



The Role of the Prefect in the Italian Legal System

by Professor Gaetano Armao

The Italian constitutional reform of 2001 – namely the part dealing with regional and local authorities – which came into force after being approved by the Parliament and confirmed by a referendum, as well as the important legislative reforms of central and local administration, introduced since 1997, have deeply changed the Italian public administration.¹

Specifically, the constitutional and administrative reforms, strongly debated during the implementation of fiscal federalism (Law 2009/42), adapt the Italian law system to the federalization of public powers phenomena.²

Any approach to the prefectural institute, as it appears today, as a result of the recent changes introduced in the Italian legal system over the last years, cannot be reconstructed by starting from the government representation. Consequently cannot be reconstructed from the fundamental character of several competences of the prefect in Italy, in light of the deep reforms of the Italian public administration in perspective of the “*multi-level constitutionalism*,” the progressive emergence and developments of organs, structure and procedures that creates legal norms and impose such norms on citizens of the different national states.³

1. Brief Historical Reconstruction of the Figure of the Prefect in the Italian System

Historically, the prefect's figure is strictly connected to the birth and development of the Italian liberal State and to its administrative organization. Thus, it is significant that the evaluations of historians and jurists coincide with the definition of Gaetano Salvemini, who reconstructs the liberal period as “*prefettocrazia*” (*prefectocracy*).⁴

This term refers, in a negative sense to a real system of government, where the Prefect consolidated and protected the majority's power, by controlling all political activities in his province. In this manner, the prefect acted like an agent in order to guarantee the government's stability.⁵

As a matter of fact, the historical reconstruction proves to be consistent with the powers assigned to the prefect under the *regio decreto* (royal decree) of 9 October 1861, n. 250, and above all, under the communal and provincial law of 1865.⁶

Although the prefect is commonly referred as “Minister” in the province over which he governs, nevertheless it must be admitted that the communal and provincial law, in case of emergency, conferred to the prefect powers which were not even given to the Minister, thus allowing the former to enforce all provisions considered indispensable in the different branches of service (article 3,

¹ This paper is dedicated to the memory of Professor Francesco Teresi.

² B. Caravitta Di Torritto, ‘Italy: Toward A Federal State? Recent Constitutional Developments In Italy’ (2004) <http://camlaw.rutgers.edu/statecon/subpapers/caravita.pdf> accessed 11 April 2014.

³ G. F. Ferrari, ‘Introduction To Italian Public Law’ (Milano, 2008).

⁴ R. Lauro & V. Madonna, ‘Il Prefetto Delle Repubblica – Tra Istituzioni e Società’ (Il Mulino, 2005).

⁵ R. C. Fried, ‘Il Prefetto In Italia’ (Milano, 1967).

⁶ E. Gustpane, ‘I Prefetti Dell'unificazione Amministrativa Nelle Biografie Dell'archivio Di Francesco Crispi’ in Riv. Trim. Dir. Pubbl., 1984, 1048 Ss.

Testo Unico, Consolidation Act, *cit.*).

Hence, the doctrine of public law of the time was tempted to deduce that “a prefect is in the province a little more than a Minister in the State”,⁷ following a model very close to the French administrative system, from the Napoleonic heritage⁸ where the prefect, in each department, is still the ‘guardian of the authority of the State’.⁹

After restoring in the *Regno* (Kingdom) the title of prefect, assigned during the French rule in Italy to the peripheral of the government, it preferred that of *governatore* as in Savoy’s legislation,¹⁰ because it was connected with the only example of modern administration that Italy had ever experienced. The institute and functions of the prefect were regulated by article 3 of the communal and provincial law of 20 March 1865, n. 2248 annex A, entitled “*Legge per l’unificazione amministrativa*,” (Law for administrative unification) the fundamental provisions of which have been left almost unchanged apart from the recent modifications dealt with in the course of this study.¹¹

By the enforcement of the cited law of 1865 the political choices, as regards the structure of the new *Regno*, were undertaken: thus the principal duty of the prefects, sub-prefects and councillors of the prefecture, was to guide the Local Authorities on the path of the new unitary legislation.¹²

The fundamental function of the prefect was to represent the executive power (until art. 1 l. nr 277 of 1949), in other words, the Government as a whole in its unity over the province to which he belonged.¹³ His main function was to exercise control over the local authorities and defend the public order and security (both in policy and police authority terms). A sort of *relais* between the central and the local government.¹⁴

The prefect was appointed by royal decree, under a deliberation of the *Consiglio dei Ministri* (Council of Ministers) adopted on proposal of the Minister of the Interior (a process that continued over the course of the centuries still the current Federal system). By the same procedure he was moved from one seat to another.

It is clear that the Government exercised the highest degree of discretionary power in the choice of the Prefects, as no qualification was required for their appointment. Equal discretionary power the Government had in moving the Prefects from a seat to another or in case of dismissal. This criterion of appointment corresponded to the notion that the prefect was considered an administrator rather than an official.

⁷ C. Meoli ‘*Il Prefetto Nell’ordinamento Italiano*’ (Firenze, 1984).

