



ISSN: 2036-5438

# The legislative power of infra-national entities in The European States

by

Katia Blairon\*

Perspectives on Federalism, Vol. 4, issue 2, 2012





## Abstract

Regional legislative power carries the same title as national legislative power. However, it is obviously different in nature. If Acts are general and impersonal – characteristics that distinguish them from regulations – regional Acts are general and impersonal in scope and are limited to the territory and the regional population, whereas national law applies to the entire territory and national population, namely, at least in the case of shared competences, to all the territories and populations of the infra-State communities. Within the various different European experiences, it is difficult to identify a commonly shared movement regarding regional legislative powers.

In any case, however, regional legislative power is a fundamental element in the definition of the constitutionalism of the composed State in general and of the infra-state communities in particular.

## Key-words

Subnational constitutionalism, legislative power, legislative competences, territory, legislative assemblies



## 1. Introduction: The constitutional features of the region

Recognising the powers of specific infra-State entities requires rethinking some of the basics of Constitutional law. Therefore, according to the States, it is more or less accepted that these variously named entities (regions, States, *Länder*, autonomous communities...) enjoy broad powers and have some features that have long characterised the States which *contain* them. These features are often the constituent elements of a State and specifically, according to the well-known definition of public international law: a Government, a population and a territory. Regarding the region, the “elements” are generally included in the regional statutes, which define the form of Government, the territory and in the end the population of the region<sup>I</sup>.

### The territorial basis of regional legislative power

Regional jurisdiction is exercised within a framework that is territorially limited: it is the “*principle of territoriality*”<sup>II</sup> or the “*localisation*” of an interest in the regional area<sup>III</sup>. “The territory is nothing more than the area of the territorial validity of the legal order”<sup>IV</sup>. It is the normative framework: “it is therefore only a legal factor”<sup>V</sup>. Like the national territory, this aspect of the region is not generally defined by the Constitution. In Italy, it refers to most national territory<sup>VI</sup> and that of the Republic<sup>VII</sup>. A concurrent regional competence<sup>VIII</sup> is inferred in contrast to the provisions of the Constitution that address the “*development of the territory*” and the “*boundaries of local authorities*”<sup>IX</sup>. It is even implicitly included in the territory of the State or the Republic, undefined by the Constitution, in Article 119.

This raises the question of the territorial demarcation of regional jurisdiction. If the territory is “ground”, its air space undoubtedly remains the domain of the State. However, its maritime areas are more problematic considering the particular geography of Italy. The region is not the main owner of maritime public domain<sup>X</sup>, in which the State can always intervene<sup>XI</sup>. Therefore, the region does not have “*a territorial sea*”<sup>XII</sup>, but it can exercise some of its competences in this area, for example, in sea fisheries<sup>XIII</sup>, the maintenance of ports and the regulation of navigation. These specific competences are attributed to the region as such and are not intended to express ownership of the sea<sup>XIV</sup>: the “extension” of its



competence and “*its effectiveness to the extreme margin of maritime space around the territory, and over which, even in an ancillary role*” the power of the State may be exercised<sup>XV</sup>. The territorial issue is of great importance when it comes to the wealth of the soil and marine subsoil. Sardinia and Sicily have often invoked their jurisdiction over these resources to manage oil at sea. Unlike competences – or even land territories – the territorial sea is not shared between the State and the regions<sup>XVI</sup>.

The regional territory, in general, is defined more specifically by regional statutes<sup>XVII</sup>. As regards the Apulia region, the territory is “*property to protect and promote in each of its environmental, landscape, architectonic, historical, cultural and rural aspects*”<sup>XVIII</sup>. The geographic peculiarities of the region or a “part of its territory” are sometimes included in the statutes: mountains<sup>XIX</sup>, plains<sup>XX</sup>, islands<sup>XXI</sup>, countryside, forests<sup>XXII</sup> or the “*municipalities of lesser importance*”<sup>XXIII</sup>. The regional territory reappears in various forms in connection with recognised regional competences (*infra*), for example, in the fight against territorial inequalities<sup>XXIV</sup>, in “*economic, social and cultural development*”<sup>XXV</sup> by supporting the enterprises and the freedom of entrepreneurship in some specific regions<sup>XXVI</sup> or in the field of environmental protection<sup>XXVII</sup>.

The territory is an “essential element” of the Italian regions, not simply a “physical or geographical domain [or] spatial area” of regional competence, but rather “a point of reference for the community’s interests which have found their location”<sup>XXVIII</sup>. Because of their residence or activity, individuals are the recipients of regional standards.

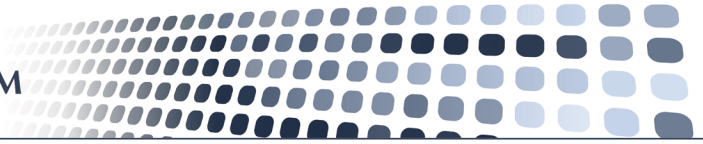
Unlike the Spanish Constitution, whose Preamble refers to the “*peoples of Spain*”<sup>XXIX</sup>, the Italian Constitution does not refer to “regional peoples”.

### The basis of regional social competence

In addition to its territorial framework, the region is “*an entity representative of the general interests of its community*”<sup>XXX</sup>. The regional community “as seen in its various different social formations [...], is another essential element of the region as a natural bearer of important and legally protected interests”<sup>XXXI</sup>. This helps define “the social basis of the region”<sup>XXXII</sup>. In Spain, the regional community is defined in the Constitution as the “*peoples*” of Spain<sup>XXXIII</sup> or the “*nationalities or regions*”<sup>XXXIV</sup>. The Italian Constitution, by contrast, refers to the “*populations of regions*” in the case of the election of the Senate<sup>XXXV</sup>, the “*interested*

