DEMB Working Paper Series

N. 125

The allocation of responsabilities between the central state and local authorities in the countries of the alpine area

Simone Scagliarini*

April 2018

* University of Modena and Reggio Emilia
Address: Viale Berengario 51, 41121, Modena, Italy
Email: simone.scaglarini@unimore.it

ISSN: 2281-440X online

THE ALLOCATION OF RESPONSABILITIES BETWEEN THE CENTRAL STATE AND LOCAL AUTHORITIES IN THE COUNTRIES OF THE ALPINE AREA

by Simone Scagliarini[1]

Abstract

This work deals with the topic of the allocation of responsibilities between the central state and local authorities, with a specific territorial focus: it takes into consideration six European countries that are covered by the EUSALP Strategy (namely, the EU Strategy for the Alpine Region): Austria, France, Germany, Italy, Slovenia and Switzerland. Despite such a common EU Strategy, and a generalised need for defining a reference framework to compare policies supporting innovation in territorial ecosystems, some major differences characterise the forms of States and the regional authorities in the aforementioned countries. Thus, moving from some general indications on the regional territorial organization of national countries, this study aims to return the main characteristics of the allocation of the legislative (and partly the administrative) responsibilities in the six countries of the Alpine region.

Keywords: EUSALP, EU Macro regional strategy, Comparative constitutional laws, Austria, France, Germany, Italy, Slovenia, Switzerland

JEL Codes: K00, K1, R58

Acknowledgemetns

This Working Paper is a contribution to the Work Package on "Mapping the governance in the research and innovation field" of the Alp-gov Project (Interreg Alpine Space).
The author wants to thank Giacomo Aloise, Lucia Bosone, Lidia Letey, Alice Marcatili, Giulia Mariani, Michele Mazzieri, Chiara Miliucci, Chiara Nizzi, Simone Sberna (LACOM MAs students) for the written transcription of the oral presentation; and Patryk Cetnarski and Alina Gavrylenko (LACOM Mas students) for having translated it in English. The author also thank Margherita Russo and Francesco Pagliacci, the proponents of the teaching and research project MORE-Alps (Università di Modena e Reggio Emilia).

[1]Associate Professor of Public Law at the University of Modena and Reggio Emilia. The text provides a reproduction of a preliminary lecture on this subject, without bibliographic notes, with a purely introductory purpose.

THE ALLOCATION OF RESPONSABILITIES BETWEEN THE CENTRAL STATE AND LOCAL AUTHORITIES IN THE COUNTRIES OF THE ALPINE AREA

1. Introduction

The European Union (EU) Strategy for the Alpine Region (EUSALP) is the fourth macro-regional strategy in chronological order approved by the EU with a view to facing some common challenges, which characterize a well determined geographical area, promoting concerted actions in cross-border geographical areas. The main objective of the EUSALP Strategy is the strengthened co-operation between regions and the Member States involved (multilevel governance approach), with objectives of economic, social and territorial cohesion: regions involved in the strategy collaborate to improve competitiveness, innovation, transport links and to protect the environment.

In addition to the EUSALP Strategy (approved by the European Council in November 2015), other three macro-regional strategies had already been approved: the Strategy for the Baltic Sea Region (2009); the Strategy for Danube Region (2010); the Strategy for the Adriatic Ionian region (2014) (European Commission, 2015). Like the Strategy for Danube Region and the Strategy for the Adriatic Ionian region, EUSALP involves also non-EU countries (namely Lichtenstein and Switzerland). The countries involved are overall seven, five of them are EU Member States: Austria, France, Germany, Italy and Slovenia. In total, 48 regions and 2 states are involved (Liechtenstein and Slovenia).

The EUSALP governance is based on three main authorities (EUSALP, 2014): The General Assembly, the Executive Committee and Action Groups. The latter represents the core of the implementation projects. In particular, the Action Group 1 (AG1) is part of the first thematic objective of the EUSALP strategy (economic growth and innovation) and focuses on developing "an effective ecosystem of research and innovation" in the Alpine region (EUSALP, 2016).

Within the AG1 there was the need to define a reference framework to compare policies supporting innovation in territorial ecosystems implemented by regional authorities in various countries. To this end, different forms of States and regional authorities in the countries of the Alpine region should be considered. This contribution, divided into two parts, is dedicated to this issue.

The first part, ore general, is intended to provide some indications on the regional territorial organization of the States, not necessarily limited to the countries of the Alpine region, but with references to the USA, to Canada or other countries that, since they are federal States, have the problem of the allocation of responsibilities between authorities which form them. This preliminary discussion is necessary because, in six countries we are going to analyze we can find all known "forms of State" models: federal States (Germany, Austria, Switzerland), unitary States (Slovenia, France) and regional State (Italy).

The second part is aimed at analyzing, very briefly, how the allocation of legislative (and partly administrative) responsibilities is configured in six countries of the Alpine region, which constitute the specific subject matter of this contribution.