⁸ E.A. Withcomb. ‘Napoleon’s Prefects’ in ‘*The American Historical Review*’ 4, 1974, 1089 e ss.

⁹ G. Vedel & P. Devolvé, ‘Administrative Justice In France’ In A. Piras. (ed) ‘*Administrative Law. The Problem Of Justice*’ (Milano, 1997) 347-348. L. Mannori & B. Sordi, ‘*Storia Del Diritto Amministrativo*’ (Bologna, 2001) 108-9.

¹⁰ S. Cassese, ‘Il Prefetto Nella Storia Amministrativa’ In *Riv. Trim. Dir. Pubb.*, 1983, N. 4, 1449 E Ss. N. Randerad, ‘*Authority In Search Of Liberty. The Prefects In Liberal Italy*’ (Amsterdam, 1993). Roma, Ministero Per I Beni Culturali E Ambientali, ‘Autorità In Cerca Di Autonomia. I Prefetti Nell’Italia Liberale’ Ufficio Centrale Per I Beni Archivistici, Pubblicazioni Degli Archivi Di Stato, 1997.

¹¹ G. Zanobini, ‘*Corso Di Diritto Amministrativo*’ Iii (Milano 1949) 64 Ss.

¹² V. Mozzarelli, ‘Voce Prefetto E Prefettura (Diritto Vigente)’ In *Enciclopedia Del Diritto* Vol. Xxxiv, 952 Ss. (Milano, 1985).

¹³ G. Balsamo, R. Lauro, ‘*Il Prefetto Della Repubblica*’ (Rimini, 1992).

¹⁴ S. Cassese, ‘Il Prefetto Come Autorità Amministrativa Generale’ in *Le Regioni*, 1992, 2, 331 E Ss.;

As in France, where – created by Napoleon, but based on the *intendant* of Richelieu – the prefect was an official of the central government and he was responsible for most of the central government functions. He was part of the chain of communication (in both directions) between the lower ranked local units and the ministry of the Interior. He provided advice to local government and he was responsible for the internal order and security within his *Department*. Each Department had, therefore, a prefect who held the balance of the executive power but who is also assisted by an elected *Conseil general*.¹⁵

Under an historic perspective it is important to point out that before 1982, he also exercised supervision (*tutelle*) over the decisions of local authorities and could revoke them on account of illegality by his own authority. Much of the activity of the *Department* and the *Commune* involved provision of public services on behalf of central government. As the doctrine underlined: “*central government, through the prefect, had a very considerable say in the activity of local government.*”¹⁶

V. E. Orlando – the father of Italian public law and Prime Minister during the first world war, clearly observed how the mixed system, both political and administrative, as regards the choice of prefects, was justified because: “*being Prefect, especially in big cities, requires not only strictly bureaucratic abilities, but also a wide open and leading mind, capable of understanding and solving issues of political rather than administrative nature.*”¹⁷

To this important prefect’s role with regard to the State’s organization, corresponds an equally important exterior image, to such an extent that the seats of prefectures, established at important historical palaces in Italian cities, were referred to as “*Palazzo del Governo*” (Government’s Palace). Among the prefect and sub-prefect’s prerogatives the so-called *garanzia amministrativa* (administrative guarantee) was striking. In this regard, they could not be called to account for the discharge of their duties, except to the superior administrative authority. Nor they could undergo criminal trial for any act in discharge of their duties without the King’s authorization and subjected to the *Consiglio di Stato* (State Council) opinion (article 8 of the law n. 2248 of 1865 *cit.*).

Although the majority of the jurists in the liberal period were against the maintenance of this institute, with no correspondence either in the Belgian or the French systems to which the Italian local government law was inspired, the administrative guarantee was retained since its application proved to be useful to protect the functioning of the administrative institutions.

The Italian prefectural system offers a completely different alternative to the French system. In fact there is a deep distinction between a not integrated framework as the Italian one and an integrated system like the French. These two types of prefectural systems have different structure, different functions and different historical origins. The political character of the Italian prefects is meaningful in terms of the necessity to exercise and symbolize the central government control over the local groups and institutions, within an unstable political background.¹⁸

The Prefect represented also the defender of the prerogatives of the Public Administration with regard to the judicial power, and was, therefore, in charge of promoting the attribution of conflicts in order to prevent ordinary judges from interfering within the sphere reserved to the administrative power. However, the direct relationship with the different local realities brought to the point that,

¹⁵ R.C. Fried, ‘*Il Prefetto In Italia*’ (Milano, 1967). M.C. Mascabruno, ‘*Il Prefetto. Dalle Origini All’avvento Delle Regioni*’ Vol. 1 (Milano, 1988).

¹⁶ L. N. Brown & J. S. Bell, ‘*French Administrative Law*’ (Clarendon Press, Oxford, 1993) 32 Ss.

¹⁷ V.E Orlando, ‘*Principi Di Diritto Amministrativo*’ (V Ed., 1925, Firenze, 171 E 172).

