principles on the form of government and local administration, leaving the statutes their adaptation to local realities. Another element of particular interest for the development of local autonomies was the establishment of metropolitan areas (Turin, Milan, Venice, Genoa, Bologna, Florence, Rome, Bari, Naples and possibly Cagliari). These metropolitan areas replace the provinces and exercise, in addition to the usual duties, other functions established by Law. This type of local intermediary entity never really started if not in a voluntary form among

³ Act, No. 142, 8 June 1990, on "Legal System of Local Autonomy".

the local authorities since the Constitutional Act No. 2001/3⁴ – which amended Article 114 of the Constitution – as well as Law No. 56/2014 (*Delrio Law*)⁵, which regulated the establishment of metropolitan cities in substitution of the provinces, as entities of the large area in the regions with an ordinary statute. There are 14 metropolitan cities: Bari, Bologna, Cagliari, Catania, Florence, Genoa, Messina, Milan, Naples, Palermo, Reggio Calabria, Rome, Turin, and Venice. Its organs are the metropolitan mayor, the metropolitan council, and the metropolitan conference. The metropolitan council – consisting of the metropolitan mayor, and a variable number of councillors (from 14 to 24 members) in connection with the population, and elected by the mayors and by the local council members of the municipalities of the province. Most of the elections and an effective constitution of the “councils” of the metropolitan cities took place in 2016.

Another problem that was already posed with the Law No. 142/1990 - and that we will see again occurs with the metropolitan cities - is that of the choice of representation mechanisms in local authorities, as foreseen by Article 3, paragraph 2, of the European Charter of Local Self-Government.

After a troubled political debate, the Italian Parliament passed the Law No. 81/1993⁶ which introduced the direct election of the mayor and the president of the province, as well as the reorganization of the local councils formation system. Laws No. 59/1997⁷, No. 127/1997⁸ and Legislative Decree No. 112/1998⁹ contributed to reinforcing the legislative design. Finally, we can mention Legislative Decree No. 267/2000¹⁰, containing the consolidated act on the Laws regulating the system of local authorities.

Furthermore, between 1999 and 2001, three fundamental constitutional Laws radically changing Title V, Part II, of the Italian Constitution concerning regions, provinces, and municipalities (No. 1, 22 November, 1999¹¹; No. 2, 31 January 2001¹²; and No. 3, 18 October 2001¹³). In particular, the constitutional Act No. 1/1999 opened a new statutory

⁴ Constitutional Act, No. 3, 18 October, 2001, containing “Amendments to Title V of the second part of the Constitution”.

⁵ Law, No. 56, 7 April, 2014, concerning “Provisions on metropolitan cities, provinces, unions and mergers of municipalities.”

⁶ Law, No. 81, 25 March 1993, on “The Direct election of the Mayor, the President of the Province, the City Council and the Provincial Council”.

⁷ Law, No. 59, 15 March, 1997, on the “Delegation to the Government for the transfer of functions and tasks to the Regions and local government, for the Public Administration reform and administrative simplification.”

⁸ Law, No. 127, 15 May, 1997, containing “Urgent measures to streamline administrative activity and decision and control procedures”.

⁹ Legislative Decree No. 112/1998, on the “Attribution of State administrative tasks and functions to the Regions and Local authorities, implementing Law No. 59/1997.”

¹⁰ Legislative Decree No. 267/2000, “Consolidated text of the laws on the organization of local authorities.”

¹¹ Constitutional Act, No. 1, 22 November, 1999, containing “Provisions concerning the direct election of President of the Regional Executive and the statutory autonomy of the Regions”.

¹² Constitutional Act, No. 2, 31 January, 2001, containing “Provisions concerning the direct election of the Presidents of the Special Statute Regions and of the Autonomous Provinces of Trento and Bolzano”.

¹³ Constitutional Act, No. 3, 18 October, 2001, containing “Amendments to Title V of the second part of the Constitution”.

season for the regions. It produced some significant innovations to present a generally complete picture of the organs and procedures of connection between the regions and the existing local autonomies. It is therefore intended to precede the analysis of the forms, concerning the activity of the consultation bodies, by a brief overview of the new statutory provisions currently in force which include an organization representing local authorities.

The Constitutional Act No. 3/2001 incorporated the principle of local autonomy into the Constitution, modifying Article 114, and, in particular, the paragraph 1, where it recognizes equal constitutional dignity to Municipalities, Provinces, Metropolitan Cities, Regions, and State. Moreover, the Municipalities, the Provinces, the Metropolitan Cities and the Regions are autonomous bodies with their statutes, powers, and functions, according to the principles established by the Italian Constitution (paragraph 2).

Other relevant Laws for the life of local government were the No. 243/2012 – which introduced the principle of the balanced budget¹⁴ – and, as I said before, the No. 56/2014 on Metropolitan Cities, Provinces and unions and mergers of municipalities¹⁵. The Italian Constitution does not refer to the European Charter of Local Self-Government. However, we can point out that in 2011, the President of the Constitutional Court, Alfonso Quaranta, responding to a specific question formulated by the delegation of the Congress of Local and Regional Authorities of the Council of Europe, spoke about the value of the Charter as a source of Law in Italian legal system (see Bellocchi and Nevola, 2011).

The Italian Constitutional Court had already referred to the Charter in the sentence No. 325 of 2010. Although the Court affirmed that the programmatic value of the principles of the Charter, the Constitution Court justices considered it such as an act of international Law, transposed into Italian legal system. The provision of the first paragraph of art. 117 of the Constitution imposes respect for the constraints deriving from international obligations on the state and regional legislator bodies. Despite the lack of perceptiveness of its provisions, the Charter sets itself as a suitable parameter for guiding the activity of both the legislator and the interpreter. The former should not dictate different disciplines, while the latter must apply the current legislation by the provisions of the same Charter.

3 Scope of local self-government

A reflection on the scope and development of local government in Italy started at the time of the Constituent Assembly. The basic idea was to implement, after the approval of the Constitution, a regional system and a review of the discipline of local government, applying the constitutional principle of autonomy. From this moment on, the debate on local autonomy has always been alive in Italy, even if for different reasons that the Legislator, both constitutional and ordinary, has tried (or not) to valorize, in close connection with the political orientation of the government in charge. Since the Nineties,

¹⁴ Law, No. 243, 24 December, 2012, concerning “Provisions for the implementation of the balanced budget principle pursuant to Article 81, sixth paragraph, of the Constitution.”

¹⁵ Law, No. 56, 7 April, 2014, concerning “Provisions on metropolitan cities, provinces, unions and mergers of municipalities.”

the reasons for these choices are not only political or economic but are also linked to the different levels of implementation of the Charter by the subscribing countries. In the Italian legal system, the fundamental principles which govern this process are listed in Article 4, paragraph 3 of Law, No. 59, 15 March, 1997. The first principle (letter *a*) consists in the attribution “of the generality of the duties and administrative functions to municipalities, provinces and mountain communities, according to the respective territorial, associative and organizational dimensions, with the exclusion of the only functions that are incompatible with the same dimensions.” It prescribes that the responsibility for certain functions and tasks should be given to the institutional level, which is more likely to fulfil the respective needs, because of the features of the social, economic and territorial context. From this point of view, the institutions closer to the citizens should manage administrative functions and public services.

Regarding the attribution of duties and functions, another significant contribution comes from the Article 4 of Law, No. 127, 15 May, 1997, which provides that this assignment to local authorities shall take place in compliance with some basic principles.