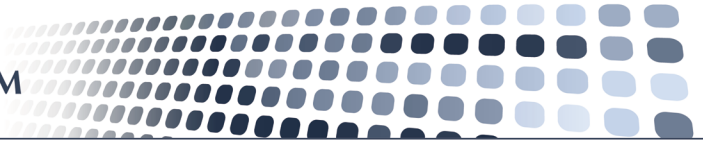


*populations*” of municipalities, provinces or regions in the case of a change in district or territory<sup>xxxvi</sup> and “*popular referendum*” concerning regional statutes<sup>xxxvii</sup>. The search for the “democratic element”<sup>xxxviii</sup> of the region is important because it is the source of the legitimacy of its various powers<sup>xxxix</sup>. The regional statute refers almost systematically to this democratic element, while, in the case of the President of the region, it restates the formula of Article 121 of the Constitution, according to which “*the President of the Regional Executive Council represents the region*”<sup>xl</sup>. In addition, the Articles only specify that the Regional Council also represents the regional community<sup>xli</sup> and that each regional counselor “*represents the whole of the region*”<sup>xlii</sup>. Other regional statutes state that “*the Council, as the representative of Calabrese society, exercises legislative power*”<sup>xliii</sup> and that it “*is the body of regional democratic representation, political direction and control*”<sup>xliv</sup> and “*the legislative and democratic representation body of the region*”<sup>xlv</sup>. However, this social element is not determined by regional citizenship, as the autonomous Spanish communities well know. In Italy, this status is defined by the State and binds the citizen to the latter. Regions cannot claim for it in the name of a regional “people” since Italian Constitutional law only recognises one people: the Italian people whose sovereignty is enshrined in the Constitution and who, like the Constitution, cannot be divided. At best, it is better expressed in the various interests at stake. The development of regional autonomy and, therefore, the increasing importance of local interests, question this split in the expression of popular sovereignty. However, while taking note of the increase in regionalisation, the Italian Constitutional Court has invoked the unity and the democratic principle of popular sovereignty in its refusal to assign the name “Parliament” to a Regional Council on the basis of popular regional sovereignty<sup>xlvi</sup>. On the other hand, if the region is deprived of this fundamental element of sovereignty in particular, the auto-qualification of the community is a “factor of differentiation”<sup>xlvii</sup>, even for the construction of regional identity. It refers to citizens’ necessity to ensure their status, particularly in the region. Therefore, the Constitution stresses the need to involve citizens in the political, economic and social life of the region<sup>xlviii</sup> and protect the most disadvantaged<sup>xlix</sup>. The residents of the region are the other recipients of the statutes<sup>l</sup> which promote “*self-government*”<sup>li</sup>. Generally, the statutes do not refer to their population but rather to their Community(ies)<sup>lii</sup>, which are local<sup>liii</sup> or “*resident in the [regional] territory*”<sup>liv</sup>, or to their ethnic<sup>lv</sup>, cultural, religious<sup>lvi</sup> or linguistic<sup>lvii</sup> minority.



However, the existence and autonomy of the community cannot be guaranteed on the basis of the territory and people alone. These elements are governed by statutes – or constitutions – albeit within the limits of the provisions of the Constitution. Therefore, it is the national Constitution of the central State that defines the third element of the region, i.e., its “bodies of government” and its ability to determine its own form of government. In other words, this refers to its ability to develop a government authority: the scope of its jurisdiction in order to define its own form of government that will govern its population and its territory. Finally, this might be the constitutional element – otherwise constituent in some cases – of these sub-national entities.

Although these “constituent elements” are acknowledged to sub-national entities, they somewhat disrupt Constitutional law because they suggest the existence of, for example, several territories, peoples and governments as well as several legal orders and even several constitutions. They are expressed through statutes or constitutions – the very name generates debate – although they are usually expressed through less controversial and more accepted instruments and techniques. Instruments recognise a sub-national legislative power and techniques distribute powers between the central Government and sub-national entities. As such, one of the major innovations of some European Constitutions (such as the 1947 Italian Constitution) is “the end of the legislative monopoly and the advent of the polycentric legislative regime”<sup>LVIII</sup>. In other words, other powers are acknowledged which may create the Law or an Act in addition to the national Parliament, whose monopoly has long been recognised and theorised<sup>LIX</sup>. By definition, law is any standard or system of standards of the legal (or extralegal<sup>LX</sup>) order. In the usual legal sense, i.e., the formal sense, an Act is the text voted upon by the Parliament<sup>LXI</sup>. In an organic and formal sense, the law is completely different from a regulation, decree or order as well as the Constitution. Therefore, the law fits into a legal order, and more accurately into a normative hierarchical system. In this sense, laws are the rules that a political regime makes and are either supreme or subject to other standards. Whether they are supreme or subject to, State law refers to any rules of law and any provisions that are general, abstract and permanent in nature. They are traditionally national: the central State enacts laws. We are currently able to identify the existence of several types of laws, according to national experience: constitutional law, ordinary law, law delegated to the Government, even a referendum act. Acts can also be regional and, in this case are the source of a particular legal order.



Therefore, each sub-national entity is characterised by its own legal order, which it develops through its legislative power. This is defined as legislative polycentrism.

## 2. Differentiated Legislative Polycentrism

Therefore, in some States, including regional and federal ones, regional law is recognised along with national legislation and is a concept adopted by several constitutions, such as, regional law in the Italian Constitution, the legislation of the *Länder* in the Austrian Constitution, the “*right to legislate of the Länder*” in the German Basic Law and the legislative decrees of the autonomous regions (recognised as legislative acts) in the Portuguese Constitution. Like national laws, there can be several types of regional laws. In Italy, for example, a regional law can be statutory, ordinary, financial as well as provincial. In Spain, on the contrary, the statute of the autonomous community is not a regional act but rather an organic Act passed by the *Cortes Generales*.

Recognising the statutory power of sub-national entities does cause theoretical and practical problems in some European constitutional experiences. Part of the doctrine (for example in France and Britain) negates the legislative value of regional law in a technical sense. These normative acts only recognise the power of “autonomy” and not sovereignty. This assumes that since sovereignty cannot be shared because it is indivisible, the same applies to the legislative power resulting from it. The unity and indivisibility of sovereignty are the unity and indivisibility of the normative power of the State. Thus, sub-national communities are entitled to have regulatory authority that is authorised by the Parliament. It is not a stand-alone regulatory power (in France: Article 72 para. 3 C since 2003). In France, this idea is reflected in the famous formula: “a territorial entity administers, it does not govern” (Lucaire 2000).

Even if this state of the law is established through the unity and indivisibility of the State or the Republic (for instance, in France and Italy), some constitutions deny the existence of any other legislative power, establishing a single legislature. This is the case of the Irish Constitution (Article 15, paragraph 2) and the Romanian Constitution (Article 58) but this monopoly of the enactment of the Act seems to be reserved for the Parliament over any other power of the State. Although like Ireland, France grants two types of power to



territorial communities: a legitimate regulatory power and a regulatory power to be used on an experimental basis in the national laws and regulations governing their competences (Article 37-1 C). Overseas departments and regions can also benefit from the adaptation of legislation and national regulations (Article 73 al. 2 C). While in principle French law seems to deny any concurrent legislative power of the Parliament, it is distinguished by the limited and measured recognition of the *lois de pays* for New Caledonia in 1999 and Polynesia in 2004. If Article 77 of the French Constitution refers only to “certain categories of acts of the deliberative assembly”, the *lois de pays* are the Congressional deliberations of the deliberative assembly of New Caledonia on the competences already assigned or to be assigned that express the importance and specificity of the statutory autonomy enjoyed by the community. The nature of the *lois de pays* is specified in Article 107 of the 1999 Organic Act and has the force of law in the area defined in Article 99 concerning legislative subjects that were regularly attributed to the Congress of the Community<sup>LXII</sup>. So far, the country’s laws have also established rules relating to the source and collection of taxes and duties of any kind, a matter which falls within the jurisdictional area of the legislature<sup>LXIII</sup> and may not be challenged before the Constitutional Council, at least in the case of New Caledonia. Before the emergence of this difference in statute, another part of French doctrine considered asymmetric federalism<sup>LXIV</sup>.