¹⁸ Fried (n 5).

within the frame of a uniform legal order, the action of Prefects resulted very different from province to province, with regard both to the socio-economic standard as well as the personality of individual prefects.¹⁹

We are thus in front of a typical 'Fascist prefects' phenomenon in relation to, the progress of career officials, the methods of recruitment and the prevailing bureaucratic culture. In order to assess the extent of the 'Fascistization' of the Interior Ministry we have hence look at how the 'Fascist prefects' operated on the ground and their relations with the Fascist Party in the provinces.

In this regards, it must be pointed out that the prefect became in point of fact "*the arm of central government in the provinces, under the Fascist regime*".²⁰

The communal and provincial *Testo Unico* (consolidation act) (royal decree of 3 march 1934, n. 383) defines, quite in harmony with the concept of state centralism, the prefect as *the State's highest authority in the province*, leading the life of the entire province, over which he has power of 'impulse, coordination and policy-making' in conformity with the 'general guidelines of the Government'.²¹

After the end of World War II, many of the Italian constitutors (especially of the left wing) wanted to eliminate the prefectural institute due to its authoritarian attitude acquired during the two decades of Fascist dictatorship.²² For this reason the Italian Constitution of 1948, makes no reference to the prefectural institute.

Nevertheless, soon after the law of 8 March 1949, n. 277 amended by article 19 of the Legal government law, the formal recognition of the Prefect's status in relation to the other peripheral administrative offices is maintained, by virtue of the recognition of the government's representation in the province, and consequently, of the potentially 'general' character of the field of competence attributed. However, many of the most important competences do not exist anymore, as described in the former text of article 19. The only field of competence remaining unreformed is the "public security" (royal decree of 18 June 1931, n. 773, *Approvazione del Testo Unico delle leggi di Pubblica Sicurezza - T.U.L.P.S.*), or in other words, the competence to take measures in cases of necessity and urgency for the public security.²³

Meanwhile, however, the new text of article 19 removed the 'supervisory' power (*ingerenza 'tutoria'*) of the prefect over the administrative life of Local Authorities (according to a tendency stemming from article 5 of the Constitution and conveyed to the recent amendment of Title V of the Italian Constitution) as the prefectural primacy over the other peripheral offices of the State administration met strong opposition.²⁴

Yet, the prefect maintained a series of specific competences of different genre and in several

¹⁹ R. Malinverno, 'Voce *Prefetto*' in *Il Novissimo Digesto Italiano* (Torino, 1968, Xii, 592 E Ss).

²⁰ P. Morgan, 'The Prefects And Party-State Relations In Fascist Italy' In *Journal Of Modern Italian Studies*, 3, Issue 3, 1998, 241 E Ss.

²¹ V. Bachelet, 'Voce *Coordinamento*' In *Enciclopedia Del Diritto*, Vol. X, Milano, 1962. Portelli, I., Le Controversie Epifanie Della Ricomposizione Del Corpo Prefettizio In Italia, in *Il Lavoro Nelle Pubbliche Amministrazioni*, 2003, P. 419;

²² D. Resta, 'L'evoluzione Del Ruolo E Dei Poteri Dell'alto Commissario Per La Lotta Alla Mafia Nella Normative Diretta A Fronteggiare L'emergenza Mafiosa, In *Rivista Amministrativa* (1990, 2, 154 Ss). G. Melis, 'Il Ministero Dell'interno Dall'unità Al Fascismo' In *Amministrazione Civile, Rivista Del Ministero Dell'interno*, Gennaio 2003;

²³ Resta (n 21).

²⁴ M.C. Mascabruno, 'Il Prefetto. Dalle Origini All'avvento Delle Regioni' Vol 1 (Milano, 1988)

fields. The civilian protection of charges in the field and the organization of general and local government elections (*elezioni politiche e amministrative*), which, according to Sandulli, represents the *properties of the prefectural institute*. This said, the prefect's importance resulted nevertheless notably reduced since the enforcement of the regional system.²⁵ The Regional reform of the 70's has deeply changed the role of the prefects in Italy and in particular way their competences upon the local authorities.²⁶

2. The Reform of the Role of the Prefect with the Act N.300/1999 and the *Regolamento* (Regulation) N.287/2001

Notwithstanding what has been stated so far, the prefect intended as high organ of the State's organization, in accordance as well with the most recent reforms of Italian administration, led to reconsider this figure within the context of the national legal system.

In a period of intense and radical changes in the administration, as the one Italy underwent in the last decade, it seems quite unavoidable to consider the prefect as the natural institutional reference of unitary State's issues at the local level.²⁷

One of the principal characteristics of the Italian public administration was, before the deep administrative and constitutional reforms of the period 1997-2001, the highly centralized organizational structure subjected to some decentralization during the 1970s. This structure, despite being sanctioned by the 1948 Italian Constitution, included the decentralization of significant legislative powers that were delayed and inadequate.²⁸

In the period 1997-98 very important laws entered into force like law 59 and 127 dated 1997 and the legislative decree 112 in 1998, named after the Civil Service Minister Prof. Bassanini. These laws attempted to outline an ambitious, but substantially failed project. In other words to reallocate functions through a heavy decentralization towards regional and local governmental bodies, to restructure state administration and public bodies, to revise policy towards public employees, to reform administrative activity, and in sum, to simplify and liberalize. Many regulations and legislative decrees have been adopted to implement this legislation. Among the most important acts adopted there was the legislative decree n. 112/1998 (*Conferimento di funzioni e compiti amministrativi dello Stato alle regioni ed agli enti locali, in attuazione del capo I della legge 15 marzo 1997, n. 59*) that hands over functions to regions and local government bodies.²⁹