2. Territorial organization of the States

Legal experts usually speak about "the form of the State" in the dual meaning: 1) the way in which relations between governments and citizens are configured; 2) method of allocation of political power between the central State and regional authorities that form it. Considering only the first meaning we can identify what patterns of this relation can be composed of: unitary, regional and federal State.

There is an important distinction between unitary State and composed State, where the latter includes both regional and federal ones.

It is easy to guess what characterizes the unitary State. The whole political power is in the hands of the central State, so there are no political autonomies at local level. Let us be clear on this matter! Local authorities at a lower level than the State may exist even in the unitary State - and, as a rule, they exist (just think about Municipalities and French departments, established at the time of Napoleon) - but the difference is that they have no political autonomy, so they do not take their own political action. It is clear that, in similar contexts, regarding public policies, measures and decisions are taken by the central State. This does not mean that there is no bureaucratic decentralization also in the unitary States, where there are peripheral offices of the State Administration and may be the local authorities perform State functions on the basis of delegations. An example, if you think about the functions exercised by the Mayor as an official of the Government, because he is managing a service on behalf of the State, which is carried out at decentralized level. This has been in Italy for long time and survived the reform of Title V, which will be discussed later. In other words, also in the unitary State there can be a decentralization and autonomous local authorities, but the main difference is in the lack of political autonomy.

In the composed State, instead, the power is distributed between the central State and the local authorities that have political autonomy, which could be The Regions (Italy), Länder (Germany and Austria) or Cantons (Switzerland).

Let's try to outline the difference between federal State and regional State.

The characteristics of the federal State are usually obtained from the paradigm of this form of State, namely the United States of America (the first federal State). There are 5 characteristics; one concerns the Parliament, the other four the Constitution.

- Bicameral Parliamentary System: in the federal States, the Parliament is generally composed of two Chambers, one of which represents the States. Just think of the United States, where the Congress is elected directly by the citizens, while the Senate has a fixed and equal representation of two senators for each State: Alaska, enormous but sparsely populated, counts as Texas, which has a higher population density; so it is a kind of compensation for smaller States with a lower population density that makes it possible to give weight to the Second Chamber by basing not on the population density, but on the fact that the Federation is composed of many sovereign States.
- Constitutional justice organ: in the federal States there is a Constitutional Court (the Supreme Court in the USA) that are meant to resolve any dispute between the Federation and individual States.
- Constitutional recognition of federated entities: the Constitution for the Member States is their guarantee of existence and autonomy. All of them are

conditional on the Federation and equal to each other. The constitutional basis of autonomy is important because in the hierarchy of norms the Constitution, with its strictness, guarantees that the ordinary legislator could not deny or limit the autonomy of federated entities.

- Allocation of responsibilities between the Federation and federated entities written in the Constitution: the Federation's responsibilities are specified in the Constitution and are typically peremptory. There is, in fact, a residuality clause that operates in favor of federated entities, by stipulating that the Federation exercises only those powers and only those functions which has been explicitly attributed, while any other power is up to the Member States.
- The federated entities are involved in the revision of the Constitution: the Constitution of a federal State, in certain respects, is similar to an international treaty; as it is a State composed of States and each one maintains a level of sovereignty, in order to amend the Constitution the agreement of individual Member States is also required, since the willingness of the Federation is not enough.

The Confederation must be distinguished from the federal State because it is not a form of State, but rather an international law body, namely an international organization that emerge on the basis of a treaty among States which are (and will be) independent and sovereign. The Confederation has the common security purposes – therefore military or economic purposes.

Switzerland is named "the Swiss Confederation", but in reality it is a federal State. It just kept its historic name, given that it started up as a Confederation, maintaining the name after having become a federal State.

In certain respects, the EU can also recall a Confederation (think about clear economic objectives or other features), but it is an organization *sui generis* extremely complex and original, not easy to categorize into above categories, it is surely not part of them.

The regional State, for its part, can be distinguished from the federal one on various points:

1) In federal States usually the Member States keep their own army, their own police and judicial offices. This is not the case for the regional State where the jurisdiction is reserved to the central State as well as the defense and the armed forces;
2) Regions have no Constitution as the Member States of a federal State have. They have different Statutes on which their autonomy is established, but which are fully subordinated to the Constitution (so much so that compliance monitoring between Statutes and Constitution can be done). In Italy the Constitutional Court strongly clarified this concept when, in 2004, it specified that all the Regions may introduce to the Statutes policy measures which, however, have no value (in contrast to equivalent constitutional norms).
3) A further characteristic of the regional States is the possible lack of the second territorial Chamber. In Italy, for example, the Senate is elected on regional basis, but it does not represent the Regions.
4) The Regions have normally appointed competences, that means the Constitution assigns them specific competences, defining the matters of possible intervention. So,

the residuality clause is not in favor of the Regions but in favor of the State, that get everything that the Constitution does not allocate to the Regions.

