The System of Local Government in Italy: A Stress-Test to Traditional Paradigms?

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Abstract In 2001 a constitutional reform was approved with the aim to considerably increase the powers and the political autonomy of the Italian Regions. In championing the federalisation of the country, the relations between State and Regions were reshaped. Despite the presence of many typical federal traits, many other essential federal features are missing. The system of local autonomies is one of the most emblematic elements that distinguishes Italy's decentralised model from traditional federations. According to the theorical approaches to federalism, federations usually adhere to a common paradigm when it comes to local entities: local governments are creatures of the subnational units, whereas non-federal countries follow a different path, in which local entities depend on the central State. Against this background, the chapter explores the hybrid nature of the Italian paradigm, i.e., a system in which relations with local governments cannot be situated in neither of these two groups. In addressing this fuzziness, the chapter gives evidence of the main characteristics of mixed paradigms by emphasizing the components that in the Italian case show significant deviations from the abovementioned dichotomy.

This chapter is the product of a joint effort. However, Alice Valdesalici wrote Sects. 2, 3 and 6, while Martina Trettel authored Sects. 4 and 5. Sects. 1 and 7 have been co-authored.

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1 A Problem of (Col)location

Italy's territorial architecture is laid forth in Art. 114 of the Constitution. Accordingly, the Italian Republic is made up of the State, Regions (20), Provinces (80), Metropolitan cities (14), and Municipalities (7904).[1] Five Regions are termed 'special' Regions, one of which (the Trentino-Alto Adige/*Südtirol* Region) comprises the Autonomous Provinces of Trento and Bolzano/*Bozen*. Both Provinces are comparable to a Region in terms of powers and competences (Art. 116.2 of the Constitution). Each special Region has a different system of powers—including a different system of local government—due to bilateral negotiations with the central level, which is guaranteed by a basic law which has the rank of a constitutional law.

Among the entities listed in Art. 114 of the Constitution, Provinces, Metropolitan cities, and Municipalities are classified as local entities. However, this paper will solely address Municipalities, i.e., the basic units representing the backbone of the territorial structure, as well as the core of local autonomy. This holds true especially after the most recent reform (Law No. 56/2014), which left Provinces without significant functions but with a role of coordination of policies and public services.

Two decades ago, the 2001 constitutional reform considerably increased the powers and the political autonomy of ordinary Regions. In championing the federalisation of the country, the relations between State and Regions were reshaped. Despite the presence of many typical federal elements, many other essential federal features are missing.[2] On top of that, the implementation of the reform proved to be extremely difficult, and the economic and financial crisis brought about a counter-wave of re-centralisation.

The system of local autonomies is one of the most emblematic features that distinguishes Italy's decentralised model from traditional federations. According to the theoretical approaches to federalism, federations usually adhere to a common paradigm when it comes to local entities; local governments are creatures of the subnational units, whereas non-federal countries follow a different path, in which local entities depend on the central State. Against this background, Italy combines features that are hybrid and cannot be situated in neither of these two groups. In addressing this fuzziness, the chapter aims to give evidence of the main characteristics of mixed paradigms by emphasizing the components that in the Italian case show significant deviations from the abovementioned dichotomy.

This peculiar institutional solution is the outcome of a long series of reforms that started in the nineties and are still far from being concluded. The first reform instance is to be found in Law No. 142/1990 ('system of local autonomies'), continued with the Law No. 59/1997, and culminated with the approval of Legislative Decree

[1] See ISTAT - National Institute of Statistics, 'Codici statistici delle unità amministrative territoriali, novità per l'anno 2021', https://www.istat.it/it/archivio/6789.

[2] On the features that might contribute to classify as state as federal or regional, see the following Italian scholars: de Vergottini (1990), p. 831 ff.; Ortino (1993); Bifulco (1995), p. 20; Groppi (2004), pp. 5–12; Ferrari (2006); Reposo (2005); Volpi (1995).

No. 267/2000 ('consolidated text of the laws on the organisation of local authorities'; hereinafter referred to as TUEL). Later on, the entry into force of Constitutional Law No. 3/2001 ('changes to Title V of the second part of the Constitution') granted constitutional entrenchment to the abovementioned evolution occurred by means of ordinary laws.[3] More recently, Law No. 42/2009 ('delegation of powers to the Government in the matter of fiscal federalism, in implementation of Art. 119 of the Constitution') in reforming the system of financial relations has determined a substantial change of the financing system, also on the side of local entities.

After 2010 the local government reforms were governed by the economic crisis; more precisely emergency has determined a real 'informal modification' of the constitutional structure of autonomies, in general, and of local administration, in particular. The issuing of four law-decrees between May and December 2011, together with the approval of Law No. 183/2011 ('provisions for the formation of the annual and multi-year budget of the State - Stability Law 2012'), opens a phase—partly anticipated already in 2010—of abandonment of the ambitious project to achieve an effective 'Republic of autonomies'.[4]

Against this background, this chapter will firstly look at the constitutional recognition of Municipalities (Sect. 2). In order to assess the degree to which the Italian local government system conforms to a hybrid paradigm, then, Sect. 3 will address the issue of the distribution of competences over Municipalities between the State and ordinary (and special) Regions, while Sects. 4 and 5 will focus on the institutions in which intergovernmental relations take place, as well as on the various forms of intermunicipal cooperation. Section 6 will then deal with the complex system of local finance with an eye to the respective role of the State and the Regions in governing the municipal financing system, whereas the actual existence of a paradigm of local government in a regional State like Italy will be the focus of the concluding section (Sect. 7).

