

Proceduralized local autonomy and decentralization under budget constraints. When Nothing Else Matters

by Antonello Tarzia

Abstract: *L'autonomia locale proceduralizzata e il decentramento sotto vincoli finanziari. Quando null'altro importa* – Misconceptions about local autonomy over the last decades have triggered the annihilation of the capacity of the thousands of Italian small Municipalities to carry out their administrative duties. Italian under-resourced Local Authorities had been overburdened of administrative tasks, frequently impossible to be fulfilled, under a frequently conflicting and frantic multi-layered national and regional legislation. The fatal blow for small Municipalities has been delivered by an asphyxiating digital bureaucracy that led to a new sophisticated form of *tutelle amministrative*. Digital deadlines have become the metronome of administration and thousands of small Municipalities are obliged to take their few civil servants away from the services to the community and reassign them to discharge dozens of daily digital obligations all year round. The entire reduction of the local autonomy to the decentralization of powers risks being a point of no return.

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Keywords: Local autonomy; decentralization; budget constraints; digital bureaucracy; participation.

1. Prologue: a concise overview on Italian local government history

Local autonomy is a time-honoured and well-established fundamental principle of the Italian Constitution. Such a concept has long been subject to a heated academic debate that led to an in-depth refinement in all of its facets¹. Nonetheless, over the past few decades the focus has been placed on the decentralization of administrative powers under tight financial control.

Before the founding of the Italian Republic, especially during the Fascist era, Public Administration conformed to the principle of institutional monism and

¹ See, *ex multis*, V. Caianiello, *Premesse storico culturali dell'ordinamento delle autonomie locali* (L. n. 142 del 1990), in *Dir. soc.*, 1993, 1 et seq.; S. Cassese, *Tendenze dei poteri locali in Italia*, in *Riv. trim. dir. pubbl.*, 1973, 283 et seq.; M.S. Giannini: *In principio sono le funzioni*, in *Amm. civ.*, II, 1959, n. 23, 11 et seq.; *I Comuni*, Vicenza, 1967; *Regioni e Stato moderno in Italia*, in *Regioni e Stato moderno in Italia. Atti del Convegno organizzato dal CESI*, Roma, 1968, 15 et seq.; *Il riassetto dei poteri locali*, in *Riv. trim. dir. pubbl.*, 1971, 451 et seq.; *Sostanze e modi delle autonomie nel diritto pubblico*, in *Studi sassaresi*, III, *Autonomia e diritto di resistenza*, Milano, 1973, 579 et seq.; M. Nigro: *Gli enti pubblici con dimensione territorialmente definita: problemi vecchi ed esperienze nuove*, in *Riv. trim. dir. pubbl.*, 1976, republished in Id., *Scritti giuridici*, T. II, Milano, 1193 et seq.; *La riforma dell'amministrazione locale*, in AA.VV., *La riforma dell'amministrazione locale*, Torino, 1978, republished in Id., *Scritti giuridici*, T. II, Milano, 1996, 1327 et seq.; L. Paladin, *Due progetti di riforma dell'amministrazione locale*, in *Le Regioni*, 1977, 408 et seq.

total subordination of territorial bodies to the State; hence, local governments were strictly dependent on the State's far-reaching control. This monist model for State and Public Administration was later replaced by the institutional pluralism that the Constituent Assembly treasured in the Article 5, within the fundamental principles of the Constitution. Nonetheless, the course towards the decentralization of administrative powers, deemed by a plethora of academics as the real instrument to provide local autonomy, has been rather slow. The first general Law on Local Government grounded on the principle of autonomy was only enacted in 1990, after more than a century of *tutelle amministrative*. Likewise, it was not until 1970s that the complete shaping of the political Regions occurred, although the Constituent Assembly viewed them as the additional new cornerstone of the Constitutional architecture of territorial powers².