5) The Regions are not involved on the revision of the Constitution.

The distinction we tried to outline is not unambiguous, being complicates in practice because of multitude of different patterns which variously hybridized over time, so that the difference between the two forms of State is now rather quantitative than qualitative. Essentially, this rigid distinction between the federal State and the regional State can perhaps have an historic value, but the varies plurality of patterns raise difficulties in leading with certainty a system to one or another category. That means that elements listed above are based on the ideal and abstract model whose history is traceable in different countries, but in practice the qualification of a form of State is not automatic. For example, Canada is surely a federal State, but Provinces have only the responsibilities allocated to them by the Constitution, while the residuality clause is in favor of the Federation. In Italy, that is not a federal State, the Regions are competent for matters other than those reserved for the State, so the residuality clause operates in favor of the Regions.

For those reasons, some of the legal doctrine state that the regional State is not different form the federal State, but the latter is simply "more regional" than the former, explaining it, as mentioned above, by reference to rather quantitative than qualitative difference. In this way the border between the two forms of State loose its clear outlines, while it is more useful to distinguish between the dual (or competitive) federalism and the cooperative federalism.

In the dual federalism, such as that of the USA, there is a strict separation between the Federation's competences (peremptory) and the State's ones (residual), that any entity exercises autonomously, in the absence of an agreement of functions' attribution (even if it should be noted that one Chamber is usually an expression of the Member States).

The cooperative federalism is instead typical of the European experience (for example Switzerland, Austria and Germany). The fora, where public policies are decided and agreed, are included in this pattern, while there are other matters – matters of concurrent competences – on which both the Confederation and the Member States legislate according to different coordination rules established by the Constitution.

Another possible distinction is that between homogeneous federalism and differentiated federalism: this is included in the first case, when all autonomous entities have the same power (ex 15 non-autonomous Regions of Italy), while the second case occurs when everyone has its own specific autonomy (ex. the Spanish Autonomous Communities).

Beyond these distinctions a common element over recent years is a general trend towards centralization of responsibilities. In fact, after the economic crisis, which started in 2007, in many federal States several constitutional reforms have been achieved. They were aimed at giving more power to the Federation, to enable it to develop counter cyclical measures at national level, by optimizing use of few resources available.

3. The allocation of responsibilities in the Alpine States

Turning now to the second part of this short explanation, we can observe how is the allocation of responsibilities between the central States and the local authorities in the

countries of the Alpine area here considered. Thus, it can be seen how different existing patterns in the Member States have very significant effects on the system configuration of the sub-state authorities, giving rise to entities with very uneven powers.

3.1. Italian regionalism

As we have pointed out, Italy is a regional State. The Title V of Part Two of the Constitution is about local authorities. It has been subject to a constitutional reform, the most extensive (since 1948 until today), which led to the replacement of about 15 articles.

Regarding the allocation of legislative powers between the State and the Regions, there are 3 cases:

- *areas of State's exclusive competence*: listed in an appropriate provision (art. 117, the second paragraph). This is the area in which exclusively the State legislate and in which all Regions therefore cannot intervene in no way;
- *areas of shared competence*: the shared competence is a pattern that has been adopted in the original Constitution since 1948. Even after the 2001 reform this area works in the same way, i.e. the State defines the legal principles – the core that should apply over the whole national territory – while the individual Regions implement those principles with their own detailed regulations respecting the specific characteristics of their territories.

  The laws of the State in this case are usually called "framework laws" because they provide the frame which contains regional detailed regulations;
- *areas of regional residual competence*: after the reform of Title V the residuality clause operates, as we have seen, in favor of the Regions, reversing the criterion in force until 2001. The State is intervening only in areas reserved to it or in area of exclusive competences (limited to the fundamental principles). While all other area (therefore not listed) are up to the Regions. Attention! This competence should have been properly classified as "residual" regional and not as "exclusive" regional, whether because it is defined residually (namely without being listed, but by difference) or because of the existence of the State transversal competences we will tell about.

As regards the areas of State's exclusive competence, they are 31, summarized in article 117, paragraph 2, composed of 17 letters.

Among them, we find, firstly, some areas we will always have, in the federal States too, as areas reserved to the central competence. One of them is defense as well as foreign policy. It does not mean that the Regions have no international law activity, but they are still part of foreign policy defined by the State. Also citizenship and immigration framework are typically central matters that could be found in other States.

In the area of State's exclusive competence, we found the State bodies framework (and this is taken for granted: for example, it is evident that Regions cannot legislate on the functioning of the Constitutional Court) and the structure of local authorities. This is the case of Italy and it helps to confirm that Italy is not a federal State because, as typical of such States, the structure of local authorities is governed by individual federated entities. In the case of Italy, therefore, we observe a uniform regime where Municipalities, Provinces and Metropolitan Areas have the same system, rather than different frameworks in the individual Regions.