The principle of subsidiarity – to which Italian Law refers (Article 4, paragraph 6, Law No. 59/1997) and Article 4 of the European Charter of local self-government – is undoubtedly an obligatory point of reference for establishing the correct distribution of functions. Nevertheless, the use in a polysemous way in different normative texts, makes it an “ambiguous principle, with at least thirty different meanings, program, magic spell, alibi, myth, an epitome of confusion, a fig leaf” (Cassese, 1995: 373). In any case, Law No. 127/1997 confirmed the principle according to which the assignment of the general duties and administrative functions to municipalities, provinces and mountain communities, must be by their respective territorial, associative and organizational dimensions. Article 4, paragraph 3 provides an exclusion of the only functions incompatible with the dimensions of local bodies, attributing public responsibilities also to favor the fulfillment of duties and tasks of social relevance by families, associations, and communities, to the territorial authority and functionally closer to the citizens concerned.

Another principle that Law considers is completeness, in the sense that to the regions remain the competence of the functions not assigned to the local bodies and of the planning functions (letter *b*, art. 4). The list of Article 4 also includes the principle of efficiency and economy, which involves the suppression of functions and tasks that have become superfluous (letter *c*); the principle of cooperation between the state, regions and local authorities also to guarantee adequate participation in the initiatives taken within the European Union (letter *d*); the principle of responsibility of the administration (letter *e*); of homogeneity, taking into account, in particular, the functions already performed with the assignment of homogeneous duties and tasks at the same level of government (letter *f*); the principle of adequacy, about the organizational fitness of the receiving administration, to guarantee the exercise of functions, also in association with other local bodies (letter *g*); the principle of differentiation in the allocation of functions in

consideration of the different characteristics of the receiving entities (associative, demographic, territorial and structural characteristics) (letter h); the principle of financial coverage of costs for the exercise of the conferred administrative functions (letter i); the principle of organizational and regulatory autonomy and responsibility of local authorities in the performance of the functions and administrative tasks conferred on them (letter l).

Article 7 of the Constitutional Act No. 3/2001 amended Article 118 of the Constitution, providing the assignment of the administrative functions to the Municipalities. Law makes an exception in cases where a unified exercise of the duty is necessary, and, in this case, by an assignment to Provinces, Metropolitan Cities, Regions, and State, respecting the principles of subsidiarity, differentiation, and adequacy. Generally, Municipalities, Provinces and Metropolitan Cities hold their administrative functions, and those conferred by State or regional Law, according to their respective competencies.

The previously mentioned normative sources highlight the importance of the principle of subsidiarity understood both horizontally and vertically. Moreover, it could not be otherwise, if we consider the constant reference of the legislator to the “citizen proximity” and the enhancement of families, associations, and communities. Vertical subsidiarity is akin to the autonomous principle set out in Article 5 of the Constitution and constitutes a precondition for horizontal subsidiarity (Razzano, 2005: 3). From a jurisprudential point of view, we can point out that the Council of State emphasized the principle of subsidiarity provided by Article 4 of Law No. 59/1997 even before the reform of Title V of the Constitution. The highest administrative justice body dealt with it in the judgment of Section IV, No. 1493/2000, in the opinions of Section II, No. 2691/2/2003, and No. 1440/3/2003, extensively focusing on the concept of horizontal subsidiarity. In particular, the Council of State has ruled out that the enforcement of the principle of horizontal subsidiarity in cases of aid to companies.

As regards the obligation laid down in Article 4, paragraph 6, of the Charter to consult the local administrations in the planning and decision-making process, a first contribution also comes from the Article 4 of the Act, No. 127, 15 May 1997. It provides that in the matters referred to the Article 117 of the Constitution, the regions confer on provinces, municipalities and other local authorities all the functions that do not require unitary exercise at a regional level. When the regions confer the functions, also provide to advice and discretionary consult the representatives of local authorities.

The new regional Statutes have implemented the fourth paragraph of the Article. 123 of the Constitution, which assigns the regulations of the Council of Local Autonomies to the Statute as a consultative body between the Region and local authorities, redefining the pre-existing bodies regulated by regional Laws. The Council's provision arises from Article 7 of the Constitutional Act No. 3/2001, which added a paragraph to Article 123 of the Constitution and is undoubtedly an essential tool for the protection of local interests in the region. It represents a form of coordination between the various levels of government, similar to the State-Regions Conference and the State-Autonomy Conference.

However, it is necessary to underline the great novelty of the Prime Ministerial Decree n. 76/2018 of May 10, 2018, implementing Legislative Decree 50/2016, which formalizes the operational participation of local communities in the design choices of major strategic works. This is perhaps one of the main implementations of Article 4, paragraph 6, of the European Charter, in the part where it provides for public consultation of local authorities. The activity of the State-City and local autonomies Conference contributes to the development of this principle¹⁶.

4 Protection of local authority boundaries

After a very long period of inactivation of the constitutional provisions of art. 132, paragraph 2, of the Constitution – which regulate the passage of Municipalities by one Region to another – there are many initiatives of Municipalities to belong to the territory of another Region. The constitutional procedure provides for the intervention of ‘affected populations, similar to what the European Charter states, in Article 5, where there is a reference to the ‘local communities concerned.’ In this procedure, various subjects intervene, in addition to the populations concerned: the municipal councils, which must deliberate the referendum request; the regional councils which must give an opinion, and the Parliament by ordinary Law, according to Article 42, Law No. 352/1975.¹⁷

In particular, Article 42, provided in paragraph 2, that the referendum took place at the request of: a) the municipal councils of the bodies to be separated and re-aggregated; b) a third of the population of the region from which the separation was requested; c) many municipal councils that represented at least a third of the population of the region to which aggregation was requested. Italian Constitutional Court (decision October 28 – November 10, 2004, No. 334) declared constitutional illegitimacy of the paragraph 2, in the part in which it prescribes the resolutions of the municipal councils not directly concerned. As a consequence, the sentence does not allow the provisions of Article 44 of the Law No. 352, namely that the referendum should take place in both regions.

The only procedures completed for the time being are those of separation-aggregation of Alta Valmarecchia from the Marche to Emilia-Romagna and the municipality of Sappada from Veneto to Friuli-Venezia Giulia.¹⁸

The territorial changes can also concern the provinces, as well as the regulatory instruments necessary to modify them. From this point of view, it is worth recalling that the Constitutional Court in the judgment No. 220/2013, declaring unconstitutional some

¹⁶ See at: <http://www.anci.it/index.cfm?layout=sezione&IdSez=2821>.

¹⁷ Law, No. 352, May 25, 1970, concerning “Rules on referendums provided by the Constitution and on the legislative initiative of the people.”

¹⁸ For a complete list of referendums held, see <https://web.archive.org/web/20150323032821/http://www.comunichecambianoregione.org/risultati.php>.

provisions of the Decree Laws No. 201/2011¹⁹ and No. 95/2012²⁰, excluded that a wide-ranging reform, which even can introduce the suppression of some provinces through the decree-law.

5 Administrative structures and resources for the tasks of local authorities

The implementation of Article 6 of the European Charter has had a setback over the years of financial crisis due to staff reductions and the arbitrary nature of financial restrictions (linear cuttings) for employees of local authorities. For more than a decade, local authorities have been applying stringent binding regulations on staff costs and turn-over limitations. Financial legislation reduced the capacity for local administrators to manage effective personnel policies. Statistics published since 2008 have highlighted how this policy has severely penalized local self-government.²¹ This cutting led to a reduction in the number of civil servants, particularly in the regional and local authorities sector. Similarly, there has been a drastic decline in the use of coordinated and continuous collaboration, which has penalized the autonomy in particular. The reduction concerned the personnel expenses of the regional and local authorities sector, and the remuneration paid to employees of the public administration, confirming that the employees of the autonomies receive less treatment than that of other public employees.