The former administrative system was centred on the magnitude of the State administrative power granted to central or peripheral (state) bodies and on the myth of a uniform legal regime (rather, it was a “panoply of shreds of legislations”³) for the over 8000 Municipalities and their rules of procedures, organizational principles, form of government, “*funzioni*” and administrative measures. This was an elephantine and asphyxiating system of *a priori* controls on local governments' actions that coexisted with a chaotic special and sectorial legislation that gradually eroded local autonomy⁴. Meanwhile, State laws nourished the proliferation of Public Companies charged with carrying out local administrative tasks as well as building up facilities⁵. Last but not least, State laws granted large influence in local matters⁶ to various national public bodies such as *Cassa per il Mezzogiorno*, a State Fund for the underdeveloped Southern Italy.

Hence, decentralization as proposed by Art. 5 of the Constitution has been rather slow.

The turning point for the enhancement of Local Authorities' autonomy coincided with the Law no. 142/1990. So, it is only from 1990 onwards that Local Authorities have become active “players” in the Italian administrative scenario.

In 1997, the Bassanini reform⁷ revolutionized the ancient centralized model of Administration by choosing Municipalities as the level of government charged by default with administrative powers, except for all those powers that the law left in the hand of the State. In that decade the popular election of the Mayor was

² Ordinary Regions were established only at the beginning of the 1970s; on the contrary, Special-status Regions became immediately effective when the Constitution entered into force.

³ F. Benvenuti, *Per una nuova legge comunale e provinciale*, in *Riv. Amm. Rep. It.*, 1959, 10, 1 et seq. (republished in Id., *Scritti giuridici*, II, Milano, 1747 et seq.: «una congerie di brandelli legislativi», *ivi*, at 1749).

⁴ See A. Tarzia, *Corti dei conti e controllo esterno sull'attività economico-finanziaria delle autonomie negli Stati regionali*, Padova, 2008, and *Los controles administrativos*, in G.F. Ferrari (ed.), *Derecho administrativo italiano*, México, 2013, 399 et seq.

⁵ For example, Law no. 1042/1969.

⁶ For example, art. 8, Law no. 646/1950, and, later, art. 32, d.P.R. (Decree issued by the President of the Republic) no. 1523/1967.

⁷ Laws no. 59 and 127/1997, mainly.

finally established by law⁸; it proved to be an efficient solution to various problems (local political instability and democratic participation, mainly).

Late in 2001, Part II of the Constitution was largely amended in order to provide much more legislative and administrative powers to political Regions⁹. These reforms deeply involved the ministerial administration since they brought about a massive transfer of legislative and administrative powers in favour of Regional and Local Authorities

In the last decade, national legislation pulsed neighbouring small Municipalities to perform in association various administrative tasks, in order to pursue efficiency targets¹⁰ and savings in the expenditure¹¹.

Most recently, the Law no. 56/2014 brought some new solutions and many new problems and inconsistencies to Local Authorities by creation of the Metropolitan Cities, after many decades of debate and various bills never passed, and marginalisation of the Provinces (a departmental level of local government that was crucial in the shaping of Italian administrative history)¹².

If local autonomy is to be conceived as the capability to define the interests of local communities according to the principles of representation and accountability, the popular election of the Mayor and the massive decentralization of administrative and regulatory powers should suffice.

Regrettably, all of this is furthest from the current situation of Italian local governments which are stifled by interweaves of rules and financial intergovernmental relations. The result is an oppressive new system of centralized controls, especially considering that, at the time of this writing, Italy has 5500 Municipalities with fewer than 5000 inhabitants and no more than a dozen of civil servants; additionally, hundreds of Municipalities work with just three or four civil servants and a few elected councillors¹³.

The truest meaning of local autonomy – self-regulation and participation – is somewhat much more precarious today than in the past.

2. A “proceduralized” local autonomy – an oxymoron

Currently, the real essence of Italian local governments is definable by an oxymoron – “proceduralized autonomy”. The real question is: What remains of the promises of local self-administration and free choice of the interests to pursue?

⁸ Law no. 81/1993.

⁹ Constitutional Act 18 October 2001, no. 3. See A. Tarzia, *Le autonomie locali nella nuova organizzazione costituzionale italiana*, Curitiba, 2008.