According to a theory that is prevalent throughout the unitary European States, local authorities have no legislative power. They may not in principle have competences in the area that the Constitution assigns to the law. This theory is based on a particular conception of the Act, i.e., that it is a unilateral standard with a general and impersonal vocation enacted by the bearer of legislative power in the State under the conditions prescribed by the Constitution. This definition originated during the French Revolution and was summarised by Léon Duguit in the following statement: “If the law is a command that emerges from the sovereign power, it cannot be made only by the authority that holds this power”. Here again, we return to the bearer of national sovereignty, which precludes sub-entities from exercising the competences of sovereignty. The debate is the following: contrary to the State, the territorial community cannot simply be the community connected to a particular objective, i.e. a particular action, which determines the lack of sovereignty that characterises it<sup>LXV</sup>. Therefore, it is absolutely impossible for the infra-national to define its own jurisdiction, which is only explicit in the attributed fields as well as under the





conditions precisely defined by law as a State standard. In a unitary State, the territorial community is indeed the instrument of its territorial decentralisation. It is definitely required for the exercise of legislative power. But what happens in other forms of the State?

In federal and regional States, this possibility is more easily accepted, since it is the Constitution itself which organises it. Entities, which are different from the State, are also assigned legislative power through the distribution of competences. However, although legislative *power* is guaranteed, the features of this power, including those *constitutional* in nature, are controversial. This is evidenced by the fact that designating the regional legislative *body* a “Parliament” is often denied. In fact, the regional legislative body which is granted legislative power is referred to by a different name.

### The controversial issue of naming the legislative sub-State bodies

Some constitutions refer to these regional bodies as “legislatures”, for instance, in Spain (Article 152)<sup>LXVI</sup>, Finland (the province of Åland<sup>LXVII</sup>) and Portugal<sup>LXVIII</sup>. In other cases, although regional bodies have the power to act, the term Parliament has been denied to some local assemblies<sup>LXIX</sup>. Therefore, in Italy regions refer to it as “Regional Council”, including those with ordinary statute. The legislative body has been given a different name in only two regions with special statute: the regional Assembly in Sicily and the Council of the Valley in the Aosta Valley. The Marches region has attempted to call its regional Parliament “the Parliament of The Marches” and its councilors “deputies”<sup>LXX</sup>. Based on the provisions of the Constitution, particularly Articles 55 and 121, the Constitutional Court<sup>LXXI</sup> has stated that “*even the regional statutes [...] within the meaning of Article 123, paragraph 1, of the Constitution, are subject to the limit of being in harmony with the Constitution*”, both with its letter and its “*spirit*”<sup>LXXII</sup>. The Court had already denied the region the opportunity to have a “Parliament” and use the term “Parliament” “*within the regional statutes*” not because “*the organ to which it refers holds legislative powers and is representative in nature but [because] the Parliament is the seat of the national political representation (Article 67 of the Constitution) and this characterises its functions*”. In this sense, the “*nomen*” Parliament does not simply have lexical value, but it also has significant value, connoting, through the organ, its exclusive position in the constitutional organisation. It is precisely the connotative force of the word which prevents any use of it aimed to



*circumscribe in territorially smaller areas the national representative function exercised only by the Parliament*<sup>LXXIII</sup>. For the same reason the region cannot call its councilors “deputies”. According to the Court “*only the members of the Sicilian Assembly are referred to as 'deputies' pursuant to constitutional Act No. 2 of February 26, 1948. It is obviously an exceptional provision justified by historical reasons [...] which can be used to infer the faculty to use the title MP at the regional level. In fact, for all regions the “nomen” Councilor, imposed by the Constitution (sect. 122, para. 1 and 4) and the corresponding special statutes standards [...] is not modifiable nor overlaps with that of Member of Parliament, to which various Constitutional provisions (sect. 55, 56, 60, 65, 75 para. 3, 85 para. 2, 86 para. 2, 96 and 126) assign significant importance, identifying it in one of the two houses which compose the Parliament. Hence, the regional councilors are doubly prohibited from using the name Parliament and calling its members ‘Deputies’, which has an evocative force that is no less significant*”<sup>LXXIV</sup>.

In Italy, the phraseology of the Constitution also suggests a unicameral regional legislative power. Although it provides for the institution of the Council of the local autonomies<sup>LXXV</sup>, the latter, as its name indicates, may only have consultative functions. The regions are, however, free to strengthen their prerogative and create a “second Regional Chamber”<sup>LXXVI</sup>, instead of having to discuss it and consult with local authorities.

Conversely, it should be noted that local parliaments were designated as such in federal States and do not have the power to make laws, but rather only to adopt decrees<sup>LXXVII</sup>.

Finally, in some European experiences there are, however, sub-national entities which do have a Parliament. This is the case in Scotland and the German as well as Austrian *Länder*.

Whatever form these sub-national legislative bodies take – houses, parliaments, councils... – one of the major innovations of some Constitutions is that they have put an end to the legislative monopoly of the Parliament, thus allowing “the advent of a polycentric legislative regime”<sup>LXXVIII</sup>. They indeed foresee that, in addition to the State, sub-national entities also have the power to act.

These Constitutions allow for a plurilegislative State or the existence of several legislators, which therefore requires that the areas of intervention of each entity, i.e., their area of jurisdiction or even the distribution of these areas, be organised.



### 3. The Distribution of Competences among Several Legislators

Here again the sovereignty issue emerges. Emphasis is often put on the ability of the State to determine its powers, both within its borders (internal sovereignty) and at the international level (external sovereignty). This *Kompetenz-Kompetenz* is otherwise defined as “a power law (it is not a matter of force but of power in the legal order which it has founded), initial (because it is the source of this legal order), unconditional (because there is no external or prior standard) and Supreme (because there is no higher standard)”<sup>LXXXIX</sup>.

“One and indivisible” sovereignty is, on the other hand, the “power to create and break the law”. Therefore, it would likely be challenged by the existence of several legislators, like in Italy, Spain, Germany, Austria, etc. Part of the related doctrine notes that “the regional phenomenon [...] indicates [...] a *status of divided sovereignty* between the State and the regions and it is irrefutable that they may substitute the former in the exercise of sovereign functions (legislative in particular) *with attributes of identical powers*” and concludes that “the Italian Republic is no longer a “regional” State but a “Federal State”<sup>LXXX</sup>. If normative power is a decisive criterion<sup>LXXXI</sup>, the “sharing” of sovereignty raises a number of issues in this regard. Its “absurdity is, however, an interesting fact: the State terms of basic public law are unable to account for the phenomenon of [...] the *res publica composita*”<sup>LXXXII</sup>. A “relaxation of unit links”<sup>LXXXIII</sup> is particularly evident in its “transfer” to sub-entities – devolution – or a supra-national entity – the European Union<sup>LXXXIV</sup>, although the essence of sovereignty is precisely its ability to consent to its limitations.

Two different sources of “general and impersonal standards” are recognised in several European States: the law of the State and the law of the region. Therefore, both the State and the regions legislate through a number of powers that the Constitution has granted them according to their respective place in the legal order.