Under the aforementioned laws a territorial distribution criterion was introduced, which assigned some competences to territorial communities, but only of an administrative kind. With regard to this model, the term "administrative federalism" is used to refer to a system in which the periphery, compared to the centre, has administrative functions according to the model of "executive federalism". Such path is qualified for its will to realise a transfer of functions from the centre to the periphery in order to assign, through legislative delegate decrees, to Regions and local bodies all

²⁵ E. Midena, 'Amministrazione Statale Periferica, in S. Cassese (ed), *Dizionario Di Diritto Pubblico* I (Milano, 2006, 275 Ss).

²⁶ V. Mazzarelli, 'Voce Prefetto E Prefettura (Diritto Vigente)' In *Enciclopedia Del Diritto*, Vol Xxxiv, 952 Ss (Milano, 1985).

²⁷ C. Mosca, 'Il Sistema Prefettoriale Di Amministrazione Generale' In *Amministrazione Pubblica*, Iv, N. 19-20-21, Maggio-Ottobre 2001.

²⁸ S. Cassese, 'Gli Uffici Territoriali Del Governo Nel Quadro Della Riforma Amministrativa' in *Le Regioni*, 2001, 869 E Ss.

²⁹ L. Vandelli, *The Administrative Reforms In Italy* (2000, Bologna) 10-11.

administrative functions referred to the local community interests. Such interests are located in each territory both for matters of regional competence or matters beyond them, excluding those assigned to the State legislative competence.³⁰

This basic concept found more than one confirmation, namely in the special legislation of last years, which assigned to the Prefect new competences, who recovers operational powers, developing the general normative precepts herewith in article 19 of the comm. and prov. Consolidation Act of 1934. This is the case of the '*Comitati Provinciali*' of Public Administration and of the '*comitati metropolitani*' (metropolitan committees); the functions in matters of drugs, strikes in public essential services, *anti-mafia*, and statistics; the re-qualification of his role related to the '*autonomie territoriali*' (local self-governments) .

Particularly, it is with the *decreto legislativo* (legislative decree) of 30 July 1999, n. 300 *Riforma dell'organizzazione del governo a norma dell'art. 11 della legge 15 marzo 1997, n. 59*, that it is finally defined the new organization of the peripheral administration and the role of the prefect within the system.

Title III, devoted precisely to the peripheral administration, states in article 11, par. 1, that prefectures are transformed into territorial governmental offices (U.T.G.).

These governmental territorial offices (henceforth U.T.G.) "maintain all the functions which previously belonged to prefectures, assume charge of those competences given in accordance with this decree and, in general, are responsible for all charges of the peripheral state administration which are not expressly assigned to other offices." (article 11, par. 2). In any case, except for the competences expressly assigned to special regions and autonomous provinces.

Thus, the prefect is "*holder of the government's ufficio territoriale in the regional capital and also assumes charges as government superintendent (commissario del governo)*" (article 11, par 3).

However, it is clearly stated that the provisions in the legislative aforementioned decree are not enforced upon peripheral administrative authorities in matters of foreign affairs, justice, defence, treasury, finance, public education, cultural assets and activities, as well as upon the offices whose competences are transferred by the same decree to agencies (article 11, par. 5, d.lgs. 300/99 *cit*).

From an organizational point of view, the decree, replaced the old prefectures by introducing new organs, which constitute the complex body of the U.T.G. (*territorial office of the government*). The prefect, who is in charge of the government local office, is in fact, assisted by a *Conferenza permanente* (permanent conference), which he heads and that is composed by the persons in charge of the peripheral structures of the State.

Similarly, the holder of the government local office in the regional capital is supported by a permanent conference made up of the representatives of the peripheral regional structures of the state.

We assume, from what until now briefly stated, that as a result of the reform of 1999, the Prefect is an organ endowed with general functions, who represents, at a provincial level, the Government in its unity; as prefect, he is holder of the U.T.G. that is the structure to which are conferred all the functions of the State at a peripheral level, except for those relative to some other Administrations expressly stated in the legislative decree 300/99 (Foreign affairs, Justice, Treasury, Finance, Public

³⁰G. Rolla & R. Ceccherini, 'Intergovernmental Relation In Italy' 2000 <http://www.docstoc.com/docs/164706263/Intergovernmental-Relations-in-Italy> accessed 14 April 2014.

Education, Cultural Assets and Activities).

Other changes, occurred with the enforcement of the *decreto legislativo* of 30 July 1999, n. 303, which states, respectively in articles 4 and 10, that “the President of the Council of Ministers avails himself at a local level of the government superintendents in the regions as herewith in article 11, par. 3 of the *decreto legislativo* on the reform of ministries” (that is the decree n. 300/99 *cit.*), and that, always with effect from the date of beginning of the next legislature, “the functions assumed by the offices of Government Superintendent in the regions are transferred to the Minister of the interior, along with the relevant financial, material and human resources”.