¹⁰ See A. Tarzia, G. De Luca, *L’associazionismo locale tra adempimenti normativi e criticità operative*, in *L’Amministrazione Italiana*, 2014, 23 et seq.

¹¹ See A. Tarzia, G. De Luca, *Los Municipios Italianos frente a los recortes presupuestarios*, in T.R. Huerta Barrera (ed.), *Derecho Municipal Multinacional*, México, 2015, 387 et seq.

¹² See A. Tarzia, *Le città metropolitane*, in A. Tarzia, B. Di Giacomo Russo (eds), *Il nuovo governo locale. Analisi della legge n. 56/2014*, Napoli, 2015, 9 et seq., and *Il governo indifferenziato dell’area vasta metropolitana. La pianificazione territoriale e il principio dimenticato*, in G.F. Ferrari (ed.), *La prossima città*, Milano, 2017, 579 et seq.

¹³ Consider, for example, that we have 50 Municipalities with no more than 100 inhabitants; 2 of them have about 30 inhabitants.

What is left for the local government capacity to define the territorial community interests? Precious little survives for the following reasons.

Italian Municipalities are facing a functional overload due to the massive decentralization of administrative duties, which is the main line of reform since the second half of the 90s.

Italy counts only few Metropolitan Cities that have been created according to the senseless and old (initially proposed in 1956) idea of absorption of pre-existing Provinces, the supra-municipal level of government. On the one side, not all of them are “real” Metropolitan areas as accounted by the OECD definition of functional urban areas; on the other side, there is a myriad of little Municipalities unable to carry out the gigantic range of “*funzioni*” allocated to them. This is mainly due to the financial constraints on their budgets. In order to hold public debt, an overpowering multi-layered system of financial rules and controls has been created; it has proved insufficient to grant Municipalities the possibility to participate in regulatory choices and, at the same time, obliges them to approve their budgets under utter uncertainty of resources available.

Nevertheless, there are two further critical factors, the multiplication of suffocating external controls and the overlapping of several layers of legislation, which will be the remaining focus of this chapter.

2.1. Digital bureaucracy

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The first issue is related to the asphyxiating system of external controls on Local Authorities. History tells about the shift, in the early 90s, from an early system of *a priori* controls on administrative acts to collaborative ones recommitted to the *Corte dei conti* (Court of Auditors), the judicial body specialized in controlling national and local public finance. These new forms of control failed in creating cooperation between Local Authorities and the *Corte dei conti*, mainly because this last is a part of the Judiciary, which makes local elected bodies and civil servants feel afraid and insecure.

Over recent years, maybe unwillingly, national Government and Parliament created a gigantic system of procedural controls on local administrative tasks. This new system yielded to a diversion of public employees from public services to an endless list of bureaucratic activities, whose usefulness to realize public interests is equal to zero in most cases and proved to be exceedingly problematic for small Municipalities.

This a short list of the (hundreds of) administrative formalities which in most cases are to be digitally processed:

1. The request for certification of the payment of social security contributions [“*DURC, Documento Unico di Regolarità Contributiva*”] for any outflow from local governments¹⁴;
2. The publication on the local government website of any grant, subsidy, reward that is above one thousand euros¹⁵;
3. The arrangement of the Performance Framework (“*Piano della performance*”)¹⁶;
4. The arrangement of the Recruitment Plan (“*Piano delle assunzioni del personale*”)¹⁷;
5. The arrangement of the End-of-Term Report [“*Relazione di fine mandato*”]¹⁸;
6. The arrangement of the Start-of-Term Program [“*Relazione di inizio mandato*”]¹⁹;
7. The arrangement of the Three-years Programme to prevent corruption [“*Piano triennale di prevenzione della corruzione*”]²⁰;
8. The arrangement of the Three-years Public Works Programme [“*Programma triennale delle opere pubbliche*”]²¹;
9. The notification to Treasury’s National Department of all information related to Municipal assets (Municipal companies and participations in local governments’ consortia)²²;
10. The notification to Treasury’s National Department of all outstanding loans (*CEAM–Comunicazione degli Enti locali e territoriali per il monitoraggio e l’Accesso al Mercato dei capitali*)²³;

¹⁴ The regulation is scattered across many primary and secondary sources of law (D.lgs. no. 163/2006, later replaced by D.lgs. no. 50/2016; D.L. no. 210/2002, converted by Law no. 266/2002; D.M. (Ministerial Decree) Labour and Social Security, adopted 24/10/2007, etc.)