Italy has experienced an interesting evolution concerning the distribution of competences between the State and the regions. Article 117 of the Constitution renewed in 2001<sup>LXXXV</sup> no longer refers to “*legislative standards*” that the regions were able to adopt<sup>LXXXVI</sup> but to their “*legislative power*” in relation to their (legislative) functions. Therefore, the so-called “integrative” jurisdiction of application disappears. The system allows for two types of regional competence: concurrent and residual, in all matters not attributed to the State<sup>LXXXVII</sup>. Although listed in Article 117, paragraph 2, of the Constitution, the



competences of the latter remain important. The State exercises its competences in the following areas: the sword, the gown, the money<sup>LXXXVIII</sup>, the “*fixing of essential levels of benefits relating to the civil and social rights which must be guaranteed for the whole national territory*”<sup>LXXXIX</sup> as well as in criminal<sup>XC</sup> and civil law matters, international relations<sup>XCI</sup> and environmental protection<sup>XCII</sup>. Therefore, these are the State’s traditional functions. However, part of the doctrine emphasises the relative brevity of its list of competences compared to foreign federal experiences, which more clearly confer unitary functions on the State<sup>XCIII</sup>. In addition, the region can intervene in some of these areas of competence, such as, for instance, international relations, the European Union and the implementation of “*essential delivery levels*”<sup>XCIV</sup>. This list of State’s competences is not truly exhaustive and benefits others under the Constitution through the effect of the reserved act. The question is whether they only relate to “*the laws of the State*” or also extend to the “*laws of the Republic*”<sup>XCIV</sup>, for which it evokes the possible intervention of a regional act<sup>XCVI</sup>. We should consider that the State, through its “laws”, also regulates *the Statute of Rome*<sup>XCVII</sup>, agreements and forms of agreements between regions<sup>XCVIII</sup>, the basic principles of the regional properties<sup>XCIX</sup>, the regional electoral system<sup>C</sup> and decides on the dissolution of a regional Council<sup>CI</sup>. The special statutes also recall the exclusive jurisdiction of the State. All of this is essentially justified by unitary reasons that the Constitution reinforces via other provisions: this is the case in the establishment of the Financial Equalisation Fund (Art. 119, para. 3) or substitutive power (s. 120, para. 2). Hence, the State has the jurisdiction to establish the “*basic principles*” of the competing legislation in the matters listed in paragraph 3 of Article 117 of the Constitution. The regions are competent to fix “*the regulation of details*”<sup>CI</sup>. Once again the matters involved are many (twenty) and important: scientific research, education, civil protection, food, development of the territory, transport, ports and civil airports, etc. This list of competences is not even definitive. It could even be altered in favour of the State: some have been transferred to the exclusive jurisdiction of the State (health protection), others are circumscribed to a “*regional*” nature<sup>CI</sup>. The 2011 Constitutional Reform attributed the rest of the competences to the “*legislative power*” of the regions<sup>CI</sup>. This “residual” competence has had to become “*exclusive*” since the 2005 constitutional reform, which established, in the renewed Article 117, para. 4, of the Constitution, that “*belongs to the exclusive legislative power to the regions*” matters such as health, education, the



definition of educational programs of “*specific interest of the region*”<sup>CV</sup>, the regional and local administrative police and “*any other matters not expressly reserved for the legislation of the State*”<sup>CVI</sup>.

Other Constitutions provide for assigning legislative power to several different entities. This notion of the plurilegislative State means limiting the scope of the acts of the legislature to some parts of the territory and excluding other in order to take into account local specificities. In some cases, this recognition may be marginal and by exception. This is particularly the case in some unitary States such as France, for example in Alsace-Moselle and Corsica, and should increase the possibility for legislative experimentation. In Portugal, two autonomous regions – the Azores and Madeira – have regional legislatures which legislate under the conditions laid down by the Constitution (Article 227) and act via “regional legislative decrees”, (section 229-4 C) not to be confused with “laws”.

By organising the devolution of legislative functions in the Scottish Assembly, i.e. the Scottish Parliament, the 1998 *Scotland Act* made the acts of the latter subordinated to the Westminster Parliament, which remains the only genuine Parliamentary Assembly and whose acts are considered the only true law. The Scottish “act” is limited in several ways. First, the Queen may, in principle, veto a bill, like the laws passed by Westminster. Then, it only has legislative power over the matters listed in the Scotland Act and cannot encroach on the powers of the British Parliament (the London Parliament will not legislate for the Affairs of Scotland). Finally, the Supreme Court controls the acts of the Scottish Parliament, but not those of the British Parliament.

Finally, in Germany, federalism is conceived as a form of separation of powers, thus guaranteeing liberties. Each of the 15 *Länder* has its own constitutional organisation with a Parliament (generally unicameral), an Executive elected by the Parliament and a constitutional control. The distribution of competences is complex and is organised into three groups: first, those which fall within the jurisdiction of the *Bund* (Foreign Affairs, Defence...); second, those under concurrent jurisdiction (in which the *Bund* and *Länder* can intervene); and finally those that are not included in the two first groups but fall within the exclusive competence of the *Länder*.

The methods used to distribute competences between the State and the regions “influences the characteristics of the form of the State”<sup>CVII</sup>. Each method reveals a characteristic: some are “federally inspired”, i.e., the enumeration of national competences, while others display “limited autonomism”, i.e. the precise definition of regional



matters<sup>CVIII</sup>. In all cases, the distribution of competences affects the inclination to develop the State in one way or another. Every method has its pros and cons. For its part, the list tends to “meet the requirement of legal security and guarantee territorial autonomies: we could not, in fact, talk about autonomy if the borders, i.e., the limits to the central State’s administrative and legislative activity, were not predetermined. However, we should consider that the borderline between the State and regional competences is never fixed at any given time, but rather is mobile”<sup>CIX</sup>. Therefore, the relation between the two legislators must be organised.

#### 4. The Relationship between the Two Legislators: from Cohabitation to Control

It would be illusory to want to strictly separate the respective areas of competence of the State and the region. Their distribution becomes more complex as the regions, which more and more are being called to intervene in areas in addition to the State, become more autonomous. Case law and the Constitution have identified the criteria intended to temper and harmonise the distribution system and make the exercise of powers consistent. This method may not be systematically applied in all matters and is complicated due to the unique relationship between the two legislators.

This relationship is first defined in terms of separation. Regional law intervenes in the jurisdictional area assigned to it by the Constitution. In legal terms, regional law in principle may not be subject to or substituted by State law, even accidentally. State law may not, in principle, repeal or replace regional law and vice versa.

Regional and state legislative powers are separate and distinct in their competences: “their relationship is not resolved through the application of the principle of hierarchy, but through the application of the principle of jurisdiction: it prevails over the act, either State or autonomous, which is competent to govern the given matter, with the incompetent Act being unconstitutional because it ignores the distribution of competences defined by the block of constitutionality” (Pierre Bon).

As is the case for all separated powers, collaboration should be organised. “One aspect of the principle of autonomy is, undoubtedly, the nature of the adopted criteria: to either



distribute powers between the central State and the Member States or regions or ensure the necessary coordination among the different institutional levels”<sup>CX</sup>. If the selected criteria imply mechanisms<sup>CXI</sup> of distributional mobility, they will be decisive for the quality of the relationship between the State and the communities.

The principle of loyal cooperation has been instrumental in the exercise of powers and has led to the emergence of another principle: subsidiarity. Both may be found not only in the various different European experiences, but also at the European level (EU) itself.

