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Local and regional democracy in Italy

Monitoring Committee

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Summary

This report was prepared following the third monitoring visit to Italy since the country ratified the European Charter of Local Self-Government in 1999. The report notes with satisfaction that the principle of self-government is soundly anchored in the State organisation by the domestic constitution. It also approves the efforts undertaken by the country to foster decentralisation. Nevertheless, the rapporteurs express their concern with regard to the general lack of financial resources available to local authorities, notably provinces, and the absence of effective consultations on financial matters that concern them directly. The report highlights the fact that local authorities do not dispose in practice of enough qualified personnel. Furthermore, the representatives of the provinces and the metropolitan cities are not elected by direct and universal suffrage and do not receive appropriate financial compensation in order to perform their responsibilities. Lastly, there exists a discrepancy between financial resources of regions having a special status in comparison with those having an ordinary status.

The Congress urges the Italian authorities to reconsider, during consultations, the calculation of the budget cuts and to lift financial constraints imposed on local authorities to ensure sufficient financial resources are available to them. It recommends clarifying the competences of the provinces and metropolitan cities, by re-introducing direct elections of their governing bodies, providing for adequate financial remuneration of their representatives and revising the current limitations in relation to local human resources. Finally, the Congress recommends that the Italian authorities ensure a greater fiscal autonomy to the regions having an ordinary status.

1 L: Chamber of Local Authorities / R: Chamber of Regions
EPP/CCE: European People's Party Group in the Congress
SOC: Socialist Group
ILDG: Independent Liberal and Democratic Group
ECR: European Conservatives and Reformists Group
NR: Members not belonging to a political group of the Congress

RECOMMENDATION 404(2017)[2]

1. The Congress of Local and Regional Authorities of the Council of Europe refers to:

a. Article 2, paragraph 1.b, of Statutory Resolution (2015)9 relating to the Congress, which provides that one of the aims of the Congress shall be "to submit proposals to the Committee of Ministers in order to promote local and regional democracy";

b. Article 2, paragraph 3, of Statutory Resolution (2015)9 relating to the Congress, stipulating that "the Congress shall prepare on a regular basis country-by-country reports on the situation of local and regional democracy in all member States and in States which have applied to join the Council of Europe, and shall ensure, in particular, that the principles of the European Charter of Local Self-Government are implemented'';

c. Congress Resolution 409 (2016) on the Rules and Procedures of the Congress and in particular, Chapter XVII on the organisation of the monitoring procedures;

d. Congress Resolution 299 (2010), which provides that the Congress will use the Council of Europe Reference Framework for Regional Democracy [MCL-16(2009)11], in its monitoring activities, and the reply by the Committee of Ministers to Congress Recommendation 282 (2010) [CM/Cong(2011)Rec282 final], which encourages the governments of member States to take account of the above Reference Framework in connection with their policies and reforms;

e. Recommendation 337 (2013) on local and regional democracy in Italy;

f. Recommendation 35 (1997) on the implementation of the European Charter of Local Self-Government in Italy;

g. the appended explanatory memorandum on local and regional democracy in Italy drawn up by Jakob Wienen (The Netherlands, EPP/CCE) and Stewart Dickson (United Kingdom, GILD/ILDG), rapporteurs, following their official visit to the country from 21 to 23 March 2017.

2. The Congress notes that:

a. Italy became a member of the Council of Europe on 5 May 1949 and signed the European Charter of Local Self-Government (ETS No. 122, hereinafter "the Charter") on 15 October 1985 before ratifying it on 11 May 1990, without reservations. The Charter entered into force with respect to Italy on 1 September 1990;

b. Italy ratified the European Convention on Transfrontier Co-operation between Territorial Communities or Authorities (CETS No. 106) on 29 March 1985. The Outline Convention entered into force on 30 June 1985. The country also ratified the Convention on the Participation of Foreigners in Public Life at Local Level on 26 May 1994. This Convention came into force on 1 May 1997;

c. the Monitoring Committee of the Congress of Local and Regional Authorities of the Council of Europe appointed the co-rapporteurs on local democracy Jakob Wienen (The Netherlands, EPP/CCE) and on regional democracy Stewart Dickson (United Kingdom, GILD/ILDG) to prepare and submit to the Congress a report on local and regional democracy in Italy;[3]

d. the monitoring visit took place from 21 to 23 March 2017. During the visit, the Congress delegation met with representatives of governmental institutions (Parliament, Ministries, Court of Audit, State Council) and of local authorities (mayors and presidents of provinces and regions). The delegation met as well with representatives of the national delegation of Italy to the

2 Debated and adopted by the Congress on 18 October 2017, 1st sitting (see Document CG33(2017)17, explanatory memorandum), co-rapporteurs: Jakob WIENEN, the Netherlands (L, EPP/CCE) and Stewart DICKSON, United Kingdom (R, ILDG).

3 The rapporteurs were assisted by Pr. Angel MORENO MOLINA, Chair of the Group of Independent Experts on the European Charter of Local Self-Government, and the Congress Secretariat.

Congress and the associations of local and regional authorities. The detailed programme of the visit is appended to the report;

e. the delegation wishes to thank the Permanent Representation of Italy to the Council of Europe, the Italian authorities at central and local levels, the secretariat of the Italian delegation to the Congress and the experts who met with the delegation for their valuable co-operation during the monitoring visit.

3. The Congress notes with satisfaction:

a. the efforts undertaken by the Italian authorities to foster decentralisation in the past years;

b. the recognition of the principle of local self-government in the domestic constitution.

4. The Congress expresses its concern with regard to:

a. the inadequate financial resources available to local authorities, particularly provinces, to accomplish their tasks due to the sharp decrease in their own revenues and state transfers as well as budget cuts (Article 9, paragraphs 1 and 2);

b. the fact that in practice local authorities are not consulted regarding the adoption of the budget, in particular in case of the implementation of budget cuts by the central government (Article 9, paragraph 6);

c. the unclear prospects of the development of the situation with the provinces as a result of the rejection of the Constitutional reform in December 2016;

d. the reduced ability of local authorities in practice to dispose of qualified staff in order to carry out their responsibilities as a consequence of the lack of career prospects, budget cuts and cross-cutting “freeze” on hiring new staff implemented in recent years (Article 6, paragraph 2);

e. the lack of appropriate remuneration or compensation for the elected representatives of provinces and metropolitan cities for the discharge of their duties that may also weaken the involvement of citizens in provincial politics (Article 7, paragraph 2);

f. the fact that the governing bodies of provinces and metropolitan cities are not elected by direct and universal suffrage (Article 3, paragraph 2);

g. the limited responsibility of the presidents of provinces and metropolitan mayors towards the respective deliberative bodies (Article 3, paragraph 2);

h. the weak financial situation of the regions having an ordinary status, in comparison with those having a special status;

i. the inefficiency of the equalisation system for smoothing out the differences in financial resources among regions (Article 9, paragraph 5).

5. In the light of the above, the Congress recommends that the Committee of Ministers call upon the Italian authorities to:

a. reconsider, during consultations, the criteria and methodology of the calculation of the budget cuts and lift financial constraints imposed on local authorities, in particular provinces, to ensure that their resources are commensurate with responsibilities;

b. ensure that local authorities are effectively consulted, in law and in practice, through representatives of national associations, on financial matters which concern them directly;

c. reconsider the policy of gradual downsizing and abolition of provinces through restoring their competences and providing necessary financial resources for their fulfilment;

d. strengthen the process begun in June 2017, in relation to local human resources and the possibility of new recruiting, so that local authorities could dispose of a high-quality staff, essential to discharge properly their responsibilities;

e. establish a system of fair and appropriate remuneration of the representatives of provinces and metropolitan cities for the discharge of their duties ;

f. re-introduce direct elections for the governing bodies of the provinces and metropolitan cities;

g. introduce the possibility to formulate a vote of dismissal or censorship in the provincial/metropolitan councils against their president/mayor in order to strengthen the political accountability of presidents/mayors;

h. revise the financial rules and principles of the regions having an “ordinary status” to strengthen their fiscal autonomy and increase the proportion of their “own revenues”;

i. revise the current formula of the equalisation system to smooth out the differences in financial resources of regions based on the principle of territorial solidarity;

j. sign and ratify the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No.207).

6. The Congress invites the Committee of Ministers of the Council of Europe to take into consideration the present recommendation on local and regional democracy in Italy, as well as the explanatory memorandum, in its activities related to this member State.

EXPLANATORY MEMORANDUM

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1. INTRODUCTION: OBJECTIVE OF THE VISIT, TERMS OF REFERENCE, SCOPE

1. Pursuant to Article 2, paragraph 3 of Statutory Resolution (2011) 2 of the Council of Europe Committee of Ministers, the Congress of Local and Regional Authorities (hereinafter referred to as “the Congress”) regularly prepares reports on the state of local and regional democracy in all Council of Europe member states.

2. The Italian Republic is one of the parties to the European Charter of Local Self-Government (ETS No. 122, hereinafter "the Charter"). Italy signed the Charter on 15 October 1985 and ratified it on 11 May 1990. The Charter entered into force in the Italian Republic on 1 September 1990. No “improper” reservation to any of its articles was formulated. On the other hand, Italy did not limit the scope of the Charter to a part of its territory or to a certain kind of territorial units. Therefore, the Italian Republic belongs to the minority group of Council of Europe’s members whose acceptance of the Charter has been full, complete and without reservations. In this sense, at the time of the deposit of the instrument of ratification, the following declaration was made: “According to Article 12, paragraph 2 of the Charter, the Italian Republic considers itself bound by the Charter in its integrality”.

3. In 2016, the Congress adopted the decision to perform a report of local and regional democracy in Italy. For this purpose, the Monitoring Committee of the Congress appointed Mr. Jakob WIENEN, from the Netherlands, mayor of the city of Harleem (rapporteur on local democracy, EPP/CCE) and Mr. Stewart DICKSON, from the United Kingdom, member of the Legislative Assembly of Northern Ireland, (rapporteur on regional democracy, GILD/ILD) as rapporteurs, and instructed them to prepare and submit to the Congress such report. An official monitoring visit in Italy was then organised, and was carried out by the aforementioned rapporteurs and by the secretariat of the Congress. The delegation was assisted by Prof. Dr. Angel M. Moreno (expert-consultant). The rapporteurs wish to express their thanks to the expert for his assistance in the preparation of this report. This group of persons will be hereinafter referred to as “the delegation”.

4. The official monitoring visit took place on 21-23 March 2017. During the visit, the delegation had several meetings with officials of the central administration (Ministries), the President of one Italian region, several mayors, and presidents of Provinces, members of the Italian delegation to the Congress, members of the National Parliament (both the House and the Senate), representatives of Associations of Municipalities and Provinces, the Court of Audit and the Council of State. The detailed programme of the visit is appended to the present report. The delegation would like to thank all the interlocutors whom they met during the monitoring mission, for their warm welcome, the fruitful exchange of view and the information provided.

5. From the outset, it should be underlined that the negative outcome of the national referendum held on 4 December 2016 (see *infra*) has introduced an element of disruption and further uncertainty in the process of territorial reforms.

2. POLITICAL CONTEXT

2.1. International context and relations with neighbours

6. The Republic of Italy was born as an independent country in 1861 after a long re-unification process. Originally a Kingdom, the country is now a democratic republic, under the now-in-force Constitution of 1947.

7. Italy has a total population of 60.782.668 inhabitants (2014) and an area of 302.073 km², which makes of Italy one of the most extended and populated countries of Western Europe. Since the end of World War II, the country has had an active and leading presence in the most important international organisations. Namely, Italy was one of the founders of the Council of Europe back in 1949 and of the then European Communities in 1951 (Treaty of Paris) and 1957 (Treaty of Rome). The country keeps regular, peaceful and amicable relations with all its neighbours.

8. In the domain of local and regional democracy, the Italian Republic, apart from the Charter, has also signed and ratified the following Council of Europe Treaties:

a. the European Outline Convention on Tran frontier Co-operation between Territorial Communities or Authorities (ETS No.106): signed on 21 May 1980 and ratified on 29 March 1985. Entry into force for Italy: 30 May 1985.

b. The Convention on the participation of foreigners in public life at local level, of 5 February 1992 (ETS No. 144). signed on 5 February 1992 and ratified on 26 May 1994. Entry into force for Italy: 1 May 1997.

9. On the other hand, Italy has signed, but not ratified yet the addition protocol to the European Outline Convention on Tran frontier Co-operation between Territorial Communities or Authorities, of 9 November 1995, ETS No.159 (signed on 5 December 2000).

10. And, finally, Italy has not yet signed the following Council of Europe Treaties:

a. The Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority, of 16 November 2009 (ETS No. 207).

b. The Protocol No. 2 to the European Outline Convention on Tran frontier Co-operation between Territorial Communities or Authorities concerning interterritorial co-operation, of 5 May 1998 (ETS No. 169).

c. The Protocol No. 3 to the European Outline Convention on Tran frontier Co-operation between Territorial Communities or Authorities concerning Euro-regional Co-operation Groupings, of 16 November 2009 (ETS No. 206).

2.2. Internal political context

11. The form of government of Italy is that of a parliamentary Republic, namely “a democratic Republic, founded on work” (Article 1 of the Italian Constitution of 1947”). The head of State is the President of the Republic, who is elected in joint session by both Chambers of the Parliament and with the participation of regional delegates, and serves a term of seven years (Article 83, 85, of the Constitution). Mr. Sergio Mattarella is the current President of the Italian Republic since 31 January 2015.

12. At national level, the legislative power of the republic resides in the National Parliament. This is a bicameral body, composed of the Chamber of Deputies (630 deputies) and of the Senate (315 senators). The Italian system is based on a “perfect bicameralism”, meaning that both chambers are equal in powers, competences and prerogatives. Therefore, any law must be approved in both chambers, following a distinct and separate procedure, although there are occasions on which they meet in joint sessions (Article 55 of the Constitution). There are, however, differences in the electoral system applicable for each chamber.

13. The MPs are elected every five years. The last general elections were held in February 2013 and saw a victory of the Democratic Party, which won 345 seats in the House of Representatives, and 123 Senators. As a result of those elections and of different political crisis triggered by the fragmented electoral results (so frequent in the Italian political landscape) there have been three different Presidents of the Council of Ministers: Mr. Enrico Letta (April 2013-February 2014), Mr. Mateo Renzi (February 2014-December 2016) and the current Prime Minister, Mr. Paolo Gentiloni.

14. The Italian Republic can be defined as a unitary country with a deep territorial decentralisation. The Constitution does not identify the “type” of the country to which Italy belongs. It proclaims, on the one hand, that the Republic is “one and indivisible” (Article 5), but on the other hand it *recognises* and promotes local and regional autonomies in view to achieve “the fullest measure of administrative decentralisation” (id). In this sense, in the last decades Italy has experienced a long process of three-fold administrative decentralisation at local, provincial and regional level, which is discussed below. The fact that the Constitution

"recognises" local self-government means in a certain way that the autonomous local administration is an old and pre-existing political element of the Italian political system.

15. From a purely political perspective, the explanatory memorandum of Recommendation 337 (2013) already pointed out that the landscape of local and regional democracy in Italy was deeply pervaded by the economic and financial crisis since 2008. In this sense, the Italian Republic drafted, on the requirement of the European Union and other international bodies, a comprehensive plan of economic and institutional reforms and adjustments, which hit in a dramatic way the local and regional authorities.

16. The delegation has noted that the situation is, to a large extent, still the same and that the reforms and further adjustments have continued in the period 2013-2017. Thus, Italy has approved in recent years a set of laws and regulations by which the financial reforms "required" by the crisis have crystallised. Different measures, such as dramatic "linear cuts" in the local budgets, or the rearrangement of competences, were approved. These measures had important consequences in the domain of local and regional government. The progressive weakening and downsizing of provinces and the parallel creation of the "metropolitan cities" can be cited as the most notable examples (see *infra*). In the case of the provinces, the impact of the institutional reforms has been even worse, for the government paved the way for the elimination of the provinces from the Italian territorial landscape. The most important reforms were embodied in the Act No. 56, of 7 April 2014, "laying down provisions in the field of metropolitan cities, provinces, and on unions and mergers of municipalities" (usually referred as the "Delrio Act", due to the name of the Minister who proposed this legislation)[4].

17. The whole territorial reform strategy was supposed to culminate in a constitutional reform, by way of a constitutional Law that was worked out by the Renzi Government. Two points of this planned constitutional reform are worthy to underline for the purposes of this report. On the one hand, the reform wanted to amend the constitutional regulation of the "concurrent" legislative powers, that is, the matters where the State and the regions both have the capacity to enact laws and regulations. The reform aimed at reinforcing the legislative powers of the State *vis-à-vis* those of the regions and at ensuring a greater regulatory homogeneity across the country, while keeping the possibility of differentiation between the regions. The other point concerned the elimination of the provinces. The project of the Constitutional Law was sent to the Parliament, and was approved by both Chambers between October 2015 and April 2016. Then, the Law was submitted to a referendum (in accordance with Article 138 of the Constitution) that was held on Sunday, the 4th of December 2016.

18. The voters were asked whether they approved the Constitutional Law drawn up by the Government. The results showed a clear victory of the "no" choice (59,11% of the ballots) over the "yes" option (40,89%). These results triggered a deep political crisis which provoked, among other things, the resignation of Mr. Renzi as President of the Council of Ministers. At the same time, the results of the referendum have openly put into question the whole pattern of the territorial reforms planned by the successive governments in the period 2012-2016 and have introduced a huge amount of confusion and uncertainty as to what should be the "next steps" in this field, especially for what concerns the provinces[5]. Some interlocutors told the delegation that the failed referendum necessarily leads to reconsider the whole strategy of territorial reforms. Others were unconvinced about the likelihood of this direction, since the reforms already accomplished are difficult to revert and the program of structural reforms must go on. Summing up: the results of the referendum have opened a period of uncertainty as to the territorial reforms in Italy, whose solution can not be seen in the short-term.

4 The *Delrio* Act was challenged in the Constitutional Court, but this court affirmed the constitutionality of the Act (Ruling No 50 /2015).

5 Scholars also discuss this situation. See: M. Gorlani: "Quale futuro per le province dope l´esito del referendum costituzionale del 4 dicembre 2016". In: *Federalismi.it,* n. 5/2017, 8 March 2017.

2.3. Previous reports and recommendations by the Council of Europe

19. The Italian Republic has received attention by the Congress a couple of times in the last twenty years: in June 1997, the Congress adopted Recommendation 35(1997), on local and regional democracy in Italy and Recommendation 337 (2013) on local and regional democracy in Italy, adopted by the Congress in March 2013.[6]

3. HONOURING OF OBLIGATIONS AND COMMITMENTS: BASIC FEATURES OF LOCAL AUTHORITIES

3.1. Constitutional and legal framework

20. Articles 114 to 133 of the Constitution (Title V) deal with "Regions, provinces and municipalities". These provisions lay down the fundamental elements of local (and regional) self-government. In this sense, Article 114 provides that "the Constitution is composed of the Municipalities, the Provinces, the Metropolitan Cities, the regions and the State".

21. Article 117 establishes that Municipalities, provinces and metropolitan cities have regulatory powers as to the organisation and implementation of the functions attributed to them. Furthermore, this provision recognises the principle of subsidiarity. In the domain of local competences, the same Article 118 stipulates that the local authorities "carry out administrative functions or their own as well as the functions assigned to them by the State or by regional legislation".

22. Article 119 of the Constitution deals comprehensively with local finances (see below, point 3.3.7). It provides, *inter alia,* that local authorities "shall have revenue and expenditure autonomy, subject to the obligation to balance their budgets" (1st indent); that they will have "independent financial resources and that they will levy taxes and collect revenues of their own" (2nd indent); that an equalisation fund will be set up (3rd indent); and that local authorities will have their own assets" (6th indent).