¹⁵ Arts. 4-*bis* and 26, par. 2, D.Lgs. no. 33/2013 (as modified by D.Lgs. no. 96/2016 and by Law no. 124/2017).

¹⁶ Art. 10, D.Lgs. no. 150/2009.

¹⁷ D.lgs. no. 165/2001 (as modified by D.lgs. no.75/2017) and D.P.C.M-Dipartimento della Funzione pubblica (Decree of the President of the Council of Ministers) adopted 8/5/2018.

¹⁸ Art. 4, D.Lgs. no. 149/2011: «With the aim to pursue the overall control of public finance, to preserve the legal and economic unity of the Republic and the principle of transparency in revenue and expenditure decisions, Municipalities and Provinces are required to prepare an end-of-term report».

¹⁹ Art. 4-*bis*, D.Lgs. no. 149/2011, as amended by art. 1-*bis*, par. 3, D.L. no. 174/2012, converted with modifications by Law no. 2013/2012: «With the aim to pursue the overall control of public finance, to preserve the legal and economic unity of the Republic and the principle of transparency in revenue and expenditure decisions, Municipalities and Provinces are required to prepare a start-of-term report, in order to make an informed assessment of their assets and liabilities, financial position and level of debt».

²⁰ Art. 1, par. 6, Law no. 190/2012, as amended by art. 41, par. 1, lett. e), D.Lgs. no. 97/2016. The Three-years Programme is to be drafted according to the ANAC (Anti-Corruption National Authority) Guidelines, updated annually.

²¹ Art. 128, D.lgs. no. 163/2006; later repealed and replaced by arts. 21 et seq., D.Lgs. no. 50/2016; the Programme is to be drafted according to the Ministerial Decree of Infrastructures and Transport 24/10/2014; Special-status Regions have an additional regulation, for example, art. 6, Law Sicilian Region no. 12/2011.

²² Art. 17, D.L. no. 90/2014, converted by Law no. 114/2014; Ministerial Decree of Economy and Finance 25-1-2015.

²³ Ministerial Decrees of Economy and Finance 1/12/2003, no. 389, and 3-6-2004, no. 14955.

11. The notification to PERLA PA (Integrated system for Public Administration) of all duties assigned by Local Authorities to civil servants and external agents²⁴;
12. The completion of the Ministry of Public Administration questionnaire on the official cars' usage (“*auto blu*”)²⁵;
13. The completion of SOSE²⁶ questionnaires²⁷ on: a) Municipal standard costs and requirements; b) “Fiscal federalism project”.
14. The completion of the AGCOM [National Authority for Communications] format on local advertising expenditures²⁸;
15. The notification to PERLA PA of all benefits from allowances and leave related (and not related) to public officials' union memberships²⁹;
16. The digital notification to the Fiscal Agency of all local fiscal revenues (“*Anagrafe tributaria*”)³⁰.

Apart from many other administrative procedural obligations, the foregoing list of administrative-no public services duties confirms that local autonomy seems to be bearing the brunt of deadlines and bureaucratic tasks that are paralyzing local governments, especially the smallest and under-resourced ones.

In 2012, the Anti-Corruption National Authority stated the unsustainable overlapping and duplication of disproportionate disclosure requirements for all Public Administrations³¹; despite some recent simplification of this “digital bureaucracy”, in a 2017 report the Authority assessed that among the Public Administrations which failed the obligations, the 94.4% is made up of Local Authorities, and most of them are of small size (74,7%) and situated in the South and Isles (54,9%)³².

Among other inconsistencies in the effects of this kind of legislation, the heads of the financial services of Local Authorities denounce that this digital bureaucracy prevents them from effectively doing their main task, defined by law as management and control of financial activities³³.