2 Municipalities in the Constitution

Local autonomy is entrenched in the Italian Constitution (hereinafter: Const.) through a combined reading of Art. 5 and Art. 114. On the one hand, decentralisation and autonomy are considered as basic principles together with the unity and the indivisibility of the Republic (Art. 5). On the other hand, and like all other territorial entities, Municipalities are considered constituent units of the Republic and are autonomous entities having their own statutes, powers, and functions in accordance with the principles laid down in the Constitution (Art. 114.2 Const.).

[3] See Groppi and Olivetti (2003) and Borgonovo Re (2011).

[4] On how the financial crisis on 2011 impacted on local government in Italy see Nicolini and Trettel (2017).

Art. 114 apparently places all units of the 'Republic' (State, Regions, Provinces, Metropolitan cities, and Municipalities) on an equal footing.[5] If the assumption sounds unfamiliar for a federal system in which local entities are typically considered as creatures of the subnational governments, at the same time, it might be interpreted as expressing the concept of (functional) 'spheres' rather than (hierarchical) levels of government.[6] To put it differently, equality is not meant in absolute and substantial terms. Wide discrepancies exist among the territorial entities enumerated in Art. 114.1 as each of them plays a very different role in the system and is vested with different powers.[7] One of the most significant differences concerns the fact that Municipalities have no legislative power, but only regulatory responsibilities associated with their organisation and the implementation of the functions attributed to them. However, they are as rule liable for all administrative functions, if and to the extent these are not assigned to the upper levels of government if deemed necessary pursuant to the principles of subsidiarity, differentiation, and proportionality (Art. 118 Const.).

As a result, Municipalities carry out their own, as well as delegated, administrative functions, whose list also includes the so-called 'fundamental functions' to be identified through national legislation; indeed, Art. 117.2, lit. p. Const. assigns this field to the exclusive legislative authority of the centre. On top of that, each Municipality has the power to adopt its own basic law. However, this power has to come to terms with the exclusive legislative competence of the central State which determines the electoral system and the governing bodies of all local entities (Art. 117.2, lit. p. Const.).

Against this framework, it emerges that the guarantees for municipal autonomy are rather weak. Incidentally, Municipalities do not have direct access to the Constitutional Court in case of violation of or interference with their competences.

Besides of that, the constitutional provisions are not self-executing and require the intervention of the (subnational or national) legislature, which defines the concrete scope of local autonomy. This is due to both the principle of legality and the undefined nature of certain constitutional expressions used in enumerating the allocation of competences among the different levels of governments. As to the first, the exercise of administrative functions necessarily finds its legitimation in the (national or subnational) law that shall define the scope and the limits of the administrative power. As to the second, the Constitution makes use of vague concepts–such as the abovementioned 'fundamental functions'—that leave ample room to the legislatures of all levels of government. [8]

[5] Art. 114 Const., as amended in 2001, reads: 'The Republic is composed of the municipalities, the provinces, the metropolitan cities, the Regions and the State'.

[6] Pizzetti (2001), p. 1153.

[7] Staderini et al. (2019), p. 38.

[8] Falcon (2002), p. 385; Martines et al. (2007), p. 228; Falcon (2004), p. 407; Corpaci (2004), p. 423.

This representation calls into question the existence of an inviolable core of local autonomy, the compression of which cannot be justified. In this respect, the constitutional case-law stipulates that the constitutional recognition of local autonomy entails that neither subnational nor national laws can end up in nullifying it (Const. Court ruling No. 83/1997), however, this does not imply that there exists

> an intangible reserve of functions and does not exclude that the subnational (or national) legislator can re-define the dimension of local autonomy in the exercise of the constitutionally allocated legislative powers (Const. Court ruling no. 286/1997).

Thus, the Court has to take into consideration the interests at stake and might legitimate a restriction of local powers, if and to the extent that the principles of subsidiarity, differentiation, and proportionality are safeguarded.[9]

As such, even if pursuant to Art. 114 the constitutional model appears to be supporting the idea that all territorial entities are on equal footing, the actual functioning of this institutional structure shows significant deviations from this pattern, favouring a system in which both the national and the regional level have a decisive role in determining the scope of local autonomy. The State is in charge of defining local basic functions, i.e., the core of local autonomy; within this framework, Regions are instead allowed to intervene in those matters falling within their (exclusive or concurrent) competence and complement the national legislation with laws valid in their territorial jurisdiction, an option that might further restrict the powers of the Municipalities thereof.

3 Jurisdiction Over Local Entities

The role assigned respectively to central and subnational governments as regards local entities helps to reconstruct the jurisdiction over them. This will be done by paying attention to the asymmetry the Italian territorial system rests on. In fact, two systems coexist: the one in place for ordinary Regions (Sect. 3.1) and the one of special Regions (Sect. 3.2).

3.1 Local Government in the Ordinary Regions: The One-Size-Fits-All Rule

As for ordinary Regions, the highly centralised pattern originally prescribed by the Constitution in 1948 has shown an interesting evolution, leaving more room to the subnational governments. Although changes have occurred over time through practice as well as by means of ordinary legislation (e.g., Law No. 142/1990), the 2001

[9] Gorlani (2020).

constitutional reform can be considered as a turning point along this trajectory. In changing the allocation criteria of the legislative competences, the reform has reversed the previous pattern. According to Art. 117 Const., the national level has exclusive and concurrent competence on a list of enumerated matters (117.2 and 117.3 respectively),[10] whereas all areas not included in these two lists are classified as residual competences and are vested exclusively in the Regions (Art. 117.4 Const.).