Among the most important State's exclusive competences, there are also civil and criminal legal system, exchange rate system and customs (that are "virtual" competence – in reality both of them are EU competences, so they are not exercised at national level, at least until a possible exit from the EU), determination of the essential levels of performances (i.e. the definition of a minimum set of rights which should be guaranteed for all Italian citizens), compulsory social security, environmental and ecosystem protection and protection of competition.

Area**s** of shared competence**s** are 21, are listed in the art. 117, paragraph 3, and have no partitions.

Among them we can mention electoral system of the Regions, protection and safety of work, education, protection of health, civil protection, territorial government (i.e. domestic planning), professions, communication system, bank archives of local interest, supplementary pension. A couple of them are known for their absurdity: large-scale transport networks (ports and airports) and national energy generation and distribution. It is obvious that placement of these competences among areas of shared competence makes no sense; if, in fact, they are *large-scale* transport networks it would be logical to include them in the State's competences, not to mention *national* energy distribution.

With regard to education we should clarify that it got fragmented after the reform of Title V. In fact, among areas of State's exclusive competence there is one referred to a "general education rules", while among areas of shared competence there is "education" (actually the complete sentence should be "education without the autonomy of educational institutions and the vocational education", which are areas of regional residual competence). So the overall picture of this area consists of: "general education rules" as State's competence, "education" with general principles defined by the government and detailed rules by the Region, "vocational education" as regional competence, taking account of the autonomy of schools and universities (the latter already assured by the Constitution of 1948). The main problem is then how to define the difference between "general educational rules" and fundamental principles of the concurrent area "education". The Court clarified this question by giving a tautological answer, stating that general rules are the ones that must be identical across the territory while fundamental principles are those that may be applied differently in the various territories, but this results already form the general difference between these two types of responsibilities.

More generally, it should be noted that the reform of Title V was written very quickly because the legislature was already concluded and its technical accuracy suffered from it, so a number of interpretation problems have been created because of some questionable placements (such as that explained above), because of the difficulty to determine the border between areas and because of some obvious text aporias not corrected in time (for example, in the absence of "road traffic" among areas of State's exclusive competence, each Region could theoretically establish their own traffic code).

Lastly, areas of regional residual competence are not, as we already know, listed, but thanks to the Constitutional case law, we can mention with certainty a number of them.

For example, commerce, industry, agriculture, fishing, handcraft, tourism (and hence, essentially, all economic activities) are included, but also local public transport, social services and vocational education.

Here you can also observe that there are at least two areas (agriculture and fishing) of the EU's areas of responsibility.

It is necessary to make clear that the Regions in their areas of responsibilities participate in both upstream and downstream of the Community law, this means that in delegations to the EU Council there may be also the Presidents of the Regions(upstream), actually the latter could even play the role of the Head of Delegation. Moreover, if there is a European act that requires the implementation, such as directive, it is made by the Regions (downstream) and actually today not only the State has its own European law, but also the Regions because in the areas of their competence the adapt the system to that of the Union.

The Italian regionalism is partly differentiated because alongside the 15 ordinary statute Regions for which the rules are mentioned above, there are 5 special states Regions (three of them included in the Alpine area) with a Statute approved by the Constitutional Law which defined its competences (also) by the way of derogation from the Constitution. Well, following the reform of 2001, that assigned more powers to the ordinary statute Regions, to prevent the risk that these Regions are put at a disadvantage, in conflict with the reason of being special statute Regions, the Constitutional Law **n.** 3 of 2001, rewriting the Title V, specified that for the special statute Regions the most favorable law between the Statute and the amended Title V should be applied. So, if their Statute assigns wider powers than those the Constitution would assign, the Statute applies. Otherwise the Constitution shall apply.

We have referred several time to the Constitutional Case Law and this applies, as we will see, partly to other States we will speak later about. If, in fact, one of the requirements of the federal State is to have a Constitutional justice organ, this organ ends up being important in the definition of responsibilities and its actions often appear quite significant. Also in Italy the case law played a significant role, especially after 2001 because of drafting defects of the reform we mentioned above. So that nobody today could imagine to study the regional law without considering the sentences of the Constitutional Court, since, if we read only what is written in the Constitution, we would have a completely different idea how the institutions operate in practice.

This "judge of laws" activity is particularly important in so far as this made the allocation of competences flexible, which apparently seemed to be rigid. If, in fact, we take a look at the article 17 we can describe it with a metaphor of a chest of drawers in which every item is put in different not interlinked drawers. But the reality is much more complex and the main weakness of the reform is the lack of agreements between the State and the Regions to solve problems of overlapping responsibilities; only the Conference State/Regions exists which, moreover, is provided only by a primary source, thus without constitutional status (at least from a formal point of view).

The case law has had the merit of elaborating 3 mechanisms that made the allocation of responsibilities, imagined in the Constitution, flexible. These are: transversal areas, subsidiarity call, concurrency of competences.