Digital deadlines have become the metronome of administration because of a widespread perception that local governments act unlawfully.

²⁴ Law no. 190/2012 (that amended D.Lgs. no. 165/2001) and arts. 15-18, D.Lgs. no. 33/2013.

²⁵ Art. 4, D.P.C.M. 25/09/2014.

²⁶ SOSE – *Soluzioni per il Sistema Economico Spa* is a public company whose shares are held by the Minister of Economy and Finance (88%) and by the Bank of Italy (12%).

²⁷ Art. 5, par. 1, lett. c), D.Lgs. no. 216/2010.

²⁸ Art. 41, D.Lgs. no. 177/2005; Del. AGCOM 14-1-2016, no. 4/16/CONS and 28-1-2017, no. 59/17/CONS.

²⁹ Art. 50, D.Lgs. no. 165/2001.

³⁰ Del. Agenzia delle Entrate 10-3-2005.

³¹ ANAC, *Per una semplificazione della trasparenza. Esiti della consultazione sugli obblighi di pubblicazione previsti in materia di trasparenza ed integrità*, 2012, in www.anticorruzione.it

³² ANAC, *Rapporto sullo stato di attuazione e la qualità dei piani triennali di prevenzione della corruzione nelle amministrazioni pubbliche 2015-2017*, 2015, in www.anticorruzione.it

³³ Art. 153, D.Lgs. no. 267/2000. See M. Bellesia, *La difficile situazione dei responsabili dei servizi finanziari dei Comuni e le iniziative per migliorarla*, in *Azienditalia*, no. 10, 2018, 1259 et seq., at 1260, and F. Tuccio, *Uffici finanziari al collasso. Ragionerie in ginocchio per la mole di adempimenti*, in *Italia Oggi*, 3-3-2017, 42-43.

2.2. Multi-layered frantic legislation

The second critical factor is that small Municipalities are constrained and prejudiced by an overwhelming arising legislation that creates total uncertainty – even in the short term. The following examples are to better depict the current situation.

Consider the set of financial emergency measures taken in 2012:

D.L. no. 216/2011 (“*Milleproroghe*”), conv. by Law no. 14/2012; D.L. no. 1/2012 (“*Liberalizzazioni*”), conv. by Law no. 27/2012; D.L. no. 5/2012 (“*Semplificazione e sviluppo*”), conv. by Law no. 35/2012; D.L. no. 16/2012 (“*Semplificazione tributaria*”), conv. by Law no. 44/2012; D.L. no. 52/2012 (“*Razionalizzazione della spesa pubblica*”), conv. by Law no. 94/2012; D.L. no. 83/2012 (“*Decreto sviluppo economico 1*”), conv. by Law no. 134/2012; D.L. no. 95/2012 (“*Spending Review*”), conv. by Law no. 135/2012; Law no. 190/2012 (“*Anticorruzione*”); D.L. no. 174/2012 (“*Finanza e funzionamento degli enti territoriali*”), conv. by Law no. 213/2012; D.L. no. 179/2012 (“*Decreto sviluppo economico 2*”), conv. by Law no. 221/2012; Law no. 228/2012 (“*Legge di stabilità per il 2013*”).

Three years later, another set of financial emergency measures has been spilled on local governments to rule on their activities in 2015:

D.L. no. 4/2015³⁴, conv. by Law no. 34/2015; Law no. 190/2014³⁵; D.L. no. 78/2015³⁶, conv. by Law no. 12/2015; Regulation of the Minister for the Interior 27-5-2015³⁷; Regulation of the Minister of Economy and Finance 20-5-2015³⁸; Regulation of the Minister for the Interior 28-4-2015³⁹; Law no. 11/2015⁴⁰; Regulation of the Minister of Economy and Finance 26-2-2015⁴¹; Regulation of the Minister of Infrastructures and Transport 29-1-2015⁴².

In the first six months of 2019 has been arranged a wide-ranging set of new passed or drafted (at the time of this writing) legislation which will definitely have a great impact on all Public Administrations:

³⁴ “*Misure urgenti in materia di esenzione IMU*”.