23. Apart from these constitutional provisions, the organisation, competences, finances and operational aspects of local authorities are regulated by a comprehensive set of laws and regulations. The most important piece of legislation on local authorities is the "Unified Laws on local authorities ("*Testo Unico delle leggi sull´ordinamento degli enti locali*") approved by Legislative Decree No. 267 of 18 August 2000. This key legal rule has been amended many times since its enactment but it still is the backbone of the Italian legal scheme on local authorities. In addition, there are different laws and regulations that govern specific aspects of local authorities, among which stand:

- Act No. 131 of 5 June 2003;
- Act No. 42, of 5 May 2009;
- Every Act approving the annual "stability plan" includes provisions that affect direct or indirectly the local and regional authorities.

4. LOCAL SELF-GOVERNMENT

4.1. Institutional arrangements

24. At present, the Italian Republic is divided into the following layers of territorial government: (a) the central, state Administration; (b) twenty self-governing regions (*regioni*), which are analysed in more detail at point 4 below, and (c) the purely local level. The local level is composed by 8.006 municipalities (*Comuni,*[7] by ten Metropolitan cities (*città metropolitana*) and 93 provinces (previously 108).[8] In this group of provinces it should be underlined that the provinces of Bolzano and Trento are "autonomous" provinces within a region of Special Status,

6 Debated and approved by the Congress on 19 March 2013.
7 2016 data (8.094 in 2012).
8 For comprehensive statistical information, see http://www.comuni-italiani.it

that of Trentino Alto Adige/Südtirol; and that the province of Aosta in reality constitutes another region of Special Status, that of Valle d´Aosta.

25. Besides these "core" local bodies (which are explicitly regulated by the Constitution), the Italian legislation recognises other types of local entities, such as the "*comuni montane*" (Municipalities in mountain areas), unions of municipalities (*unioni di comuni*) and the Island municipality (*comunità isolana*), which are local communities that can be instituted in the islands, except in Sardinia and Sicily. The institutional profile of Italian municipalities makes that their competences and sources of revenue are quite homogeneous, independently from their population. The system does not establish a "categorisation" of municipalities on the basis of their size or population. It should not be forgotten, though, that regions having a special status have reinforced and deeper legislative and executive powers in the domain of local authorities. Therefore, variations and special features for local authorities may be found in those regions, as compared to the regions having an "ordinary" status.

26. Apart from the purely local/regional level, there is a structure of deconcentrated administrative territorial districts, units or offices of the State administration, mainly based at regional and provincial level and organised around the prefect (*prefetto)*. Other constitutional bodies (such as the Court of Auditors and the Administrative Jurisdiction) have also offices or delegations in the regions.

27. In the light of the information and the impressions collected by the delegation during the visit, it is possible to point out that the number and size of local authorities seems to be a controversial feature of the current situation. This is evidenced by the fact that more than 50% of the existing municipalities have less than 3.000 inhabitants (and 768 have less than 500). The situation has a specific historical explanation, which can be traced back to the middle of the XIXth century, especially with the Administrative Unification Laws (1865), for they instituted a municipality for almost every existing territorial communities[9].

28. This structural pattern of the Italian system of local authorities was almost unanimously considered as very negative by the interlocutors met during the visit: there are too many municipalities, and there are too many small ones. The problem seems to be especially acute in regions such as Piemonte and Lombardia. This feature has a negative impact on the operations and working of these bodies. The interlocutors were fully aware of this situation, but there is no agreement on how to solve the problem. The main solutions to the hyper-fragmentation of municipalities are: (a) to encourage inter-municipal associations and (b) the merger of municipalities.

29. The mergers of municipalities have been encouraged by the legislators since the nineties of last century (the Act No 142 of 1990 was approved with this aim) but it had little success. According to an internal publication of the Ministry of the Interior,[10] between 1995 and 2011 only 9 mergers were accomplished, but in 2014 the total number was already 35, and this figure seems to have increased sharply in recent years: the interlocutors met during the visit mentioned the number of roughly 100-110 successful mergers up to 2017.

30. Different laws and regulations (among which the Decree-Law No. 95 of 2012, later Law No. 135 of 2012) were enacted in recent years, which increased progressively the financial incentives for the merger of municipalities. For instance, the 2014 Stability Plan Law provided for the allocation of a portion of the municipal solidarity fund (established by the Act No. 228 of 2012) to finance an increased contribution of the State transfer in favour of the merged municipalities (30 million € in 2014, 2015 and 2016). The Stability Act of 2015 introduced further measures to encourage the merger of municipalities. For instance, the merged municipalities receive more money from the State grants (up to four times bigger an amount than a regular municipality, during five years). On the other hand, the merged municipalities are free from the limitations concerning the possibility to hire new personnel, during the first five years of the merger. Some regions (like Tuscany) have also established additional fiscal incentives schemes. In the regions having special status the situation may be also specific, due to their

9 See: L.Vandelli: "Local Government in Italy". In: *Local self-government in the member states of the European Union: a comparative legal perspective* (A-M.Moreno, edit.), INAP Madrid, 2010, page 339.
10 Ministero dell´Interno, Dipartimento per gli Affari Interni e Territoriali: *Fusioni: Quali vantaggi?,* February 2015.

wider and deeper competences in the domain of local authorities. For instance, in the province of Trento the number of municipalities has been reduced by about 1/3 through mergers.

31. As a result of these legislative measures, the mergers of municipalities do enjoy currently different fiscal and economic incentives. The mergers are supposed to produce savings and economies of scale that have been calculated under a theoretical model by the Ministry of the Interior, based on the assumption that the optimal size of a municipality to merge is under 3,000 inhabitants[11]. The official policy of the competent Ministries is to favour and encourage fusions and mergers of small municipalities.

4.2. Ongoing reforms: provinces and metropolitan cities

32. Since the last monitoring visit of the Congress, conducted in 2012-13, the most important new developments in the organisation of local authorities have to do with the provinces and the metropolitan cities (*città metropolitane*). Both developments are to be understood in the context that has been presented *supra*, at point 2.2.

Provinces

33. In their current form, the provinces were introduced in the Italian territorial landscape in the period 1859-1865, as full territorial and representative entities, whose running bodies were elected by the people (first elections held in 1860). Since that date, many reforms have been operated in those local bodies, the most notable being the reduction in their number, and their specific transformation or suppression in some regions of Special Status (Sicily, Valle d´Aosta and Trentino Alto Adige and lately Friuli Venezia Giulia). However, their very nature was not put into question until the beginning of this decade, and the monitoring mission conducted in 2012-13 already detected different proposals in this sense.

34. As noted *supra*, the most important recent reform was embodied in the "*Delrio Act"* of 2014*.* Under the new legislative arrangements, the provinces are no longer depicted as "representative" local (intermediate) entities, but as a "territorial entities of wide area" (in Italian, *area vasta*), which is a second-level entity (together with the metropolitan cities), focused on the planning and management of the territory. This "area vasta" entails a re-conception of the province. The most important impact is that it eliminates the traditional construct of the province as an entity representative or a "local community", whose members elect the running organs of the said entity. In this sense, the *Delrio* Act eliminated the direct popular election to provincial bodies and introduced the "revolutionary" change that the President of the Province should no longer been elected by the *Consiglio* of the province, but by the mayors and by the members of the city councils of the said province (Article 58). By the same token, the provincial council is also elected in "secondary election" by a restricted vote of the mayors and of the members of the city councils of the province. The underlying idea is that the province does not represent anymore the citizens living in the province, but the bodies and institutional organs of the local entities of the province.

35. As a consequence, the presidents and the council members of the provinces are no longer elected in Italy. The last direct provincial elections took place in 2013. At this point it should be underlined that Congress Recommendation 337(2013) recommended the Italian authorities to "recommit to the democratic value of direct elections in any future structural reform proposals, notably as concerns the provincial level", invoking Article 3, paragraph 2 of the Charter. The delegation observes then that this Recommendation has clearly been ignored or disregarded by the Italian authorities.

11 Idem, previous note.

36. Other reforms in the provinces are presented below at different items. The rapporteurs were told that these legal reforms were established as a part of a global strategy to de-construct and later abolish the provinces altogether. The "problem" is that this suppression needed a reform of the Constitution, a prospect that was rejected by the people in the December 2016 referendum. Consequently, the whole reform has been seriously put into question, and the provinces stand currently in a sort of political "limbo": they have been weakened and downsized, with the aim of suppress them, but they have been reinvigorated by the results of the referendum. The rejection of the governmental proposal may be interpreted as an implicit support to the subsistence of the provinces in the Italian territorial landscape.

Metropolitan cities

37. The metropolitan cities are local authorities of second or intermediary degree, placed just between the municipalities and the regions. Therefore, the name of these entities is a bit misleading, since they are not really "cities", but second-degree entities equivalent to the provinces, and as a matter of fact those entities were designed to substitute or replace some provinces, in the context of the different plans to "streamline" or "rationalise" the territorial structure of the country.

38. These entities were firstly introduced in 2001, by means of a constitutional reform (Constitutional Law 3/2001). However, the process of establishing the Metropolitan cities has been slow and somehow erratic. The *Delrio* Act (see *supra*) gave the final impulse to really establishing those bodies as true operational local bodies, and each one is supposed to replace a pre-existing province. All the powers, resources, assets, competences and powers are transferred to the Metropolitan Cities. Like provinces, metropolitan cities are conceived as entities of "vast extension" (*area vasta*), with important functions in the field of strategic planning and promotion/coordination of public services.

39. There are two groups of metropolitan cities. On the one hand, those placed in the regions of ordinary status, which are fully regulated by the Delrio Act: those of Roma Capitale, Torino, Milano, Venezia, Genova, Bari, Firenze, Reggio Calabria, Napoli and Reggio Calabria. On the other hand, four metropolitan cities placed in regions of special status, where specific provisions may apply: those of Cagliari, Catania, Messina and Palermo. There are provisions for the "activation" of up to 14 Metropolitan cities. Although the metropolitan cities are theoretically fully operational since 1 January 2017, the delegation heard different figures of how many metropolitan cities were fully and "really" operational at the time of the visit, since it seems that in some cases the transition from the province to the *città metropolitana* had not been totally finalised. Only 10 seemed to be fully operational at the time of the monitoring visit.

40. The main organs of the metropolitan city are the "metropolitan mayor" (*sindaco metropolitano*), the metropolitan council (*consiglio metropolitano*) and the *conferenza metropolitana* (see, below, point 5.1).

41. The delegation has observed that the effective introduction of the metropolitan cities in the Italian political landscape is controversial, both in the political and in the academic environments[12]. Some interlocutors said that they did not see a clear "improvement" or streamlining of the administrative organisation with the introduction of the metropolitan cities, and that their political and institutional profile is rather ambiguous. In the view of Government officials whom the rapporteurs met, the metropolitan city increases significantly the possibility to coordinate the plans and policies of the municipalities of the (old) province, and it generates synergies and economies of scale. Other local representatives said that the metropolitan city was a "failed reform", and many expressed their concerned that the new "intermediate entity" will be clearly controlled or determined by the rulers and by the priorities of the former province capital (*capoluogo*), and that the surrounding municipalities risk to be converted into suburbs of that city.

12 See, for example: A. Patroni: "Le città metropolitane nel guado costituzionale", in: *Federalismi.it,* n. 14/2016, of 6 July 2016.

42. For the purpose of this report, a key feature is that the governing bodies of the metropolitan cities are not elected by the people in direct or indirect elections whatsoever (Government officials clarified, though, that the national law provides for the possibility of direct election of the "sindaco metropolitano" in Roma, Napoli and Milano). Thus, and contrary to what happens in the still-existing provinces, the presidents of such Metropolitan cities or "metropolitan mayor" (*sindaco metropolitano*) are not even elected by the mayors and by the members of the local councils present in the province: the mayor of the city-capital of the former province (*capoluogo*) becomes "de iure" the metropolitan mayor, that is, the key ruler of the metropolitan city. From the perspective of the Charter, this is probably the crucial point of these new local entities. Therefore, the rapporteurs regret that in this case, too, Congress Recommendation 337(2013) was disregarded by the Italian authorities.

4.3. Relations between central and local authorities

43. Two issues need to be addressed here: on the one hand, the consultation and participation of local authorities in the decision making of State (or regional) authorities; on the other hand, the inter-administrative co-operation.

44. For what concerns the first topic, the delegation drew the conclusion that there is a noticeable pattern of consultation and participation of local authorities in the political decision making of national institutions. In this sense, there are different bilateral bodies or "Commissions" established at national level. There are three major bilateral commissions (*Conferenze*): (a) the Permanent Conference for the relations between State, regions and the autonomous provinces of Trento and Bolzano; (b) the Conference State-cities-local governments (*conferenza stato-città*), chaired by the Ministry of the Interior; and c) the Joint Conference (conferenza unificata), which is chaired by the Minister for regional Affairs and Autonomies. These commissions were first set up by decrees of the Prime Minister, but currently they are regulated by different legal rules, among which the Act No. 281 of 1997. Furthermore, the Constitutional Court has underlined that the system of conferences is a key instrument to implement the principle of fair co-operation (Ruling 31/2006).

45. In those Commissions, the State and the local and regional authorities try to reach agreements or harmonise their positions, they carry out political negotiations and discuss guidelines and draft projects.

46. Among the different outputs that these forms of consultation may produce, stand the following:

- Agreements (*accordi*), as expression of assent between the central Government and the presidents of the regions and autonomous provinces of Trento and Bolzano, as well as representatives of local governments. For example, several agreements were reached on the actual steps to be followed in order to implement the *Delrio* Act;
- Agreements or understandings ("*intesa*"), on the legislative measures of regional or local interest, which are not binding. The law establishes in which matters an *intesa* is needed.

47. Apart from these major Conferences, there are other bilateral commissions. Thus, Legislative Decree 23 June 2011, n. 118 (amended and supplemented by Legislative Decree 10 August 2014, n. 126) established a specific commission in the Ministry of Economy and Finance, the Commission for Harmonization of local authorities (Commission "Arconet") with the task of promoting the harmonization of accounting and financial statements of local authorities in the budgetary process. According to the said Ministry, the composition of the Commission ensures the full participation of representatives of local authorities. On the other hand, the Stability Act 2016 (Article 1, paragraph 29 of the Law of 28 December 2015, n. 208) has created –also in that Department- a Technical Commission, were the representatives of local/regional and State administration analyze and evaluate the standardises needs and requirements of local and regional governments (legislative decree 26 November 2010 n. 216).

48. Still in the domain of relations between the State and the territorial autonomies, the constitutional reform of 2001 (Article 11) had foreseen the establishment of a bi-cameral Committee (House-Senate) for regional and Local Affairs, but this provision has not been fully implemented. In this sense, many local leaders (for instance, the Provinces Association, UPI) do demand such establishment. Apparently, there is a neat political willingness to establish that Commission, as evidenced by the resolution adopted by the Senate on May the 31st this year, in plenary sitting.

49. On the other hand, the associations of local authorities seem to be recognised and respected as qualified stakeholders by the government and other central authorities. In this sense, such associations may conduct "lobby" and other informal actions, they conduct negotiations and political dialogue with the top political institutions of the country. For instance, the presidents of the Provinces were received in public audience by the President of the Republic on 16 February 2017. In this meeting, the provincial leaders asked the government to take urgent action to tackle the emergency situation faced by the provinces (see, below).

50. In the domain of inter-administrative co-operation, though, the situation is less satisfactory. Apparently, the system of inter-administrative co-operation is not well developed in Italy. The main reason is that all three territorial levels (State, regions, Provinces/città metropolitane and municipalities), have their own spheres of responsibilities and competencies, but they are designed as rather independent layers. In the case of the provinces, and contrary to what happens in other European countries, the Italian ones are not specifically designed as authorities who help or assist municipalities (especially the small ones) in discharging their duties. Italian provinces have their own and distinctive competences and powers.

51. Consequently, the culture of inter-administrative or joint co-operation seems to be little developed or is not in line with the political culture of the country. Of course, at regional level (especially in the regions having a special status) there may be specific schemes of co-operation between the regions and the municipalities and provinces.

4.4. Status of the Capital City

52. Rome is the capital of the country, as well as the most important Italian city from the historical, political, economic and social perspective (as well as the head of the World – *caput mundi*- according to an old saying). The vast territory of the city of Rome (with a considerable extension of 1.285 km2) is also the seat for many State administration offices and departments, as well as Diplomatic representations, and even embraces a foreign micro-country, namely the City of Vatican. The number of inhabitants is roughly 2,9 million.

53. The status of the city of Rome has not been detected as a hot or problematic issue by the delegation, and the rapporteurs did not hear specific complaints about the current *status quo* by the local leaders.

54. To begin with, the Constitution (as revised in 2011) establishes at Article 114 that "*Rome is the capital of the Republic. Its status is regulated by a State Law*". In this sense, Rome was given a specific status by the Act 42/2009, supplemented by a Legislative Decree approved in October 2010. These legislative arrangements established the "Roma Capitale" (Roma Capital), which substituted in technical terms the precedent "Municipality" of Rome (*Comune di Roma*) although the boundaries and all constituent elements of the previous local bodies were respected. Rome can thus be defined as a local authority enjoying a specific autonomy. The capital city has more competences than a regular city, specific provisions on fiscal and budgetary matters, and a deeper administrative and organisational autonomy. Apart from this particular legislative arrangement, Rome is the object of specific references in different laws and regulations, for instance in the 2009 Fiscal Federalism Act.

55. Roma Capital has its own “statuto” (approved in 2013, as amended).[13] In reality, this is not a (national or regional) statute as a literal translation of the word might suggest, but the codified internal by-laws of the local body, which can be changed and amended by the city council itself. As a matter of fact, and under domestic legislation, every municipality or province can approve its own “statuto”.[14]

56. The *Statuto* of *Roma Capitale* lays down specific provisions on the internal territorial and administrative structure of the city. Currently, the internal organisation of the city of Rome is two-fold. At the « central » level, there is a clear separation between the “executive” and the “deliberative-normative” bodies. For what respects the former, there is a Mayor (Sindaco) and a team of up to 12 councillors or city ministries (assessori), who are appointed and removed by the mayor. The latter is composed by the “assembly of the Capital” (*assemblea capitolina*) composed of 45 members. It should be noted that the Mayor of the city of Rome is at the same time, the “metropolitan mayor” (sindaco metropolitano) of the Metropolitan City Rome (see point 4.2).

57. There is also a second territorial level, since the capital city is divided into 10 municipalities, and each one is considered to be a local authority (a municipality) on its own. In each of those sections, the dual structure (council/mayor) is reproduced: there is an executive organ (the mayor) and a deliberative, decision-making organ (a council). All these district rulers and representatives are also elected in the local, direct elections. Each district (*municipi*) has its own budget, which is separated from the general budget of the city, and manages it in an autonomous way. The relations between the two administrative layers, between the City Mayor and the district mayors, and between the different councils of the several districts, on the other hand, are regulated by the *Statuto* of Roma Capitale, and by more specific by-laws, for instance an internal regulation on decentralisation. Those rules regulate also aspects such as the monies and transfers from the Roma Capitale to the internal “municipi”. In broad terms, the allocation of the main administrative functions among the two layers is the following: the “district” municipalities are competent for roads and streets, parks, schools and official buildings, whereas the Capital City is competent for transportation and for waste collection and management.

58. Apart from the 15 municipalities, Rome is also divided in several historical and toponymic subdivisions, such as “Rioni”, “Quartieri”, “Suburbe” or “Zone”, which may be confusing and which in any case are not considered to be local entities.