In Italy, the internal stability pact disciplines the fiscal relations across levels of government and is a prerogative of the Italian Government. It works within the framework of the Cohesion Action Plan agreed with the European Commission. The Laws No. 111/2011 (passing of the Decree-Law No. 98/2011), and No. 148/2011 (passing of the Decree-Law No. 138/2011) and No. 183/2011 (Articles 30 and 31), as amended by the Law No. 147/2013, regulates the internal stability pact for the three-year period 2012-2014.

Starting from the year 2013, also the municipalities with population superior to 1000 inhabitants must respect the rules also fixed the cities with community superior to 1000 inhabitants. The Law No. 190/2014 (2015 Financial Stability Law), paragraph 498, made changes to paragraph 23 of the Article 31 of the Law No. 183/2011, excluding the application of the paragraph for the Metropolitan Cities and the Provinces. These are an object of reorganization according to the Law No. 56/2014. Also, the Municipalities established as a result of the merger, as of 2011, are subject to the rules of the stability pact from the fifth year following that of their institution, assuming as a basis for calculating the results of the last three years available.

¹⁹ Law Decree, No. 201, December 6, 2011, (Urgent provisions for growth, equity and consolidation of public accounts), converted, with amendments, by art. 1, paragraph 1, of the Law No. 214, December 22, 2011.

²⁰ Law, No. 95/2012, July 6, 2012, (Urgent provisions for the revision of public spending with invariance of services to citizens as well as measures to strengthen the capital of companies in the banking sector), converted, with amendments, by art. 1, paragraph 1, of the law No. 135/2012, August 7, 2012.

²¹ At: http://www.mef.gov.it/ministero/commissioni/copaff/documenti/Primo_rapporto_Copaff_su_entitx_e_ripartizione_misure_finanza_pubblica_gennaio_2014.pdf.

Within 2015, public employees fell by 6.9% compared to those in service in 2007: in absolute terms, the reduction is 237,220 employees. The greatest contraction is in Regions and local autonomies: the difference between 2015 and 2007 is 10.7% and, in absolute terms, a good 55,388 units. We can underline the strong decrease registered in 2015 compared to 2014 which was 3.9%.

The sector (local authorities) registered, therefore, a considerable reduction in personnel, despite the confirmation of the tasks performed. We should recall that the marked decrease recorded in 2015 (in absolute value 18,702 employees) is mainly due to the contraction of the personnel of the large area entities, in particular for the use by almost all the provincial administrations of the 'early retirement' tool. The decrease principally concerns permanent employees: the difference between 2015 and 2007, in fact, recorded a negative balance of 11.6% and that between 2015 and 2014 a decrease of 4%. It is not by chance that the data on the other personnel show a slight increase in their number both in percentage and absolute values. In 2015 the incidence of personnel hired with flexible contracts (fixed time, supply contracts, training and work contracts, etc.) compared to staff employed for an indefinite period stood at 9.2%. Worthy of mention is the sharp reduction in the stabilization process of precarious workers: in 2015, including the permanent hiring of former socially useful workers, 490 cases were recorded (the tendency to reduce these assumptions is present from 2013), to the front of the 9,830 of 2008.

Other data to highlight is the sharp decline in the number of recipients of coordinated and continuous collaboration positions, particularly in the Regions and local autonomy sector (from 34,464 assignments in 2007 to just 4,388 in 2015). As a percentage, the reduction is 87%, confirmed by the decrease in relative spending which decreased by 86%.

However, the situation could improve in 2019. 2018 is the last year in which the temporary discipline in concerning the turn over limits, introduced, for the 2016-2018 three-year period, by the 2016 budget Law (Article 1, paragraph 228, Law No. 208/2015). As a consequence, starting from 2019, the provisions contained in Article 3, paragraph 5, of the Law Decree No. 90/2014, and the determination of the exceeding of the limitations on the turnover for all local authorities, which can have a capacity of 100% of the staff expenses ceased in the previous year.

Article 6, paragraph 2, of the European Charter, provides for the recruitment of high-quality staff with merit and competence.

On June 22, 2017, the legislative Decree No. 75/2017 came into force, containing important changes concerning the work discipline in the p., Having modified important provisions of the legislative Decree No 165/2001. A fundamental point of the reform design, with a view at the same time of simplification and rationalization of the employment relationship to the public administration, consists of overcoming the

traditional determination of the needs of administrations anchored to the organic endowment and the introduction of a plan actual staff needs. In particular, with the changes made to Article 6 of the legislative Decree No. 165/2001, the organizational structure of public administrations is no longer assigned to a programmatic tool, but necessarily static, but to an essentially managerial plan, of a dynamic nature.

The new system foresees that every single administration - and, consequently, local ones - adopts a three-year plan of personnel needs that is coherent not only with the specific lines of ministerial address, but also with the organization of offices and with the multi-year planning activities and performances for a programmatic coverage of staff needs within the limits of available financial resources. The capacity and responsibility of each individual administration determines the concrete and progressive identification of the professional skills required to achieve their institutional goals, with the sole limitation of compliance with spending constraints and public finances.

6 Conditions under which responsibilities at local level are exercised

Article 7 of the European Charter guarantees to local administrators the free exercise of the mandate, similarly to what art. 67 of the Constitution provides for parliamentarians. A first criticism that it is possible to note in this regard concerns the recent introduction by a ruling party (the 5 Stars Movement) of the obligatory signing of a contract by the candidates – and, before the election – with the movement, sharply limiting the freedom of mandate. In the agreement, there are not only penalties for 100 thousand euros (or more) in case of damaging of the image of the Movement, but also that proposals for acts of high administration, and legally complex issues, must be submitted in advance to a prior technical legal opinion to the staff coordinated by the guarantors of the M5S. We can recall here that the Mayor of Rome, Virginia Raggi, signed this contract before being elected. It seems clear that the provision of these clauses is clearly contrary to the European Charter and, for this reason, represents only a natural obligation, and not a legal requirement, which binds the elected – who, for example, decides to leave the Movement – to the payment of the sum stipulated in the contract.

Another problem concerns the paragraph 2 of the art. 7, that is adequate financial compensation for the performance of the functions. Law No. 56/2014 introduced relevant changes regarding the number of administrators of municipalities with a population of fewer than 10,000 inhabitants and their allowances. In absolute contradiction with previous regulations, aimed at reducing the number of local administrators, the composition of the bodies for the demographic band of the Municipalities has increased, up to 10,000 inhabitants (Article 1, paragraph 135, of Law No. 56/2014). The municipalities affected by the aforementioned provision must re-establish with their own deeds the charges connected with the activities concerning the status of local administrators referred to in Title III, Chapter IV, of the first part of the consolidated text, in order to ensure the invariance of the relative expenditure in relation to the legislation in force. This invariance needs a specific certification by the board of auditors (Article 1, paragraph 136, of Law 56/2014). The following Law Decree No. 66/2014, converted into

Law No. 89/2014, in paragraph 136, added the provision that ‘for compliance with the invariance of expenditure, about the calculation of the charges related to the activities concerning directors’ status, we can exclude those relating to paid leave, social security, welfare and insurance costs. Referred to in Articles 80 and 86 of the consolidated act’.

The provision has led to many interpretative doubts. The Court of Auditors, Section of the Autonomies, with an opinion expressed with resolution No. 35/SEZAUT/2016/QMIG²², communicating some undoubtedly innovative principles on the subject, while confirming the current orientation in other respects. With particular reference to the allowances of the directors, the different aspect between the regional sections of the Court concerned the extent to which the invariance of expenditure should be guaranteed.