³⁵ “*Disposizioni per la formazione del bilancio annuale e pluriennale dello Stato – legge di stabilità 2015*”.

³⁶ “*Disposizioni urgenti in materia di enti territoriali*”.

³⁷ Decreto Ministro dell’Interno, “*Riparto del contributo alla finanza pubblica di 60 milioni di euro a carico delle province, per l’anno 2015*”.

³⁸ Decreto Ministro dell’Economia e delle Finanze, “*Aggiornamento degli allegati al decreto legislativo 23 giugno 2011, n. 118, relativo alle disposizioni in materia di armonizzazione dei sistemi contabili e degli schemi di bilancio delle Regioni, degli enti locali e dei loro organismi, a norma degli articoli 1 e 2 della legge 5 maggio 2009, n. 42*”.

³⁹ Decreto Ministro dell’Interno, “*Determinazione del riparto del contributo alla finanza pubblica a carico delle città metropolitane, delle province ricomprese nelle regioni a statuto ordinario e delle province delle regioni Siciliana e Sardegna, pari complessivamente a 5,7 milioni di euro, per l’anno 2015, in proporzione alle spese per incarichi di consulenza, studio e ricerca e per i contratti di collaborazione coordinata e continuativa*”.

⁴⁰ “*Conversione in legge, con modificazioni, del decreto-legge 31 dicembre 2014, n. 192, recante proroga di termini previsti da disposizioni legislative*”.

⁴¹ Decreto Ministro dell’Economia e delle Finanze, “*Determinazione del riparto del contributo alla finanza pubblica a carico dei comuni, pari complessivamente a 563,4 milioni di euro, per l’anno 2015*”.

⁴² Decreto Ministro delle Infrastrutture e dei Trasporti, “*Fondo nazionale di sostegno per l’accesso alle abitazioni in locazione – Riparto disponibilità anno 2015 (100.000.000 €)*”.

Law no. 56/2019 (“Measures to ensure more concrete administrative actions and to prevent absenteeism”); bill (“d.d.l.”) of “Delegation to the Government to introduce new measures for the improvement of Public Administration”; Law no. 145/2018 (Budget Law for 2019); D.L. no. 135/2018 (“Urgent provisions for simplification and support for enterprises and for Public Administration”), conv. by Law no. 12/2019; D.L. no. 4/2019 (“Urgent provisions on basic income (“*reddito di cittadinanza*”) and pensions”), conv. by Law no. 26/2019; D.L. no. 32/2019 (“Urgent provisions to revitalize public contracts, to accelerate investments in infrastructure projects, urban regeneration and reconstructions after seismic events”), conv. by Law no. 55/2019; and, finally, the just-passed D.L. 27-6-2019, no. 34 (called “*Decreto crescita*”) that introduces new rules for budget and accrual accounting.

These regulations attest that Italian financial legislation is facing an enduring emergency.

All legislation is also unstable. For example, consider the Law on General Principles on Public Administration [Law no. 241/1990], made up of 31 articles. It suffered more than 200 amendments and various repeals brought by 40 different primary sources (20 Law Decrees; 9 Legislative Decrees; 11 Laws); 1 Law Decree of “*interpretazione autentica*” for some of its provisions⁴³; 2 law Decrees and 1 Law of integration of its provisions⁴⁴; 1 secondary source of “*delegificazione*”⁴⁵; 1 secondary source of “*attuazione*”⁴⁶ and references to various other secondary sources, over a 29-years period! How can principles be so unstable? The foregoing shows a dramatic inconsistency of the overall administrative system, which is under an enduring emergency.