Having said that, it is necessary to briefly focus the attention on a certain difference if we compare articles 4 and 10 of the abovementioned decree n. 303. As a matter of fact, while the former confirms the Government commissioner’s functional dependence on the President of the Council of Ministers, although identified, for his personal union of charges, in the figure of the Prefect residing in the regional capital, the latter provides for the functions and competences of the Inspector to be transferred to the Ministry of the interior, thus definitely breaking not only the organic relationship, but also the functional dependence on the Presidency.

By issuing the regulation provided by Decree-law n. 300/99, steps have been taken to specify charges and responsibilities of the head of the U.T.G. (*Ufficio Territoriale del Governo*) to reorganize, within the U.T.G., charges of peripheral offices of other administrations different from those provided in par. 5, article 11 of decree n. 300/99, and to consolidate, the relative structures, ensuring both concentration of mutual services and instrumental functions to be performed in agreement and an organizational and functional articulation capable of exploiting professional abilities, with particular attention to technical competences.³¹

After the Decree n. 300 came in force the art. 10 of the law 28.7.1999, n. 266. The Parliament delegated the Government to set up the new regulation of the prefect's career with the aim to clearly adopt the principle of unitary career of the prefect in Italian administration. The Decree (*decreto legislativo*) 19 May 2000, n. 139, introduced the new employment regulation of prefects and their administrative staff.³²

The regulation, introduced by the *decreto del Presidente della Repubblica* (presidential decree) of 17 May 2001, n. 287, laid down the procedures for the U.T.G. to carry out at a peripheral level functions and charges of peripheral administration, the competence of which goes not beyond the provincial boundaries.

Moreover, it provided for the maintenance of the roles of the provenance when it regards the personnel moved from the peripheral structures to the U.T.G., and for the maintenance of the current legislation as far as the employment and the access to the above mentioned roles are concerned, and maintained the functional dependence of the “ufficio territoriale del governo” or any of its branches on the ministries with respect to issues of competence.

To proceed with our discourse, the Regulation deals in its first article with the structure of U.T.G., establishing that “the Ufficio territoriale del Governo, is the government’s structure at a local level with general competences and is part of the peripheral organization of the Ministry of the

³¹ Lauro & Madonna (n 4).

³² A. Buoncristiano, ‘Il Decreto Legislativo Recante Il Nuovo Ordinamento Della Carriera Prefettizia, In Amministrazione Pubblica’ (2000, 14-15, 105 Ss). C. Silvestro & F. Romano, ‘La Riforma Della Carriera Prefettizia, In Giornale Di Dir. Amm’ (2001, P. 1103).

interior on which it depends.³³

³³ This 'Government Office' Is In Charge Of Ensuring:

"A) Support To The Prefect In Discharge Of His Functions As General Government Representative And Coordinator Of The State Public Administrations At A Local Level And In Discharge Of His Cooperation Functions In Favor Of The Regions And The Local Authorities Involved;

B) Support To The Prefect In Discharge Of His Functions As Provincial Authority For Public Security, As Well As In Discharge Of His Duties In Matters Of Civilian Protection And Defense;

C) Support To The Prefect Of The Regional Capital In Discharge Of His Functions As Government Commissioner, In The Position Of Functional Dependence On The President Of The Council Of Ministers;

D) The Carrying Out At A Regional Or Provincial Level Of Functions And Competences Of The Minister Of The Interior;

E) The Carrying Out At A Peripheral Level Of The Functions And Competences, Which Are Not Assumed By Agencies Of The Ministries Of Productive Activities, Of Infrastructure, Of Transports And Labour, Of Health And Of Social Policies, Availing Himself Of The Staff Assigned By The Respective Administrations;

F) The Carrying Out At A Peripheral Level Of The Functions For Which The Ministry Of The Environment And Protection Of The Territory And The Agencies For Provisions And Technical Controls And For The Industrial Property Decide To Avail Themselves, Under Special Conventions, Of The Government Offices;

G) The Carrying Out At A Peripheral Level Of The Functions For Which The Rules Of Law Or Of Regulation Provide For The Utilization On The Part Of Other State Administrations Of The Government Offices (Art. 1, Par. 2)".

The Regulation Makes Clear That The Government's Office "Maintains All The Functions And Competences Of Prefectures. It Ensures The Carrying Out On The Part Of The Prefect Of Any Other Duty Assigned To It By The President Of The Council Of Ministers, Or By The Minister For The Public Function (Ministro Per La Funzione Pubblica) And By Other Ministers, Heard The Minister Of The Interior, And Exercises All Of Attributions Of The State Peripheral Administration That Are Not Expressly Assigned To Other Offices. Besides, It Ensures The Execution On The Part Of The Prefect Of All Necessary Functional Relations With The Directors, Heading First-Level Offices At Other Ministries".