The doubts concerned, on the one hand, the alternative whether to evaluate the amounts disbursed in the reference year (actual expenditure). On the other, to take into account expenses that are abstractly due to directors based on the size of the institution, regardless of any subjective assessment (waiver or reduction of compensation on a voluntary basis, halving of the same in consideration of the lack of expectation of the employee administrator). The Court reconstructs a different legal discipline for the two cases. The principle of expenditure invariance pursuant to art. 1, paragraph 136, of Law 56/2014, concerns only the charges related to the performance of activities related to the status of the local administrator (including the tokens of the presence of councilors of local authorities) that must be determined according to the criterion of historical expenditure. From another point of view, the charges deriving from expenses for the function of the statutory auditor and the assessors are not subject to recalculation and are due to the extent provided for in Table A of the Ministerial Decree. 119/2000, with the reduction, referred to in art. 1, paragraph 54, of Law 266/2005. The resolution, therefore, remains outside the principle of invariance of expenditure according to art. 1, section 136, of the Law No. 56/2014 the expenses for the function allowances, precisely because they are not subject to a reduction, to the charges related to paid leave, to the social security, welfare, and insurance expenses.

A second element to consider is the power of supervision of local authority bodies. The main problem concerns the dissolution of municipal councils for mafia infiltration, now governed by Article 143 of Legislative Decree No. 267/2000. The President of the Republic has the supervision of this function and has the power to dissolve municipal and provincial councils, on a proposal from the Minister of Interior, who informs Parliament immediately of the dissolution decree. A consequence of this Presidential Decree is the appointment of a commissioner in place of the council pending the next elections.

²² At: <https://www.self-entilocali.it/wp-content/uploads/2016/12/CC-Sez.-Autonomie-del.-n.-35-16.pdf>.

Law No. 94/2009 introduced some changes to the discipline of the proceedings of dissolution of the municipal and provincial councils. The decree of dissolution for mafia infiltration preserves its effects for a period from twelve to eighteen months that can be extended up to a maximum of twenty-four hours with a further presidential measure. The elections of the dissolved bodies take place on the occasion of the ordinary annual round if the duration of the dissolution expires in the first half of the year. In the case of expiry in the second semester, the elections take place in one shift extraordinary to be held on a Sunday between October 15 and 15 December.

The law provides for the dissolution of municipal councils when concrete, univocal, and significant elements emerge on direct or indirect links with organized crime of the mafia or similar type of criminal organizations. The same sanction applies in the case of forms of conditioning of the institution, such as to determine an alteration of the procedure formation of the will of the elective and administrative bodies, and to jeopardize the excellent performance or impartiality of the municipal administrations, as well as the regular functioning of the services entrusted to them. These elements may also refer to the municipal secretary, the general manager, managers and employees of the institution.

In the period 1991 and 1996 the dissolution regarded 90 councils. However, in 2016 there were only 8 cases of dissolution due to mafia infiltration. The main causes of dissolution found in the same year are: forfeiture (5), death (19), resignation (39), impediment (2), non-adoption of the financial statements (10), failure (1), resignation of directors (75), motion of no confidence (4), for a total of 163 entities.

If we consider a more extended period instead, from 1991 to 2018, the dissolutions are 306, even if in 25 cases, the measures were canceled in court. The decrees of dissolution were more numerous in the Southern Regions (Calabria: 105, Campania: 104, Sicily: 73, Puglia: 13, Basilicata: 1), compared to the Northern Regions (Piedmont: 3, Liguria: 3, Lombardy: 1, Emilia-Romagna: 1) and of the Center (Lazio: 2).

The Constitutional Court addressed the issue of the dissolution of the councils, in the sentence No. 103/1993, noting that the art. 15 bis of Law No. 55/1990, requires a stringent consequentiality between the emergence of one of the situations provided by law (links or forms of conditioning). Furthermore, it is necessary to ascertain the compromise of the freedom of determination and the good administrative performance and the regular functioning of the services. The dissolution of the elective body ‘has no repressive purpose against individuals but for the safeguarding of public administration’ (Council of State, VI, 13 May 2010, No. 2957), and it represents a ‘measure of extraordinary character to face an extraordinary emergency’ (Council of State, VI, March 10, 2011, No. 1547).

The fulfillment, by the municipal administration, of illegitimate acts, is not sufficient to determine the dissolution of the entity. A *quid pluris* is necessary. It consists in conduct, active or omissive, conditioned by crime even if suffered, found by ‘competent administration with broad discretion (Council of State, VI, April 24, 2009, No. 2615,

April 6, 2005, No. 1573). Moreover, in the presence of a phenomenon of organized crime spread throughout the territory, the judge must consider the elements confirming collusion, connections and conditioning (see Council of State, IV, 6 April 2005, No. 1573, 4 February 2003, No. 562, V, March 22, 1998, No. 319, February 3, 2000, No. 585).

Undoubtedly, the anti-mafia legislation is a particular case, which concerns the Italian legal system and, however, precisely because of the potential contraposition with Article 7 of the European Charter, requires that the administrative measures of dissolution must contain a specific motivation.

7 Administrative supervision of local authorities' activities

The European Charter excludes that checks on local authorities are intrusive unless they are decisions of administrative or civil courts. From another point of view, the spending and financial procedures of local authorities fall under the scrutiny of the Corte di Conti. In this regard, it is necessary to remember that the constitutional reform of 2001, on the one hand, repealed art. 130 of the Constitution, and, on the other, inserted a new discipline of substitute checks against the regions and local authorities. This discipline concerned the failure to comply with international norms and treaties, a danger to public safety, and the protection of the legal and economic unit (Vandelli, 2013: 237).

The replacement powers represent an exception to the exercise of local functions, and the Italian Constitutional Court has set some fundamental principles. Firstly, a Law must provide the replacement powers, and establish the substantive and procedural assumptions.²³ Furthermore, a replacement in local functions can only take place when a local authority must carry out a mandatory behavior;²⁴ the requirement of participation or consultation of the local authority is not necessary if the exercise of substitute powers is linked to events of an objective nature.²⁵ The system of controls over local authorities has undergone profound changes after the constitutional reform, particularly by Legislative Decree No. 150, October 27, 2009, and Article 3 of the Decree Law No. 174, October 10, 2012, that completely redesigned the structure outlined by Article 147 of Legislative Decree 267, 18 August, 2000.

Concerning controls over administrative management, Legislative Decree No. 150/2009 assigned this function to independent assessment bodies, which replace the internal control services in this activity, and the enforcement of measurement of organizational and individual performance to the administrative staff. Article 3 of the Decree Law No. 174/2012 provides, in addition to traditional controls (accounting administrative regularity, management and strategic control), new activities, such as: the control over the financial balance of the institution, the checking of effectiveness and the economics

²³ Constitutional Court, judg. No. 338, 15 June, 1989.

²⁴ Constitutional Court, judg. No. 177, 18 February, 1988.

²⁵ Constitutional Court, judg. No. 244, 24 June, 2005.

of the management bodies, and the quality of the provided services, either directly or through external management bodies. Another novelty of the Law concerned the control of the participating companies, which must be periodic, and provides for the analysis of the deviations from the assigned objectives, also regarding the possible economic and financial imbalances recorded for the local authority budget. The control over the participating companies concerns both administrative and accounting regularities (including the check of the company's financial performance to detect possible repercussions on the local entity) and exemplary aspects of management and strategic control.

In this regard, there has been increasing attention of the legislator on the companies controlled by local authorities, which stems from the actual need to monitor with growing attention the total expenditure of local administrations. In many cases, the situations of instability, or in any case of serious economic and financial imbalance, of the local authority were linked to circumstances that involve participating entities.