As to the system of local entities, the allocation scheme formally provides ample legislative space to ordinary Regions. In fact, the Constitution limits the national authority to the discipline of 'the governing bodies and the electoral regime, as well as the fundamental functions of local entities' (Art. 117.2 lit. p) Const.). All other matters fall under the responsibility of the Regions according to the residual clause which operates in their favour (Art. 117.4). Hence, the national level is not allowed to adopt an all-comprehensive regulation in this field, and the system of local entities is, at least on paper, under the responsibility of both the subnational and the national legislatures.

Soon after the 2001 reform, the Constitutional Court delivered a series of decisions that later were made object of a *revirement*. The Court stipulated that Regions have competence on both the forms of intermunicipal cooperation (see further Sect. 5) and the regulation of the 'basic functions' of local entities, when matters of subnational (legislative) competence are at stake. In fact, according to its ruling (no. 22/2014) the competence of the national level in this respect is limited to the mere identification of the functions that are to be classified as 'basic'. This choice, however, does not affect the constitutional distribution of competences. Hence, whenever the label of 'basic function' relates to a subject-matter that falls within the legislative competence of the Regions, the latter remain responsible for the regulation thereof.

Nevertheless, this change of paradigm is more illusory than real.[11] In fact, besides the need to respect a space for local autonomy, the new scheme operates without prejudice to the other competences of the national level, including those that are not a competence title in the classical sense but do have cross-cutting nature.

The national exclusive legislative power as to 'determination of the basic level of benefits relating to civil and social rights to be guaranteed throughout the national territory' (Art. 117.2 lit. m) Const.) is emblematic in this respect. Irrespective of the matter at hand, whenever a regional law provides for benefits related to civil and welfare rights–among the many in the field of healthcare, education, social assistance, and public transport–, there is the duty to comply with the standards set for those rights by the national law. Put differently, as the regional law cannot constrain essential rights, the State is allowed to intersect also matters of regional competence,

[10] Where the center and the Regions are given concurrent legislative competence (Art. 117.3 Const.), the legislative power of the center is restricted to the determination of basic principles, while the regions have full legislative powers within the framework determined by the center.

[11] Sterpa (2016).

if this is necessary to ensure public functions, and services are granted to a certain level to all citizens within the entire national territory. Besides giving rise to frequent conflicts before the Constitutional Court, an extensive interpretation of the national powers has mostly prevailed. This approach has challenged the margin of manoeuvre of the Regions also in fields of their competence; and, in so doing, it has affected their role and powers over local entities.

Other interferences arise with reference to another concurrent competence, i.e., land-use planning (*governo del territorio*), an expression that refers to a rather vague concept whose object is difficult to define. Besides that, there is the need to consider that it is not straightforward to draw a line between what is to be considered 'basic principle' and falls under the national authority and what is the 'detailed regulation' and belongs to the regional sphere.[12]

The concurrent competence on 'the coordination of public finance and the tax system' is another symptomatic example. Although concurrency in legislative powers should limit the State intervention to the determination of the basic principles thereof, the national legislator has often gone beyond by introducing detailed regulations. This trend has been emphasised especially after 2010 with the escalation of the economic-financial crisis and the tightening of the EU obligations. Furthermore, the Constitutional Court has gone along accepting an extensive reading to what can be considered a 'fundamental principle of coordination of public finance', thus leaving to the national legislator the upper hand. As such, the scope of the national legislation has expanded at the expense of the autonomy of the Regions in its financial and political dimension, also in respect to their local entities.[13] The reasoning of the Court rests on the fact that this is not to be considered a 'competence-title' in the traditional understanding. It is the purpose-oriented nature of coordination that is of relevance in this case. Because of this interpretation, the principles of coordination of public finance are to be understood much more as an exclusive and all-encompassing function, rather than a concurrent and subject-limited competence. If any, a safeguard to protect subnational autonomy could be found in the necessity of cooperation and integration between the different levels of government (i.e., the principle of loyal cooperation). Accordingly, the central authority must make all possible efforts to reach an agreement with subnational entities when decisions affecting their (financial) interests are made.

[12] Mengozzi (2017).

[13] Among others, see rulings no. 198/2012, 262/2012, 236/2013, 23/2014, 38/2016, 69/2016, 154/2017).

3.2 *Local Government in the Special Regions: Six Systems with Wide Discrepancies*

A different approach is to be found in the special Regions. In these territories the regional legislative competence over local government (and the provincial one as far as the autonomous Provinces of Trento and Bolzano/*Bozen* are concerned) is altogether very broad. Nevertheless, wide discrepancies exist from one subnational government to the other due to fact that each of them has a different system of powers, which is the result of bilateral negotiations with the central authority and is guaranteed by a 'special statute', a basic law with constitutional rank.[14]

This notwithstanding, a common pattern does emerge and can be summarised as it follows. Special Regions are vested, at least on paper (*rectius*, according to their Statutes of autonomy), with an exclusive legislative competence on the system of local entities that is coupled with a strong financial and tax autonomy (see below Sect. 6). In these territories, the new allocation scheme set forth by the 2001 constitutional reform applies only to the extent that it provides a greater degree of autonomy (Art. 10, constitutional law No. 3/2001). Only under this condition, the new constitutional rules are extended to them. Although this does not apply to the specific field of local entities,[15] the constitutional reform has offered an incentive to pass a complete and organic regulation in most of these regions.