Subsequently, The Regulation Deals With The New Role Of The Prefect And Establishes That He, "In Discharge Of His Duties As General Representative Of The Government At A Local Level, Avails Himself Of The Government Office, Of Which He Is The Holder:

A) To Provide For, On Request Of The President Of The Council Of Ministers Or Of The Ministers Delegated By Him, The Evaluation Elements Necessary For Carrying Out The Functions Of Impulse, Guidance And Coordination On The Part Of The President Of The Council Of Ministers, And To Execute His Determinations;

B) To Carry Out, In Accordance With The General Directives And Indications From The Presidency Of The Council Of Ministers Or The Ministers Of The Field, Heard The Ministry Of The Interior, Studies, Surveys And Checks For The Purpose Of Rationally Distributing The Competences Among The Peripheral Offices Of The State, By Making Proposals In Order To Remove Any Organizational And Functional Duplications, Either Within Every Peripheral Structure, Or Among Different Structures Or Between Administrative And Technical Organs;

C) To Promote, Also According To The Criteria And Indications From The President Of The Council Of Ministers Or From The Ministers Delegated By Him, The Simplification Of Procedures, The Shortening Of The Times Of Proceedings And The Reduction Of Relative Costs, By Proposing The Making Of Agreements Between Different Authorities And Offices In Order To Regulate The Coordination Of The Relevant Activities And The Terms Of Debasement On The Part Of An Office Of The Structures And Of The Services On The Part Of Another Office;

D) To Foster And Promote, Also In Accordance With The Criteria And Indications From The President Of The Council Of Ministers Or The Ministers Delegated By Him, The Implementation, On The Part Of The Peripheral

The Regulation with all limits and problems to its application correlated with every process of administrative simplification, nevertheless moves towards the right direction, as in periphery there is the need for a single voice, just in a moment of fragmentation of public power.³⁴

The new organizational pattern which identifies the prefect and the permanent State Conference's peripheral administrations with the motors driving innovation and the reorganization of activities, as well as making less bureaucratic all procedures in their local articulations, represents a real challenge which makes urgent the rediscovering of the authentic 'generalist' vocation of the Prefect.

The increased institutional weight of the prefectural organ is also determined by the power assigned to the Prefect in its competence of general representative of the State at the local level, which consists also of the power to promote and sign "conventions", in compliance with the mandate approved during the State-regions Conference, and to summon the *Service Conferences*, whenever the competence of the initiative is up to the State.

Therefore, the Prefect maintains its recognized function as impartial guarantor. This means freedom from any influence of political nature which still characterizes non-State organisms in the province, and which makes him, at the same time (especially in periods of inflamed institutional debate), the Government's collaborator. This role, without any political connotation is well suited to symbolize faithfulness to the State institutions but also to prize the trust the man of the street has in

Offices Of The State, Of Measures Of Coordination In The Relations Between State And Local Self-Governments Defined By The Conference State-Town And Local Self-Governments In Conformity Of Article 9, Par. 5 Of The Decreto Legislativo Of 28 August 1997, N. 281;

E) To Promote Projects For The Institution Of Interservice Centres Shared By More Administrations, Preparing, By Initiative Of The Supporting Subjects,

The Relative Convention Frames, Dealing With Their Realization According To The Terms Provided For Therein;

F) To Promote And Coordinate The Initiatives, Also According To The Criteria And Indications From The President Of The Council Of Ministers Or Of The Ministers Delegated By Him, Aimed At Enforcing The General Laws On The Administrative Proceedings, On The Cooperation Among Public Administrations And On The Technological Adaptation Of The Instrumental Equipment Of The Offices;

G) To Deal With, On Request Of The Public Function Department (Dipartimento Della Funzione Pubblica), The Decentralized Procedures For The Employment Of Personnel Under The Provisions Of Article 36, Par. 5 The Legislative Decree Of 3 February 1993, N. 29."

The Holder Of The U.T.G. Of The Regional Capital, Besides The Functions Provided In Par. 1, Is Also In Charge Of The Functions Of The Government Commissioner In Conformity With Article 13 Of The Law Of 23 August 1988, N. 400 And With Any Other Provisions Regulating This Competence.

It Is Provided That, In Discharge Of Such Functions, "*He Avails Himself Of Other Government Offices Within The Region For The Purpose Of:*

A) Fostering And Promoting The Realization Of Agreements Made During The Conference State-Regions And The Joined Conference In Order To Coordinate The Performing Of The State, Regional, Provincial And Municipal Competences And Of The Other Local Authorities And To Perform In Collaboration Activities Of Common Interest, In Conformity With Articles 4, Par. 1, And 9, Par. 2, Letter C), Of The Decreto Legislativo Of 28 August 1997, N. 281;

B) Verify The Realization, On The Part Of The State Peripheral Offices, Of The Agreements Defined During The Conference State-Regions And The Joined Conference In The Field Of Data And Information Exchange On The Activity Of The State, Of The Region, Of The Province And Local Authorities, In Conformity With Article 6 Of The Decreto Legislativo Of 15 March 1998, N. 112 (Art. 2, Par. 2, D.P.R., Presidential Decree, N. 287/2001 Cit.)

³⁴ Cassese (n 27).

the State representative, and therefore in the Government in charge, representing also a symbol of reliability and neutrality, well aware of the needs of the social community in which he lives and works.