Another set of criteria for the distribution of competences is based on the principle of subsidiarity: pursued interest. Its name varies from State to State, in France it is called local interest and purpose<sup>CXII</sup> in Italy, though it still refers to the form of the aim pursued. However, the challenge is to identify the area of interest, especially when it is local: it should be defined and represent hundreds of provincial/departmental interests as well as thousands of municipal interests besides those of the regions and the State. However, the assessment of interest is inherently political and represents the point of view of the communities concerned since it “is necessarily *entrusted to their evaluation*”<sup>CXIII</sup>. It is precisely the competition between all of these interests which sometimes makes the system ineffective, and sometimes makes it dynamic.

However, in Italy, as in many other European countries, interest more than any other criterion has long been used to limit regional jurisdiction or, rather, in the intervention of the State in regional areas, by limiting regional action through “national interest”. In addition, it has served as the basis and justification for broad State control over infra-national communities, either before the Constitutional Court in some countries or before administrative judges in others. Therefore, they are both responsible for settling conflict. The Constitutional Court, in particular, would guarantee respect for the Constitution, though generally speaking it would benefit the State at the expense of others, i.e., the infra-national entities, under the legal and economic unity of the State. Here again, the evolution of regional access to Italian constitutional justice, which has been facilitated since 2001, and to a certain equality of status between the State and the regions<sup>CXIV</sup> is an important sign of the evolution of Italian regionalism and the relationship between the State and the regions.

Spain also wields exclusively judicial<sup>CXV</sup> control over the legislative or administrative acts of the Autonomous Communities.



If arbitration between legislative powers makes legal status appear equally accessible to constitutional justice by the State and the regions, under certain conditions it also leads to imbalance to the benefit of the State, which is authorised to act over other communities in order to protect essential interests and ensure the “unitary (or even uniform) exercise” of competence<sup>CXVI</sup>. This is also referred to as the substitutive or replacement power (Article 120, paragraph 2, of the Italian Constitution) of one authority by another one. This power – or this function – is variously intended to counteract either the possible inaction of a region or its improper performance.

Regional legislative power carries the same title as national legislative power. However, it is obviously different in nature. If Acts are general and impersonal – characteristics that distinguish them from regulations – regional Acts are general and impersonal in scope and are limited to the territory and the regional population, whereas national law applies to the entire territory and national population, namely, at least in the case of shared competences, to all the territories and populations of the infra-State communities. Within the various different European experiences, it is difficult to identify a commonly shared movement regarding regional legislative powers.

In any case, however, regional legislative power is a fundamental element in the definition of the constitutionalism of the composed State in general and of the infra-state communities in particular.

Generally, it questions who the unique bearer of sovereignty is, traditionally the only bearer of the power to make the law. Therefore, it raises the issue of the unique bearer of sovereignty and legislative pluralism, postponing the problem of the demarcation of the power of the central State.

More specifically, defining regional legislative power means defining several constitutional aspects of the region. Therefore, the definition of the various characteristic elements of this legislative power influences the extent of regional constitutional power. Beyond the mere consecration of a field of regional legislative expertise, it is indeed necessary to determine which institution should be in charge of promulgating the said act: should it be the Parliament and can it be referred to in the same way as a national Parliament? Can this Parliament consist of “deputies” or “councilors”?





In addition, it is necessary to define its field of application in the same terms as the national law, thus determining a territory, a population and a relevant public authority at the regional level. Finally, regional constitutionalism becomes more clearly defined, especially since it has recognised an appropriate competence, which defines its own competence (as is the case, for example, in Italian or Spanish regions which can ask for additional conditions of autonomy). Infra-State constitutionalism is almost paradoxically defined by the Constitution of the central State, which gives – or does not give – it a certain amount of latitude. Therefore, one type of constitutionalism (national constitutionalism) creates space for the other (regional constitutionalism), or rather it gives shape to its place.

This is particularly significant for the strengthening of regions, and therefore of their legislative autonomy. However, we must also be aware that even if the State should gradually withdraw from certain areas of competence, its role is fundamental and cannot be withdrawn completely. Economy, health and education are areas that national States have taken over, under the pressure of the international economic and financial crisis, either because of the need to ensure a minimum level of equality – either legal or economic – or because regional action alone is insufficient. Institutions are simply the “product of the free invention of men”<sup>CXVII</sup>. One of them is legislative polycentrism, whose complex nature is a reflection of man.

---

\* Senior Lecturer in Public Law, Université de Lorraine.

<sup>I</sup> Cf. sect. 1 of the Statutes of The Marches and of Emilia-Romagna.

<sup>II</sup> Cf. Italian Constitutional Court, Judgement No. 829 of July 27, 1988, punto 2.5.

<sup>III</sup> Italian Constitutional Court, Judgement No. 21 of April 17, 1968, punto 4.

<sup>IV</sup> Kelsen 1997: 260-261.

<sup>V</sup> Darcy 2003: 79.

<sup>VI</sup> Sect. 16 and 117 of the Italian Constitution.

<sup>VII</sup> Sect. 10 and 16 of the Italian Constitution. See also sect. 80 and 120. The regional territory as such is not cited except in sect. 119 and 133 of the Constitution, the latter on the terms of its variation.

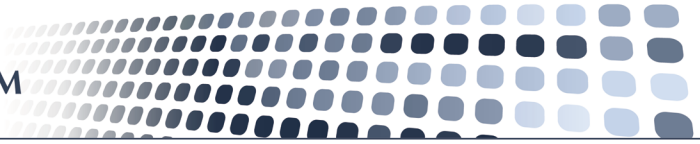
<sup>VIII</sup> Sect. 117, para. 3, of the Italian Constitution.

<sup>IX</sup> Sect. 120 of the Italian Constitution.

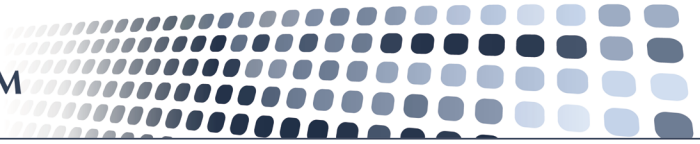
<sup>X</sup> Italian Constitutional Court, Judgement No. 150, May 9, 2003.

<sup>XI</sup> *Ibid.* Judgement No. 23 of January 26, 1957.

<sup>XII</sup> Italian Constitutional Court, Judgement No. 21/68, punto 4.