According to this line, special Regions are entitled–among other things–with the power to define the 'essential components of the system of local entities' (see Constitutional Court, ruling no. 220/2013), such as the electoral system, the governing bodies, the identification of the local functions and the respective allocation amid the different local entities, as well as the forms of intermunicipal cooperation. However, these powers are not without limits. On the one hand, local autonomy can be circumscribed by the Region but cannot be nullified. On the other hand, each Statute sets limits also to the exclusive competences. Special Regions have the power to legislate over local authorities, however their legal acts shall be in line with Constitution and the principles of the legal system, and shall respect the international and the European obligations, the national interests, as well as the fundamental rules of the economic and social reforms passed at the national level. On this point, then, the case-law of the Constitutional Court has provided a rather expansive interpretation that has conditioned and restrained the actual power in this field, especially with regard to finance and controls.

Besides that, the effective scope of autonomy depends on the rules set forth in the so-called enactment decrees (*norme di attuazione*). These are bylaws of the autonomy Statute adopted for the purpose of giving implementation to (and eventually also integrating) its provisions and have quasi-constitutional status. On top of that, having specific regard to the transfer of competences from the centre to the Regions,

[14] Palermo (2008), pp. 33–49.

[15] Along this line, see Constitutional Court, rulings no. 48/2003 and no. 370/2006. See Salvago (2011).

these acts are essential for defining the content and the boundaries of the regional (administrative and legislative) powers, and also for the regional powers to become effective.

In practice, the solutions adopted at the regional level do not necessarily differ from the national ones. For certain issues, some special Regions have adopted different rules from those approved by the national level; and, in some cases, regional local regimes have also worked as laboratories, experimenting with innovations that have later been introduced also at the national level. In other cases, regional interventions have been limited to the transposition of national patterns. All this, however, confirms that each special system is different from the other, despite the presence of a few general traits in common. This is however a typical feature of the federal paradigm, and this is even more so if the rules are observed from a dynamic perspective in their evolution over time and space.

4 Vertical and Horizontal Intergovernmental Relations of Local Entities

Regarding the way in which State, Regions, and local autonomies coordinate with one another, it is necessary to look at the so-called 'Conference system'. Born as a governmental practice in the 1980s, and subsequently regulated by Legislative Decree No. 281/1997, this system has gradually established itself as an expression of the constitutional principle of loyal cooperation.[16] It is made up of three bodies, namely: the 'State-Regions Conference', the 'State-Cities and local autonomies Conference' and the 'Unified Conference', which is the union of the first two and addresses matters and tasks of common interest.

Since these conferences are the only formal institutions where political representatives of local authorities meet regularly with members of the national government, they are of paramount importance to the political process, at least formally.

The primary purpose of the State-City-Local Autonomies Conference is to coordinate relations between the State and local entities and to guarantee local autonomies a way to directly interact with the national government. This includes advisory and information activities, discussions on issues that may affect the missions of Provinces, Municipalities, and metropolitan areas (or on the organisation of local autonomies), as well as financial and budgetary policies or national legislative initiatives.[17] From a more substantive viewpoint, though, it is difficult to determine the real impact of the conference on policymaking, particularly given that its decisions are non-binding but merely advisory.

As for its composition, the Conference is made up of the President of the Council of Ministers, who chairs it, and the Ministers of the Interior and for Regional Affairs;

[16] See Del Prete (2020), p. 69.

[17] Among others see Bifulco (2006); Palermo and Wilson (2014), p. 510.

other ministers, the President of the National Association of Italian Municipalities (*Associazione dei Comuni Italiani*—ANCI), the President of the Union of Italian Provinces (*Unione delle Province Italiane*—UPI) and the President of the National Union of Municipalities, Communities and Mountain Authorities (*Unione Nazionale Comuni Comunità Enti Montani*—UNCEM) are also members, as well as fourteen mayors designated by ANCI and six Province Presidents designated by UPI. Law No. 131/2003 assigned new functions to the Conference to adapt the system to the reform of Title V of the Constitution.[18]

Complementary to the 'conference system' which provides for the vertical relations among Municipalities and the State, ANCI, UPI and UNCEM configure the system where the (horizontal and multilateral) intergovernmental relations between local entities take place. A non-profit organisation founded in 1901, ANCI, among its main goals, represents the interests of Municipalities *vis-à-vis* the national and regional governments. Interestingly, despite not being constitutionally recognised, 7134 Municipalities adhere to the association (as of January 2022) representing ninety per cent of the population. These numbers speak clearly of a very firm rooting of the association in the social, geographical. and cultural fabric of Italy. ANCI's assembly meets once a year while its seventeen special permanent commissions working on different policy fields (such as local finances, social welfare, immigration, and integration policies) meet more often. It is also important to underline that ANCI has regional branches in all twenty Italian Regions.

Another way for Municipalities to entertain intergovernmental relations was provided with the constitutional reform of 2001 which amended Art. 123 Const. by foreseeing that the regional statutes, at least those of ordinary Regions, must provide for a specific body aimed at representing the interests of the local entities at the regional level, i.e. the Council of Local Autonomies (*Consiglio delle Autonomie Locali*—CAL). It has to be considered that many administrative functions fall under the responsibility of the local level in accordance with the principle of subsidiarity stated in Art. 118 Const. Therefore, it is strong the need to create an institutional setting that gives the municipalities the possibility of expressing their views on the political and administrative actions of the Region they are situated in.