It must be also underlined how the direct election of the organs of the local authority, while on one hand, tends to meet the citizen's desire for the immediate participation in the *res publica*, on the other, it is also partly exhausts the same desire. The prefect's institutional figure allows, in this case, to further highlight the functions of mediator with the central Government, whose he is the reference within the province.

Particularly important is the prefect's role, in his capacity of holder of the regional capital's U.T.G, of the function to promote the realization of the agreements carried out during the State-Regions Conference and the joined conference, for the coordination and collaboration purposes. Added to this, there are also the functions of verifying the realization, on the part of the State peripheral offices, of the agreements defined during the above-mentioned conferences in the field of data and information exchange.³⁵ This means functions, which allow the outlining of an instrument for guaranteeing the concrete application of coordination, and collaboration guidelines defined at a general level within the competent institutional seats. (art. 2, par. 2).

Therefore, the role of State's general representative at the local level is also accompanied by the power to promote and make conventions aiming at regulate, in compliance with the guidelines approved during the State-regions Conference, its terms of implementation. This included, for the State or for the Regions or offices belonging to one or the other authority, the power to summon the conference of services for the care of state interests or, in case of connected administrative proceedings, whenever it is requested by regional representatives or the local authorities involved (art. 3, *Reg. cit.*).

The general role assigned to the prefect as representative of the government finds further confirmation and support in the establishment of the 'Permanent Conference', presided by him and composed of persons in charge of the peripheral structures of the State (art. 4, *Reg. cit.*).

Therefore, such organism of collaboration discharges the U.T.G. holder of his function as coordinator at the local level of the state public administrations, destined to replace the public administration *Comitati provinciali e metropolitani*, which in the meantime have been suppressed (art. 16, *Reg. cit.*). Special rules are provided for the identification of the subjects invited to participate to the Conference meetings.

It's important to underline the fact that in order to give concreteness and coordination to the activities of this kind of organisms, they will be subdivided into sections, corresponding to four areas or organic competence, in accordance with the frame provided in the legislative decree of 15 March 1998, n. 112. Hence, this was a serious attempt to develop conference specialization in a broad range of activities such as administration of order, economic development and productive activities, territory, environment and infrastructures, services for people and community. This in order to avoid the establishment of organisms characterised by an excessively complex composition.³⁶ Moreover, the composition of sections changes depending on whether these operate at a provincial or regional level.

Finally, the provision also emphasizes the importance of the participation of single sessions of the conference of representatives of socio-economical and professional categories, university institutions, of authorities for public services supply, as well as experts, in order to ensure a highly qualified support to the decision-making process.

³⁵ C. Fracchini, 'L' Organizzazione' in S. Cassese (ed.) 'Trattato Di Diritto Amministrativo. Diritto Amministrativo – Parte Generale' (Milano, 2003, 296 E Ss).

³⁶ Lauro & Madonna (n 4).

It has been provided that to the conferences are invited to participate also the representatives of regions, provinces, commons and other local authorities, which may be interested, thus guaranteeing the opportunity of exchanging evaluations and a global and combined visualization of the problems of the public administration. We cannot neglect to underline that under the statement of *d.P.R.* (presidential decree) n. 287, the President of the Council of Ministers has the power to introduce general directives related to the functioning and activities of the permanent conferences and that he can also provide for their convocation. This power is connected with the coordination functions of the President of the Council of Ministers and is exercised, after hearing the Minister of the Interior (art. 5).

In order to better understand the institution of the U.T.G. very useful appears the explanatory *circolare* (circular) of the *Direzione Generale del Personale* on the functioning of the U.T.G. (Circ. Prot. M/3110) of 18 July 2001. By confirming the innovative finality of the institution of the Government Offices, dictated by the rationalization principle of the state peripheral representation – stated in art. 12, par. 1 of the law n. 59/1997 – and by the joining of the many state presences in the territory, the circular contributes to the redefinition of the “institutional geography at a local level”, by ensuring the necessary integration and cooperation within the system of local self-governments.

The circular clarifies the organization of the Governmental Office as stated in the Regulation.

As aforementioned, the opening provision of the Regulation states, by a summary formula, the institutional role and the structural arrangement of the office. From a certain point of view, the U.T.G. is qualified as “structure of the Government at a local level endowed with general competences”, while under the second, it is stated its dependence on the Ministry of the Interior, of the peripheral organization of which the office organically belong by virtue of art. 15, par. 2, of *decreto legislativo* n. 300/1999 (art. 1, par. 1). In regard to the duties assigned to it, the provision gives a systematic list (art. 1, par. 2).

Expressly mentioned are those duties of support to peculiar powers of the Prefect in matters of general representation of the Government, of coordination of state public administrations in the territory, of protection of public order and security, of civilian protection, of civilian defence and of collaboration with the regions and local authorities, as well as the duties connected with the functions of Government commissioner exercised by the Prefect in the regional capital

Lastly, in this connection the circular makes clear that art. 62 of the *decreto legislativo* of 30 March 2001, n. 165, has stated that the *Commissariato del Governo* represents the State in the regional territory until the enforcement of the regulation here referred to. However, it must be noted, that in the subsequent months after the enforcement of the Regulation, the constitutional reference framework has been radically changed by the introduction of the constitutional law of 18 October 2001, n. 3, which reformed the Title V, part II, of the Italian Constitution. For reasons of systematic nature, we think it useful to deal with these modifications and with the perspectives *de iure condendo* in the final part of the present contribution.