Transversal area: are some State's exclusive competence areas that formulate objectives to be pursued and not a defined object, and legitimize a State's legislation in areas that would actually be Region's areas. For example, environmental and ecosystem protection is transversal, because in order to achieve this goal the State acts in any field and area, even if it is theoretically competence of the Regions. So, there is a dispute concerning the hunting that is the area of regional competence, but where the State acts to protect the ecosystem, specifying what species can be hunted.

Through the transversal areas the State, therefore, expands its responsibilities with the result that this case law has the effect of a re-centralization. The definition of "transversal" arises from the fact that they divide, indeed, transversally the allocation we talked about: essentially the State so not have to worry about the "ownership" of the area because when it acts for a purpose which falls within its exclusive competences, it is however entitled to do so. The most evident case of this "centralizer" effect concerns economic activities that, as we have seen, belong to the regional competence, but that inevitably affects the protection of competition, State's exclusive competence (we have seen it with the liberalization process of recent years).

A Subsidiarity call occurs when the State has to intervene to perform certain administrative functions, as subsidiarity and adequacy lead us to believe that this is the optimal territorial level to perform certain functions. In this case the State also has the power to legislate on that same matter (limited to the function it has to perform). The subsidiarity call was drafted for the first time in reference to the so-called "legge obiettivo" in terms of public works, precisely to allow the State to regulate areas in which it should have intervened due to the inter-regional relevance of the interests involved.

Concurrency of competences (not to be confused with concurrent competence) occurs when reality manifests itself more complex than what the 2001 constitutional legislator had imagined. Thus, for example, it is for contracts with training content (such as apprenticeship), since the regulation of employment contracts, in general, belongs to the State, but that of professional training to the Region. The inflexible text of the article 117 of the Constitution does not provide a solution to exit the impasse. The Court has therefore introduced the concurrency of competences, establishing, that if the area is complex, it has to be verified which is the prevailing subject. If the weight of the subjects is the same, the only solution is the principle of loyal collaboration, through the achievement of an agreement between the State and the Regions.

The activity of the Court has therefore resulted in what was thought of as a dual regionalism assuming much more cooperative characteristics; it is also true that in reality all the above mechanisms play in favor of the State, but it is not less true that this has allowed the reform to work, without the risk of compromising the mechanism of relations between the State and the autonomies.

After the reform of 2001 there would also exist a form of differentiated autonomy governed by the article 116 of the Constitution, under which each region could "negotiate" with the State individually to obtain greater forms of autonomy in matters of concurrent power and in some areas of exclusive state competence. However, so far this mechanism has never been used in the 16 years since its prediction, and the attempts made by some Regions seem to have been strongly opposed by the Regions with special status not even being able to start. We will see if the recent initiatives of Veneto and Lombardy regions, preceded by regional *referendums*, and that of Emilia-Romagna, which followed the text of the constitutional rule, will have more luck.

As far as administrative functions are concerned, the current principle is that which has been defined as "allocation parallelism", in the sense that the Constitution is limited to prescribing that the person who holds the legislative function also decides who should perform the administrative function. This decision must be inspired by the three guiding principles written in Article 118 of the Constitution, namely:

1. *Subsidiarity*. The function must be attributed to the territorial level (and therefore to the body) which is closest to the citizens, therefore preferably to the Municipalities;
2. *Differentiation*. Not all bodies of the same type necessarily have to perform the same functions. Differentiation values subsidiarity more because it allows us to keep the function "down" whenever possible. It would be fundamental in the Italian reality, because in Italy there is a great lack of homogeneity between local authorities of the same type (in particular among the Municipalities);
3. *Adequacy*. The function is attributed to the territorial level that ensures good performance. If the institution guarantees the good performance of the Public Administration it is entrusted to the function, otherwise it goes to the higher level, perhaps only for some bodies (those, in fact, which are not adequate), so as to apply the principle of differentiation.

In short, the Constitution does not tell us who performs the administrative functions. It exclusively tells us how to choose the subject to which to attribute them. The criterion, therefore, is different: while for the laws we know who is responsible for legislating on the basis of the topic, for the administrative functions we do not know who is responsible, but only that there is a preference for the Municipalities, even if the subject will be settled by the single law.

3.2. The territorial autonomies in France

France is a unitary state, although recent reforms tend to privilege regional autonomies, for which limited political autonomy has also been envisaged. Suffice it to say that the French Constitutions have always emphasized the concept of indivisibility of France; while only starting from 1946 did the territorial autonomies (Municipalities and Departments) make their appearance.

The current Constitution of the 5th Republic, in force since 1958, has continued along this line, so much so that the Regions were introduced only in 1982 (despite a first attempt by De Gaulle in the late 60s) with ordinary law, while only in the 2003 they have also been added to the Constitution. In fact, to the 1st Article of the Constitution, which states that "France is an indivisible Republic [...]" it has been added "Its organization is decentralized". In this way, constitutional reform introduces the principle of subsidiarity and manages to reconcile the "dogma" of indivisibility with a new favor for autonomies.