- XIII Statute of Sardinia, sect. 3; Statute of Friuli Venezia Giulia., sect. 4, para. 3; Statute of Veneto, sect. 2 letter l); Statute of Sicily, sect. 14, para. 1, letter l); Statute of Trentino Alto Adige, sect. 8, para. 15. Italian Constitutional Court, Judgement No.23/57.
- XIV Cf. Italian Constitutional Court, Judgement No. 21/68.
- XV Italian Constitutional Court, Judgement No. 23/57.
- XVI The Court refuses “to divide the seabed into territorial zone, contiguous zone and the high seas in order to define jurisdiction only concerning the activities which can be exercised in the portion of the seabed and the subsoil below the territorial waters”; in fact, these activities “are varied in nature and intensity” and the State exercises related competences in matters of “defence, navigation police, customs control, etc., while on the seabed powers with equal content and intensity for all that is at the level of the sea until the extreme limit of the continental shelf”: Italian Constitutional Court, Judgement No.21/68.
- XVII Statute of Piedmont, sect. 8.
- XVIII Statute of Apulia, sect. 2, para. 2.
- XIX Statute of Emilia-Romagna, sect. 10, para. 1; Statute of Tuscany, sect. 4, para. 1, letter v); Statute of The Marches sect. 4, para. 7; Statute of Umbria sect. 11, para. 2; Statute of Piedmont, sect. 8.
- XX Statute of Emilia-Romagna, sect. 10, para. 1.
- XXI Statute of Tuscany, sect. 4, para. 1, letter v); Statute of Sardinia, sect. 1. Sicily is defined exclusively by its islands: “Sicily, with its islands Eoles, Egadi, Pelagie, Ustica and Pantelleria, is an autonomous region”: Statute of Sicily, sect. 1. Statute of Umbria, sect. 11, para. 2; Statute of Apulia, sect. 2, para. 2.
- XXII E.g. Statute of Umbria, sect. 11, para. 2 and 5.
- XXIII Statute of Tuscany, sect. 4, para. 1, letter v).
- XXIV Statute of The Marches, sect. 4, para. 7: the region “recognises the specific nature of the mountainous territory and internal areas. It promotes policies of intervention and rebalancing to ensure an equal distribution of services and infrastructure, job opportunities and adequate conditions of life”. Statute of Piedmont, sect. 5, para. 1. Statute of Emilia-Romagna, sect. 10, para. 1. See also the Statute of Piedmont, sect. 2, para. 3 on social solidarity.
- XXV Statute of Calabria, sect. 54, para. 1.
- XXVI Statute of Tuscany, sect. 4, para. 1, letter n). See also Statute of The Marches sect. 4, para. 2.
- XXVII Statute of Calabria, sect. 2, para. 2, letter r). On the environmental “vocation” of the territory: cf. Statute of Piedmont, Preamble. Statute of Emilia-Romagna, sect. 3. See also Statute of The Marches, sect. 5; Statute of Piedmont, sect. 6.
- XXVIII Martines 2000: 633.
- XXIX Cf. Pérez Calvo 2000.
- XXX Italian Constitutional Court, Judgement No. 829/88, punto 2.5; Judgement No. 372, December 2, 2004, punto 2.
- XXXI Martines 2000: 634.
- XXXII Pérez Calvo 2000.
- XXXIII Preamble to the Spanish Constitution.
- XXXIV Sect. 2 of the Spanish Constitution.
- XXXV Sect. 57 of the Constitution before the 2005 reform.
- XXXVI Sect. 132 and 133 of the Constitution.
- XXXVII Sect. 123 of the Constitution.
- XXXVIII Pérez Calvo 2000.
- XXXIX *Ibid.*
- XL Statute of Calabria, sect. 34 1.a); Statute of Latium, sect. 41; Statute of The Marches, sect. 26, para. 1, a); Statute of Umbria, sect. 65, para. 1; Statute of Piedmont, sect. 51, para. 1; Statute of Apulia, sect. 42, para. 1; Statute of Emilia-Romagna, sect. 43, para. 1 a).
- XLI Statute of Emilia-Romagna, sect. 27, para. 2; Statute of Liguria, sect. 15, para. 1; Statute of Apulia, sect. 22, para. 1; Statute of Tuscany, sect. 1, para. 1; sect. 11, para. 1 and 4.
- XLII Statute of Emilia-Romagna, sect. 27, para. 2; Statute of Liguria, sect. 30, para. 1; Statute of Emilia-Romagna, sect. 16, para. 1; Statute of Apulia, sect. 24, para. 1; Statute of Latium, sect. 29; Statute of Umbria, sect. 56, para. 1; Statute of Piedmont, sect. 18, para. 2.
- XLIII Statute of Calabria, sect. 16, para. 1.
- XLIV Statute of Emilia-Romagna, sect. 27, para. 1.
- XLV Statute of The Marches, sect. 11, para. 1.
- XLVI Italian Constitutional Court, Judgement No. 106 of April 12, 2002.



XLVII López Aguilar 1999: 104.

XLVIII Statute of Apulia: sect. 13, para. 1; Statute of Emilia-Romagna, sect. 14 para. 1; Statute of Latium, sect. 3 para. 2; Statute of Liguria, sect. 6, para. 1 and Title II of Chapter II of the Statute: “*Relations with citizens*”; Statute of Piedmont, Preamble and sect. 2, para. 1 and 2.

XLIX Statute of Apulia, sect. 10, para. 1.

L Statute of Emilia-Romagna, sect. 15; Statute of Liguria, sect. 6, para. 1; Statute of Tuscany, sect. 3, para. 4.

LI Statute of Apulia, sect. 1, para. 3.

LII See, however, the meaning attributed to “*the enhancement of popular traditions*”: Statute of Calabria, sect. 2, para. 2 s) and the letter p). Statute of Sardinia, sect. 15, para. 2 (“*the Sardinian people*”). See also sect. 2 of the former status of Veneto: “*the self-government of the Venetian people is exercised in the forms respecting the characteristics and traditions of its history. The region participates in the enhancement of the cultural and linguistic heritage of the individual communities*”. Statute of Calabria, sect. 2, para. 2 s).

LIII Statute of Latium, sect. 3, para. 2.

LIV Statute of Emilia-Romagna, sect. 2, l, c). Statute of Piedmont, sect. 7, par. 4: the Statute protects “*the Piedmont community and Occitan, Franco-Provençale and Walser minority communities*”.

LV Statute of Calabria, sect. 2 para. 2, p). Statute of Piedmont, sect. 7, para. 3.

LVI Statute of Calabria, sect. 2 para. 2, p); Statute of Piedmont, sect. 7, para. 3.

LVII Statute of Calabria, sect. 2 para. 2, p); Statute of Apulia, sect. 4, para. 1.

LVIII D’Atena 1999: 383.

LIX The theory of the monopoly of power, including legislative power, has long derived from exclusive sovereignty, at least in France, in order to establish a central power that is therefore unique. The unity of power was thus established, and with it, in France, its centralisation.

LX In this sense, we refer to natural law and moral law, as opposed to positive law (substantive law).

LXI It can also be the text voted by referendum.

LXII Faberon (ed.) 2000.

LXIII Sect. 34 of the French Constitution.

LXIV Michalon 1982: 625.

LXV Sovereignty is often used as a criterion to distinguish the unitary State from the Federal one (Rolla 1998a: 36 and Beaud 1998: 85). But it has already met with several conceptual limits (Beaud 1998) when studied in the compound States. It is an important evolution (Luchaire 2000) which can be direct – by its “*transfers*” – or indirect by the growing autonomy of internal communities. Determining the sovereign allows for the characterisation of autonomy according to their respective and parallel, sometimes interrelated, developments. The form of the State will then in turn be defined in the light of the relationship that the autonomous entity and the sovereign establish or do not establish (on the relationship between the concept of sovereignty and federalism: Caravita 2002: 4).