As to the functions, the regulation of CALs varies from Region to Region, but we can identify two common features: firstly, it is a body conceived as strictly representing local authorities, even if the criteria that determine its composition varies (sometimes it is composed of representatives of the local executive, sometimes of the local councils, sometimes of both). As its second feature, all CALs are expected to issue mandatory opinions on certain matters, including amendments to the regional statutes and approval of budgets and financial laws.[19]

In its rulings no. 370/2006, the Constitutional Court decided that special Regions do not have to establish this institution, given their exclusive competence over the organisation and the functioning of local authorities. Nonetheless, all five special

[18] Klotz (Bolzano 2021), pp. 71–73.

[19] Carloni and Cortese (2020), p. 123.

Regions set up such CALs, thus conforming their intergovernmental institutional structure to those of the ordinary Regions.[20]

With regard to the possibilities for local entities to defend their status and interact with the national institutions, it is also interesting to consider that—despite the constitutional recognition of local entities (see Sect. 2)—no legal provision grants them instruments to directly access the Constitutional Court in order to ensure that their prerogatives are respected.

This impediment has led over time to an accentuated search for ways of protection 'mediated' above all by the State, less frequently by the Regions, which have thus both become architects of the safeguarding of municipal (and provincial) autonomy.[21] The Constitutional Court identified a solution in its ruling no. 196/2004:

> the fourth paragraph of art. 123 Cost. has configured the Council of Local Authorities as a necessary organ of the Region and that art. 32. 2 of law n. 87 of 1953 (as replaced by art. 9.2, of law n. 131 of 2003) has attributed precisely to this organ a power of proposal to the regional Council relating to the promotion of judgments of constitutional legitimacy directly against the laws of the State.[22]

5 Territorial Reorganisation Policies (Mergers and Intermunicipal Cooperation)

When it comes to policies adopted for the territorial reorganisation of Municipalities, two main strategies can be observed from a comparative perspective: mergers/amalgamations, on one side, and inter-municipal cooperation, on the other side. Both are widely used to deal with problems small territorial units must face. These are in fact upscaling strategies to face the issues that territorial fragmentation brings along.[23]

Italy is no exception. In fact, with an administrative map made up mainly of small and very small Municipalities, the need for territorial reorganisation through mergers and intermunicipal cooperation has been part of the academic and political debate since a long time.[24]

As to mergers, in Italy the strategy—starting from Law No. 142/1990—has been that of a voluntary system mixed with a series of economic incentives and differentiated regulatory solutions provided to guarantee the representativeness of the Municipalities involved in the merger.

[20] Although with some peculiarities in composition and functions. See: D'Orlando and Grisostolo (2018), p. 148.

[21] Consiglio Autonomie Locali Lazio (2013).

[22] Translation of the *Considerato in diritto p.to 14* is ours.

[23] See Bolgherini et al. (2018a), p. 85.

[24] de Donno and Tubertini (2020).

It must be underlined that the Constitution provides the procedure for the modification of municipal boundaries. Art. 133 Const. states that Regions may establish new Municipalities within their own territory and modify their districts and denominations. Art. 133 also specifies that the populace of the Municipalities concerned must necessarily be consulted.[25] It is then up to the regional law to define the way to involve the people, while the initiation of the process is up to the Municipalities themselves, which are also responsible for approving a statute that will regulate the life of the newly formed Municipality.

Mergers have been the subject of numerous subsequent legislative interventions of the national authority, in particular with the advent of the economic crisis as it has been considered as an effective tool to counter the effects of the crisis itself.[26] In fact, after 2010 different legislative measures have come up with incentive solutions to encourage municipal mergers since these were perceived as a valid solution for reducing public spending.[27]

Law No. 56/2014 profoundly innovated the subject by modifying Art. 15 of the TUEL related to the procedure for territorial reorganisation. In particular, the law establishes that the State delivers, for the ten years after the merger, extraordinary contributions commensurated to a quota of the transfers to which each single merging Municipality is entitled.[28] On top of that, each single Region can opt to foster the merger of Municipalities by adding further economic incentives. These measures sorted some effects by bringing to a contraction of the overall number of Municipalities. In fact, in the last years the number has been constantly reducing: since 2014 this amount on average to twenty Municipalities per year (mostly those with less than 5000 inhabitants), with a peak of forty-five fewer Municipalities between 2015 and 2016. Currently, the orientation of national legislation is to promote and increase mergers to the maximum possible extent, in order to achieve, as the ultimate goal, a reorganisation of the territory capable of strengthening the supply and the efficiency of services provided to citizens.[29]

Besides mergers, it is on inter-municipal cooperation that the legislative strategy has mostly focused, in search of an optimal size for the exercise of local functions. The TUEL provides for three ways through which Municipalities can form cooperation structures: consortia (*consorzi*, Art. 31 TUEL),[30] conventions (*convenzioni*,

[25] See Amiranda (2020).

[26] On mergers in Italy see Bolgherini et al. (2019), p. 112.

[27] See for example d.l. 95/2012 that provided for the biennial exemption from the pact of stability for the Municipalities that were going to merge, on this see Nardelli (2012).

[28] Carloni and Cortese (2020), pp. 152–153.