59. According to the interlocutors met by the delegation, there is no specific benefit enjoyed by city of Rome for the reason of being the capital of the country, and Rome does not collect any special tax. There is no specific State or regional fund designed for Rome, neither. The only source of concern is the public debt: Roma Capitale had an important debt in the past, but it was cancelled by the State administration in 2008. However, the rapporteurs were told that the debt is again increasing every year.

13 Approved by the Assemblea Capitolina no 7 March 2013; published in the Italian Official Gazzete on 29 March 2013. It entered into force on 30 march 2013.
14 As provided by Article 6 of the Codified Laws on local authorities (“*Testo Unico delle leggi sull´ordinamento degli enti locali*”) of 18 August 2000, as amended.

5. ANALYSIS OF THE SITUATION OF LOCAL DEMOCRACY IN LIGHT OF THE EUROPEAN CHARTER ON LOCAL SELF-GOVERNMENT (ECLSG) ON AN ARTICLE BY ARTICLE BASIS

5.1. Articles 2 and 3: Principle and concept of local self-government

Article 2 – Constitutional and legal foundation for local self-government

The principle of local self-government shall be recognised in domestic legislation, and where practicable in the Constitution.

Article 3 – Concept of local self-government

1 Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.

2 This right shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them. This provision shall in no way affect recourse to assemblies of citizens, referendums or any other form of direct citizen participation where it is permitted by statute.

Article 2: Legal recognition of local self-government. The position of the Charter

60. In Italy, the principle of local self-government is explicitly recognised and proclaimed in the constitution. Thus, the Constitution proclaims that the Republic is one and indivisible, but in the same provision states that the Republic *recognises* and promotes local and regional autonomies in view to achieve "the fullest measure of administrative decentralisation" (Article 5). The fact that the Republic "recognises" local self-governments conveys the idea, in a certain way, that the local autonomy is not a creation of the State, but a sort of pre-existing entity. Something which, under a strict historical perspective, is fully true.

61. Article 114 provides that "the Constitution is composed of the Municipalities, the Provinces, the Metropolitan Cities, the regions and the State". These four local and regional bodies "are autonomous entities having their own statutes, powers and functions". In this sense, the case-law of the Italian Council of State, which is the highest body in the administrative jurisdiction, has established that municipalities and provinces enjoy full "administrative" autonomy, as opposed as the autonomy enjoyed by the regions, which is a "political" autonomy. Article 117 states that Municipalities, provinces and metropolitan cities have regulatory powers as to the organisation and implementation of the functions attributed to them. Furthermore, Article 118 of the Constitution is a key provision for the purposes of this report, since it deals with the principle of subsidiarity, which is reflected in several aspects: first, "administrative functions are attributed to the municipalities, unless they are attributed to the provinces, metropolitan cities and regions or to the State" pursuant to the principle of subsidiarity. In the last indent of that article, reference is again made to the principle of subsidiarity.

62. These Constitutional provisions, which expressly recognise local self-government, have been specified and supplemented by a harmonic body of domestic legislation on local authorities which also recognise explicitly local self-government. The most relevant reference is to be found in the "Codified Laws" (*Testo Unico*), whose Article 3, paragraph 1 proclaims that: "*the local communities, organised in municipalities and provinces, are autonomous*". The 4th indent of the said article goes on to specify that municipalities and provinces have autonomy in the domains of "regulation, self-organisation and administration, as well as taxing and financial autonomy".

63. In the light of these constitutional provisions, the rapporteurs conclude that the Italian legal system complies with the requirements of Article 2 of the Charter. Furthermore, the interlocutors met during the visit ensured the delegation that the principles enshrined in the Charter do inspire domestic legislation on local governments.

64. Despite this overall positive situation, reference should be made to the legal status of the said Charter within the domestic legal system, especially in the light of certain recent judgements of the Constitutional Court. Two general features should be first presented, to have a clear picture of the situation. To begin with, Italy is a country with a classical "dualist" approach to International Treaties. Article 117 of the Constitution provides that the legislative powers of the Republic shall be exercised "with limitations deriving from EU-legislation and international obligations". Treaties occupy a sort of "intermediate" position between the Constitution and regular legislation and, as a rule, a Treaty has to be "received" in the internal legal order, and the Legislative power enacts legal rules by which the said Treaty crystallises into operational legal rules. This makes difficult, from a methodological point of view, to invoke "directly" in the courts (especially in the administrative courts) the wording or provisions of a given treaty. On the other hand, under Italian constitutional Law, a court cannot disapply a given piece of legislation on the ground that it could be contrary to the Constitution or to a regular international treaty: the court is under the obligation to refer to the Constitutional Court, which will rule on that question.[15] This feature hampers dramatically the possibility to invoke the direct application of the Charter in a given administrative litigation, in which local authorities could be parties.

65. In the above described context, the Charter is generally seen as a binding international treaty, to which Italy has made no reservation or further scope limitation whatsoever. The Charter is seen as an "interposed rule" (*norma interposta*), between the Constitution and ordinary legislation. According to a leading academic, "the national Constitution had already incorporated principles regarding local authorities, so national legislation did not require readjustments to comply with the terms of the Charter".[16]

66. However, and contrary to what happens in the case of the regions, local authorities cannot bring a direct legal action in the Constitutional Court to challenge the compatibility of a piece of legislation with the principles and provisions of the Charter. Only by means of a referral or *preliminary question* can the Administrative regional Courts or the Council of State ask the Constitutional Court about the said compatibility (see *infra*, point 5.8). In this scenario, the case-law of the Constitutional Court has raised some concerns in the Congress. For instance, in its ruling No 50/2015 (dealing precisely with the *Delrio* Act) the Court said that, in the framework of the specific legal problems raised by the constitutional question, the Charter was basically a sort of guideline, or a guiding political document (*un mero atto di indirizzo*), and was too vague to be taken as reference for an abstract control of "legitimacy" of a given piece of national legislation[17]. On this point, it should be pointed that a meeting with the Constitutional Court was scheduled for the monitoring visit in order to get clarifications on this point, but unfortunately it could not take place.

67. Anyway, and according to the information collected by the monitoring delegation, the point is not that the Constitutional Court understands –as a rule- that the Charter is not an applicable Treaty in itself, but that the problems raised in the precise proceedings leading to the ruling No. 50/2015 were too imprecise in order to be adjudicated exclusively on the basis of the wording of the Charter. Therefore, that ruling should not be taken as a "final" and denial ruling on the "legal teeth" of the Charter, but only as a specific reply constrained to a precise question. Apparently, in January this year the Administrative Regional Court of the Lazio region has formulated a request for a preliminary ruling in the Constitutional Court, concerning a State law that imposes the obligatory merger of municipalities in some cases. The said regional administrative court understands that this piece of legislation could disregard the principle of local self-government. Apparently in this case, the referral is very detailed and well structured. Consequently, in adjudicating this preliminary ruling, the Constitutional Court will have a new opportunity to clarify his interpretation of the binding effect of the Charter in the Italian legal system.

15 This specific aspect of Italian public Law proved already to be an obstacle to the full application of the EU Law and prompted the well-know ruling of the ECJ in *Simmenthal II* (1978).
16 L. Vandelli, op. cit., page 343.
17 On this relevant ruling of the Constitutional Court, see: A. Spadaro: "La sentencia const. N.50/2015. Una novità relevante: talvolta la democrazia è un optional". In: *Rivista Della Associazione Italiana dei Costituzionalisti* (AIC), Nr. 2/2015, pp. 1-27; A. Lucarelli: "La sentenza della Corte costituzionale n. 50 del 2015. Considerazioni in merito all'istituzione delle città metropolitane". In: *Federalismi.it*, Nr. 8/2015, pp. 2-7.

Article 3: Concept of local self-government

68. As regards the concept of local self-government (Article 3, paragraph 1 of the Charter), the main question that must be addressed under this heading is whether, in the present situation, Italian municipalities and provinces do regulate and manage a "substantial share of public affairs". The impression of the delegation should be nuanced. In the case of municipalities, the situation is positive, but in the case of the provinces the appraisal is not so positive, in the light of the reduction of competences that has happened in recent years (see *infra*). However, it is true that, as explained below, some provinces may have additional competences according to the region where they are located, since the region may attribute competences to their provinces. Therefore, the picture may be varied.

69. Both in the case of municipalities and provinces, the principle of self-government applies to both entities *ex constitutione* in the same manner and with the same intensity; they have the power to enact binding local regulations, and there is a lack of "a priori" controls from State and regional agencies and departments, for most of the decisions taken by local authorities (see *infra*).

70. As regards the compliance with Article 3, paragraph 2 of the Charter, it should be noted that the internal structure and organisation of Italian local authorities is regulated exclusively by ordinary legislation, and not from the Constitution itself. There is here a clear constitutional difference between "local" and "regional" authorities, in the sense that the structure and organisation of regions are enshrined in the Constitution, while in the case of local authorities the Constitution is silent and therefore leaves a wide remit or discretion to the legislators.

71. The key rule here is again, the "Unified Laws" on local authorities of 2000, as amended, or *Testo Unico*. In the light of this legal framework, the main bodies of the local authorities may be described as follows:

Municipalities (*Comuni*)

72. The representative body is the city council (*consiglio*). The number of local councillors (*consigliere*) varies according to the number of inhabitants and fluctuates between 12 and 60 members (Article 37, *Testo Unico*). They are elected by the citizens of the municipality through an electoral process of secret, general, and direct voting and they serve a five-year term. The last local elections were held in June 2016 (with different dates in some Special Status regions). The municipal council is chaired by its own president, elected by the council members among themselves. It is the body for debate and decision-making and is depicted as the organ of direction and political-administrative control (Article 42, paragraph 1). It adopts the most important political decisions affecting the municipality, *inter alia*: the local budget, the agreements with other municipalities, land development plans, the local regulations and the internal by-laws (*statuto*), etc.

73. There are two key "executive" organs: the mayor (*sindaco*) and the board (*Giunta*).
The mayor, as in other European countries, is the key executive officer, and it is responsible for the entire administration and management of the municipality (Article 50, paragraph 1, *Testo Unico*). In this sense, the mayor manages, controls and supervises the functioning of the municipal services and offices, and the execution of municipal plans and decisions. Moreover, the mayor discharges all the competences and duties that are attributed to him by the local regulations and by-laws (statuto), and by the sectoral legislation, either enacted by the State or by the region. Apart from his strict "local" powers, the Law also assigns the mayor competences in matters of State responsibility such as the police, civil register, public order and security (Article 54). These powers are exercised in connection with (or under the control of) the "prefetto". The mayor can also call for the meetings of the council, if there is no Council President (Article 50, paragraph 2).

74. The system to elect the mayor is different in small and in medium/large cities, but the mayor is elected at the same time as the council. If the municipality has less than 15,000 inhabitants, the candidate for the local council that receives the most votes is elected mayor. If the population is higher than the said figure, the system is more complex and may involve a two-round voting, if no candidate obtains the absolute majority of the ballots.

75. From the perspective of Article 3, paragraph 2 of the Charter, a relevant aspect is the "responsibility" of the mayor (and, consequently, of the members of the Giunta) *vis-á-vis* the local Council. Despite the direct election of the mayor, the Council is still the sovereign body, so a motion of non-confidence (*voto di sfiducia*) is established in the Law (Article 52, *Testo Unico*). If the motion is successful (absolute majority is required), the mayor must resign.

76. The board or *Giunta* is the other key executive organ of the municipality. It is composed of the mayor, who acts as the chairman, and an even number of *assessori*. This number is established by the local by-laws (statuto) but it cannot be higher than 1/3 of the members of the council (Article 47, *Testo Unico*). The aldermen are appointed and dismissed by the mayor. The *Giunta* is basically conceived as an organ that assists and helps the mayor in discharging his duties (Article 48 *Testo Unico*). The members of the Giunta may act collectively, discharging duties and competences that are attributed to that body by the internal by-laws, by specific commissions of the Giunta or by the order of the Mayor. They can also act individually, following instruction, precise commitments or tasks commissioned by the mayor.

Provinces

77. At point 5.3, reference was made to the profound reforms that have been operated on the provinces by a set of laws and regulations whose keystone is the "Delrio Act". The provinces have been reformulated in the area of competences, finances and resources, as a key point in the plan of structural reforms envisaged to overcome the economic crisis. At this point the rapporteurs need to underline once more the "transitory" nature of this piece of legislation, to the point that Article 51 of the said statute provides that the new regulation of provinces is enacted "*in attesa della riforma del titolo V della parte seconda della Constituzione e delle relative norme di attuazione"*, that is, "awaiting the reform of the Constitution", a reform that could not be culminated due to the negative outcome of the December 2016 referendum. However, the *Delrio Act* does not affect the autonomous provinces of Trento and Bolzano.

78. This piece of legislation has not only altered the election system for the provincial bodies, but also some of their names, competences and profile. The current key organs of the provinces are the President, the Provincial Council and the Assembly of mayors. Before the Delrio Act, the "Unified Laws" on local authorities did regulate with a great parallelism the organs of the municipalities and those of the provinces, and this parallelism still exist to a certain extent.

79. Currently the key executive is still the President of the Province (*Presidente della Provincia*). The President has the same institutional profile and type of competences than the mayors have in municipalities, so there is no need to repeat what was presented above. As underlined *supra*, the President is no longer elected by the inhabitants of the municipalities of the province by universal and direct suffrage. Nowadays, the president is elected by direct and secret ballot by the mayors and by the members of the local council of the municipalities of the province, but only mayors are eligible to become the president of the province. Therefore, if the President ceases to be the mayor of his city, he can no longer be the President of the Province. The president may appoint a vice-president among those persons that are provincial council members, who helps and assists the president in discharging his duties. The old "Provincial board" was eliminated by the reforms.

80. The Provincial council (*consiglio provinciale*) is a multi-member organ, composed by *consiglieri* whose number is: 16 members in the provinces with more than 700,000 inhabitants; 12 in provinces having between 300,000 and 700,000 inhabitants and 10 in provinces with less than 300,000 inhabitants. The new figures represent a dramatic reduction of members, as compared with the members of the old provincial councils. Another reform pertains to the length of the term they serve: currently is two years (while the President of the province serves a four-year one!). The members of the current provincial councils are elected by the mayors and

by the local councillors of the province among themselves, also through a direct and secret ballot. The competences of the Provincial council are, *mutatis mutandis*, the same as those of the local council but it should be pointed out, for purposes of Article 3, paragraph 2 of the Charter, that apparently there are no specific provisions on the possibility to formulate a vote of dismissal or censorship in the Council as against the President, something which is in contradiction of Article 3, paragraph 2 of the Charter.

81. Finally, the Assembly of Mayor (*Assemblea dei sindaci*) is a brand-new organ in the traditional structure of the province, but its profile and competences are somehow murky, for the Law only provides that it is composed of the mayors of the municipalities of the province.

82. The change from the old "direct" election to the new "indirect" ones did not happen at once, but along an extended period that included deadlines, which were successively extended. Thus, the first elections of provincial bodies following the Delrio Act took place in September/October 2014 (in 65 provinces). In the rest of the provinces, such elections took place at different times, between November 2015 and September 2016.

Metropolitan cities

83. This "new" type of local, intermediate entity was already foreseen in the Act of 8 June 1990, but never really incepted since then. The Delrio Act "activated" the actual establishment of those bodies an operation that has lasted one quart of a century. Here the delegation should only present summarily their internal structure, as regulated by the *Delrio* Act. The key organs are the metropolitan mayor, the metropolitan council and the metropolitan conference.

84. The metropolitan mayor (*sindaco metropolitano*) has more or less the same institutional and administrative profile of the President of a province. He represents the metropolitan city, and his competences are detailed at Article 8 of the *Delrio* Act. From the perspective of local democracy, though, this top official presents a more negative profile than the current presidents of provinces, since these are at least elected by the mayors and local council members. On the contrary, the metropolitan mayor is elected by no one: the person who becomes the mayor the city-capital of the province (*capoluogo*) becomes automatically and *de iure* the metropolitan mayor of the metropolitan city (Article 19, *Delrio* Act), so he discharges simultaneously both positions. The metropolitan mayor may appoint a vice-mayor.

85. The metropolitan council (*consiglio metropolitano*), has a profile and powers that do replicate to a large extent those of a provincial council (approval of the budget and of the "statuto", etc). It is composed by the metropolitan mayor and by a number of councillors whose numbers varies according to the population of the "metropolitan city": from 14 to 24 members. They are elected (among themselves) by the mayors and by the local council members of the municipalities of the province. These members serve a five-year term (Article 21, *Delrio* Act). Most of the "elections" related to the effective constitution of the "councils" of the metropolitan cities took place in 2016. For the purposes of Article 3, paragraph 2 of the Charter, the same remark should be made in connection to the metropolitan city (lack of responsibility of the Sindaco metropolitano vis-à-vis the Council).

86. Finally, the metropolitan conference (*conferenza metropolitana*) is composed of the metropolitan mayor (who presides its meetings) and by the mayors of the municipalities included in the metropolitan city (that is, in the "old" province). Its main competence is the approval and amendment of the by-laws (statuto) of the metropolitan city.

87. In the light of the precedent lines, some conclusions could be derived: the Italian system complies with Article 2 of the Charter but it does not comply with Article 3 paragraph 2, in the case of the provinces and metropolitan cities, since their governing bodies are not elected by the people. There is a kind of "indirect" election in the case of the provinces, but this light democratic link is absent in the case of the metropolitan cities. In this sense, two points should be mentioned: the Law provides the possibility for direct election for metropolitan cities, but possibility has not been activated. In addition, the rapporteurs were informed that a Bill was recently introduced in the House of Representatives by the "Lega Nord", aiming at reintroducing

the direct election in the case of provinces, but the overall impression was that the bill had little chance to be approved. It seems that the political sensitivity of the moment is far from this motion.

88. This observation is more regrettable in the sense that the legal reforms adopted in the case of those entities –namely the *Delrio Act*- were adopted after recommendation 337(2013), that recommended the Italian authorities to defend the system of direct local elections and by the fact that, on ratifying the Charter, the Italian Republic ratified the whole text without introducing any declaration excluding the application of Article 3, paragraph 2 to any of its local authorities.

89. Furthermore, in the opinion of the rapporteurs, the lack of a meaningful responsibility of the president of the province vis-à-vis the council and that of the metropolitan mayor as concerns the metropolitan council are in contradiction with the requirements of Article 3, paragraph 2.

5.2. Article 4: Scope of local self-government. Competences

Article 4 – Scope of local self-government

1 The basic powers and responsibilities of local authorities shall be prescribed by the Constitution or by statute. However, this provision shall not prevent the attribution to local authorities of powers and responsibilities for specific purposes in accordance with the law.
2 Local authorities shall, within the limits of the law, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority.
3 Public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy.
4 Powers given to local authorities shall normally be full and exclusive. They may not be undermined or limited by another, central or regional, authority except as provided for by the law.
5 Where powers are delegated to them by a central or regional authority, local authorities shall, insofar as possible, be allowed discretion in adapting their exercise to local conditions.
6 Local authorities shall be consulted, insofar as possible, in due time and in an appropriate way in the planning and decision-making processes for all matters which concern them directly.

90. The analysis of the competences and functions of Italian local authorities needs to have in mind a couple of general principles. First of all, and for the purposes of Article 4, paragraph 1 of the Charter, the Constitution does not enumerate a more or less close list of competences for those entities. It certainly recognises regulatory powers to municipalities, provinces and metropolitan cities “as to the organisation and implementation of the functions attributed to them” (Article 117). Also, it recognises certain fiscal powers, such as the power “to set and levy taxes” and little else. But these are more “powers” than true “competences.