LXVI The organisation of autonomous institutions is based on the election of a legislative Assembly via universal suffrage under a system of proportional representation, in addition to the representation of the various areas of the territory; a Council of Government in the Executive and administrative functions; and a President, elected by the Assembly from among its members and appointed by the King.

LXVII Sect. 75 (specific laws of the province of Åland).

LXVIII Cf. sect. 114 of the Constitution.

LXIX Blairon 2005: 437.

LXX Regional Deliberation of September, 25, 2001.

LXXI Italian Constitutional Court, Judgement No. 306 of July 3, 2002.

LXXII Italian Constitutional Court, Judgement No. 306/2002, punto 4.

LXXIII Italian Constitutional Court, Judgement No. 106 of April 12, 2002.

LXXIV Italian Constitutional Court, Judgement No. 106/2002, punto 5. Cf. also Italian Constitutional Court, Judgement No. 306/2002. See sect. 60 of the project of the 1997 Bicameral Commission which refers to the “*Regional Assembly*”. On the project Sperooni and the description of the “*regional Parliament*”: cf. Olivetti 2002: 210.

LXXV Sect. 123, last para., of the Constitution.

LXXVI Cf. Olivetti 2002: 362.

LXXVII For example: sect. 127 of the Belgian Constitution.

LXXVIII D’Atena 1999: 383.

LXXIX Pactet 2002: 44.



LXXX De Fina 1988: 3.

LXXXI Cf. Favoreu 2003: 159.

LXXXII Beaud 1998: 88 ; Pactet 2002: 44.

LXXXIII Rolla 1998a: 37.

LXXXIV Cf. Rubio Lara 2002.

LXXXV Constitutional Law No.3 of October, 18, 2001, Official Gazette of the Italian Republic No.248 of October 24, 2001.

LXXXVI Former sect. 117, para. 1, of the Constitution.

LXXXVII This is a reversal of the criteria of the distribution of competences to the benefit of the region, which was seen as “one of the fundamental points of a project that can be qualified as a strong supportive of federalism” (Vandelli 2002: 83). The doctrine identifies a typical criterion of the Federal States in the technique of the list of State powers (cf. Hertzog 2002: 244; Rolla 1998b: 19; Olivetti 2001: 86; Falcon 2001: 306) or at least a very important innovation (Cavaleri 2003: 132). State and regional legislators are granted “absolute equality” less under the new section 114 of the Constitution than by the same limits to which they are subject in their action (it is a “constitutional equal dignity”: Bassanini 2003: 25). However, this particular rule is not widespread in all federal experiments (Carli and Zaccaria 1998), which have seen several variations in the distribution of competences in the texts (cf. Rolla 1998b: 19 and López Aguilar 1999: 49 concerning Spain in particular and Rolla 1998a: 40 from a more general point of view) – sometimes setting the residual jurisdiction for the State – or in practice (cf. Croisat 1999, Volpi 1995: 99), which may result in a “disruption of competences as the initial balance [...] is broken” (Beaud 1998: 109).

LXXXVIII Sect. 117, para. 2 letters), l) and e), of the Italian Constitution.

LXXXIX Sect. 117, para. 2, m and i), of the Constitution.

XC Sect. 117, para. 2, l), of the Constitution.

XCI Sect. 117, para. 2, a), of the Constitution.

XCII Sect. 117, para. 2, s), of the Constitution.

XCIII Olivetti 2001: 92.

XCIV Sect. 117, para. 2, m), of the Constitution.

XCV Referred to the sect. 122, 125, 126, 132 and 133 of the Constitution.

XCVI Olivetti 2001: 93. The Constitutional Court evokes it implicitly in its Judgement No. 94/1985, punto\_3, about the protection of the landscape contained in sect. 9 of the Constitution: “*without a complete exegesis of the constitutional provision, it is sufficient to notice that, according to it, the pursuit of the objective of the protection of the landscape (and the historical and artistic national heritage) is obligatory for the Republic, i.e. [...], in the framework of their institutional competences, to all subjects*”.

XCVII Sect. 114 last para. of the Constitution.

XCVIII Sect. 117, para. 9. of the Constitution.

XCIX Sect. 119, para. 5. of the Constitution.

C Sect. 122, para. 1. of the Constitution.

CI Sect. 126, para. 1. See also sections 33, 116 last para., 118 para. 1 to 3, 125, 132 and 139 of the Constitution.

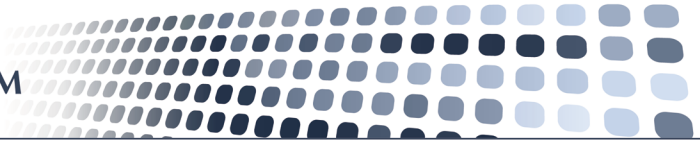
CII Italian Constitutional Court, Judgement No. 362 of December 19, 2003, cons. in law n. 5.3.

CIII Sect. 9, g), of the project No. 2544-B. The unitary principle reappears as it is guaranteed by the basic principles set by the State and applied uniformly throughout the territory. It is a limit to the legislative power of the regions and at the same time a point of reference for their field of action which is ensured by the Constitution: on the one hand in the elaboration of the *legge-cornice*, through the participation of regional and local representatives in the bicameral commission for regional issues, which gives its opinion on the bill whose rejection by the commission requires the adoption of the *legge* by a reinforced majority (the absolute majority of each House); on the other hand before the Constitutional Court which guarantees respect for each area of jurisdiction. The Law finally clarifies the terms of definitions of the fundamental principles by the State which may not delegate this task to the Executive as regards the “new” principles but which can only recognise the principles contained in the legislation in force: sect. 1, para. 4 of ActNo. 131/2003. See Bassanini 2003: 35.

CIV Sect. 117, para. 4. of the Constitution.

CV Sect. 117, para. 4 c), of the Constitution.

CVI Sect. 117, para. 4, e), of the Constitution. In this renewed system of distribution it seems that the differentiation between the two types of ordinary and special regions disappears. The reform significantly



increases the number of ordinary regions with the same jurisdictions that have characterised the special regions until that time. This is why Constitutional Act No. 3/2001 added a jurisdictional clause that is more favourable to the special regions and the autonomous provinces. Section 10 establishes that “*regarding the adaptation of the respective statutes, the provisions of this Constitutional Act also apply to the regions with special status and the autonomous provinces of Trento and Bolzano to the parties providing for more forms of autonomy than those already assigned*”. See for example: Italian Constitutional Court, Judgement No. 145 of April 12, 2005. Cf. Art. 11 of Act No. 131/2003. In Spain, the Constitution expressly confers legislative authority on the autonomous communities of first rank, but practice and jurisprudence have extended this power to the communities of second rank. The autonomous communities adopt “normative provisions” (Art. 150-3 of the Constitution). This is an example of the principle of the classical distribution of competences: 32 matters fall under the exclusive jurisdiction of the State (Art. 149-1 of the Constitution) and 22 are devolved to the autonomous communities (Art. 148-1 of the Constitution), but the unusual aspect of the Spanish situation is the condition that the status of each community has provided in the exercise of such jurisdiction (otherwise, it is State law that applies). In matters which are not listed in the Constitution but have been claimed by the status of the community, a residual clause applies (Art. 149-3 of the Constitution): the jurisdiction of the communities is thus presumed. The State may also, in its field of competence, only set the general principles, allowing the communities – or some of them – to enact complementary standards of legislation (Art. 150-1 of the Constitution). It may also decide to transfer or delegate competences (Art. 150-2 of the Constitution) to the communities. Conversely, it may intervene if general interest demands it and sets the necessary principles for the harmonisation of the laws of the communities.