But there is much more to be said. Administrative policies are completely annihilated by the instability and complexity of national and regional legislation which affects small Municipalities. Regional legislation, in particular, is considered as the frequent cause of further complication. The following examples are illustrative:

a) The national legislation gives a certain definition of the “Civil Protection” function. Regional legislations, whose compliance with regional funds for Municipalities are dependent on, sometimes give different legal definitions, e.g. in Lombardy Region. According to this latter point, Municipalities have to comply with national legislation in order to avoid governmental exercise of substitutive powers whilst, on the other hand, they have to comply with regional legislation to receive funds. The result is, at best, a vague characterisation of the required-by-law definition of civil protection in municipal regulations.

b) The problematic creation of the Union of Municipalities as a solution to small and under-resourced local authorities’ difficulty to perform their administrative tasks. At first, State legislation provided that the modification of the Charter of the Union was reserved to the Assembly of the Union. Later in 2008, an Act passed by the Lombardy Regional Assembly stated quite the

⁴³ Art. 5, par. 2, lett. c), D.L. no. 70/2011.

⁴⁴ D.L. no. 245/2005, converted by Law no. 21/2006; Law no. 296/2006; art. 47-bis D.L. no. 69/2013 as converted and modified by Law no. 98/2013.

⁴⁵ D.P.R. no. 157/2007.

⁴⁶ D.P.R. no. 300/1992.

contrary, that all amendments might be approved by each City Council. Accordingly, another national Law in 2014 expressly stated that the power to amend is vested in the Assembly of the Union. Finally, Lombardy Regional Assembly modified the regional Law according to national rule. Then, it took more than 10 years and 4 Laws to be passed to establish a simple principle that identifies which political body is vested with the power of amendment.

In recent years, even the *Corte dei conti* is not providing advice to Municipalities whereas the same Court is not able to foresee frequent changes in regulation at all level; thus, the Court prefers to hide itself behind a misleading comity to Local Authorities' political discretion.

On concluding, it is patent that local autonomy does not mechanically derive by a deceptive and uncontrolled devolution of public powers but from simplification of legislation (is legislative simplification still alive in political agenda?) and some kind of participation of Municipalities in defining regional and national legislation.

3. What is left of local autonomy and participation in defining public policies?

It appears that the concept of local autonomy has long been ill defined, accordingly to the idea that some Author, as borrowing the definition offered by de Tocqueville, refer to north-American Federalists: great political centralization and extreme administrative decentralization. The present Italian situation is the concrete sign of such a system with rewarding powers at the centre and cumbersome duties at local level (consider, e.g., the problem of addressing massive migration flows in the Municipalities).

Giovanni Lobrano, an Italian and Roman Law historian, clearly stated that the aforementioned administrative reforms solely focused on decentralization are not a deviation from centralism, but its finalization⁴⁷. Evidences of this are also found in the lexical difficulty to refer to the situation of Local Authorities in a comparative perspective – *decentralización, desconcentración, décentralisation, devolution*, ending with the paradoxical expression “*Decentralization from the local*” which was used some years ago by the Secretary General of the Latin-American Federation of Municipalities and Local Authorities⁴⁸.

It would be arguably adequate to state that local autonomy cannot rest only upon decentralization of powers and participation of citizen by voting. Evidently, the participation is completely annihilated by an oppressive and conflicting regulation produced by superior levels of government.

It is vital to introduce a new form of participation, based on the involvement of local communities in the political centres (national and regional) accordingly to

⁴⁷ G. Lobrano, *Perché e come riformare la autonomia speciale della Sardegna (e la Costituzione italiana)*, in *ISPRM-Atti on-line del Convegno di Cagliari, 24-25 settembre 2015*, in www.isprom.wordpress.com

⁴⁸ C. Gadsden Carrasco, *Decentralisation from the Local: Action Research Lessons on Municipal Governance in the Mexican Transition to Democracy*, University of Essex, 2010.

the concept of “societal federalism”, which dates back to Althusius; unfortunately, that fundamental idea has been completely abandoned in favour of a centralized “federalism”.

At the national level, the Constitutional Amendment project of a new Senate made up of regional councillors and Mayors was rejected by the national referendum held in December 2016. There is no other sensible solution than restarting the involvement of local governments in regional political processes, e.g., by revitalizing their participation in the Council of Local Authorities at regional level.

To conclude, the decentralization of administrative powers without participation of local authorities converts into the most refined centralism which allows National Government to load the burden of administration to impoverished and sometimes insolvent local governments.