[29] Marinuzzi and Tortorella (2018), p. 477.

[30] Consortia are fully recognised as local entities and need to be organised in an assembly and a management board. Municipalities and other entities form a consortium in which they intend to manage one or more public services together. Alber (2021), p. 42. However, consortia are an institution that has lost its vitality and is in the process of being surpassed. Although it has not been officially repealed, its use is very limited.; See Carloni and Cortese (2020), p. 154.

Art. 30 TUEL),[31] and unions of Municipalities (*unioni di comuni*, Art. 32 TUEL).[32] The latter is the solution the legislator relied the most on, since the union is the option that offers greater stability and deeper integration among the involved Municipalities, and it is generally perceived as the stage preceding a potential merger.[33]

Although in a first instance the option of exercising functions in an associated manner has been designed as a voluntary choice of the Municipalities, the urgent need to cut off public expenditure has determined the indiscriminatory use by the State of the competence over the coordination of public finance to impose the mandatory recourse to unions and conventions.[34] So, the system currently provides for two types of exercise of functions in associated form: a voluntary one, for the exercise of functions freely identified by the Municipalities, and a mandatory one, aimed at smaller Municipalities (those with less than 5000 inhabitants) for the exercise of fundamental functions as established in decree-law No. 78/2010 and subsequently reiterated in the sources that regulated the matter.[35]

This choice of the national legislator, along with the decision not to proceed with the financing of mountain communities, has profoundly influenced the symmetrical evolution of the regional legislation on the system of local governments. It must be borne in mind that the room for a differentiated regional discipline of the organisational models of associated exercise of the municipal functions has progressively reduced. It has been recognised to the national legislator the power to establish many aspects related to the policies of territorial reorganisation, emptying the Regions of the powers they had in this sector.[36]

The intertwining of competencies between State and Regions on territorial reorganisation is particularly intricate and has been the terrain for frequent disputes between the two levels of government. In fact, as already mentioned, although the role of the ordinary Regions with respect to the regulation of Municipalities is generally limited (see Sect. 3), when it comes to mergers and inter-municipal associations Regions acquire a more central position in terms of legislative regulation, at least in theory. Hence, in the aftermath of the 2001 constitutional reform, the Constitutional Court did not doubt about the inclusion of the competence over the regulation of the territorial reorganisation of local entities in the residual clause

[31] Conventions are agreements between two or more Municipalities for the delivery of services or the fulfilment of a task. Municipalities shall form a convention for at least three years, and they do not foresee the establishment of further bodies. Normally, one Municipality must be identified as the coordinator of the parties in the convention. Alber (2021), p. 8.

[32] Unions of Municipalities are composed of two or more Municipalities for the associate exercise of their functions. These are recognised as local entities themselves with their own by-laws and organs and, unlike consortia, can perform an array of functions and services. Alber (2021), p. 8.

[33] See Bolgherini et al. (2018b).

[34] Carloni and Cortese (2020), p. 154.

[35] Recently, the Constitutional Court adopted a decision (Constitutional Court No. 33/2019) in which it confirmed the constitutional legitimacy of the mandatory exercise of fundamental functions in associated form for small Municipalities. See Morelli (2019), p. 523.

[36] Tubertini (2020), pp. 296–297.

which grants exclusive legislative powers to the Regions (Art. 117.4).[37] However, the economic crisis that drastically hit Italy from 2009 onwards strongly impacted on the case-law orientation that almost nullified the role of the Regions in this sector by extensively interpreting the concurrent competence on the coordination of public finance to the extent to which ample margins for legislative manoeuvre were recognised to the State (among the others, see decisions nos. 151/2012; 120/2013; 22/2014; 44/2014; and 50/2015).[38]

There is certainly a connection between these circumstances and the attempt recently pursued by some Regions (in particular, Emilia-Romagna, Veneto, and Lombardy) for the recognition of the so-called 'differentiated autonomy' as provided for in Art. 116.3 Const., which also includes legislative powers over the organisation and exercise of local administrative functions. This is an attempt to get back a space in the government of the local system that has so far been denied to the Regions.[39]

It goes without saying that the situation partially differs in the special Regions where, as mentioned (see above par. 2), the legislative competence over local government is exclusive; however, it should be noted that the most recent laws adopted in the special Regions have in certain cases been a duplication of reforms enacted through state legislation in the ordinary Regions.[40]

6 Local Finance

The dichotomy between ordinary and special Regions that characterises the overall system of territorial organisation is also reflected in the system of local finance. According to Art. 119 Const.,[41] local entities of ordinary Regions—which also means Municipalities—are financed through own tax sources, shared taxes, not-earmarked equalisation transfers, plus additional (specific-purpose) grants provided for extra-ordinary circumstances. Over the last decade (2010–2020) local finance has witnessed a structural metamorphosis marked by an overall increase of tax-revenues and a correspondent decrease of state transfers altogether considered (−32%).[42] This is the result of frequent changes introduced by the national authority from 2012 onwards. In 2018, tax-revenues accounted for forty-six per cent of the overall local revenues, however, local financing is mostly based on tax sources,

[37] Among the others, see rulings nos. 244/2005; 456/2005; 397/2006; 267/2011. See Nicolini (2011), p. 4707.

[38] Carloni (2015), p. 287.

[39] Mazzola (2020), p. 288.

[40] For further information on inter-municipal associations in special statute Regions, see D'Orlando and Grisostolo (2018), p. 124; Giangaspero (2017), p. 82.