CVII Rolla 2002: 48.

CVIII *Ibid.*, p. 48.

CIX *Ibid.*, pp. 48-49.

CX Rolla 1998b: 18.

CXI Olivetti 2001: 97.

CXII Italian Constitutional Court, Judgement No.7 of June 15, 1956.

CXIII Italian Constitutional Court, Judgement No.140, 141 and 142 of July 24, 1972. The interest of several communities in the same matter has been defined in France as crossed competence, making financing these competences complex and in turn the general system. Proposals regularly aim to remove some local communities, but without success (Blairon 2011).

CXIV However, equality is a goal that still has not quite been reached. Although the Constitutional Court’s procedural requirements for the region have been facilitated, the grounds of the law are still unequal.

CXV LO 7/1999 of April 21, 1999 attributes to the TC jurisdiction to resolve the conflict in defence of local self-government.

CXVI Cf. Italian Constitutional Court, Judgement No. 43/04, punto 3.3.

CXVII Rivero 1980: 213.

## References

- Bassanini Franco, 2003, “Attuazione dell’articolo 117, primo e terzo comma, della Costituzione in materia di legislazione regionale”, in Bassanini Franco *et al.* (eds.), *Legge “La Loggia”. Commento alla L. 5 giugno 2003 n. 131 di attuazione del Titolo V della Costituzione*, Maggioli Editore, Dogana, 22-56.
- Beaud Olivier, 1998, “Fédéralisme et souveraineté. Notes pour une théorie constitutionnelle de la Fédération”, in *Revue de droit public*, 1, pp. 83-122.
- Beaud Olivier, 2009, *Théorie de la Fédération*, PUF, Paris.
- Blairon Katia, 2005, *Le régionalisme et le fédéralisme dans les réformes de l’État italien*, Thesis, University of Lorraine.
- Blairon Katia, 2011, “Organización territorial en Francia: alcance de las reformas de 2010”, in *Revista catalana de dret públic*, 43, pp. 347-371.
- Caravita Beniamino, 2002, *La costituzione dopo la riforma del titolo V. Stato, regioni e autonomie fra Repubblica e Unione europea*, G. Giappichelli Editore, Torino.
- Carli Massimo, Zaccaria Roberto, 1998, “La forma di Stato”, in Caretti Paolo (ed.), *La riforma della Costituzione nel progetto della Bicamerale*, CEDAM, Padova, pp. 1-21.



- Cavaleri Paolo, 2003, *Diritto regionale*, CEDAM, Padova.
- Croisat Maurice, 1999, *Le fédéralisme dans les démocraties contemporaines*, Montchrestien, Paris.
- Darcy Gilles, 2003, “Variations sur le concept de territoire”, *Les collectivités locales, Mélanges en l’honneur de J. Moreau*, Economica, Paris.
- D’Atena Antonio, 1999, “L’impatto del policentrismo legislativo sul sistema delle fonti”, in *Studi in onore di L. Elia*, Giuffrè, Milano, 251-268.
- De Fina Silvio, 1988, “Autonomia”, in *Enc. Giur., Ist. Giur. It.*, IV, 1-5.
- Faberon Jean-Yves (ed.), 2000, *La souveraineté partagée en Nouvelle-Calédonie et en droit comparé*, La Documentation Française, Paris.
- Faberon Jean-Yves (ed.), 1997, *L’avenir statutaire de la Nouvelle-Calédonie*, La Documentation Française, Paris.
- Falcon Giandomenico, 2001, *Lineamenti di Diritto Pubblico*, CEDAM, Padova, 8th ed.
- Favoreu Louis, 2003, “La notion constitutionnelle de collectivité territoriale”, in Jacques Petit (ed.), *Mélanges en l’honneur de J. Moreau, Les collectivités locales*, Economica, Paris.
- Hertzog Robert, 2002, “Les personnes publiques n’ont pas de compétences”, in *Liber amicorum J. Waline, Gouverner, administrer, juger*, Dalloz, Paris.
- Kelsen Hans, 1997, *Théorie générale du droit et de l’Etat*, Brussels and Paris, Bruylant and LGDJ, trans. B. Laroche.
- López Aguilar Juan Fernando, 1999, *Lo Stato autonomico spagnolo. Stato composto asimmetrico e fatti differenziali nella Costituzione spagnola del 1978*, CEDAM, Padova.
- Luchaire François, 2000, “La souveraineté?”, in *Revue Française de Droit Constitutionnel*, issue no. 43, 451-461.
- Martines Temistocle, 2000, *Diritto costituzionale*, Giuffrè Editore, Milano, 10th ed.
- Michalon Thierry, 1982, “La République française, une fédération qui s’ignore?”, in *Revue de Droit Public*, 623-688.
- Olivetti Marco, 2001, “Le funzioni legislative regionali”, in Groppi Tania, Olivetti Marco (eds.), *La Repubblica delle autonomie, Regioni ed enti locali nel nuovo titolo V*, G. Giappichelli Editore, Torino, 2001, 85-99.
- Olivetti Marco, 2002, *Nuovi statuti e forma di governo delle regioni. Verso le Costituzioni regionali ?*, Il Mulino, Bologna.
- Pactet Pierre, 2002, *Institutions politiques. Droit constitutionnel*, Dalloz, Armand Colin, Paris.
- Pérez Calvo Alberto, 2000, “Pueblo, nacionalidades y regiones en la práctica estutaria”, in *Revista Jurídica de Navarra*, No. 29, 107-120.
- Rivero Jean, 1980, “Fédéralisme et décentralisation: harmonie ou contradiction?”, in de Laubadère André, Mathiot André, Rivero Jean, Vedel Georges, *Pages de doctrine*, LGDJ, Paris, I.
- Rolla Giancarlo, 2002, *Diritto regionale e degli enti locali*, Giuffrè Editore, Milano.
- Rolla Giancarlo, 1998a, “L’autonomie: un guide pour la décentralisation de l’administration publique”, in *Revue internationale des sciences administratives*, 1, 31-45.
- Rolla Giancarlo, 1998b, “L’autonomia costituzionale delle comunità territoriali. Tendenze e problemi”, in Groppi Tania (ed.), *Principio di autonomia e forma dello stato*, G. Giappichelli Editore, Torino, 3-32.
- Rubio Lara María Josefa, 2002, “Estados soberanos y gobernación: las mutaciones de las formas de organización política”, in *Sistema*, No. 171, 85-103.
- Vandelli Luciano, 2002, “Du régionalisme au fédéralisme?”, in *Pouvoirs*, No. 103, 81-91.
- Volpi Mauro, 1995, “Stato federale e stato regionale: due modelli a confronto”, in *Quaderni costituzionali*, XV(3): 367-409.