The new Article 147-quater of legislative Decree No. 267/2000 reaffirms the obligation to draw up the consolidated financial statements, already provided for under legislative Decree No. 118/2011, on the harmonization of accounting systems and financial statements of the regions, local authorities and their bodies. Regarding the pre-existing checks, such as, in particular, the control of the administrative accounting regularity, Law Decree No. 174/2012 – converted into Law No. 213/2012 – the internal controls are more stringent in the cases in which Law requires an opinion of accounting regularity. It establishes that such advice should be requested not only for the proposals of resolutions submitted to the Board and the Council involving a commitment to spend or decrease the entry, but on any proposed decision that includes direct or indirect consequences on the economic-financial situation, or on the assets of the institution.

Furthermore, legislative Decree No. 149/2011 introduced some specific instruments aimed at ensuring the coordination of public finance, and in particular the principle of transparency of the incomes and expenses decisions. The legislative Decree provided for the provinces and local authorities, as well as for the regions, the obligation to draw up a end-of-term report, consisting of a document signed by the president of the province, or by the mayor, certified by the internal control bodies of the institution, and verified by a specific inter-institutional technical table. This document is primarily a tool for reporting the main regulatory and administrative activities carried out during the mandate, with particular reference to the system and the results of internal controls, to any findings of the Court of Auditors (Corte dei Conti). It regards the actions to comply with the financial balances, public programs and the status of the convergence path towards the standard needs, the economic situation, and assets, also highlighting the weaknesses found in the management of institutions and companies controlled by the municipalities or the provinces. The document also points out the actions to contain expenditure, and the state of the convergence process to the standard requirements, to the quantification of the provincial or municipal debt measure. Local authorities must publish it, together with the checking report, on the institutional (also website) of the provinces or municipalities.

Municipal and provincial authorities have also the obligation to draw up a mandated report, aimed at verifying the financial and equity situation, and the extent of the indebtedness of the same bodies. The president of the province, or the mayor, within the ninetieth day from the beginning of the mandate, must sign the start-up report prepared by the head of the financial service, or by the general secretary.

Regarding external controls, Article 3 of the Law Decree No. 174/2012 enhanced the powers of the Court of Auditors, expanding the control parameters, also during the year, including the regularity of the financial management, of the planning documents, and the checking of the functioning of the internal controls of the local authority. Article 148 of legislative Decree no. 267/2000 provides that the regional sections of the Court verify, every six months the regularity of the management, and the operations of internal controls adopted to comply with accounting rules and budget balance of local authorities. For the performance of the six-monthly verification activity, the local auditing sections of the Court can also avail themselves of the Finance Guard Corps, or of the Inspection Services of the State General Accounting Department.

In the exercise of its control function – and concerning the year 2015 – the Court notes the substantial stability of the revenue of the municipalities, and the lack of sufficient resources for metropolitan provinces and cities, in its Report on the activity presented at the inauguration of the 2018 judicial year.²⁶

For the Municipalities, the Court points out a substantially stable trend in revenues compared to a decrease in commitments (-11.15%). The most substantial resources are represented by income related to real estate taxation and the revenue from the waste tax, which is, however, totally absorbed by the cost of the service. The revenue that is specifically dependent on the municipal tax levy (including that of the tourist tax), as well as income from the fight against tax evasion, is modest, even if it is growing.

From another point of view, provinces and metropolitan cities have persistent problems on the revenue side, above all concerning the revenue deriving from own taxes. An expenditure analysis shows, compared to 2014, an increase in the commitments undertaken on the accrual basis (22.86%) mainly attributable to the growth in investment expenditure (due to the effect, also, of the more significant financial space created by the reduction of debt and, therefore, the cost of repaying loans) and less to the dynamics of current spending (up 12.63%). Commitments for personnel expenses (-9.53%), and for the purchase of services (-2.11%) were reduced.

The funding of local authorities, despite the efforts made, is the main problem that prevents the implementation of the European Charter.

²⁶

http://www.corteconti.it/export/sites/portalecdc/_documenti/chi_siamo/presidente_buscema/Inaugurazione-Anno-giudiziario-2018-Relazione-Attivita-Presidente-Buscema.pdf.

The Court also points out that its analysis of the financial stability indicators of the sector, on the basis of trends overall financial equilibrium, highlights a situation of progressive suffering of the municipalities and, above all, of the provinces and metropolitan cities: 150 municipalities and 64 provinces are non-compliant with the stability pact for 2015. 2015 analysis of the administrative results, in contrast with the two-year period previous, denotes a considerable increase in the number of deficit institutions, mainly attributable to the application of the harmonized accounting rules. The total amount of the deficit (net of off-balance sheet debts) amounts to approximately € 4,004 million in the municipalities, while in the provinces and metropolitan cities, it stands at 121 million euros.

8 Financial resources of local authorities and financial transfer system

The problem of the financial autonomy of local authorities is essential for the development of the principles contained in the Charter. Article 119 of the Italian Constitution of 1948, in its original text, attributed a financial autonomy only to the regions, and not to the other local authorities, codifying the aim for a revenue and expenditure autonomy, corresponding to the principle that all levels of local self-government should have independent financial resources (principle of fiscal federalism). The constitutional reforms of 2001 introduced some tenets, primarily against this perspective, by a prolonged failure to enact the legislation necessary for the implementation the financial autonomy and to produce a change concerning the Government's measures taken, since 2008, in response to the global financial crisis. A first, foremost, goal towards the implementation of art. 9 of the European Charter was the approval of Law No. 42/2009 on fiscal federalism, which establishes the fundamental principles of the coordination of public finance and the tax system.²⁷ It also regulates the setting up of the *Equalization Fund* for areas with lower tax capacity per inhabitant as well as additional resources and the implementation of particular interventions pursuing the development of the under-utilized regions in the perspective of overcoming the country's economic dualism.

The 2015 legislation was useful for the performance of the financial statements of local authorities, as well as their cash flows. I refer, in particular, to Law No. 125 of August 6, 2015, on essential provisions concerning local authorities. Until the entry into force of this Law, local authorities had to respect the Stability and Growth Pact, which establishes the rules that local authorities must follow to compete with the achievement of the public finance objectives set by the Financial Laws (now 'Stability Laws'), concerning the parameters of the deficit and public debt that derive from EU commitments.

The rewriting of financial rules was necessary for supporting the local investments. It took place between 2016 and 2017, also in the implementation of the amendment of the

²⁷ Law No. 42, May 5, 2009, concerning "Delegation to the Government regarding fiscal federalism, implementing art. 119 of the Constitution.

law on budget balancing, together with the input of resources (concerning financial space) useful to allow a higher capacity to use administrative surpluses accumulated during the years of the Stability and Growth Pact. A composite range of direct support interventions, related to different priority sectors, followed these measures. Economic and Financial Document (DEF) 2019-21 recalls these interventions without however delineating the further actions necessary to consolidate the overall financial balance of the municipalities.

The extent of the effort required by the Municipalities in the period 2010-2017, amounting to over 9 billion euro of cuts in resources between 2011 and 2015 (besides 3.3 billion in the whole period for the public finance constraints). The effects of these economic sacrifices were differentiated according to the characteristics of the institutions, inevitably affect their full involvement in the implementation of policies for economic growth and territorial development.