91. This means that there is not really a “core” of essential or nominated “competences”, in the technical sense of the word, guaranteed by the Constitution and that the legislators have a wide remit of discretion in order to identify precise competences, according to the political sensitivity of the moment. However, the Constitution lays down a fundamental principle at Article 118, when it states that “Administrative functions are attributed to the Municipalities, unless they are attributed to the provinces, metropolitan cities and regions or to the State, pursuant to the principles of subsidiarity…”. This means that there is a clear constitutional preference in favour of the municipalities as the best “governmental instance” to discharge administrative functions. This could be interpreted as a fair implementation of Article 4, paragraph 3 of the Charter. It is unclear, though, how this provision is ensured or observed by the legislators.

92. The other factor is the presence of the regions. Under the Constitution (Article 117, paragraph 2) the State has exclusive legislative competences to regulate the "fundamental functions" (*funzioni fondamentali*) of municipalities, provinces and metropolitan cities. This means that the "core" or uniform basic competences are identified by the State. However, regions have relevant legislative powers in a large list of matters (see *infra*). When they legislate on these matters, they may attribute competences to their own local authorities. This may introduce a factor of diversity in the national picture, for the competences of municipalities in region A may not be exactly the same as the competences of municipalities in region B. For instance, the leaders of Veneto region told the rapporteurs that this region has traditionally created a greater decentralisation of administrative functions to provinces and municipalities.

93. It is commonly accepted that powers granted to local authorities are full and exclusive, and that they enjoy autonomy in the discharge of those competences and duties. The overall feeling expressed to the delegation by the interlocutors met was that the depth and width of local autonomy is fair and reasonable. In this sense, municipal competences may be divided into "original" competences and "transferred" or delegated competences".

Municipalities

94. There is no piece of legislation identifying in a comprehensive way all the competences of the municipalities, not even the *Testo Unico*. The Fiscal Federalism Act of 2009 identified an array of competences in the following fields: local police, public education (for children between 0 and 3 years), urban management, local road networks and transportation, and environment and social services. These are identified as "fundamental functions" or "obligatory services". Apart from those, there are other municipal competences in the following fields: Social welfare, in particular personal social services and community assistance; culture and recreation, including museums, exhibition halls, cultural activities and theatre; town planning, housing, and land registry; local transport and maintenance of local roads; economic development, including drafting of plans for trade, programming and regulation of commercial activities, as well as establishment and management of industrial and trade zones; environment, including waste management, and local police.

Provinces

95. The competences of the provinces have been significantly reduced in recent years, as a result of the "structural reforms" undertaken by Italian authorities to combat the economic crisis. Among all local authorities, provinces are clearly those who have experienced a more dramatic downsizing.

96. Before the reforms, provinces were responsible for a bunch of competences in a variety of sectors: public education, concretely the management and maintenance of school facilities (*edilizia scolastica*), transportation, spatial planning, social and land-use planning, environmental protection (natural reserves and parks, water refuse, energy resources, pollution and waste collection), disaster prevention, civil protection, agriculture, fishing, some labour and market issues, protection of cultural heritage, technical and administrative assistance for municipalities, economic development, etc. The provinces would also coordinate municipal proposals in matters of regional economic, territorial and environmental plans.

97. As a consequence of the reforms (example: Decree Law 201/2011, but especially the *Delrio* Act) many of those competences were transferred either to the municipalities or to the regions. In this sense, the provisions of that statute were accompanied by regional legislation. All the regions having a regular or ordinary statue were required to approve a piece of legislation in order to lay down precise rules on the rearrangement of the provincial "non-core" functions and competences. The 15 "regular" regions did so during the year 2015 and 2016. For instance, the Veneto Region approved the regional laws 19/2015 and 30/2016).

98. Provincial leaders told the delegation that, currently, the provinces only discharge the following basic competences (or "fundamental functions"):

- Management of buildings and facilities for the school system (secondary education only);
- Provincial roads and transit management and transport;
- territorial planning;
- some competences in the field of environmental protection;
- Collection of data, technical and administrative assistance to the local bodies.

99. The regions may attribute more competences to the provinces in specific sectors that fall under their competences. In this sense, all Italian regions have passed laws implementing the Delrio Act, by assigning competences to Provinces or Municipalities.

Metropolitan cities

100. As presented *supra*, metropolitan cities are supposed to replace in full the position, assets and competences of the corresponding former provinces in the metropolitan areas. Therefore, the metropolitan cities discharge the "fundamental functions" that are attributed to the provinces, plus some others that are singled out at Article 44 of the Delrio Act. The idea is that they will be strong in the domain of territorial planning and the economic development, as well as the coordination of local services.

101. In the light of the foregoing, the rapporteurs conclude that Article 4 of the Charter is respected in Italy.

5.3. Article 5: Protection of boundaries

Article 5 – Protection of local authority boundaries

Changes in local authority boundaries shall not be made without prior consultation of the local communities concerned, possibly by means of a referendum where this is permitted by statute.

102. At point 4.1 of this preliminary report, reference was already made to the evolution and current situation of the mergers of municipalities in Italy. In this domain, the most important concern raised by this short article of the Charter is whether the local residents are consulted whenever a fusion or merger or municipalities is approved. The interlocutors met during the visit ensured that this provision is fully respected by the Italian legislation and is common political and administrative practice. In this sense, Article 15 of the *Testo Unico* provides that "the region may modify the territorial remit of the municipalities having heard the concerned population…". Moreover, the Constitution includes specific provisions on this: "the region, *after consultation with the populations involved*, may establish through its laws new municipalities within its own territory and modify their districts and names". The delegation was informed that the merger of municipalities is always a bottom-up process, and that there is a referendum for the citizens involved. If this popular referendum is positive, then the merger is approved by the region, by means of a specific legislative act.

103. Therefore, the rapporteurs conclude that Article 5 of the Charter is fully respected in the Italian Republic.

5.4. Article 6: Administrative structures

Article 6 – Appropriate administrative structures and resources for the tasks of local authorities

1 Without prejudice to more general statutory provisions, local authorities shall be able to determine their own internal administrative structures in order to adapt them to local needs and ensure effective management.

2 The conditions of service of local government employees shall be such as to permit the recruitment of high-quality staff on the basis of merit and competence; to this end adequate training opportunities, remuneration and career prospects shall be provided.

104. As regards the compliance with Article 6, paragraph 1 of the Charter, as a rule, Italian local authorities are able to determine their own internal administrative structures, with due respect to general legislation. This self-organisation power is recognised by the Constitution, according to which "municipalities, provinces and metropolitan cities have regulatory powers as to the organisation and implementation of the functions attributed to them" (Article 117). In this sense, and as noted *supra*, all local authorities have the power to approve their own by-laws, by which they decide on the organisational structure of their internal services, as well as the precise competences of the local organs. The comprehensive document of such by-laws is called "statuto" and is regulated extensively at Article 6 of the *Testo Unico.* The *statuto* has to be approved in every local authority, they must be discussed and approved in the council by a two-thirds majority.

105. In the light of this information, it can be concluded that Article 6, paragraph 1 of the Charter is complied with in Italy.

106. Concerning Article 6, paragraph 2, it should be noted that each municipality, province and metropolitan city has its own bureaucratic apparatus, consisting of administrative officials who are responsible for discharging the instructions of the mayor and other municipal bodies. In large municipalities (above 100,000 inhabitants), the municipal office may be run by "managers" (*dirigenti*) and by a "director general" (*direttore generale*) placed at the top of the professional staff.

107. Municipalities, provinces and metropolitan cities are quite independent in the field of human resources and as a matter of fact, they can freely appoint and withdraw their own employees. Each municipality is responsible for hiring, managing and paying its own public employees, within the framework of applicable legislation, the by-laws and regulations adopted by each city and the applicable collective agreements signed with the trade unions. According to a leading expert, "the legal regime of local government personnel, as well as all the Civil Service, changed radically with the reforms to privatize Public Administration staff" (starting in 1993). Current government employees are normally regulated by the Civil Code.[18]

108. A specific feature of the Italian system, common also in countries such as Spain or France, is the existence of the town or province secretary (*segretario municipale, segretario provinciale)*. These special and highly regarded civil servants have a peculiar legal nature (a hybrid dependence from the State and the local entities where they work) and play a leading role in the day-to-day business of the local authorities. Usually, they manage some specific proceedings under his responsibility, they oversee the legality of the decisions, plans and regulations approved by the local body, they attend the meetings of the Council and the Executive board (and records the minutes), etc. The local clerk may be pooled by several neighbouring municipalities, something that happens more and more frequently for the sake of reducing costs of administration.

18 L. Vandelli, *op. cit*, p. 351.

109. As for the specific requirements of Article 6, paragraph 2 of the Charter, the overall impression is rather negative. Italian local authorities do not have enough qualified personnel, as a consequence of the structural reforms and budget cuts implemented in the last years. Those entities have no possibility to have a meaningful "personnel" policy, due to the financial and budget cuts (*tagli lineari*) established by different State laws and regulations (especially by the annual Stability plans). For instance, a cross-cutting "freeze" on personnel was established, so as a rule there is no possibility for local authorities to hire new personnel. There are exceptions in case of mergers of municipalities, as mentioned *supra*.

110. This appraisal is especially severe in the case of the Provinces. In fact, those bodies had to reduce significantly their staff (up to 50%, according to provincial leaders). This obligation was accomplished by means of anticipated retirements, transfers to the regions or to other bodies, etc. The implementation of the Delrio Act involved the transfer or reassignment of up to 20,000 provincial civil servants. This is supposed to be the biggest public employees reorganisation in the history of the republic. The situation was described as almost catastrophic by the said representatives. They claim that there is as a total "blockade" by provincial leaders in terms of new recruits, continuous training, and professional career.

111. Furthermore, the delegation was also told that, in general, the work in local administration is usually unattractive for young and qualified people, not only for economic reasons but also for the lack of a meaningful administrative "career" and the few possibilities for promotion.

112. In conclusion, it seems to the rapporteurs that the requirements of Article 6, paragraph 2 of the Charter are not met in general in Italy.

5.5. Article 7: Exercise of local responsibilities

Article 7 – Exercise of local responsibilities

1 The conditions of office of local elected representatives shall provide for free exercise of their functions.
2 They shall allow for appropriate financial compensation for expenses incurred in the exercise of the office in question as well as, where appropriate, compensation for loss of earnings or remuneration for work done and corresponding social welfare protection.
3 Any functions and activities which are deemed incompatible with the holding of local elective office shall be determined by statute or fundamental legal principles.

113. The analysis of Article 7 in the Italian context should be carried out following the different indents of that provision. Thus, apparently there is no problem with Article 7, paragraph 1, that deals with the "free exercise of the functions" of local elected representatives. This independent action is enshrined in the legislation and the interlocutors met during the visit did not report cases of political coactions or similar hindrances on the "free" exercise of political level (the rapporteurs do not refer, of course, to criminal constraints or pressures coming from the organised crime, unfortunately a well know problem in the Italian landscape, especially in some areas of the country).

114. As regards Article 7, paragraph 2, the assessment may differ according to municipalities and provinces and metropolitan cities. In the case of municipalities, local council members do not receive, as a rule a permanent "salary" or pay. At most (especially in big and some middle-sized municipalities), they receive an allowance or indemnity (*gettone di presenza*) for participating in the different meetings of the council and its commissions (Article 82, paragraph 2, *Testo Unico*), and the reimbursement of the costs of travelling (Article 84, *Testo Unico*).

115. The mayors do receive a remuneration for the exercise of their functions (called "indennità" by the *Unified Laws* and by Decree-Law No. 174/2012). This pay is regulated in detail by a Decree that is approved by the competent State minister, in the framework of the guidelines and criteria established by the legislation on local authorities (for instance, the population of the *Comune*). Italian municipalities can determine in an autonomous way the remuneration or financial compensation to be granted to the mayors, within the limits of the said State decree. For instance, in municipalities having up to 1,000 inhabitants, the maximum is 1,291€ per month. This amount escalates according to the population, and in the municipalities with more than 500,000 inhabitants, the indennità´s amount is 7,019€. The members of the local council

receive an “allowance” or compensation for assisting to the meetings of the said council or other statutory bodies thereof (*Gettoni di presenza*). Here again the amount varies according to the city´s population: from 17€ in towns with up to 1,000 inhabitants, to 103€ in cities having more than 500,000 inhabitants. As for the actual amount of the said pay, in general the feeling is that it may be considered as “fair”, taking into account the different national realities in Europe and the delicate economic situation of the Italian public sector[19]. Apart from this main “retribution”, mayors and the members of the local councils may receive allowances and other types of compensations for expenses incurred in the fulfilment of their tasks.

116. In the case of provinces and metropolitan cities, however, the situation is far less satisfactory. As a matter of fact, the *Delrio* Act broke the historical practice and legislative provision that provincial councillors and presidents should receive remuneration or at least compensation for their work as local representatives. The same rule was extended to the Metropolitan cities that have replaced some of the provinces. In this sense, Article 84 of the *Delrio* Act provided that the positions of President and members of the Provincial Council will be discharged in a non-remunerated way (*sono esercitati a titolo gratuito*), and Article 24 of the same Act did the same with the positions of presidents and members of the metropolitan cities.

117. This deplorable situation was the target of strong disapproval uttered by the provincial leaders and by the Union of the provinces. They complain of course about this strange situation, but also by the fact that the non-existence of retributions, salaries or allowances has a catastrophic effect on the possibility to have qualified leaders engaged in the provincial political life, a contention which seems understandable. Many people are “de facto” prevented from getting involved in provincial politics.

118. Ministerial representatives, replicated that the situation is not truly as the one depicted by provincial leaders and see the situation from another perspective. First, the measure was taken to get savings in the public expenses. Second, they content that in reality provincial representatives do get a sort of payment: if the mayor of one municipality is elected as president of his province, he still obtains the allowances and indemnities that corresponds to him as a mayor. This indication does not deny the fact that, under the current legislation, someone will be responsible for discharging two positions (that of mayor and that of President of the province) that are highly demanding, but receiving only one “salary”. That is, two jobs with only one salary. It is clear that “nobody can serve two masters…” In the case of the members of the provincial Giunta, the situation seems to be even worse, for there is no fixed remuneration for any of the jobs.

119. In the light of the above, the rapporteurs consider that Article 7, paragraph 2 is not respected in Italy, in the case of Provinces and Metropolitan Cities.

120. As regard Article 7, paragraph 3 of the Charter, this provision is complied with, in the sense that the *Testo Unico* (Articles 63 to 65) and the electoral legislation determine what functions and activities are deemed incompatible with the holding of local elective office.

19 For instance, and according to data provided to the delegation, in the case of the Municipality of Vezze (some 30,000 inhabitants), the mayor receives a monthly pay of some 1,600 euros. In the case of large cities, this monthly remuneration may go up to 4,500 euros.

5.6. Article 8: Governmental supervision

Article 8 – Administrative supervision of local authorities' activities

1 Any administrative supervision of local authorities may only be exercised according to such procedures and in such cases as are provided for by the Constitution or by statute.
2 Any administrative supervision of the activities of the local authorities shall normally aim only at ensuring compliance with the law and with constitutional principles. Administrative supervision may however be exercised with regard to expediency by higher-level authorities in respect of tasks the execution of which is delegated to local authorities.
3 Administrative supervision of local authorities shall be exercised in such a way as to ensure that the intervention of the controlling authority is kept in proportion to the importance of the interests which it is intended to protect.

121. As a rule, the control of the State (or of the region) over local authorities is very limited, it is strictly regulated in the Law and covers aspects of legality. Two different aspects need to be addressed here: the system of inter-administrative controls. The role played by other State bodies such as the Court of Auditors (*corte dei Conti*).

122. The inter-administrative controls over local authorities have experienced a profound change in the last decades.[20] For a long time, a rather strong control over local authorities was in place (mainly performed by the region, which could annul local decisions) and this situation was already criticised by the 1997 Congress Recommendation. There were different types of controls: control of legality and control of expediency. In the nineties, though, the system was totally revamped in order to grant local governments more autonomy and to reduce the controls exercised so far by State and regional bodies. Another constitutional reform in 2001 eliminated most of the inter-administrative controls that were exerted by regions, as they were found ineffective. Consequently, as a rule local authorities do enjoy full autonomy in their day-to-day activities in adopting their decision, plan, policies and regulations without the need to get the prior approval of State or regional bodies (while in the case of delegated competences, however, the legislation or the delegating decision may establish specific sorts of supervision).

123. This general rule does not mean that there are no inter-administrative controls. These are regulated by the Constitution, by the general legislation on local authorities and by sectoral legislation. Different techniques and controls may be identified. To begin with, under Article 120 of the Constitution the government may intervene in certain cases of measures adopted by local and regional authorities. This power (called “power of substitution”) is only possible in three cases or situations:

- non-compliance of the local authority with legal rules, international treaties and EU legislation;
- serious threats to public safety and security;
- when it is necessary to preserve the legal or economic unity of the country, and particularly if this is needed to guarantee the basic levels of social and civil entitlements of the population (Article 120, paragraph 2 of the Constitution).

124. Those constitutional provisions were supplemented by Act No 131, of 2003, which regulates in detail the procedure to implement this substitutive power of the State or the regions, a procedure where the local or regional authority must be heard. Scholars underline that this power must be construed as an extraordinary device, according to the case-law of the Constitutional Court.[21]

125. A second type of inter-administrative control is now enshrined in the general legislation on local authorities (mainly, the *Testo Unico*). Under Article 138 of this legislation, the central government, on proposal of the Ministry of the interior, may annul the illegal (or illegitimate, in Italian) decisions adopted by the local authorities. This device is called extraordinary annulment (*anullamento straordinario*) and a precise procedure must be followed: this power has to be

20 On this issue, see : P. Magarò : « L'évolution du système des contrôles sur les collectivités territoriales en Italie”. In the collective book: *The controls over the local and regional public action : a threatened autonomy? Proceedings of the O.L.A conference.* Forthcoming, 2017.
21 See: L. Vandelli, *op. cit*, p. 358.

discharge by means of a decree of the President of the Republic, with the previous deliberation of the Council of Ministries and the opinion of the Council of State. The delegation did not hear complaints about a possible misuse or abuse of this extraordinary form of control. In any case, the procedural and legal guarantees that are established make us understand that it is only applied when the protection of the legal order is required (as this is the main ground for exercising it).

126. Other types of controls may be specified by sectoral legislation. For instance, the prefect (*prefetto*) may carry out supervisory and substitutive controls over the functions that are discharged by the mayor in his capacity of State government representative, which include the civil register, elections, statistics and military service matters.