[41] In the text approved by the 2001 constitutional reform and progressively entering into force.

[42] All data in the text are taken from: IFEL (2019).

which are created and regulated in their foundations by the central level of government (so-called devolved taxes).

As taxes can only be imposed through law—and Municipalities do not have legislative powers–, the national and regional legislatures define the scope of the (regulatory) taxing powers of local entities. Nonetheless, in the relation between the national and the regional authority the first one has the supremacy. This is the result of the assignment of the power to 'coordinate the tax system' to the concurrent legislative competence (Art. 117.2 Const.). Although such an allocation scheme should result in the national authority setting the basic principles and the Regions providing for the detailed regulation, the prior intervention of the national legislature is considered as a necessary precondition. In addition to that, the Constitutional Court has upheld an extensive reading also of this competence title.[43] In fact, the coordination of the entire tax-system requires that the national law determines not only the principles the regional legislators must comply with, but also the guidelines of this system, including the spaces and the limits in which the taxation power of State, Regions, and local authorities, respectively, can be expressed (*ex multis*, Constitutional Court, ruling no. 37/2004). The result is that Municipalities are vested with a limited tax varying power over national taxes and/or entitled to the revenue generated thereof, in both cases with limited reference to their territory.

In addition to that, an equalisation fund provides for non-earmarked transfers to cope with inter-municipal imbalances. Since 2001 reform, the overall system of equalisation is undergoing a comprehensive reform. According to Art. 119.4 Const., the national law shall set up an equalisation fund, to be assigned through non-earmarked transfers. Thus the State holds exclusive legislative power over equalisation. This framework was implemented partly by Law No. 42/2009, partly by a series of governmental decrees. Law No. 42/2009 mandates the gradual overcoming of the earlier funding system, which links the transfers to the resources spent in the previous financial years (so-called historic spending). The new funding mechanism must be based on objective and pre-defined parameters to be applied uniformly to all entities (so-called standard costs and needs). Pursuant to Art. 11 Law No. 42/2009, two equalisation mechanisms shall be introduced based on a twofold classification of the decentralised local functions. A first scheme is meant to ensure the funding of fundamental functions (around eighty per cent of local spending),[44] while a second one is envisaged for the other (non-fundamental) functions (20% of local spending). The scope of equalisation differs between the two groups: a full financing is foreseen for fundamental functions, while only a partial equalisation is prescribed for all others. The financing parameters also differ from one case to the other: transfers are calculated applying the 'standard costs and needs' criteria to the

[43] Servizio studi del Senato e della Camera (2017).

[44] To be noted is the fact that the determination of the fundamental functions of local entities to be ensured in a uniform manner across the country (Art. 117(2) Constitution) is an exclusive legislative competence of the national authority (see Sect. 3).

first group only, while the per-capita fiscal capacity is the funding parameter for non-fundamental functions.

The detailed regulation of the two above-illustrated mechanisms (methodology and definition of parameters) has been left to the national Executive (e.g., Law Decree No. 216/2010 as later modified and integrated), while a public-private company (SOSE) oversees calculating the standard costs and needs for each fundamental function considering the peculiarities of the single function and of each category of entity (e.g., the size of Municipalities). More than two decades have passed since the constitutional reform, but this change is still a work in progress, with obstacles. Indeed, a clear path to effective implementation has ultimately been undertaken precisely with regard to local goverments and, in particular, with reference to Municipalities.

From the description above it emerges that the municipal funding scheme in ordinary Regions is mainly State-driven: local revenues depend on decisions adopted by the national government as the taxation power concentrates mainly at the centre. Despite that, the requirement that all entities respect the principle of balanced budget has brought about an interesting change, if financial relations between the regional and the local level of government within a certain territory are taken as standpoint. The functioning of the principle of 'balanced budget' for local authorities has been specified by Law No. 243/2012, as later modified by Law No. 164/2016. A non-negative value—on accrual basis—in the balance between final revenues and final expenditures must be achieved as of 2015. On top of that, limits to deficits and debts have also been introduced and strict limitations to overspending are in place. At the same time, deviations from the equilibrium are allowed only after agreement reached at the regional level.[45] The so-called infra-regional agreements allow extra-flexibility to certain entities, to the detriment of others, though only for investment spending. Accordingly, each Region can come to terms with the local entities located within its territory and assign extra financial room to some of them. This is done by 'borrowing' financial room from those entities that do not spend/need all resources at their disposal, as the principle of balanced budget applies to the entire regional territory, the Region included. As the budget must be balanced on a regional scale, Regions have gained a substantial leverage on Municipalities that can significantly affect the scope of their autonomy on the spending side and as such also in its political dimension.

The above-described funding mechanism applies only to local entities within ordinary Regions, whereas rules are different in special Regions. First, their overall financing system must be agreed between each special Region and the centre in a bilateral negotiation. Therefore, special Regions have on average a higher degree of financial autonomy, but they differ one from the other to a great extent.[46] Second, some special Regions run local finance (the three Northern ones). In these cases, the

[45] Such agreements might be reached also on a nation-wide basis, in this case involving the national level as well.