Table 1: The maneuvers on the Municipalities 2010-2017 (in millions of euros)*

	2010	2011	2012	2013	2014	2015	2016	2017
Maneuvre		3.009,3	5.185,9	3.160,7	43,8	850,5	-534,1	662,0
Pact and new accounting from 2015	345,1	1.509,3	1.522,3	1.261,3	-448,5	-637,3	-534,1	662,0
Of which cutting tax transfers		1.500,0	3.663,6	1.899,4	492,3	1.487,8	0,0	0,0
"Costs of policy"			118,0					
<i>cuts D.L. 78/2010</i>		1.500,0	1.000,0					
<i>cuts D.L. 201/2011</i>			1.450,0					
<i>cuts D.L. 95/2012</i>			95,6	2.154,4	250,0	100,0		
<i>cuts o D.L. 66/2014</i>					375,6	187,8		
<i>cuts L. Stab. 2015</i>						1.200,0		
<i>IMU revision cuts</i>					170,7			
<i>ICI /IMU hidden cuts</i>			1.000,0	-255,0	-304,0			

(*) IFEL elaborations on data from the Ministry of the Interior and Ministry of Economy and Finance

The obligation of the regions and local authorities to participate in the achievement of public finance objectives has recently taken on constitutional significance with the new formulation of Article 119 of the Constitution – made by Constitutional Law No. 1/2012 to introduce the principle of balanced budget in the Constitutional Charter – which, in addition to specifying that the financial autonomy of local authorities (Municipalities, Provinces, Metropolitan Cities and Regions), is ensured in compliance with the balance of the related budgets, at the same time, it requires these institutions to contribute to ensuring compliance with economic and financial constraints arising from the Law of the European Union.

Starting from 2019, the reductions of resources carried out by Decree 66/2014 will cease to affect the contribution of regions and local authorities (reduction of public spending review). It is a 'return' to the funds' financial statements of € 563.4 million, the

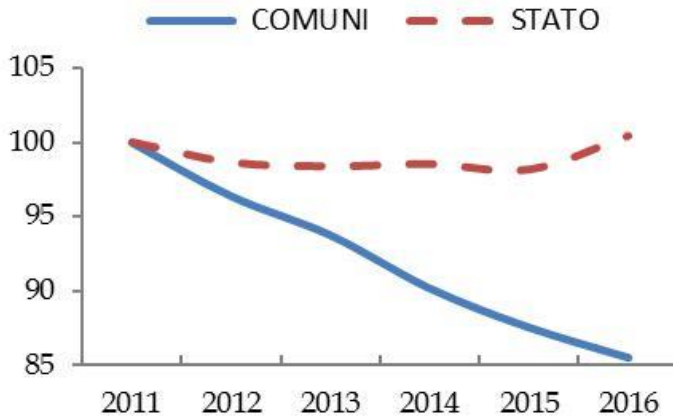
quantification of the annual cut for the period 2015-2018, operated directly on the Municipal Solidarity Fund.

Concerning staff costs, for more than a decade, local authorities have been applying stringent binding regulations to cover staff costs and turn-over limitations. Financial legislation has strongly compressed the capacity for local administrators to manage effective personnel policies. In a few years, it produced: a) a drastic reduction in the number of civil servants employed in the sector; b) a decrease in the average value of the individual salaries of the municipal staff; c) a significant increase in the average age of personnel. In recent years the relevant legislation has reached a stratification level and unprecedented complexity, which makes an organic review of the subject indispensable and urgent (Dota and Buldrini, 2018, 1).

As is clear from the graph below the expenditure by the staff of State and municipalities has drastically reduced from 2011 to 2016.

Figure 1: Expenditure by staff of state and municipalities. 2011-2016 trends

Index numbers (2011 = 100)



Starting from 2018, after almost a decade of a freeze, wages increase due to the renewal of the contract will begin for the public (and also local) administration staff. It is unthinkable that the local authorities can have the responsibility for the higher cost of renewal of the contract. The rigidity of the financial rules that local authorities must meet to cover the higher charges, together with the magnitude of the increases (around € 650 million for all local authorities) are likely to nullify the painstakingly achieved results regarding staff substitutability ceased. It can be considered that, in this case, the provision of art. 9 of the European Charter should be regarded as not respected, in a context characterized by a strong aging of the workforce and an unprecedented reduction, almost

14% in six years. It makes particularly tricky in small and medium-sized municipalities the effectiveness of essential offices such as technical and financial services.

The local financial situation does not allow to affirm the compliance with Article 9 of the Charter.. Equalisation is not working, even in view of the still existing interpretative uncertainty despite the Court of Auditors ruling on this issue. Regarding the consultation of local authorities before the choices of economic policy, paragraph 6 of art. 9 of the Charter is not yet sufficiently implemented, even if the National Association of Municipalities (ANCI) was present on May 9, 2018 for a confrontation with the Special Commission for acts of the Government of the Chamber of Deputies.

9 Local authorities' right to associate

The aims of Article 10 of the Charter are mainly two: the protection of the right of local authorities to form and join associations 'for the protection and promotion of their common interests', and also the right to co-operate, and to form consortia with other local authorities in order to carry out tasks of common interest. After the provision of the Law No. 142/1990, also art. 4 of Legislative Decree No. 267/2000 regulate this principle 'to achieve an efficient system of local autonomies at the service of economic, social and civil development.' There are many forms of association and cooperation. We can point out the National Association of Italian Municipalities (ANCI), the Association of Italian Provinces (UPI), the National Association of Municipalities and Mountain Communities (UNICEM), some structured institutions, such as the Union of municipalities, the multipurpose consortium, the mountain community', or even the conferences, such as the State-City and Local Autonomies Conference (see Guerra, 2017: 609).

Associationism is a handy tool to allow, in a particular way, smaller municipalities to participate in the exercise of functions, also about regional competences, among which there is the preparation of a program to change the municipal districts and merger. The intercommunality has become the object of attention by the legislator, in connection with the federal design initiated by Law No. 59/1997, and Legislative Decree No. 112/1998, in parallel with the constitutional reform of Title V of the Constitution, introduced by Constitutional Act No. 3/2001. From this point of view, on the one hand, we point out the suppression of the obligatory nature of the transition from the union to the merger of municipalities, and, on the other, the provision of the obligation for institutions of smaller demographic size to perform the functions in associated, to ensure optimal performance levels identified by the regions (Guerra, 2017: 612).

We can point out here that Decree-Law No. 78/2010 imposed the obligation for municipalities under 5,000 inhabitants - 3,000 if they are part of mountain communities – management in an associated form of essential functions. The law left the choice between the use of a convention or the model of union of municipalities. Law No. 56/2014 confirms the mandatory use of the essential functions by the small municipalities, reformulating the discipline of the union of towns in the direction of

forced integration, but with the power of choice of the extension of this process by the same municipalities. The failure of the constitutional revision project following the last referendum consultations did not change the constitutional framework, but interrupted the process of reforming the territorial articulations of the State.

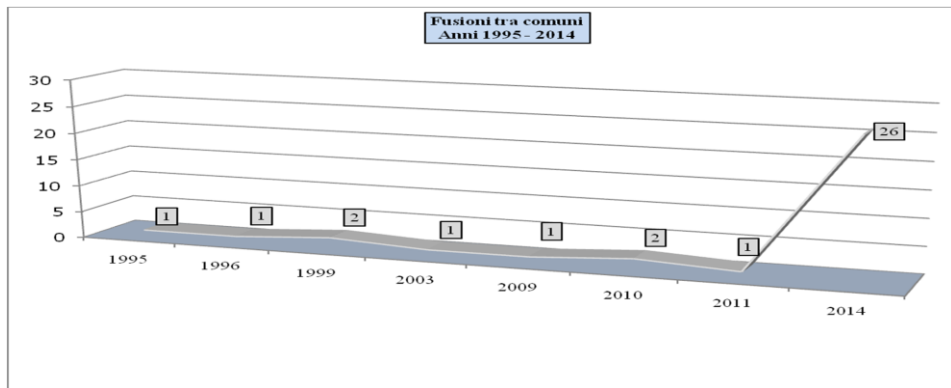
A rough analysis of the unions of the currently operative municipalities can be defined as follows²⁸: Abruzzo (11), Basilicata (2), Calabria (10), Campania (15), Emilia-Romagna (42), Friuli Venezia Giulia (19), Lazio (19), Liguria (19), Lombardy (80), Marche (19), Molise (8), Piemonte (108), Puglia (23), Sardinia (36), Sicily (47), Trentino Alto-Adige (0), Tuscany (22), Umbria (1), Valle d’Aosta (8), Veneto (2).