127. Beyond the typical forms of inter-administrative controls, there are (like in other countries) exceptional powers of the State over local authorities, such as the power to dissolve the local entity. In this sense, the Unified Laws or *Testo Unico* also provides for the possibility to dissolve the local council and to remove the local administrators as a sanction in some circumstances, like the non-approval of the local budget in the way prescribed by the Law. It should also be recalled that in 1991, the possibility to dissolve the municipal and provincial councils that were suspected to have “mafia-like” infiltrations was introduced in the legislation.[22]

128. The outbreak of the economic and financial crisis has had a notable impact in the pre-existing system. In the last years, the financial and budgetary controls over the economic activity of local authorities have been multiplied, with the justification that there were necessary to attain different objectives in the struggle against the public deficit, the consecution of balanced budget and some stability objectives.[23]

129. This leads to consider the growing role of the Court of Auditors (*Corte dei Conti*). The Court of Auditors is an independent institution established by the Constitution (Article 100) and according to that provision it carries out the “ex ante” audit on Government acts and the compliance, financial and performance audit on State budget and local government budgets. The Law 20/1994 is the main reference for the audit activity. The Court of Auditors supervises, among other things, all financial and budgetary and financial operations of local governments. In doing so, it performs different types of controls, fact finding and verification practices. These powers are constitutionally enshrined at Article 81 of the Constitution. Currently, this State body performs a key role in the control of local (and regional) accounting, budgeting and public expenditures. Since 2003 the Court of Auditors carried out a « verification » on the respect of budgetary balance as respected by municipalities, provinces and metropolitan cities. This role has been dramatically reinforced by the successive annual Stability Plans and by different pieces of legislation, especially the Act No. 213 of 2012. In this sense, the Court of Auditors enjoys increased power to carry out its « verification » powers. While confirming a collaborative nature audit, the Regional Audit Chambers verify, every six months, the legality and regularity of the management, the functioning of internal controls and the budget balance as well as the respect of the annual objectives fixed by the internal Stability pact (until 2016) and the debt constraints established by the Article 119 of the Constitution. They verify the implementation of the measures addressed to the rationalization of public expenditures of local bodies (so-called spending review) and in some circumstances (negative result in the audit activity) may determine prohibitive measures on expenditure laws, as well as procedures concerning financial bail lout plan. That is, in some circumstances, a negative result in this « verification » process may determine some sanctions on the concerned local authorities, something that has an evident impact on the local autonomy, as has been pointed out by some scholars.[24]

130. In light of the foregoing, Article 8 of the Charter is respected in Italy.

22 According to a leading expert, between 1992 and 2014, 258 municipal councils have been dissolved on this ground. See: P. Magarò, op. cit.
23 For a thorough description of these new controls, see: P. Magarò. Op. cit.
24 See: Magarò, *op. cit*, note 17.

5.7. Article 9: Financial resources

Article 9 – Financial resources of local authorities

1 Local authorities shall be entitled, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers.
2 Local authorities' financial resources shall be commensurate with the responsibilities provided for by the Constitution and the law.
3 Part at least of the financial resources of local authorities shall derive from local taxes and charges of which, within the limits of statute, they have the power to determine the rate.
4 The financial systems on which resources available to local authorities are based shall be of a sufficiently diversified and buoyant nature to enable them to keep pace as far as practically possible with the real evolution of the cost of carrying out their tasks.
5 The protection of financially weaker local authorities calls for the institution of financial equalisation procedures or equivalent measures which are designed to correct the effects of the unequal distribution of potential sources of finance and of the financial burden they must support. Such procedures or measures shall not diminish the discretion local authorities may exercise within their own sphere of responsibility.
6 Local authorities shall be consulted, in an appropriate manner, on the way in which redistributed resources are to be allocated to them.
7 As far as possible, grants to local authorities shall not be earmarked for the financing of specific projects. The provision of grants shall not remove the basic freedom of local authorities to exercise policy discretion within their own jurisdiction.
8 For the purpose of borrowing for capital investment, local authorities shall have access to the national capital market within the limits of the law.

131. As in other European countries, the financial aspects of local autonomy are perceived by local politicians as one of the most controversial aspects of the current situation. As a matter of fact, most of the attention and remarks made during the visit had to do with this topic. Three main ideas should be here presented as the general framework of local finances in Italy: the constitutional context, the economic-political scenario and the key legal framework governing this matter.

132. For what concerns the first point, local finances are regulated by different constitutional provisions and principles, which form the so-called "Fiscal Federalism" (*federalismo fiscale*). On the one hand, and from the perspective of the allocation of powers between the State and the regions, it should be underlined that, after the constitutional reform of 2001, local finances are characterized as a concurrent competence. The regions have legislative powers in this area, but the State keeps control of the fundamental principles. As a consequence: (a) the regions can establish local taxes, "as long as they do not hit elements already taxed by the State"[25]. Regional Laws may also determine variable tax rates and establish other schemes for co-participation for local authorities in the regional taxes; (b) the financial situation of local authorities may present differences around the country, especially in the regions having a special status, since they manage almost entirely their own resources and have increased competences in the field of local government.

133. Moreover, the Constitution provides substantive principles in the domain of local finances (Article 119). To begin with, local authorities shall have revenue and expenditure autonomy, "subject to the obligation to balance their budgets"[26]. Moreover, they will have "independent financial resources. They set and levy taxes and collect revenues of their own". They have also the right to have a share in the State revenues. On the other hand, it is established that "State legislation shall provide for an equalisation fund". As for the principle of commensurability, it is explicitly guaranteed at Article 119. 4th indent: Revenues raised from the above-mentioned sources shall enable local authorities "to fully finance the public functions attributed to them". Finally it is provided that the State shall allocate supplementary resources and adopt special measures in favour of specific local authorities "to promote economic development along with social cohesion and solidarity". These constitutional principles have been further elaborated by a bunch of rulings of the Constitutional Court (i.a., Rulings No 37/2004 and 425/2004).

25 See: Vandelli, *op. cit*., p 356
26 The Constitutional Act No. 1/2012 introduced the budgetary principle of equilibrium, implementing the International commitments assumed by Italy.

134. Therefore, the basic requirements of Article 9 of the Charter seem to be enshrined in the domestic constitution.

135. For what concerns the economic-political scenario, the whole situation is pervaded by the governmental policies and laws approved by the government and Parliament to fight the economic crisis, to control the public deficit, and to comply with the Stability plans and other strategies required by European Union. This framework has prompted the adoption of different measures, the most important ones being the Stability Plans, approved every year since 1999. These plans involve numerous measures and objectives, such as linear budget cuts, reinforced budgetary balance obligations and even financial penalties, which have hit in a dramatic manner the local finances, and has led to a limitation in their spending autonomy. The situation seems to be critical in the case of provinces. This picture was already underlined by the previous monitoring visit carried out by the Congress in Italy, back in 2012. Unfortunately, this panorama is likely to remain the same at least in the short future, since the Italian economy, according to our interlocutors, is not recovering at the desired pace. Fiscal decentralisation has not been deepened since the last monitoring visit, just the reverse. The overall picture may present variations and nuances in some regions having a special status.

136. Finally, the key legal framework is represented by a set of laws and regulations, whose backbone is the Fiscal Federalism Act of 2009 (Act No 42, of 5 May 2009), as amended. This key statute enables the approval of further regulatory measures, and enumerates general and specific guiding principles. Among those principle stands that of coordination of public expenditures, consistency, financial discipline, rationalization and budget balance. The continuous amendments and readjustments to this statute make the picture difficult to depict as stable. In any case, the current situation and trends may be summarily described as follows:

Municipalities

Main sources of municipal income

Local taxes

137. Traditionally, municipal taxes included the tax on real estate, a housing tax (ICI), a tax on the collection and disposal of waste; a supplementary (local) income tax; a publicity tax and a tax on the occupation of public spaces. There have been several changes in this picture: some taxes have been eliminated, while others have been renamed and new acronym introduced, which sometimes makes the matter hard to understand. The main changes are:

a. The single municipal tax (*imposta unica comunale*, IUC), established by the Act No 147 of 2013. The details and operative elements of such tax may change from year to year, which makes difficult to present a “stable” situation.
In reality, this tax embraces or unifies three other local taxes:

- The IMU (imposta *municipale propria*), which is a real estate tax. It hits owners of real estate that is registered in the cadastre (buildings, farms, urban and farm land) and other real estate rights. This tax does not hit the personal, main housing (except if it is a luxury housing), but only secondary residences. The taxable base is determined in connection with the value of the property according to the cadastre. The regular tax rate is 0,76% of the taxable base, but municipalities may increase or reduce such rate, with a maximum of 0,3%. There are specific tax exemptions, which change from one year to another.

- The TASI, or tax for indivisible services. This is a supplementary real estate tax, which hits among other things the main residences if they are considered luxury housing. It is supposed to meet the expenses for the delivery of lighting, street cleaning, green areas and services that are provided equitably by municipalities to all citizens;

- The TARI (*tassa sui rifiuti*, a tax on waste). Formerly “TARES” and other denominations such as “TARSU”. The amount is determined by the municipality, within the guidelines that have been determined by State regulations and which, in any case, must ensure the integral covering of the cost of the service of collection and treatment of waste).

b. The ADDIRPEF, a municipal surtax on the personal income tax. Municipalities may decide to establish such surtax (*addizionale*), with a maximum of 0,8% (for Roma Capitale, 0,9%).

c. The ICPDPA, a municipal tax on external publicity and billposting.

d. Other taxes, such as the touristic tax (*imposta di soggiorno*) and the contribution (contributo) on disembarkation. The first one can be collected by some municipalities such as the capital of the province (*capoluogo*), the unions of municipalities and other touristic spots. The latter can be collected by municipalities in some minor islands, as an alternative as the touristic tax.

Charges and fees

138. Italian municipalities may collect several fees and charges. Among them:

a. The CIMP. This is a fee for the installation of publicity, which may replace the ICPDPA (tax on publicity), if the municipality finds it appropriate;

b. The TOSAP, a fee for the occupation of public spaces (such as streets, boulevards and parks) by economic activities, such as bars, stores, etc.

c. The COSAP, another fee for the occupation and use of public areas and spaces, which may substitute the TOSAP.

d. The ISCOP: a charge that may be collected to cover the cost of some public works by the municipality.

Non-fiscal income

139. Italian municipalities may get income of no fiscal nature, such as the revenue from business, commercial activities and revenue from the ownership of property (sale of movable and immovable property); interests from deposits or other financial products; collection of traffic and parking fines and other administrative offences; financial operations: the municipalities can ask for loans from the private sector and they can issue bonds. However, this source of income has been subject to many restrictions, in the framework of the struggle against excessive public deficit. According to Article 119 of the Constitution, local authorities can only have recourse to indebtedness in order to finance investment expenses, not their running costs.

Transfers and equalisation schemes

140. Italian municipalities may receive different types of transfers:

- Transfers from equalisation mechanisms: the lack of meaningful equalisation mechanisms has been a traditional feature of the Italian system of local finances, and the 2012-13 Congress Monitoring still reported that "there is no general scheme in operation and this continues, therefore, to be a huge gap in the implementation of fiscal federalism". The present 2017 visit, however, has revealed that significant progress has been achieved, although the situation was still assessed as unsatisfactory by the interlocutors met during the visit. Currently, the fund of local solidarity (*fondo di solidarietà comunale*, FSC) is the most important tool for equalisation. This equalisation Fund was created by the Law No. 228/2012, and replaced the preexisting "Fondo Sperimentale di Riequilibrio". This Fund, and the respective allocations received by the municipalities in the regions of ordinary status (plus Sicily and Sardinia) is managed by the Central Direction of Local Finance, in the Ministry of the interior. The amounts to be received by the municipalities are calculated according to a complex set of variables. The Solidarity Fund envelope for 2016 was 6,442 million €.
- Ad hoc Transfers and subsidies from the State budget: municipalities may receive transfers for the performance of joint projects or public works.
- EU Funds: municipalities may benefit from the several EU funds established in the domain of urban development, rural development and other fields related to the municipal life. Italy has also received extraordinary funds to remedy the situation caused by emergencies like earthquakes in the L´Aquila area.

141. The current overall situation of municipal finances was diagnosed in a contradictory way by the interlocutors of the delegation. Local leaders consider the situation as unsatisfactory in general, as far as the flexibility and sufficiency of financial resources is concerned. Their main claims may be summarized as follows[27]:

- while the biggest part of the public deficit is on the shoulders of the central government (48,4 billion € in 2015, against a surplus of 1,5 billion€ on the part of municipalities) local finances have been hit in disproportionately severe way. The budget cuts (*tagli lineari*) imposed on the municipalities do sum up more than 9 billion€ between 2011 and 2015.
- Since 2012, the State transfers to municipalities have been continuously reduced: from roughly 10 billion € in 2012, to 1,4 billion € in 2015.
- Since 2015, the fund for municipal solidarity (FSC) is provisioned solely by the IMU local tax.
- In 2015 the State net contribution to the municipality finances was even negative: the municipalities have done a net contribution of 628 million€ to the State budget.

142. In a nutshell, they claim that the system of local taxes is not satisfactory and that the total amount of disposable resources is not enough. Moreover, some local leaders are not satisfied with the manner how funds are calculated, and according to them there is not enough equalisation. They also allege that the budget cuts (*tagli lineari*) were decided unilaterally by the Government and imposed in a rather executive way. In this sense, mention should be made to several reports and opinions performed by the Court of Auditors (*Corte dei Conti*) in recent years. In these reports (namely in one released shortly before the visit of the delegation) the said Court found that municipalities are not adequately funded to discharge their statutory services and responsibilities.[28]

143. A different viewpoint is that of the central government. The relevant ministry contends that the current system is fair for the country, taking into account the current economic crisis. Government official assert that the current financing has been established according to the "standard costs" (*fabbisogni standard*) for the fundamental functions of municipalities. The current system ensures, at least, the adequate delivery of such fundamental functions. They also understand that the principle of commensurability of local finances (as proclaimed by the Constitution) is respected. Moreover, in order to counterbalance the negative fiscal effects on the municipalities of the abolition of the TASI for main residences, the central Government has allegedly increased the FSC by 3,5 billion€ for compensatory transfers.

27 See: IFEL, dipartimento Finanza Locale: *Finanza comunale in Italia. Sintesi e principali criticità*. Roma, 2017.
28 Corte dei Conti – Sezione Autonomie Locali, *Audizione presso la commissione parlamentare per l´attuazione del federalismo fiscale*, 23 February 2017.

144. Independently from the official position of the Government, it is clear from tables and data provided by municipal associations and leaders that the own revenues of municipalities have decreased in recent years, and so have the state transfers.

Provinces

145. The main sources of own revenues for the provinces (taxes and charges) are the following:

- IPT, *imposta provinciale di trascrizione*. This is a tax that hits the inscription of cars and other vehicles in the transit register, and other modification in the said register. The tax rate depends on the fiscal power of the car. The provinces may increase the said rate up to 30%;
- *RC-Auto*; this is a tax that hits the insurances of civil responsibility derived from transit accidents. The provinces may also increase or reduce the tax rate;
- TEFA: this is an environmental tax, that is supposed to finance the provincial services in the domain of protection and restoring of the environment. This is a derivative provincial tax, and is complementary to the local TARI (waste tax);
- TOSAP: this *tassa* functions like the equivalent one in the case of municipalities.

146. From the perspective of the Charter, the assessment of the financial situation of provinces is, according to the delegation, rather negative.

147. To begin with, the financial legislation of the period 2013-16, together with the institutional review under Law No. 56 of 7 April 2014 and the reduction of tax revenues, has provided for a reduction of resources amounting to 4,25 billion€, with a severe repercussion on their capacity to perform their functions. Second, the Stability Act of 2015 established that provinces and metropolitan cities would contribute to the containment of public expenditures by means of a reduction of running costs (linear cost or *tagli lineari*) of one billion € (900 million € for the provinces of the regions of ordinary status and 100 for the provinces of Sicily and Sardinia). This reduction should be in the amount of 2 billion in 2016 and 3 billion in 2017.

148. The government representatives declared that they are aware of this situation and that in 2016 (Act No. 208 of 28 December 2015, Stability Act of 2016) some measures were adopted in favour of metropolitan cities and provinces. In particular, 495 million€ of complementary contributions were granted to the provinces for roads and school buildings, 100 million€ for extraordinary road maintenance works, 20,4 million for staff expenditure and 39,6 for the maintenance of balanced budgets. The total amount of those complementary contributions for the incoming years are supposed to be 470 million€ for the years 2017-2020.

149. In any case, the representatives of the provinces (at least those placed in the regions having an ordinary status) do evaluate their financial situation as clearly insufficient. They claim that the own revenue is far to cover the expenses for the fundamental functions of the provinces. In addition, and under the “spending review” strategy embodied in the Act No. 190/2014, the provinces must transfer to the State a significant amount of the fiscal effort obtained in the provinces. This would go clearly against Article 119 of the Constitution. According to the provincial leaders, in 2017 the provinces of the regions having an ordinary status will have to “reimburse” or repay to the State more than 1,6 billion €, a sum which is close to the amount of the total collection of the provincial own taxes: according to the UPI, the tax revenues for the provinces in 2014 accounted for a total of 2,095 million€ (660 million for the tax on transcriptions; 1,250 million for the insurance tax, and 185million for the environmental protection tax). Consequently, the net amount of the tax collection that will stay at the disposal of the province will only be 446 million € (2,095 billion minus 1,6 billion in transfers to the State). However, the discharge of the three fundamental functions for the 76 provinces placed in the regions having an ordinary status (roads, schools and environmental protection) would need at least 1,305 million €. The imbalance is, thus, quite clear.

150. Finally, they remind that they manage today more than 130,000 kilometers of provincial roads and 5,100 schools, hosting in total more than 2,5 million students ad claim that they do not have the resources to manage and conserve appropriately those facilities and infrastructures. This is not only a problem of sufficiency of means to provide good quality services, but a source of personal concern among the provincial leaders. In the case of an accident in a provincial road or in a school, the Law does not only provide of course for the civil and administrative responsibility of the province, but also in some extreme cases the criminal liability of the provincial leaders, as long as the accident was caused by a bad maintenance or conservation of the facility. Therefore, provincial leaders feel that, on the one hand, they could be prosecuted in the criminal courts, but on the other they do not have the financial means to avoid the risky situation.

151. The UPI pointed out that, as a result of these different financial measures, there is an imbalance in the budgets of the provinces which allegedly amounts to 650 million€, as certified by the public company “SOSE”. The overall situation can be singled out in certain provinces. In this sense, the delegation was briefed about the extremely difficult financial situation of the province of Belluno, in the Veneto region. The rulers of this province informed the delegation that there is an acute imbalance in the provincial budget for 2017. The total expenses for the discharge of the “fundamental functions” have been budgeted in 29,200 million€ and they have estimated tax revenues in the amount of 23,800 million€. However, they are obliged to transfer or repay (r*iversamento*) to the State funds in the amount of 22,915 million€. Therefore, there is an imbalance of some 28,315 million€. The data are quite illustrative and show a dramatic situation.

152. The Court of Auditors has also made its voice heard in this area. In an important report released shortly before the visit of the delegation, the *Corte dei Conti* has affirmed that provinces do not have the adequate financial resources to accomplish their tasks; that the provinces should no longer suffer from the effects of the “programmed suppression” of these bodies; and that they must have the necessary personnel, financial and instrumental resources to carry out their fundamental functions and to guarantee the essential services for the citizens and for the territory.[29]

Additional aspects

153. In the domain of budgeting, all municipalities are free to draft and to approve their own budgets, but in recent years the budgetary discipline of the State (mainly by the Corte dei Conti) has been sharply increased. “Budgetary discipline” is now the golden rule.

154. Although the Law sets some specific limits and clear on the public debt and on the deficit of local authorities, the indebtedness of local authorities is still a hot issue. The precise rules governing the extreme cases of insolvency are laid down at Articles 244 and ff. of the *Testo Unico*. According to information facilitated by the Ministry of the Interior, in recent times 102 local authorities have resorted to financial failure, including large-size municipalities like Alessandria or Potenza. The peaks are in Sicily, Campania and Calabria. Cases of financial instability did affect some provinces, too (Biella, Caserta).

29 Id. previous footnote.

155. Finally, and as far as municipal property is concerned, Italian local authorities have their own property, goods and assets. This is specifically guaranteed by Article 119, last indent, of the Constitution. The situation on this issue seems to be quite satisfactory. The right to own land and real estate property is fully recognised to local authorities, and they manage their assets in a free way. In the case of the provinces, thought, a specific information should be underlined: As a consequence of the *Delrio* Act, the provinces were partly dismantled in several ways; their "non fundamental" functions were transferred to the regions, and part of their personnel and assets were alto transferred, according to some criteria that were negotiated in the Joint Conference.