The current title XII in addition to municipalities and departments (whose institution dates back to the Napoleonic times) contemplates the regions, which are divided into three types:

- Ordinary statute regions (21 before the recent reform that reduced them to 12, essentially merging them for the sake of cost containment);
- Collectivities with autonomous statute (Corsica);
- Overseas collectivities.

At the time of their introduction in 1982, the regions had a general competence, taking care of everything that was needed for their territory. The risk of overlaps of functions in a not well defined framework of competences has, however, led in recent years to the French legislators to revise their system of local authorities.

Thus, in 2010, the State eliminated the provision of a general jurisdiction of the Regions, which was then restored in 2014 and finally eliminated again in 2015 (with evident changes in the approach rather close in time).

Today, under the law n. 911 of 2015, the matters on which the Regions are involved are specified by law and concern:

- the economic system, mainly with regard to programming, with a system of plans and projects that must be drawn up at regional level;
- planning aimed at territorial development;
- infastructure, transport, port and airports;
- secondary school and higher education, in addition to vocational training;
- environmental protection (in particular regarding water management);
- access to housing and housing policies (public housing and urban policies)
- preservation of the identity of regional languages (Corsican, Breton, etc.).

The Regions have a political body (the Council) elected directly by the citizens, but do not have legislative power, as is the case in Italy. This shows that France cannot yet be considered a regional state, given that the regions do not have that true political autonomy, which appears mainly in the possibility of giving oneself an autonomous political direction through legislative power. It is true, however, that the French regions have a regulatory power, an element that should not be underestimated if we consider that in the French system of sources there is a regulation reserve, for which there are areas that are regulated (only) by law and others regulated (only) with regulation. So that the regulatory power certainly has a greater weight in France than it has in Italy.

Moreover, with the constitutional reform of 2003, the possibility has been included in the Constitution that, on an experimental basis and for a well-defined object and a delimited time, the Regions can regulate the exercise of their powers notwithstanding the legislative provisions of the State. In this way, some greater regulatory power is attributed to the Regions, even if, in addition to the limits mentioned above, a regional jurisdiction is also excluded where the enjoyment of a constitutional right is at stake. The French regions, in short, are newly established entities with basically administrative functions, with a very limited legislative power to exceptional cases and to certain specific subjects.

The aforementioned law of 2015, in addition to having tried to solve the problem of overlapping competences by eliminating the general competence of the Regions, represents in reality a broader and more ambitious project for the reform of local authorities that has been going on for some time. The same reduction in the number of regions goes in this direction, even if in this case the real purpose was of an economic nature rather than reorganization aimed at achieving greater efficiency.

3.3. Swiss federalism

As already mentioned, Switzerland is a federal state, whose current Constitution dates back to 1999. It is a "new" Constitution, which succeeded that of 1874, which had been amended in so many parts to make a complete rewrite necessary. It can actually be said that the current one is already a different Constitution even with respect to the original text of 18 years ago, because from 2000 to today it has again been subject to numerous rather incisive changes.

Article 3 of the Swiss Constitution perfectly follows the model of federal states, establishing a general and residual jurisdiction of the cantons, which are sovereign as far as their sovereignty is not limited by the federal constitution, and exercise all powers not assigned to the Confederation. Thus we find the typical residual clause.

Along the same lines, Article 42 states that "the Confederation carries out the tasks assigned to it by the Constitution", thus reaffirming the duties of the functions. The following article 43 points out further that "the cantons determine which tasks they fulfill within their competence".

Swiss federalism is certainly a cooperative type of federalism. The proof is the fact that the Constitution expressly (under Article 44, paragraph 3) explicitly states that "any conflicts must be resolved through negotiation and mediation", so that a relationship of exchange and collaboration between the Federation and the Cantons is formalized.

In Switzerland, however, there is a tendency towards centralization, being it true that one of the federal reforms after 1999 has eliminated various matters of concurrent power and many of these have been attributed to the State, while, more generally, the latest reforms have tended to strengthen the federal structures to the detriment of the cantonal ones.

The division of skills is rather complex, being able to identify four types of skills:

- exclusive competencies of the Federation;
- *concurrent competences*, i.e. matters on which the cantons legislate as long as they have not been legislated the Federation, while in the moment in which it legislates federal law prevails over the cantonal one;
- *parallel competences*, in which both subjects legislate by regulating different profiles of the given subject, without the prevalence of federal law over the cantonal one;
- *cantonal skills*.

A difficulty lies in the fact that there is no possibility of delegating powers, so that the Federation cannot delegate the regulation of matters within its jurisdiction to the cantons, being able, at most, to provide, by law, that the cantons adopt supplementary rules.