[46] Valdesalici (2018).

funding thereof is in charge of the regional budget (*rectius*, the provincial budget in case of the autonomous Provinces of Trento and Bolzano).[47] Whereas in the two main Islands (Sicily and Sardinia) this settlement is still on paper, i.e., their Statutes of autonomy include local finance as a regional competence, but *de facto* it remains for the most with the centre. The regulations thereof are the same into force for local entities within ordinary Regions, even though both Islands partly contribute to the funding of local entities from their budgets.[48]

The same Northern Regions that run local finance have also been assigned the legislative competence on local taxes, surtaxes on national taxes, as well as fees and taxes on local services. In these cases, the scope of manoeuvre is much broader than the power ordinary Regions are vested with, because the prerequisite of a national law setting the principle of coordination does not apply to them. At the same time, the constraints applied to each of them differ one from the other in the light of the specific provisions of their Statutes of autonomy (or of the implementing bylaws thereof).[49]

Finally, also special Regions have the responsibility to ensure the respect of the principle of balanced budget by considering all territorial entities within the regional territory of reference. This rule applies to all of them, even though also certain special Regions (e.g., the two autonomous Provinces) have been vested with a broader margin of action and responsibility, while for others the powers are more like the ones recognised to ordinary Regions. Anyhow, the circumstance that the centre is responsible for the enforcement of 'the principle of balanced budget', considered as a *sui generis* State competence of exclusive nature, [50] inevitably conditions the financial autonomy of all subnational entities. As a result, these are bound to ensure that their budgets are in balance and shall contribute to the enforcement of EU obligations pursuant to Art.s 119.1 and 97 Const.[51]

7 Conclusions

Having analysed the main features of the Italian system of local government, we can now move on to evaluate whether the system responds to a federal paradigm, i.e., Municipalities are under the domain of the subnational level of government; or whether there is a centralist tendency, in which Municipalities are a responsibility of the central state.

[47] D'Orlando and Grisostolo (2018), p. 140.

[48] Barone Ricciardelli (2007), pp. 331–344.

[49] D'Orlando and Grisostolo (2018), p. 145.

[50] Salerno (2012), p. 145.

[51] Servizio studi del Senato e della Camera (2017).

If the regional nature of a system would lead to the assumption that the central state has the jurisdiction over local government, this option is not clearly reflected in the Italian decentralised model, not even with regard to the ordinary Regions.

In fact, the outcome of the 2001 constitutional reform has resulted in an original model that neither can be traced back to properly federal experiences nor fully follows the path of full equality between the various components of the Republic proclaimed by Art. 114.[52]

Hence, on the one hand, it could be argued that Italy is not exactly a federal state, but rather a quasi-federal model, and the system of local entities reflects this categorisation.[53] In fact, just as the decision was not taken to strengthen the role of the Regions with respect to the central government, with obvious consequences in terms of procedural guarantees (i.e. participation in the central decision-making process), the option of bringing the local government system back into the exclusive domain of the Regions was not taken up to the full.

On the other hand, it should be noted that local authorities have not been endowed with a sphere of autonomy and guarantees that would have placed them on an effective equal footing with the regional level of government. To give a few examples, it suffices mentioning the lack of legislative and, consequently, original tax powers, and the absence of instruments that allow direct access to the Constitutional Court to safeguard local autonomy (as seen in Sect. 4).

Through the analysis, it has been made clear that the system of local entities is a hybrid not only in the form but also in the substance. Indeed, the constitutional reform aimed at reversing the strong centralism that had prevailed up to that point, but the way in which powers on local governments were allocated between the national and subnational governments resulted in a pattern that is hybrid also in its functioning. As seen in Sect. 3, the national authority is not seemingly allowed to adopt an all-comprehensive regulation of local government, although the way in which the competence catalogue was interpreted, particularly in light of the economic crisis, challenged the margin of manoeuvre of the Regions also in fields under their domain and, in so doing, has affected the regional role and powers over local entities. More precisely, the State made an extensive use of the legislative competencies over the determination of the basic level of benefits relating to civil and social rights, land-use planning and, above all, on coordination of public finance, as such interfering with areas of regional responsibility, as widely shown in the case of intermunicipal cooperation (Sect. 5).

Also, the financing is pivotal for the recognition of the hybrid nature (non-federal/non-centralistic) of the Italian system, given that the financial endowment of Municipalities depends on decisions taken and resources transferred from the central level of government (as seen in Sect. 6).

The situation is apparently different with regard to special Regions, where the system presents more typical traits of the federal paradigm. Hence, the institutional

[52] Staderini et al. (2019), p. 422.

[53] See Palermo (2004).

asymmetry that characterises the Italian regional system also extends to the logic underneath the local entities model. In fact, the five autonomous Regions (including the two autonomous Provinces of Trento and Bolzano that are comparable to a special Regions with reference to the competence catalogue) are based on the special Statute of autonomy which prescribes that the system of local entities belongs to the primary (i.e., exclusive) legislative competence of the respective Region, narrowing down the room for a national intervention in the field. However, the functioning of this scheme from a dynamic perspective shows interesting deviations and an overall convergence towards a common pattern of hybrid nature, also in the case of special autonomies. Despite a few exceptions of remarkable nature (e.g., the systems of local government in the two autonomous Province of Trento), this is proved by the fact that, in many cases, the very broad margin of legislative autonomy has remained on paper and the regional acts on Municipalities replicate the measures adopted at the central level, resulting in a rather high degree of uniformity of the local government system throughout Italy. Also, the fact that in the two main islands (Sicily and Sardinia) the Statutes of autonomy include local finance as a regional competence, but *de facto* it remains for the most with the centre is telling in this respect.

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