156. In view of the foregoing, it appears to the rapporteurs that Article 9 of the Charter is not respected in Italy, especially in the case of provinces.

5.8. Article 10: Right to associate

Article 10 – Local authorities' right to associate

1 Local authorities shall be entitled, in exercising their powers, to co-operate and, within the framework of the law, to form consortia with other local authorities in order to carry out tasks of common interest.

2 The entitlement of local authorities to belong to an association for the protection and promotion of their common interests and to belong to an international association of local authorities shall be recognised in each State.

3 Local authorities shall be entitled, under such conditions as may be provided for by the law, to co-operate with their counterparts in other States.

157. Concerning the application of Article 10, paragraph 1: In Italy, the right of local authorities to associate and to form common organisations and structures for the delivery of local services is fully recognised. As a matter of fact, the Italian system provides for different possibilities for municipalities to form co-operative structures in order to carry out their common tasks and public services. This legislative situation is in a certain way unavoidable in ca country with so many and small municipalities (some 5,567 municipalities have less than 5,00 inhabitants as of 1 January 2016). The *Testo Unico* regulates under different headings the "communities" and the "associative forms", and the regions (especially those of Special Status, may established other forms or co-operation). For what concerns the first ones, there are "Mountain-area community" (*comunità montana*, Article 27) and island communities (comunità isolana, Article 29). The first ones may be established in the mountainous areas and may discharge in an associative manner the functions attributed to municipalities, as well as any other function that can be attribute to them by the provinces or by the regions (Article 28). The second ones may be established in the different islands, except in Sicily and Sardegna, and they follow the same rules as the *comunità montane*.

158. There are three basic associative forms (*forme associative*): the conventions (*convenzioni*), the consortia (*consorzi*) the unions of municipalities (*unione di comuni*) and the program agreements (*accordi di programma*). The Conventions may be defined as agreements performed by two or more municipalities regulating the coordinated discharge of common tasks and services, under some requirements that are regulated in a sketchy way at Article 30 of the *Testo Unico*. Consortia are organisation formed by municipalities and by other public entities, for the associative management of one or more public services. Contrary to what happens with the *Convenzioni*, the *Consorzi* are fully recognised as local entities, and they must have an assembly and a management board of their own (Article 31, *Testo Unico*). Finally, the unions of municipalities are certainly the most important form of inter-municipal associative structure. They are formed by two or more municipalities for the associative exercise of their functions and services, and they are also recognised as local entities (Article 32). Contrary to consortia, that discharge usually one single task, the union may discharge different tasks, and they are multi-functional. Regions, especially the "special status" ones, have authority to regulate in more details these co-operative instruments and entities.

159. On this aspect of the Italian system, there are three main ideas that should be underlined in this report:

160. First, the cooperative structures are well developed. According to 2017 data, 69% of municipalities have adopted one or more conventions, 38% form part of consortia and 27 % are members of Unioni. The number of *Unioni* was 586 in February 2017. Among the "associative forms", the unions of municipalities are clearly the most important ones and they have been sometimes seen as precursors of municipal mergers."[30] Second, recent State legislation (mainly the Delrio Act) introduced measures to revamp the field of inter-municipal cooperative structures. In particular, that statute tried to reduce the cooperative formulae, to discourage both the consortia and the mountain authorities, and to favor the Unioni and the "convenzioni". Apparently, there is a political willingness to suppress step by step the consortia and other forms of co-operation, such as the mountain communities. On the other hand, a minimum joint population of 10,000 inhabitants among the interested municipalities is now required to found a new union of municipalities. The Unions may be also fostered and supported by the regions, in terms of financial assistance or specific projects.

161. Third, since 2010 (Decree No 78 of 2010) the government has established for municipalities under 5,000 inhabitants the obligation to carry out their "fundamental functions" by means of partnerships, through a Union or a Convention. The main rationale is the need to make savings in the public expenditures and to "rationalise" the public sector. However, since then the deadline for implementing this obligation has been successively postponed. The "current" target date is supposed to be 31 December 2017.

162. In view of the precedent, it may be concluded that Article 10, paragraph 1 of the Charter is respected in Italy.

163. As regard Article 10, paragraph 2, the right of local authorities to form associations for the representation and defense of their interests is fully recognised in Italy, and the vitality of the associations life is the best argument to support the full compliance with Article 10, paragraph 2. In this sense, the most important local associations are:

- ANCI (associazione nazionale di Comune d'Italia). This is the largest and most important national association. The municipalities that have adhered are more than 7,300, representing 90% of the overall number. This association has also "regional" chambers or sections;
- UPI (unione delle provincie italiane): this is the association of Italian provinces, and currently a powerful and clear voice of the provinces in the changing political landscape. It represents all Italian provinces, except those of Trento and Bolzano (parts of a region having a special status);
- UNCEM is the association representing the mountain towns and communities;
- AICCRE is the "Associazione italiana per il Consiglio dei Comuni e delle Regioni d'Europa". It is the Italian section of the CCRE (Conseil del Communes et des Regions de l´Europe).

164. Apart from these "institutional" associations, formed by "genuine" local entities, there are other associations at regional level.

165. These associations are very active and play an important role in the defense and advancement of the interest of they represented local authorities. The Minister of the Interior affirmed that ANCI and UPI are fully recognised as partners and that they entertain fruitful relationships.

30 L. Vandelli, *op. cit*., p. 342.

166. In light of the precedent, Article 10, paragraph 2 of the Charter is respected in Italy.

167. On Article 10, paragraphe 3: As noted in the introduction of this report, the Italian has signed and ratified the European Outline Convention on Trans-frontier Co-operation between Territorial Communities or Authorities (signed on 21 May 1980 and ratified on 29 March 1985. Entry into force for Italy: 30 May 1985). On the other hand, Italy has signed, but not ratified yet the addition protocol to the European Outline Convention on Trans-frontier Co-operation between Territorial Communities or Authorities, of 9 November 1995, ETS No.159. And, finally, Italy has not yet signed Protocols No.2 (1988) and No. 3(2009) to the European Outline Convention on Trans-frontier Co-operation. The delegation did not hear any official position of Italy as to the ratification of the said Protocol.

168. At the same time, the rapporteurs did not hear any complaint about limitations or constraints imposed by the State on local authorities in order to engage in trans-frontier co-operation. This co-operation is especially fruitful in some territories in the north where German is the coofficial Language (for instance, Alto Adige/Südtirol). Italian municipalities have established partnerships, agreements and twining with towns and cities in other countries.

169. In light of the precedent, Article 10, paragraph 3 of the Charter is respected in Italy, that is why the rapporteurs do not see any reason not to ratify the above mentioned Conventions in a near future.

5.9. Article 11: Legal protection of local self-government

Article 11 – Legal protection of local self-government

Local authorities shall have the right of recourse to a judicial remedy in order to secure free exercise of their powers and respect for such principles of local self-government as are enshrined in the Constitution or domestic legislation.

170. The implementation of this article of the Charter in Italy should deserve a nuanced assessment. It is true, as noted *supra*, that Italian local authorities enjoy a large scope of autonomy, an autonomy that is protected both by the Constitution and by the legislation on local government. It is also true that local authorities, as legal entities, do have the right to go to ordinary or regular courts in order to defend their statutory rights, interests, assets and properties. Local authorities can also go to the administrative courts, where they can defend their statutory rights and interests, as well as their autonomy, if it were ignored or reduced by a decision, plan or policy of the central government or by regional agencies. In this field, the regional Administrative Courts and above all the Council of State, play a decisive role.

171. There are different legal scenarios where local authorities may have access to the administrative courts: (1) the municipality, as an entity representing the interests of its inhabitants, may oppose, for instance, the construction of a State project or work that are disliked by the local residents; (2) conflicts between local authorities. For example, Municipality A authorises an energy-production installation, close to the territorial limits of Municipality B. This entity opposes such projects and sues Municipality A; (3): a conflict between a municipality and a region, mainly in the field of urban management and planning. For instance, a municipality does not get the final approval of the region for a local land use plan. Then, the municipality appeals such denial in the administrative courts; (4) a conflict between a local authority and the State. For instance, in a recent case, a State department issued a circular prohibiting the inscription of same-sex marriages in the municipal civil register (this is a competence of the mayor, exercised on behalf of the State). A municipality sued the government, as it believed that such circular would be illegitimate because it would ignore local autonomy and that it would unduly interfere with the powers of the mayors. The appeal was upheld by the Council of State. The associations of local authorities have standing, also, to sue in the administrative courts on behalf of the associated local entities.

172. However, the rapporteurs would like to additionally comment on the implementation of Article 11 of the Charter when it comes to having access to the Constitutional Court. This might be useful or even necessary when a region or the central legislative powers enacts a piece of legislation that might ignore, reduce or affect negatively whatsoever the local autonomy. Under Italian public law, local authorities are not entitled to sue in this court when a region or the State approves a piece of legislation which in a way or another disrespects, reduced or limits the local autonomy. Contrary to what happens in other European countries, there is no specific remedy that those entities might use in the precedent scenario. They do not have *locus standi.*

173. Neither can they have automatic access to the said court by way of an incident or specific referral that they could trigger independently or automatically. It is true that, in the context of an actual administrative lawsuit triggered in scenario 3 or 4 above described, where a piece of State or regional legislation stands at the center of the legal debate, the regional administrative court may refer to the Constitutional Court and it may ask about the constitutionality of such a hypothetical piece of legislation (question of unconstitutionality). In that case, there would be an alleged violation of Article 5 of the Constitution (principle of local autonomy) and the Charter, in connection with the Constitution (especially Article 117) can be used as a parameter of validity or legitimacy of the contested law, that is, the Charter may be used as a part of the argumentative referral made by the administrative court. But the court cannot refer directly to the Charter in order not to apply the Law, and it is obliged to refer to the Constitutional Court. This specific feature of Italian constitutional law has already been presented at point 5.1, *supra*.

174. Nevertheless, this procedural device can only be triggered by the court, not by the plaintiff municipality, and the court will do that only if it finds that it is reasonable and justified. This situation, as explained *supra*, is not exclusive of the Charter, but is the result of a specific feature of the Italian constitutional system: no court may pronounce the unconstitutionality of an Act of Parliament, and if any court has doubts as to the constitutionality of that legal rule, it has to formulate a referral or preliminary ruling to the Constitutional Court.

175. This does not mean that this possibility is a closed door. As a matter of fact, in last years there have been several such referrals, which gave the Constitutional Court the possibility to adjudicate whether a given piece of legislation was constitutionally legitimate (because it was contested that it could constitute a violation of the principle of self-government). For instance, the above presented ruling No 50/2015 was the result of such a referral. The delegation was also informed that in January this year the Administrative Regional Court of Lazio made a preliminary question to the Constitutional Court in connection with a State legislative provision that imposes the obligatory merger of municipalities in some cases. According to the court, that provision could go against local autonomy. The ruling of the Constitutional Court on this case may be very interesting in the field of the protection of local autonomy.

176. In the light of the precedent, it may be concluded that Article 11 of the Charter is generally respected in Italy, since local authorities do have access to regular and administrative courts to defend their statutory rights. The rapporteurs believe that ensuring the right of local authorities to directly access the Constitutional court would give them an additional remedy to defend the principle of local autonomy against a piece of regional or State legislation undermining that principle. In the view of the Council of State, the lack of access to the Constitutional court is, at least in part, balanced by the wide *locus standi* which is granted to provinces and municipalities before the Administrative courts.

5.10. Article 12: Undertakings – reservations formulated by Italy

177. As noted at point 1 of this Report, the Italian Republic ratified the Charter without formulating any reservation, or with no territorial or organic restriction on its scope of application. The "declaration" annexed to the Instrument of Ratification clearly states that Italy is bound by all the articles of the Charter.

6. REGIONAL DEMOCRACY: THE REFERENCE FRAMEWORK FOR REGIONAL DEMOCRACY

6.1. Antecedents: main developments concerning regional democracy in Italy

178. Regional decentralisation has a long but uneven history in Italy.[31] At present and after different reforms there are 20 regions, that can be sorted into two neatly different groups: on the one hand, 15 regions having a regular or "ordinary" status (*regioni a statuto ordinario*): those of Abruzzo, Apulia, Basilicata, Calabria, Campania, Emilia-Romagna, Lazio, Liguria, Lombardy, Marche, Molise, Piemonte, Toscana, Umbria and Veneto. On the other hand, five regions having a special status (*regioni a statuto speciale*): those of Valle d´Aosta, Trentino-Alto Adige/Südtirol, Friuli-Venezia Giulia, Sardinia and Sicily. The region of Trentino-Alto Adige/Südtirol is even more specific, because the "region" as such is in reality composed by two "autonomous provinces", those of Trento and Bolzano, which have their own competences, powers and finances, the region being almost powerless in practical means.[32] While most of the regions (the "regular" or ordinary ones) were created in the 1970´, others (the "special" status ones) had a longer history of autonomy: Alto Adige-Südtirol was present as an autonomous territory since its annexation to Italy after World War I; Sicily and Sardinia were recognised at "special region" at the end of World War II (the Status for Sicily was approved in 1946, before the national constitution); and Valle d´Aosta was endowed with a special status in 1948.Friuli Venezia Giulia became a special region in 1963.

179. Different reforms have been accomplished in the field of regional decentralisation[33]. The most important one (apart from the inception of the "regular" regions in 1970) was accomplished by means of a constitutional reform of 2001, which increased the powers of the regions having an ordinary status. A further federalist reform was proposed in 2005, but it was rejected in national referendum in 2006.

180. The existence of "special" regions is explained mainly for historical reasons, but also for cultural, linguistic and geographical ones. This key, structural feature of the Italian regional democracy makes that these two groups of regions have important differences in many domains: "special status" regions have more autonomy, more competences, more institutional relevance, more financial resources and more political power than the "ordinary" regions. Indeed, Italian regionalisation is clearly "asymmetric", and this structural feature has enormous implications in each and every aspect of regional democracy in that country.

181. The process of regionalisation is widely considered to have arrived at a point of "maturity" by now. New transfers of powers from the central government to the regions are not foreseen in the near future. However, as in any decentralised country, there are cyclical or recurrent questions, demands or tensions in some parts of the territory. The claims in favour of moving to an open federalist country are certainly present, but they are still comparative minor. In other territories there are from time to time more or less recurrent claims in favour of more autonomy or even independence, which have arrived to nowhere. In this sense, the so-called pro-Padania movement, so active some years ago, seems to have faded away and does no longer occupy a

31 See: L. Gambi: "Le regioni italiane come problema storico" (1977) *Quaderni storici* 275.
32 In reality, these two provinces are most times treated like "special regions" on their own (for instance, Article 117 of the Constitution: "The regions and the autonomous provinces of Trento and Bolzano take part in the preparatory decision-making process of EU legislative acts…")
33 For an analysis of the different reforms (both successful and failed) in the field of Italian regionalisation, see: A. Bagnai: "Le parcours du régionalisme italien: entre crise économique et crise de la Constitution". In: *Federalims, decentralisation and European regionalisation. Comparative perspectives.* Editions l´Epitoge-Lextenso, 2017, pp. 229 and ff.

prominent position in internal politics. The feeling of national identity, despite the inherent diverse and even individualistic Italian soul, is still strong and largely unquestioned.

182. In other parts of the territory, the demands for more autonomy have clearly been proposed by regional leaders. Special reference should be made to the region Veneto. Since 2001, this region has presented several requests to the central government, aiming at the recognition of a deeper autonomy, according to Article 116, paragraph 3 of the Constitution, a mechanism that has never been implemented in Italy. In particular, the region is not asking specifically to become a "special status" one, but to get more autonomy and powers on a large number of subjects. To this end, the regional council approved in 2014 a piece of legislation (Act No.15, of 19 June 2014) approving the call of a referendum, where the people will be asked if they are in favour to opening a process of negotiation with the State in order to increase the current level of autonomy. In its ruling 118/2015, the Constitutional Court upheld the constitutional legitimacy of such initiative[34]. According to regional leaders, such referendum should take place in October this year 2017. Another similar referendum will apparently take place in Lombardy.

6.2. Constitutional scheme for regional democracy

183. The constitutional provisions dealing with regions are to be found in the same section that regulates local authorities: title V of the Constitution, which includes Articles 114 to 133. The underlying reason is that regions are conceived as territorial layers of the Republic, together with municipalities, provinces and metropolitan cities. Consequently, some constitutional provisions are applicable both to regions and local authorities, but there are also specific provisions for regions. The constitutional regulation of regions, though, is more dense and wide than that of the local authorities, something that gives more stability and permanence to the regional autonomies. Thus, as in the case of local authorities, regions are depicted as "autonomous entities" having their own statutes, powers and functions. Although regions and local authorities are included in the same provision, it is currently understood that local authorities are endowed with "administrative" autonomy, while regions have "political" autonomy: they can approve parliamentary legislation, and in some fields they even have exclusive legislative competences. In principle, it is not possible for the State legislature to regulate that matter.

184. Article 116 is key in the domain of regional democracy, since it implicitly enshrines the "asymmetric" nature of Italian regionalisation. The regions having a special status are enumerated and singled out, and the Constitution states that they "have special forms and conditions of autonomy, pursuant to the special statutes adopted by constitutional law". Moreover, there is a special provision for the region of Trentino-Alto Adige/Südtirol, in the sense that it is underlined that the region is composed of the "autonomous provinces" of Trento and Bolzano). On the contrary, the regions having an ordinary status are not enumerated in that section, and there is just the mention that "additional special forms and conditions of autonomy…may be attributed to other regions by State law. Article 131 includes a list with the names of the 20 existing regions, but they are not classified into distinct groups.

185. Article 117 regulates the complex issue of the allocation of powers between the State and the Regions (all of them), in a form that will be summarily presented at point 6.4.1 below. Article 119 of the Constitution lays down common rules for local and regional entities in the domain of financing. These principles have been already presented in the precedent part of this report and will be re-considered at point 6.4.8 below. Articles 121-123 and 126 establish provision on the internal organisation of the regions. Finally, Article 132 regulates the merger of the existing regions or the creation of new ones.

34 The Court, though, declared unconstitutional the referendum questions related to the obtention of independence for the region.

6.3. Internal organisation

186. As noted above, Article 121 of the Constitution lays down the basic institutional organisation of the regions. Under this provision, the organs of the regions are the regional Council, The regional executive and its President. Beyond these rather sketchy constitutional provisions, each region has its own "statute" (*statuto*), that lays down the political-administrative organisation of the region. The procedure for approval and amendment of the regional statutes is regulated by Article 123 of the Constitution, but here again there are specialties in the case of "special status" regions, for their current statutes were approved by Constitutional Laws in 1948 (Valle d´Aosta, Trentino-Alto Adige/Südtirol, Sicily and Sardinia) and in 1963 (Friuli – Venezia Giulia). The main difference between the *special status* and the *ordinary status* is that while the ordinary statute is adopted and modified by an entrenched regional law, the special statute is adopted by constitutional law, as well as any change thereof.

187. The fact that every region approves its own statute may produce notable differences in the secondary or lower levels of the regional administrative machinery. In any case, the three top political institutions in every region are the regional Council, the regional executive and the president of it. Thus, the regional council or Assembly discharges the legislative powers of the region. Each region has its own regional council, but in Trentino-Alto Adige/Südtirol the "regional council" is in reality a union of the councils of the autonomous provinces of Trento and Bolzano. The number of members of the regional assembly is regulated by the statute of regional autonomy. They are elected in direct and universal elections, according to an electoral system that is established by regional law. The institutional profile and competences of the council of the region largely replicates that of the municipal council. The council, for instance, approves and amends the budget of the regionsand the statute of autonomy.