As for the mountain communities, partly suppressed by regional measures, the current number is 94, divided as follows²⁹:

Abruzzo (0), Basilicata (0), Calabria (0), Campania (20), Emilia-Romagna (0), Friuli Venezia Giulia (0), Lazio (22), Liguria (0), Lombardy (23), Marche (0), Molise (0), Piemonte (0), Puglia (0), Sardinia (5), Sicily (0), Trentino Alto-Adige (22), Tuscany (0), Umbria (0), Valle d’Aosta (0), Veneto (2).

About the mergers of the municipalities, 73 mergers were carried out at the beginning of July 206, with an upward trend starting in 2011.

Figure 2: Mergers of municipalities



Source: Ministry of Interior.

Finally, it could be interest point out that article 10 of the Statute of the City of Bolzano (2015) – the central town of the Autonomous Province of Bolzano (South Tyrol) – expressly provides that the European Charter of Local self-government should constitute

²⁸ Ancitel, 2018.

²⁹ Ancitel, 2018.

«a guide for the activities of the City.” From this point of view, the City of Bolzano, exercising its competences, pursues the intent of the European Charter of Local self-government to respect its principles and work for its full implementation. Furthermore, it promotes and supports projects that develop the process of European integration, developing any useful initiative to establish relationships of mutual understanding between the different local communities. Finally, the perspective into which the City operates is that of a culture of peace and human rights through every useful initiative to develop forms of stable associations and cultural activities that propose these purposes.

10 Legal protection of local self -government

In the Italian legal system, local authorities have the right, exercised by their legal representatives, to appeal to the courts for the guarantee of legitimate interests and subjective rights, as provided for each citizen by Articles 103 and 113 of the Constitution. Tuttavia, il problema che alcuni studiosi si pongono è se non sia opportuno che sia introdotto un ricorso davanti all'organo di giustizia costituzionale. However, the problem that some scholars pose is if it is not appropriate to appeal to the constitutional court in cases where there may be a violation by the legislator of the principle of local autonomy.

The Italian Constitution does not allow a defense of the local government against the legislator in the judgment of constitutionality. If we consider Article 134, paragraph 3, of the Constitution, combined with Article 11 of the European Charter of Local Self-Government, we should consider the possibility of the introduction of the appeal to the Constitutional Court.

The introduction of an individual appeal to the Constitutional Court by local authorities, who consider themselves injured in their constitutional rights, appears to be challenging to implement in the Italian legal system.

Nevertheless, in the hope of an implementation of the art. 11 of the European Charter, a necessary reference is to art. 9 of Law No. 131/2003. It which provides that the question of the constitutional legitimacy of a regional law can be raised by the President of the Council of Ministers, following deliberation by the Council of Ministers, also on the proposal of the State-City Conference and local autonomies, by direct appeal to the Constitutional Court. It follows that the President of the Regional Council, subject to the resolution of the Regional Council, also on the proposal of the Council of Local Autonomies, can promote a question of the constitutional legitimacy of a law, or an act of the State, having the force of law, can before the Constitutional Court. We can consider the proposal of local bodies such as a sort of "surrogate" of the appeal directed to the judge of the laws, denied in the constitutional reform of 2001. The holders of the power of proposal, in fact, are the collegiate bodies that place themselves (the Conference) as the institutional forum for comparison and connection between the State and the local autonomies and the other (the Council of Local Autonomies) as consultation body between local authorities and the Region.

As regards, in fact, the appeal of laws and acts with the force of state law and other regions, the Council's initiative cannot go beyond a 'simple stimulus' for the Region, and we exclude any constraining conditioning to the free decision on the an and the quomodo of the appeal to the Constitutional Court.

Therefore, even after the entry into force of Law No. 131/2003, the Court reiterates the known foreclosures against local authorities.

The real turning point happens with the sentence of the Constitutional Court n. 196/2004, on the subject of building amnesty, where, for the first time, a question of constitutional legitimacy raised in principle by a Region to 'assert not only its competencies but also of local authorities.' The Court declares this question as admissible with the 'close connection, in particular in urban planning and terms of regional and local finance, between regional and local self-government.'

It allows considering that the lesion of local competences is potentially suitable to determine the vulnerability of regional powers. The decision of the Court introduces an interesting opening about the feasibility of indirect access by the local authorities to the constitutional justice. Furthermore, the Court, despite the widening of the possibility of a 'procedural substitution' of local authorities legislative competence to any form of regional autonomy. And, it continues to require the presence of the close connection between the lesion of the attribution of the local authority, and, at least, one of the constitutional attributions of the regions.

11 Future challenges of the implementation of the European Charter of Local Self-Government in Italian legislation

The Monitoring Committee of the Congress of Local and Regional Authorities Report 2017 on local and regional democracy highlighted some of the problems (and potential challenges) of the implementation of the European Charter of Local Self-Government in Italian legislation. From this point of view, the perspectives can be mainly two. The first is political and concerns the uncertainty of the Italian situation after the adverse outcome of the constitutional referendum of December, 4th, 2016, and the formation of a new government in June 2017. This uncertainty does not only affect national and regional policies but also, in many ways, the context of local self-government, guaranteed by the European Charter. The lack of constitutional reform is a negative element for the strengthening of local autonomies. There are many doubts that the current government can take the necessary measures to implement the European Charter.

In this regard, we can ask ourselves how the current Italian financial situation can allow us to find adequate solutions to implement the Charter with more resources and economic balance for local authorities. It will be inevitable that the Government adopts some measures because new abrupt cuts in the funding of the systems of territorial government may have the effect of breaching not only art. 9 but also arts. 3, 4, 5, 6 and others.

The contractual renewal costs for local staff – estimated at over one billion euro for the municipal sector only – cannot be left to the local authorities alone, which will have to finance this step exclusively with the annual resources of competence. Furthermore, the problem of the economic imbalance between the local bodies of the Center-North and those of the South remains unaltered. To a significant investment trend in the Center-North between 2015 and 2016, correspond the negative values of the South, and the most substantial growth among small and medium-sized organizations (only) in the North, both regarding commitments and payments. The municipal debt remains very low (only 1.8% of total public mortgages) and continuously decreasing (from 2.5% in 2011 to 1.8% in 2016). However, it also affects the budgets of broad groups of institutions in all areas of the country, having been contracted in periods of rates much higher than the current and subjected to very high penalties in the event of extinction. Similar problems arise for the metropolitan cities where the overall size of the structural imbalance (between 200 and 300 million euro) reflects the underlying situation of the financial statements, due to the prolonged economic suffering of the entire former provinces sector, from 2013 then, despite the substantial sterilization of the 2016 and 2017 incremental cuts.

If the solution of financial problems is important, there are other issues – which also require interventions by the central government – that condition the implementation of the European Charter and the constitutional development of the local government.