The conflicts, as mentioned above, must be resolved with "negotiation and mediation", but in any case there is also a constitutional Court, which can sanction cantonal laws that have exceeded their sphere of competence, invading the prerogatives of the Federation. On the contrary, the Tribunal cannot declare federal laws harmful to the cantonal prerogatives illegitimate, which is explained for reasons of a historical nature, given that, originally, it was necessary to guarantee the Federation more than the Cantons.

Chapter 2 of Title III of the Constitution is entitled "Skills" and consists of 72 articles divided by the subject each of them deals with.

Among the exclusive competences there are:

- defense;
- civil protection;
- vocational training (which may seem curious, considering that instead in all other national cases it is a regional competence);
- scientific research;
- statistics;
- sport;
- protection of the environment, fauna and forests;

- banks and insurance companies (which is also explained by the importance of financial activity in the country);
- law and procedure both civil and criminal (in fact, only since 2000, strange as it may seem, in previous years there were different civil and criminal procedures for each canton);
- alcohol and cash games.

Concerning the concurrent and parallel competences there are:

- waters;
- safety;
- public transport;
- energy policy (with the exception of nuclear energy, which is instead assigned to the Federation);
- integration of the disabled;
- help for the elderly and disabled;
- promotion of children and youth;
- foreign policy.

Finally, examples of cantonal skills are:

- school;
- culture;
- protection of nature and the landscape.

The implementation of federal law is in any case up to the cantons (Article 46 of the Constitution), for which there is federalism (not only legislative but) also administrative. The cantons, therefore, are holders of legislative power in some matters, in which they can and must legislate, but are also called to implement not only their law but also the federal one (same as the functioning of Austrian federalism as we will see).

Furthermore, Article 46 of the Constitution provides that cantonal implementation programs financed by the Confederation may be agreed upon. This means that not only the cantons apply federal law, but they can propose special programs and projects to better implement it.

Lastly, it should be recalled that in 2004 the principle of subsidiarity was introduced in the Constitution, so that "in the assignment and fulfillment of state tasks the principle of subsidiarity must be observed" (Article 5a), as a matter of fact " the Confederation only takes on tasks that exceed the capacity of the cantons or which require uniform regulation on its part "(Article 43a).

3.4. German federalism

Even Germany, like other countries we have talked about, saw the approval of constitutional reforms in fairly recent times (early 2000) which also affected the federal state. In fact, the competences of the *Bund* and the *Länder* were reviewed respectively in 2006 and 2009, confirming the federal cooperative type model, that is to say the presence of concurrent competences and forms of connection between the Federation and the Member States through the *Bundesrat* (second Federal Chamber), whose members are emanated from the individual *Länder*.

As regards the division of responsibilities, the German Constitution provides for matters of exclusive state competence (Article 73) and matters of concurrent power

(Article 72), in which (as in Switzerland) federal legislative intervention prevails over that of individual *Länder*. Then, there is the residency clause in favor of the *Länder* (Article 70), which covers all non-exclusive or shared matters. Unlike Switzerland, however, it is possible that the legislative function in matters of exclusive competence will be delegated by law to the *Länder*.

The *Bundesverfassungsgericht* (BVGe), has elaborated, in its jurisprudence, two types of competences not explicitly stated in the Constitution, but of origin, precisely, Pretoria (like the transversal competences in Italy):

1) *connected and ancillary skills*: tools instrumental to those attributed by the Constitution, because
   they are functional to their regulation;

skills "on account of the nature of things": skills that logically can only be attributed to the State.

While in the first case these are skills that can be either attributed to the State or to the individual *Länder*, these ones are necessarily attributed to the State. For example, among these is the definition of federal symbols, such as the flag of Germany, which is logically a state competence even if it does not find an explanation.

The exclusive federal competences are 11 and mainly include:

- foreign and defense policy;
- citizenship and immigration;
- air and rail transport;
- commercial exchanges;
- statistics.

The responsibilities of the *Länder*, on the other hand, are very small in spite of the residual clause operating in their favor. They mainly concern:

- culture (cinema, press, radio and television, museums, etc.);
- health and social services;
- ecclesiastical law;
- urban planning and construction.

The concurrent competences are much more numerous and the concurrent power in Germany foresees three cases:

1) *essential competences*: these are matters on which the Federation can intervene discretely and therefore, the *Länder* legislate to the point where the State does not intervene. These mainly concern civil and criminal law, health, road traffic, etc.;
2) *skills of necessity*: the Federation can intervene in cases where it deems it necessary to guarantee equal living conditions or the protection of legal and economic unity (such as immigration, social security, economic activities);
3) *derogable competences*: competences for which the *Länder* can claim for derogation with respect to the federal legislation (protection of nature, waters, etc.). While for the first two hypotheses federal intervention is required, in this type of competence the chronological criterion is applied, that is to say the law that came into force last applies (and thus establishes who can intervene between Länder and the Federation).

The implementation of law, including federal law, is entrusted to the *Länder* (Article 83) and therefore it is considered federalism (also) administrative as in Switzerland and Austria, except in the few areas in which the State also makes use of the administrative function (defense, diplomacy, transport, financial institutions).