188. The regional executive (which may receive specific names such as *Giunta*) is the executive body of the region and it is chaired and ruled by a President. This top official is regulated at Articles 121 and 122 of the Constitution. He is elected by universal and direct suffrage, "unless the regional statute provides otherwise" (Article 122). An example of this exception is once again the region Trentino-Adige/Südtirol. The presidency of the region rotates between the presidents of the two provinces. That of Trento is directly elected by universal suffrage, while that of Bolzano is elected by the provincial assembly. As a rule, the President appoints and dismisses the members of the regional executive and directs the policy-making of the region. As in the case of the mayors at municipal level, the President is the executive authority of the region, the political leader and its "visible head". He is responsible for the management of the regional bureaucracy, means and resources. He is also the representative of the region.

189. For what concerns human resources, the Italian regions have their own staff, which is independent from the central or local bureaucracy. The regions have a limited autonomy to fix the salaries for their own employees, since these are mostly determined by national collective agreements of the public sector, while they can establish complementary or accessory retributions. They have autonomy to hire and dismiss their own civil servants, as in the case of municipalities.

6.4. Analysis of the situation of regional democracy on an article by article basis, from the perspective of the Council of Europe Framework Reference for Regional Democracy

6.4.1. Regional competences

190. Italian regions are endowed with an important realm of competences. These may be "legislative" competences, that is, the capacity to enact pieces of legislation which have the nature of "statutes"; "regulatory" competences, that is, the capacity to approve administrative regulations, which are subordinated to the statutes; and "executive" competences, that is, the ability to implement and enforce laws and regulations (either State or regional laws, or even EU rules).

191. Three major ideas should be kept in mind when analysing the competences of Italian regions. First, the realm of regional competences has been substantially deepened in the last 40 years. The general inception of the regions in the 1970´ came along with transfers of executive competences, assets and resources from the State. The so-called 'Bassanini' laws of 1997 (in particular, Law 59/1997) gave regions residual administrative powers. Later, the constitutional reform of 2001 expanded the regional legislative competences, and they were endowed with residual legislative powers (see *infra*). Second, the allocation of powers between the regions and the State is regulated by the Constitution, not by regular legislation, like in the case of local authorities. This means that the essential rules on regional competences are guaranteed by the Constitution and cannot be changed by the "regular" legislator. However, as it happens in many countries, these constitutional provisions are far to be crystal clear and have triggered much constitutional litigation, opposing the State and the regions. Therefore, any analysis of the Constitution (especially, Article 117) cannot be performed without the consultation of the appropriate case-law of that court. Third, there are differences in the competences among the several regions, in accordance with the peculiar provisions of each regional statute of autonomy. Moreover, "special status" regions have more and deeper competences in some fields than the regions having an "ordinary status".

192. Article 117 of the Constitution is the key bone of the system of distribution of powers between the State and the regions. This provision, which does not use subheadings or numbered paragraphs, distinguishes between legislative powers and "regulatory" ones. There is no mention to the "executive" powers, but these are mentioned at Article 118, which provides that "administrative functions are attributed to the municipalities, unless they are attributed to the provinces, metropolitan cities and regions or to the State".

193. As far as legislative powers are concerned, it should be pointed out that, before the reform of 2001, the Constitution singled out 18 different fields where the regions could approve legal rules, together with other fields that were of the exclusive competence of the State. That reform substantially increased the legislative autonomy of the regions, and today the Constitution does identify *nominatim* only the exclusive competences of the State in up to 17 "matters" (from foreign policy to social security), "while regions have legislative powers in all subject matters that are not expressly attributed to the State". That means that the 2001 constitutional reform introduced the *residual powers* clause in favour of the regions. However, there is not a list of "exclusive" competences for the regions. That is, the Constitution does not identify any single subject matter where the regions have competences. In theory, everything that is not identified as an "exclusive competence" of the State or as a matter of "concurrent powers" in Article 117 belongs to the regions and may be identified as an exclusive competence of the regions in its own statute of autonomy. The main problem (for the regions) is that any of the 17 "subject matters" being of the exclusive competence of the state (or the *concurrent* matters) may be interpreted in a large or extensive way, therefore reducing considerably the matters that "belong exclusively" to the regions. Probably "the protection of the environment" (letter a, Article 117) is the best example of this potentially expansive nature of the fields of action for the State, taking into account the cross-cutting and far-reaching domain of the protection of the environment. Of course, this problem is the source of countless constitutional litigation.

194. In between the subject matters belonging to the exclusive competence of the State and those belonging to the regions stand the matters where both the regions and the State have legislative powers. This is what the Constitution identifies as “concurring legislation”. This construct applies to a long list of subject matters (more than twenty, and some of them are broken down in two sub-matters). The list includes, inter alia, foreign trade, job protection and safety, education, communications or the transport and distribution of energy. In those matters both the State and the regions have “concurring” legislative powers. The relation between State and regional laws works as follows: regions are free to legislate on those matters, but they must respect the so-called “fundamental principles” that are to be laid down in State legislation.

195. As anyone may presume, this system of *concurring* legislative powers has produced a very high number of controversies and constitutional appeals, triggered by the State or by the regions. The number of possible litigation scenarios is high and the legal quarrels may be very complex: whether a certain State statute falls under a matter which is “exclusive” of the State or if it belongs to a “concurring” matter; whether the State has gone too far in laying down the “fundamental” principles; whether the regions have respected them, etc. The stage is set for a rich and maybe never-ending constitutional litigation. In order to redress this situation, one of the proposals included in the December 2016 referendum was to reinforce the ability of the State to approve the fundamental principles that regions should respect when they legislate on this matter. The rationale was to increase the homogeneity of the legislation across the country and reduce the regional regulatory disparities. However, this proposal could not materialise due to the negative result of the referendum.

196. In the domain of regulatory powers (*potestà regolamentare*), the State has such powers in connection with its “exclusive” subject matters, while this power is vested in the regions in all the rest of subject-matters.

197. As for “executive” powers (planning, implementation, planning and so on) the regions have a fair domain of such powers in all the policies and subject areas for which they are competent. Those competences are identified in their own statute, in State legislation, or in regional laws and regulations. For instance, regions have large executive powers in health services, transports, social services, environment, education, fiscal matters, relations with their “own” municipalities and provinces, culture, historical heritage, employment, etc. Finally, regions may also call referendums on the laws and administrative measures of the regions (Article 123 of the Constitution).

198. In light of the foregoing the share of powers attributed to the Italian regions clearly satisfies the requirements of the Reference Framework for regional democracy.

6.4.2. Relations with other sub-national territorial authorities

199. Regions have important competences in the domain of local authorities, which is a field of “concurrent competences” between the State and the regions. For instance, the establishment of the “fundamental functions” for municipalities and provinces is an exclusive competence of the State, which means that the regions may attribute other competences (“non-fundamental” ones) to the local authorities placed in their territory. On the other hand, it has been already noted *supra* that the merger of municipalities, or any change in their boundaries, has to be done by an act of the regions, either of legislative (merger) or executive nature (Article 133 of the Constitution). Special statute regions, though, have more competences in this domain than regular ones, as it is evidence by the *Testo Unico* itself, which does not apply in those regions if it is in contradiction with the regional laws (Article 2).

200. Regions have also competences as regards provinces. In this sense, it should be underlined that all regions (except Valle d´Aosta) have been traditionally divided into two or more provinces. Again, the specificities of the "autonomous provinces" of Trento and Bolzano (not really "provinces" in the regular sense of the word) should be underlined. Regions with special status have, here, more competences than the ordinary ones, and they may carry out operations to reorganise their provinces (such as the one operated in Sardinia) or even suppress them (like in Sicily, where the provinces were eliminated in 2015 and replaced by other bodies).

201. For what concerns the consultation and participation or municipalities and provinces in the decision-making of regional institutions, these mechanisms must be provided for by regional legislation. Consequently, the picture may vary among the several regions. In any case, the delegation was told that in every region there is a joint "Conference" with local authorities. For instance, in the case of the Veneto region there is the Conference Region-Local autonomies (*Conferenza Regione-autonomie locali)* and the regional observatory for provinces reorganisation.

202. Consequently, Italy complies in this area with the requirements of the Reference Framework for regional democracy.

6.4.3. Involvement in the State decision-making process

203. Italian regions, according to the Constitution and the political dynamics of the county, are broadly involved in consultation and participation in the decision-making process of State authorities, for most decisions, plans and legal initiatives that affect them. For what concerns the first topic, the delegation drew the conclusion that, as in the case of local authorities, there is a positive pattern of consultation and participation of regional authorities in the political decision making of national institutions. In this sense, the most important body is the "Permanent Conference for the relations between State, regions and the autonomous provinces of Trento and Bolzano", but the Joint Conference (see point 3.2.3) can also play an important role in some matters. Hence, it is possible to reproduce here what has been noted *supra* for the municipalities: the central government consults regularly the regions in regard to the different legislative proposals that affect them.

204. There are, though, other forms and techniques by which the regions may have their voice heard in the State political bodies. For instance, regional assemblies (councils) may submit bills to the national Parliament, under Article 121 of the Constitution. On the other hand, all regions (and the autonomous provinces of Trento and Bolzano) take part in the decision-making process of EU legislative acts in the areas that fall within their responsibilities (this is provided and guaranteed by Article 117, paragraph 4 of the Constitution).

205. In the field of participation in State decision-making, too, is it possible to see some differences between the two groups of regions: those having a special statute have the right to sit in the meetings of the Council of Ministers, while the "regular ones" do not. The former ones have their own system of lobby, in defense of the current asymmetric "status quo". On the other hand, and depending on the matter under consideration, the State may decide to negotiate/consult only with the regular regions, if the legislative proposal does not affect the competences of the special regions, or where the special regions have specific and increased powers and therefore remain outside of the legal reform.

206. In view of the foregoing, Italy complies in this area with the requirements of the Reference Framework for Regional Democracy.

6.4.4. Supervision of regional authorities by State authorities

207. Italian regions do act as fully autonomous territorial units, free from day-to-day guidance, prior approval or consent from the Central administration. Under strictly legal terms, the Government cannot give orders to a region, and the constitutional reform of 2001 eliminated the preventive controls of the State over the decisions of the regions (by repealing the former Article 130 of the Constitution). Therefore, the remit of self-government enjoyed by the regions

is usually respected by State authorities. The State, however, keeps a general power to co-ordinate the action between the State and the regions in some matters, and this may cause tensions with the policy, priorities or decisions of the regions.

208. There is no expediency control or appeal before the state administration in connection with regional activities. However, regional autonomy is compatible with some types of State control. The most important is the one of substitution, that is regulated at Article 120, 2nd indent and works in the same way that has been presented *supra*, at point 5.6. for local authorities, so we refer to that point for the sake of concision.

209. As a rule, the controls that the State may trigger on the decisions, plans and laws of the regions must be decided in the courts. Thus, if the State understands that a particular decision of a region is illegal, it may bring an appeal in the administrative courts (regional administrative courts). In relation with regional laws, when the State believes that a piece of regional legislation was approved *ultra vires*, that is, outside the realm of regional competences, the State may bring an appeal in the Constitutional Court. The same applies when the State understands that the regional law is unconstitutional for any other reason. For instance, Article 120 of the Constitution provides that "the region may not levy import or export or transit duties between regions or adopt measures that in any way obstruct the freedom of movement of persons or goods between regions. Regions may not limit the right of the citizens to work in any part of the national territory". These murky provisions have triggered numerous constitutional conflicts, where the court has clarified the reach of those prohibitions.

210. In this field it is important to underline two points that evidence the fact that regional autonomy has been deepened in the last two decades. On the one hand, before the constitutional reform of 2001 (constitutional law No. 3 of 2011), the State could initiate constitutional proceedings in respects with regional laws even before they had entered into force. Currently, a regional law can only be challenged by the State if it has entered into force. On the other hand, constitutional law No. 1 of 1999 also reduced the control of the State over the statutes of the regions: before that reform, the said statutes were approved by a State Act, therefore the national legislators could modify or alter the wording of the statute. Currently, the said statutes are approved in a final way by the assembly (council) of the regions, and they are only subject to the control of the Constitutional Court, if triggered by the State.

211. Finally, the Court of Auditors (*Corte dei Conti*) can also supervise the budgets and financial activity of the regions, as it happens with local authorities. These controls have been tightened by a State Act of December 2012 and the principles of budget balance and fiscal and spending discipline also apply to the regions. This increased control takes different forms. To begin with, all the regions are required to set up an internal auditing body that is in charge to monitor the accountancy and economic regularity of the financial activity of the regions. The President of the regions must forward to the national Court of Auditors an annual report on the regularity of the budgetary management of the regions, following the guidelines and criteria established by the Corte dei Conti.

212. The 2012 Act further enlarged the control of the Court of Auditors, to include the budgets of the regions (even in draft form). With this control, the *Corte dei Conti* monitors different aspects, i.e.: (a) whether the regions follow the annual targets included in the Stability Pact and in other relevant agreements (such as the Health covenant); (b) the regional indebtedness ratio and evolution; (c) the existence of irregularities potentially leading to economic or financial imbalances. However, and contrary to what happens in the case of local authorities, this monitoring activity of the Corte dei Conti cannot crystallise in sanctioning decisions vis-à-vis the regions, for this would go against the principle of regional autonomy according to the case-law of the Constitutional Court.[35]

35 On these aspects, see. P. Magarò, *op. cit.*

213. In view of the foregoing, Italy complies in this area with the requirements of the Reference Framework for Regional Democracy.

6.4.5. Protection of regional self-government

214. Regional self-government is protected by several remedies and procedural devices in Italy. On the one hand, any region may file an appeal in the Administrative courts against any State decision, plan or circular that encroaches upon the regional competences or that in any other way neglects regional autonomy. Already in 1980, the General Assembly of the Council of State declared that the region could have access to the said council. Here, the situation presented at point 3.3.9 (for local authorities) may be replicated in full.

215. There is, though, a fundamental difference between the protection of local self-government and the protection of regional self-government. While local authorities do not have direct access to the Constitutional Court, the situation is different in the case of regions, since they may bring directly an appeal in the Constitutional Court whenever a piece of State legislation encroaches upon the regional competences or in any other way disregards regional autonomy (Article 134, of the Constitution). The filing of such an appeal must be preceded by a stage of negotiation/consultation, aimed at avoiding, if possible, the constitutional conflict. As a matter of fact, there has been a notable trend of constitutional litigation confronting the regions and the State, mainly in the domain of concurrent powers (see point 6.4.1, *supra*).

216. In view of the foregoing, Italy complies in this area with the requirements of the Reference Framework for regional democracy and regional autonomy is adequately protected in the Law.

6.4.6. Right of association

217. As in the case of local authorities, regions have the right to enter into agreements with other regions, in order to set up common structures and joint organisations for the better discharge of their duties and competences. This is provided for by the Constitution, whose Article 117 establishes that “agreements between a region and other regions that aim at improving the performance of regional functions and that may also envisage the establishment of joint bodies shall be ratified by regional law”. Therefore, the regions do not need to get the approval or consent of the State bodies.

218. On the other hand, the Constitution does not include any specific provision on the right to form associations for the defense and enhancement of the regional interests. In reality, there is no national association of regions as such, but a couple of “institutional clubs” or associations of the presidents of the regions and of the presidents of the regional assemblies or Councils. On the one hand, there is the “Conference of the region and autonomous provinces of Italy”. This association was founded in 1981 as a “conference of regional presidents” and promotes the debate and coordination among presidents of the executives of all the regions, plus the autonomous provinces of Bolzano and Trento. Currently, this association is recognised as an organ for institutional inter-regional discussion. Usually, the documents, drafts and proposals that are presented by the regions to the meetings of the Conference State-regions and to the Joint conference are previously agreed and discussed in this association. There is also a “Conference of presidents of self-governing regional assemblies and provinces”. According to its by-laws, this association is a “body for the valorisation of the institutional role of the Assemblies of the regions and of the Autonomous Provinces and a forum for the coordination and interchange of experiences in the fields of interest of the legislative assemblies”.

219. In view of the foregoing, Italy complies in this area with the requirements of the Reference Framework for regional democracy.

6.4.7. External relations. Trans-frontier co-operation

220. Italian regions have a noticeable bunch of competences having an international or "external" dimension. Although the Constitution provides that "foreign policy and international relations of the State" is a matter where the latter has exclusive legislative powers (Article 117) the same provision, in another paragraph identify as a concurring matter that of "international and EU relations of the regions", plus "foreign trade". This important constitutional provision indicates that, although the regions must follow the "fundamental principles" laid down in State legislation, they enjoy a certain room of manoeuvre in conducting their own external relations.

221. A specific dimension of the external regional action takes place at the EU level. In this sense, most Italian regions have established their own representative office in Brussels, to advance the regional interests among the EU institutions (Abruzzo, Aosta Valley, Apulia, Basilicata, etc.). In addition, the regions are adequately represented in the delegation of the Italian Republic to the Committee of the regions of the EU. Among the members of the said delegation (24 members), there are 10 presidents of regional executives, and 4 presidents or regional assemblies.

222. On the other hand, Italian regions are allowed to perform different forms of trans-frontier co-operation. This is especially guaranteed by the Constitution, whose Article 117 (last paragraph) provides that "in the areas in the areas falling within their responsibilities, regions may enter into agreements with foreign states and with local authorities of other States in the cases and according to the forms laid down by State legislation". As a consequence of this liberal constitutional framework, Italian regions are free to enter into agreements with regions and other entities of other neighbouring countries, and trans-frontier co-operation seems to be very active at regional level.

223. Trans-frontier co-operation is in principle more likely for some regions than for others, due to the geographical shape of the country. In the north of the country, trans-frontier co-operation is very developed, not only for reasons of neighbourhood, but also for historical ones (relations with South Austria and France). This trans-frontier co-operation is especially fruitful between the Italian region Trentino-Alto Adige/Südtirol and the Land Tirol in Austria, for obvious historical reasons. These regions have established a common "euro-region" and have even established a joint office in Brussels. They entertain many common cooperative initiatives in the domain of cultural heritage, transport, economic projects and even sport competitions (for instance, the "Giro del Trentino", a cycling competition which takes place partly in Italian Trentino and partly in the Austrian Land Tirol).

224. In view of the foregoing, Italy complies in this area with the requirements of the Reference Framework for Regional Democracy.

6.4.8. Regional finances

General remarks

225. Any description of the Italian system of regional financing should have in mind the following framework considerations: First, the field of regional finances is a part of the so-called "federalism fiscal" and is moreover governed by the same essential constitutional principles inspiring local finances, which are laid down at Article 119 of the Constitution. Therefore, there is no need to repeat here what was said *supra* in connection with this provision.

226. Second, in the domain of regional finances there is a big difference between the regions having an ordinary statute and those having a special statute. All regions have their own regional taxes, charges and fees, but special regions have more resources at hand, due to a system of shared taxes that makes that most of the regional and state taxes that are collected in their territory remain in their budgets, while in the case of ordinary regions the situation is different, for most State taxes (mainly the personal and corporate income tax) go to the State budget, from where the monies can later be transferred to the regions.

227. Third, the Italian system is a delicate balance between conflicting interests or feelings, which emerge with more or less force at cyclical times: on the one hand, the distribution of wealth across the country is clearly unbalanced (with sharp differences among the regions) and the central government wants to ensure a fair and harmonious economic development of the nation. Consequently, it has adopted measures for the redistribution of wealth that raise opposing popular feelings: while some citizens in rich regions believe that they subsidise the poorer regions, many citizens in poor regions believe that the standards of the regional public services (mainly social services and health) is much lower than in the rich regions. The inherently unstable political situation makes the field of regional finances a hot and controversial domain.