The Decree of the Ministry of Economy and Finance, No. 182944, 23 July 2018³⁰, introduces a positive element from this perspective, dealing with the question concerning the rulings of the Constitutional Court No. 247/2017 and No. 101 / 2018. The two sentences, interpreting the art. 9 of the Law No. 243/2012, consider that the administrative surplus and the limited multi-year fund of the local authorities cannot be limited in its use since once realized a more significant entry is in the availability of the entity that obtained it. The Constitutional Court's orientation could allow local authorities to balance the budget and to overcome the internal stability pact.

At this time, government politics and financial uncertainty represent, together with corruption, and the presence of criminal associations, the main problems of local authorities. These problems also have consequences on the institutional set-up and the exercise of local functions. The phenomenon is widespread especially in the Southern Regions, and has produced the dissolution of many municipal councils for mafia infiltration, pursuant to art. 143 of the legislative Decree No. 267/2000. From 1991 to May 2018 there was the dissolution of 306 municipal councils for mafia infiltration (i.e. Calabria: 105, Campania: 104, Sicily: 73, Puglia: 13).

Among the various functional areas, recent (and tragic) Italian events highlight, in particular, the theme of immigrants, the great public works, and the environment.

³⁰ At: <http://www.rgs.mef.gov.it>.

The Italian Government, since its establishment in June 2017 until today, has focused mainly on the issue of migrants. This problem touches on different aspects of the Charter, from the concept of autonomy to the sphere of local autonomy, from the adaptation of structures to the resources necessary for the exercise of functions to the guarantee of human rights in the local dimension.

The issue of the guarantee of human rights at the local level with particular reference to migrants and refugees represents a significant and constant criticality for Italy as the Monitoring Committee noted. According to data from the Ministry of the Interior, between 2016 and 2018, 218,392 migrants have landed in Italy³¹, with a drastic reduction in the last year. Although this is a national problem, as well as a European one, it mainly concerns local authorities.

The problem mainly concerns the Southern Regions where the main landing ports reached in 2018 are: Sicily (Pozzallo, Catania, Augusta, Messina, Lampedusa, Trapani, Palermo), Calabria (Crotone, Porto Empedocle, Reggio Calabria) and Sardinia (Cagliari), as well as the reception centers. These structures are divided into first aid and reception centers (CPSA), reception centers (Cda), reception centers for asylum seekers (Cara) and identification and expulsion centers (CIE). The procedures for recognition and ascertainment of refugee status are unusually lengthy in Italy, and this produces tension in the local communities. First, due to the severe lack of resources allocated by the government to the municipalities to provide for the maintenance of sheltered centers and immigrants. Public order and economic problems complicate the life of local governments with regard to this issue.

For example, from the first point of view, many mayors make opposition to the government's plans for the redistribution of migrants in different Italian Regions, in the same way, it happens in some Countries of the European Union. Since June 2018, the Italian government received many criticisms for the prohibition of entry into the Italian ports of NGO ships that have collected migrants at sea. Even some city mayors with large ports have expressed their dissent on this policy.³²

About the action of local authorities for the protection of asylum seekers and refugees we can point out the SPRAR Project³³, created under Law No. 189/2002. It consists of a network of local authorities, which run reception projects for people forced to migrate with members of third-sector and ONG, within the limits of available resources. In the 2011-2013 period, 128 local authorities - of which 110 local authorities, 16 provinces, and two consortia of local authorities - took part in the project. In 2016 the municipalities that joined were 1017 out of 7898, of which the majority are in the southern regions.

³¹ At: http://www.interno.gov.it/sites/default/files/cruscotto_statistico_giornaliero_17-08-2018.pdf.

³² See Pianigiani, G., Horowitz, J. and Minder, R. (2018) Italy's New Populist Government Turns Away Ship With 600 Migrants Aboard, at <https://www.nytimes.com/2018/06/11/world/europe/italy-migrant-boat-aquarius.html>.

³³ At: https://www.sprar.it/wp-content/uploads/2016/07/sprar_description.pdf.

From this point of view, if the financial resources of the local communities are not sufficient, it is evident that not even the funds transferred to the Italian State in the European context can contribute significantly to the solution of the problems linked to immigration. However, if the main difficulties relate to intersubjective relationships, an opportunity can be given by solutions of a large area, from the management of reception facilities to the ports of metropolitan cities.³⁴

Another critical area for local authorities concerns the infrastructures of a particular size, located in the territory. Even if not the under the responsibility of local authorities, however, produce effects on the level of administrative functions, and consequences on citizens resulting from severe and tragic events, as happened for the collapse of Morandi Bridge in Genoa on August 14th, 2018.

The Decree of the Minister of Infrastructures and Transport of January 17, 2018, updating the technical standards for buildings – which revises the old technical regulations of 2008 – entered into force in March 2018. The question that is mandatory to apply regards the exercise of controls by the competent public (or private) subjects, considering that the local authorities do not have this competence. However, without going into the merits, we can underline the great novelty of the Prime Ministerial Decree n. 76/2018 of May 10, 2018 (whose entry into force is August 24, 2018), implementing Legislative Decree 50/2016, which formalizes the operational participation of local communities in the design choices of major strategic works. This is perhaps one of the main implementations of Article 4, paragraph 6, of the European Charter, in the part where it provides for public consultation of local authorities. Concerning the consultation of local authorities, before the approval of the state budget, it should be noted that the joint budget committees of the Senate and the Chamber of Deputies heard in the audience the Italian Association of Italian Municipalities to assess the financial needs for 2018. It remains to be seen whether the government's uncertainties about actions taken for political choices compromise the expectations of local self-government. Otherwise, the implementation of the European Charter itself could be jeopardized, as well as the guarantee of essential services to citizens.

The interruption of the constitutional reform process – after the failure of the last referendum consultation – had the effect of crystallizing the reform, for the profiles relating to the provinces and the entities of large area, according to the Law No. 56/2014, determining, however, a condition of uncertainty, above all for the regulation of the institutional structures and the financial aspects of the entities involved in the reform. With the disappearance of the planned abolition of the provinces, at least in the medium term, it seems necessary to impose, in public sector policies, the operation of these bodies (by arts. 114-118 of the Constitution as institutional subjects recipients of their fundamental functions and functions conferred) no longer suffers the effects of this

³⁴ At: <http://www.lavoro.gov.it/notizie/Pagine/Rapporti-sulla-presenza-dei-migranti-nelle-aree-metropolitane.aspx>.

conditioned perspective. In regards to the severe deterioration of the structural equilibrium conditions of the related financial statements, which took place in the last two fiscal years, and to which the subsequent emergent interventions, partly unrelated to the regulatory system of local finance, that the previous governments didn't give a solution.

The consolidation of public accounts, the restrictive effects of the new accounting, the freezing of the maneuverability of the local tax lever, and the start of equalization, contributed to a substantial compression of the political and administrative autonomy of the municipalities. It also requested an exceptional effort for the adaptation to the new paradigms. In this regard, we can point out that, even in the absence of further cuts in resources, the current-account tightening is continuing to occur due to accounting harmonization, due in particular to the gradual adjustment of the provision to doubtful receivables (FCDE), for several hundred million annually until 2021. The analysis of the financial situation of the provinces and metropolitan cities offers a significant comparison with what was shown about the detrimental effects produced, on the one hand, by the multiple maneuvers of public finance that affected the sector and, on the other hand, by the precarious situation connected to the uncertain implementation of the institutional reorganization process.³⁵

The government emerged since the elections of March 2018, does not seem to have among its priorities the problems of funding, and organization of local authorities, nor the implementation of the European Charter of Local Self-Government.

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³⁵ Ibid., p. 118.

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