In any case, federal law in Germany provides the autonomy of the *Länder* in the organization and administration of its offices.

3.5. The Austrian federal system

In the Austrian federal system, the division of powers between the Federation and the *Länder* is rigid and complex, being entrusted to lists of subjects, along the lines of Article 117 of the Italian Constitution. The complexity is basically due to the length of articles 10, 11 and 12 of the Austrian Constitutional Law, and among them, in particular, of the Article 10, which lists the numerous exclusive state competences.

The division of powers first of all presents the typical residual clause in favor of the federated bodies, for which all matters not otherwise distributed are the responsibility of the *Länder*.

As far as the matters of federal jurisdiction are concerned, these must be distinguished between those for which the Federation exercises both the administrative and legislative functions (unless delegating the first one) and those (actually the majority) in which the Federation is responsible for the legislation and the *Länder* **for** the execution. Examples of matters of exclusive federal competence are currency, foreign, defensive and immigration policy, transport, civil law, trade, industry, health, environmental, wildlife and water protection.

There is also a concurrent power, which functions as in the Italian system, but which in fact affects, very few subjects, especially in the agrarian sphere.

In the Austrian case, unlike what happened in Italy and Germany, where the Constitutional Courts played such an important role, the situation seems different. Since the Constitution is so precise and detailed, the jurisprudence has often been a mere application of positive law. The only jurisprudential innovation of a certain importance is the introduction of the principle of mutual attention, according to which the federal and the *Länder* regulations must to some extent coordinate and not hinder each other (in essence, a principle similar to that known in Italy as "loyal collaboration").

The *Länder* implement federal law, as we said, in almost all subjects, therefore, as can be easily deduced, they carry out a great administrative activity. Among other things, the Länder can replace the state even in the absence of state institutions.

3.6. A short overview of the Slovenian territorial system

Linguistic difficulties and the lack of availability of studies in other languages on the system of local authorities in Slovenia compel a very concise treatment.

First of all, it should be noted that Slovenia did not have regional autonomies until 2006, so that at the eastern end of the Alps, as in the west, we find unitary states. The only form of territorial aggregation between the State and the Municipalities, up to the reform we will mention below, was the possibility that the Municipalities, on their own initiative, would establish Regions by assigning them responsibilities, something which is very difficult since all bodies not to usually renounce their powers.

In 2006 the Regions were instead introduced by law (remaining however without a constitutional guarantee), but their constitution requires the consent of the municipalities. In any case, the Regions do not have any elective bodies such as the Italian Councils,

consequently resulting in no political autonomy and therefore institutions of a purely administrative nature.

More specifically, the only constitutional provision in this regard (Article 143) states today that "The Region is an autonomous local community that performs functions and takes care of local interests of great importance as well as certain tasks of regional importance established by law". The amplitude of the reference to the law is such that it is up to the law to establish the Regions determining their location and name, and to specify their functions, with the possibility that the State delegates to them individual administrative functions.

Essential references

On the general part

G. De Vergottini, *Diritto costituzionale comparato*, Cedam, Padova, 2013

P. Carozza, I poteri centro-periferia: federalismi, regionalismi e autonomie, in P. Carozza - A. Di Giovine - G.F. Ferrari, *Diritto costituzionale comparato*, Roma-Bari, 2009

M. Volpi, La distribuzione territoriale dei poteri: tipi di Stato e Unione europea, in G. Morbidelli - L. Pegoraro - A. Rinella - M. Volpi, *Diritto pubblico comparato*, Torino, 2016, 359 ss.

European Commission (2015), An EU Strategy for the Alpine Region. Accessed at http://ec.europa.eu/regional_policy/it/policy/cooperation/macro-regional-strategies/alpine/ on 7 November 2017.

EUSALP (2014). Milan Declaration of the Alpine States and Regions. Milan. Accessed at http://ec.europa.eu/regional_policy/upload/documents/Milan_Declaration_122014.pdf on 11 November 2017.

EUSALP (2016). Action Group 1. Accessed at https://www.alpine-region.eu/action-group-1 on 12 November 2017.

On the single countries

AA. VV., *Costituzioni comparate*, Giappichelli, Torino, 2015

R. Bifulco (a cura di), *Ordinamenti federali comparati. I. Gli Stati federali «classici»*, Giappichelli, Torino, 2010

On the texts of the constitutions currently in force

Austria:http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000138

France:http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/la-constitution/la-constitution-du-4-octobre-1958/texte-integral-de-la-constitution-du-4-octobre-1958-en-vigueur.5074.html

Germany: https://www.gesetze-im-internet.de/gg/BJNR000010949.html

Slovenia (in English): http://www.us-rs.si/en/about-the-court/legal-basis/constitution/

Switzerland: https://www.admin.ch/opc/it/classifiedcompilation/19995395/index.html