228. Finally, the outbreak of the deep economic and financial crisis that hits Italy has had important repercussions in the domain of regional finances. The government, as in the case of local authorities, has adopted several measures to ensure the balance of the regional budgets, the containment of the public expenditure, and the accomplishment of different goals in the domain of public deficit. Regulatory changes are frequent and the picture is far to remain stable.

Regional own revenues: taxes and charges/fees

229. Italian regions have several “own taxes”, and they may charge different fees and charges. The system may be describe summarily as follows:

a. Regional taxes:

- the IRAP (*imposta regionale sulle attività produttive*) a tax on economic activities. The basic tax rate (from 1 January 2015) is 3,9% of the taxable basis, which the regions may increase (up to 0.92%) or reduce. For some categories of business, there are special tax rates;
- the regional tax on fuels for vehicles, with a tax rate laid down in State legislation, that the regions can modify, elevating it following a state of emergency;
- the regional fee on concessions made on State public domain goods, which can be suppressed by the regions;
- the regional tax on State concessions on the maritime public domain (*imposta regionale sulle concessioni statali*);
- the regional tax on waste landfills and waste incineration plants;
- the regional tax on the noise emissions from aircrafts (IRESA);
- the regional tax on vehicles , which is paid by the owner or user of the vehicle. The amount of the tax is determined by State law, in accordance with the type of the vehicle.

230. In the domain of regional taxation, specific rules apply in the regions having a special statute.

b. Surcharges on State taxes and fees:

Regions may establish a surcharge on some State taxes. Therefore, the State tax pressure is not absolutely homogeneous across the country, depending on the fiscal decisions of the regions. In this field, specific rules apply in the regions having a special statute. The most important surcharges in the regions having an ordinary statute are:

- the surcharge on the personal income tax (*addizionali regional all´IRPEF*). The basic rate of this add-on is 1,23%, which may be varied within a “fork” or intervals (breaks) established in State law and may vary from year to year (a maximum of 2,1% from 2015).

- Regional supplement on excise duty on natural gas used as fuel and regional substitute tax for exempted utilities.

c. Charges and fees:

- the regional fee (tassa) on concessions made on regional public domain goods, which can be suppressed by the region;
- the regional fee (tassa) for the qualification for the exercise of professional activities. This tax can be suppressed by the region;
- the regional fee for the occupation of regional public areas and spaces (TOSAP). This revenue has the same rationale than the local equivalent one;
- the regional charge (tassa) on the right to study at the university. The amount is determined by the region, within a "fork" or range laid down in State legislation;
- the regional charge on the qualification for the harvesting of truffles. This charge is optional;
- the charge on phytosanitary activities.

d. Other sources

231. In addition to those regular elements of regional finances, the regions may also apply for funding to the central government in connection with a specific project, which may be financed by the State alone or within the framework of the several structural funds of the EU. In that respect, the Italian regions are considered as NUTS II for the purpose of the management of EU Cohesion funds.[36]

232. Finally, regions may also get funds from equalisation schemes, which are demanded by Article 119 of the Constitution. The most important is the "Fondo Perequativo" introduced by Constitutional Law 3/2001. This Fund only apply to the Regions having an ordinary status. In the case of essential services, the Fondo Perequativo should compensate for any imbalance between tax revenues of the regions and allow them to provide services under their competence to uniform levels throughout the national territory.

Assessment

233. An assessment of the financial situation of the Italian regions should include the following considerations:

a. The system of regional taxes, fees/charges and surcharges over State taxes may well seem to be fairly assorted and developed. However, it remains to be seen whether the "own" revenues of the region suffices to finances their fundamental functions, especially those of "education", "social services" and "health", which take most part of the regional public expenditure.

b. It is commonly understood that the "federalismo fiscale" has not been developed in full, due, on the one hand, to the unstable political scenario at central level and the changing sensitivity of the successive governments over this subject in the last 20 years, and the outbreak of the economic and financial crisis on the other (which triggered different measures, starting with Law No. 448 of 1998, on the Internal stability pact and finalising with the introduction of the principle of budgetary balance). There is a conflict between the need to contain the public expenditure and the regional obligation to ensure the "essential levels" of social services.[37]

c. There are still important differences between regions having an ordinary statute and those having a special one, especially for what concerns fiscal self-sufficiency and tax-raising autonomy. These differences have been well documented by scholars. Thus, in the case of "regular" regions, although the proportion of "own revenue" has increased dramatically as compared to the State transfers between 1985 (2%) and 2005 (45%), roughly half of their

36 For instance, in December 2016 the EU Commission decided to allocate 106 million € from the European Regional Development Fund to co-finance the construction of San Marco hospital and the Orthopaedic Centre of Excellence in the region of Sicily.
37 See: A. Bagnai, op. cit. p. 236.

budgets are still fed by State transfers. On the contrary, special statute regions have always had a higher fiscal self-sufficiency: their expenditure was covered by revenues originated in their territories in the amount of 74% in 1985 and this proportion has steadily increased ever since, to reach 91% in 2005[38]. According to some interlocutors, though, there have been important cuts in recent years also for special regions.

d. Special regions have special arrangements with the State on financial relations. The most significant part of their revenues is a predetermined share on state taxes (a certain percentage on the VAT, a certain percentage on the personal income tax, etc.). Since the transfers are for the most part automatic, they do not need to raise many regional taxes.

234. In general terms, the fiscal decentralisation is seen in a contradictory way by regional leaders. While in general the situation is seen as satisfactory in the regions of special statute, the situation is seen differently among the "ordinary" regions. Thus, some regional leader complained about the following features:

- The State has allegedly defined in a unilateral way the public finance targets. The public debt allocation between the State and the regions has not been shared in a fair way;
- The Constitutional Court has interpreted in a restrictive way the regional taxing power;
- The checks carried out by the Court of Auditors have been strengthened;
- The transfer cuts decided in recent years had a negative impact on the spending autonomy of the regions. Moreover, the part of State transfers is still very high;
- The inequalities between "special" and "ordinary" regions have increased, especially as regards the quality standards of essential regional public services like health protection;
- The tough implementation of the "balanced budget" policy has limited the spending capacity of the regions;
- Taxable bases for regional taxes have decreased. The State is supposed to compensate this decrease with transfers, but they are accomplished with delay;
- Tax flexibility for the regions has been dramatically reduced.

235. State authorities, on their part, do not share this view. They understand that the current system is fair and adequate in view of the hard financial constraint that the current economic crisis is imposing on all levels of government. Furthermore, there is a political will to redress this state of affairs as soon as the economic situation improves.

236. In view of the foregoing, it can be concluded that Italy clearly complies with the requirements of the Reference Framework for Regional Democracy in the case of regions having a special statute, but the situation is clearly improvable in the case of the regions having an "ordinary" statute.

38 See: pp. 31 S. Mangiameli (edit.): *Italian Regionalism: Between Unitary Traditions and Federal Processes.* Issirfa-Springer, 2014, pp. 317 and ff.

7. CONCLUSIONS, FURTHER STEPS ON THE MONITORING PROCEDURE AND RECOMMENDATIONS

237. The above explanatory memorandum allows drawing the following conclusions, as to the overall situation of local and regional democracy in Italy:

a. Local and regional democracy in Italy constitutes a complex, changing and structural keystone of the Italian political and territorial system. Local autonomy has been a permanent feature in the history of Italy republic and it seems firmly anchored in the political and territorial scenario of the transalpine republic. In this sense, it is more than positive that the very principle of self-government is proclaimed as a pillar of the State organisation by the domestic constitution and that the country has fully ratified the Charter (without reservations or territorial limitations).

b. The Italian Republic has performed a double decentralisation, and in doing so the country had to combine that endeavour with the need to ensure the unity of the country and the fight against economic and financial crisis, within a context of a disrupted political scenario with permanent changes of government. On the other hand, the quest for greater autonomy had to be reconciled with other compelling interests, such as the fight against corruption and crime infiltrations in local authorities.

c. Although the overall situation is in broad lines positive, in the light of the above mentioned structural constraints and the average situation in other European countries, the situation is still far to be fully satisfactory.

d. To begin with, it is well-known that Italy, like other European countries, has been suffering from a severe economic and financial crisis, which prompted the central authorities to adopt measures for the discipline of public finances and expenditures, to ensure budgetary equilibrium and to curb the evolution of the public deficit. However, it is not evident that the measures adopted have been proportional or even fair in relation with local and regional authorities, and it seems that the sacrifices and constraints imposed on those bodies are not proportional with the share of responsibility of those entities in the macroeconomic problems.

e. In the specific domain of local democracy and local self-government, the monitoring visit has revealed that several provisions of the Charter are not complied with, namely:

- Article 3, paragraph 2: the Italian system does not comply with this provision, in the case of the provinces and metropolitan cities, since their governing bodies are not elected by the people and that there is limited responsibility of the presidents of provinces and metropolitan mayors vis-à-vis the provincial councils;
- Article 6, paragraph 2 : clear insufficiencies in the field of local civil service;
- Article 7, paragraph 2: no compensation for the discharge of provinces and metropolitan cities running positions;
- Article 9: defective situation of local finances, especially in the case of the provinces.

238. In the specific domain of regional democracy, it is evident that regional decentralisation has been deepened in the last quarter of century. Although the system complies with the Council of Europe Reference Framework for regional democracy, the financial situation of regions having an ordinary statute is clearly improvable.

239. This monitoring visit, as did the 2012 one, has highlighted the fact that local and regional democracy in Italy is a changing subject, with an unstable political context that triggers permanent reforms and amendments. In this sense, it remains to be seen in which way the inception of the metropolitan cities will turn to be a “successful” or a failed reform; or what will be the final consequences of the demands of more autonomy that have been voice by certain regions. Moreover, the results of the December 2016 have opened the debate about what should be the consequences of the clear, popular rejection of the constitutional reform planned by the government, and what should be the next steps in the precise domain of local and regional government reforms. Indeed, the negative result of the referendum means, *inter alia,* that the carefully planned abolition of the provinces cannot be accomplished anymore, at least in the near future, since the necessary amendment of the constitution was rejected by the Italian people. It is therefore recommended that the Italian authorities reconsider their policy on the gradual downsizing and abolition of the provinces. This would imply not only restoring the

competences of the provinces (to transform them into essential and meaningful entities of the territorial structure of the country), but also amending the current financial system in order to give them the necessary means to accomplish their tasks. Finally, the monitoring visit has also determined several unsatisfactory aspects of local democracy in Italy from the perspective of the Charter. For these reasons, it would be more than convenient that the Congress pay permanent attention to these developments and carry out a post-monitoring visit to the country in due time.

APPENDIX I – Human rights: The performance of local and regional governments in the domain of human rights

1. From the outset, this report should point the fact that a meeting with a regional ombudsman was schedule during the monitoring visit, but that meeting could not take place. Therefore, the delegation missed the opportunity to ask precise questions or to get update information on this topic.

2. In any case, it is relevant to note first of all that traditionally, local and regional entities could create their own Ombudsmen (*difensore civico).* However, and as a part of the structural reforms undertaken by Italian government, this possibility was eliminated in 2010 and local ombudsmen were suppressed. Since then there is no national ombudsman neither, the current system for the protection of human rights (apart from the Constitutional Court) is composed of regional ombudsmen, who are appointed by the regional assemblies and are report to them. Thus, each region has its own ombudsman, which takes care that human rights are respected by the municipalities and provinces of the region, and by the region itself. These regional ombudsmen work in a coordinated way by means of a network that was established in 2003.

3. In the domain of human rights at local level, the most serious problem is represented by the situation of migrants and refugees. In this sense, this report should be in line of continuity with the report of the Monitoring visit performed by the Congress in 2012. The situation has not improved, but even worsened. The last available data are certainly appalling:

- Some 153,000 migrants arrived on Italy's shores in 2015;
- Roughly 181,400 sea arrivals in 2016;
- Between 1 January and 31 March 2017, more than 37,000 people have arrived to Italy (estimates);
- Some 123,000 asylum seekers applied for refugee status in Italy in 2016 (Eurostat data).

4. This problem is a national one but certainly affects primarily all municipalities. Shelter, food and first health assistance are asked from authorities, and local ones are those closer to those people. The problem is more acute in the South (not to speak of the extraordinary situation in the island of Lampedusa). However, the available resources of municipalities are totally insufficient to handle this tremendous and overwhelming situation.

5. Municipalities receive special funds from the State, but they are not sufficient. In view of the severity of the problem, the central government approved in 2016 a plan aimed at distributing migrants more evenly across the country as it struggles to deal with the ongoing refugee situation Some 800 local authorities are involved in the project, which is funded by the Interior Ministry through the National Fund for Asylum Policy and Service. They also receive funds from FRONTEX, the EU Agency taking care of the external EU borders controls. There is also a specific scheme for assisting the asylum seekers, called SPRAR, which provides essential help in the accommodation of asylum seekers, refugees or other beneficiaries of international protection.

APPENDIX II – Programme of the Congress monitoring visit to Italy

CONGRESS MONITORING VISIT TO ITALY
Rome and Venice (21-23 March 2017)

PROGRAMME

Congress delegation:

Rapporteurs:

Mr Jakob WIENEN	Rapporteur on local democracy Chamber of local authorities, EPP/CCE[39] Vice-President of the Dutch Delegation Member of the Monitoring Committee of the Congress Mayor of Haarlem (Netherlands)
Mr Stewart DICKSON	Rapporteur on regional democracy Chamber of Region, ILDG[40] Member of the Northern Ireland Legislative Assembly (United Kingdom) Member of the Monitoring Committee of the Congress

Congress Secretariat:

Mrs Stéphanie POIREL	Secretary to the Monitoring Committee

Expert:

Mr Angel M. MORENO	Chair of the Group of Independent Experts on the European Charter of Local Self-Government (Spain)

Interpreters:

Ms Paula BRUNO
Ms Valeria GUGLIELMI

The working language of the meeting will be Italian and interpretation from and into English will be provided.

39 EPP/CCE: European People's Party Group in the Congress
40 ILDG/GILD: Independent and Liberal Democrat Group of the Congress

Tuesday 21 March 2017
Roma

- **Joint meeting with the members of the Italian Delegation to the Congress, the representatives of the Local Councils' Associations and the Independent Experts**

- **Italian Delegation to the Congress:**

Mr Remo GRENGA, President of the Delegation, Councillor of Sezze
Mrs Manuela BORA, Vice-President of the Delegation, Councillor, Regional Council of Marche
Mr Carlo RIVA VERCELLOTTI, President of the Province of Vercelli

- **Local Councils' Association:**

Italian section of the Council of European Municipalities and Regions (AICCRE)

Mr Stefano BONACCINI, President of AICCRE
Mrs Carla REY, Secretary General of AICCRE

Union of Italian Provinces (UPI)

Dr. Carlo RIVA VERCELLOTTI, Vice-President of UPI, and President of the Vercelli Province
Dr. Claudia GIOVANNINI, Vice-Director of UPI

Conference of the Regions and Autonomous Provinces of Italy (CINSEDO)

Mr Andrea CIAFFI, *Director for European and International Affairs*

Conference of Presidents of Self-Governing Regional Assemblies and Provinces
Mr Paolo PIETRANGELO, Director General

- **City of Roma**

Ms. Flavia MARZANO, City Councillor for Innovation

- **Ministry of Interior**

Hon. Gianpiero BOCCI, Undersecretary
Prefect BELGIORNO, Head of Department for Internal and Local Affairs
Prefect PERROTTA, Director General for Governmental Department of Local Affairs and Autonomies
Dr. VERDE, Director General for Local Financial Resources
Dr. LATTARULO, Head of Staff Office
Dr. NATALI, staff
Dr. VALIANTE, Cabinet of the Minister of Interior
Dr. STRATI, Head of Secretariat, Undersecretary

- **Ministry of Economy and Finances**

  Mr Paolo BARETTA, Undersecretary of Economy and Finances

- **Ministry for Regional Affairs and Autonomies**

  Mr Enrico COSTA, Minister
  Hon. Gianclaudio BRESSA, Undersecretary
  Prof. Francesco PIZZETTI, Head of Cabinet
  Counc. Antonio NADDEO, Head of Department

- **Independent Experts:**

  Mr Francesco PALERMO, Full member of the Group of Independent Experts on the European Charter of Local Self-Government
  Ms Tania GROPPI, Alternate member of the Group of Independent Experts on the European Charter of Local Self-Government
  Mr Francesco MERLONI, Honorary President of the Group of Independent Experts on the European Charter of Local Self-Government

Wednesday 22 March 2017
Roma

- **Meeting with the Chamber of Deputies**

  Mr Michele NICOLETTI, President of the Italian Parliamentary Delegation to the Council of Europe, and President of the Foreign Affairs and Defense Committee
  Mr Enrico BORGHI, Member of Environment and territory Committee
  Ms Valeria GALARDINI, Head of Parliamentary Delegations Office
  Mr Federico CASELLI, Staff of the Italian Parliamentary Delegation to the Council of Europe

- **The Senate of the Republic**

  Senator Nadia GINETTI
  Mr Giovanni BAIOCCHI, Councillor, European Union Policies Committee
  Mr Luigi FUCITO, Councillor, Head of the office for the research on regional and local self-government issues
  Ms Alessandra LAI, Councillor, Director of the international Affairs Service

- **The State Council**

  Mr Alessandro PAJNO, President of the State Council
  Mr. Filippo PATRONI GRIFFI, Deputy President
  Mr. Marco LIPARI, President of Chamber
  Mr. Carlo SALTELLI, President of Chamber

- **The Court of Audit**

  Mr Arturo MARTUCCI DI SCARFIZZI, President of the Court of Audit
  Ms Patrizia FERRARI, Councillor, Chief of Cabinet of the Court of Audit
  Ms Adelisa CORSETTI, Councillor of the Central Audit Chamber for Local Authorities

Thursday 23 March 2017
Venezia

- **Joint meeting with the President of the Province of Belluno, some Mayors of the Province of Belluno, and the President of the association Movimento Belluno Autonoma Regione Dolomiti (BARD)**

  Ms Daniela LARESE FILON, President of the Province of Belluno
  Ms Alessandra BUZZO, President of the Movimento Belluno Autonoma
  Mr Mario DE BON, Mayor of Sospirolo
  Ms Alessandra BUZZO, Mayor of Santo Stefano di Cadore
  Mr Jacopo MASSARO, Mayor of Belluno

- **Meeting with the Veneto region**

  Mr Cristiano CORAZZARI, Regional Assessor for Culture, Territory and Security
  Dr Diego VECCHIATO, Director, Directorate for International Relations, Communication and SISTAR
  Mr Enrico SPECCHIO, Director of Local and Auxiliary Authorities Department
  Ms Maria Antonietta GRECO, Director of the Organisational Unit for Institutional Reforms and Delegation Processes
  Ms Giulia MILLEVOI, Director of the Organisational Unit for Local Authorities and Electoral Services
  Mr Antonio STRUSI, Director of the Organisational Unit for Innovative Processes of Budget
  Mr Marcello CHIZZOLINI, Head of the Organisational Position for EU Legislation and Electoral Procedures: study and analysis
  Ms Anna GAMBA, Head of the Organisational Position for Territorial Reorganisation Process and the Autonomy of the Veneto
  Ms Chiara GASPARI, Head of the Organisational Position Financial Relations between State and Regions
  Ms Cristina MARCHESI, Head of the Organisational Position for Constitutional Reforms: study and analysis of legislative action
  Ms Marta MATTIUZZI, Head of the Organisational Position for Coordinating Administrative Activities, Legislation and Verification of Acts
  Mr Mauro STEFANI, Head of the Organisational Position for Relations and International Agreements