Substantially the configuration of the office is new, as a structure at a peripheral level of the duties of the Ministry of the Interior, at a twofold level of territorial competence, both at the regional and provincial level. It maintains all the functions assigned to the Prefectures, to which are added those at a peripheral level of Administrations, the structures of which are supposed to be concentrated in the U.T.G., as well as the duties of other State administrations, which intend to profit by it. In compliance with the attribution of the U.T.G. to qualify the “*structure of the Government in the territory having general competences*”, the *d.P.R.* (presidential decree) n. 287 makes explicit the power of the President of the Council of Ministers and of the single Ministers, to endow him with any other duty, heard the Minister of the Interior, by investing him with the residual competence to exercise in all those administrative duties of the State’s peripheral administration which are not expressly attributed to other offices (art. 1, par. 3).

The organizational framework resulting from the provisions of the regulation is a unique structure, which incorporates all peripheral offices of the State administration, and which works by concentrating the relative procedures and services supported by a permanent conference where the persons in charge of the peripheral structures of the State are all gathered.

The new offices will replace the prefectures, the Government commissioner and the peripheral offices of a series of Ministries [infrastructures, transports (*motorizzazione civile*) and labour (*Direzione Regionale e Provinciale*), health and social policies (*uffici veterinari e di sanità marittima e aerea*), productive activities], incorporating them again in a single structure with the above mentioned different duties. In other words, the U.T.G. is not meant as a sum of the offices flowing in, gathered under principles of pure rationalization, but more precisely, as a new model of presence of the State on the territory, a point of junction with the system of local self-governments, organized like a sort of unique entity counter serving the people.³⁷

The creation of an unitary structures for exercising common services to all articulations of the office, in truth, meets the exigency of rationalization and economization of the administrative action and which is one of the fundamental steps of the reform, which we think could be extended also to other decentralized State's offices which have not much familiarity with the administrative and economic management.

From a functional point of view, the U.T.G., maintains the attributions already reserved to the Prefects, as well as it shall be called to exercise those functions until accomplished by the peripheral offices concentrated in them. More generally, we can say that the U.T.G. will be in charge of all those functions of the peripheral State administration which are not expressly assigned to other offices (cfr. art. 11 *cit.* par. 2).

Thus, Territorial Offices of the Government are in charge of exercising, according to the suggestive definition of Minister Bassanini, the role of *aircraft-carriers of the State on the national territory*, as it is worldwide with the representations of the Ministry of Foreign Affairs.

In compliance with a precise criterion of exercise of regulatory powers, the provision then defines the duties of the Prefect, as general representative of the Government on the territory.³⁸ Notably, the duties, which are expressly stated, are those directly functional to the power of impulse, guidance and coordination of the President of the Council of Ministers, to the abolition of organizational or functional duplications and to the simplification of the procedures. But also for the introduction of coordination measures between the State and the local self-government authorities defined by the Conference State-city and local authorities, for the implementation in the administrative system of general laws on proceedings and to the promotion and cooperation (art. 2).

An important instrument for exercising the essential functions of coordination and guidance, will be the "*Regional and provincial permanent Conferences*" presided by the prefects, in which will participate the persons in charge of the other peripheral offices of the State, of the peripheral structures of the public authorities at a national level and of the other public authorities at a provincial level, with some significant exceptions, such as the persons in charge of the peripheral offices of the new agencies which will be instituted at a local level.

³⁷ C. Mosca, 'Il Sistema Prefettoriale Di Amministrazione General' in *Amministrazione Pubblica*, Iv, N. 19-20- 21, Maggio-Ottobre 2001.

³⁸ Lauro & Madonna (n 4).

From time to time, invitations will be made to the representatives of the local authorities or of the trade unions, of the productive and associative world, or that associated with university or culture. This organism replaces the old *Comitato provinciale della pubblica amministrazione*, recently used by many prefects for explaining and discussing about the reforms in progress and which will be subdivided in sections corresponding to organic fields of subjects (art. 4, par. 2).

As regards the terms of functioning of the Conferences and the identification of the subjects called to participate in it, the provision supply for a detailed analysis.

In conclusion, it is necessary to underline how *d.P.R.* (presidential decree) n. 287 assigns to the President of the Council of Ministers the power to introduce general directives with regard to the functions and activities of the permanent conferences, and provides for their convocation. The latter power is connected with the coordination duties of the President of the Council of Ministers and is carried out, in concert with the Minister of the Interior (art. 5).

Besides the above stated considerations, a deeper analysis of what else is labelled as “non-codified prefectural function” leads to enucleate new and multifaceted spaces for territorial intervention, being the U.T.G. the only peripheral office of the State with general competences, in which the citizen may find the answer to a question that is of government and order, of whatever solution of instances of any nature and in any sector of collective, public or private life.³⁹

Therefore, if the prefect and the prefecture have, from the beginning, a sort of functional hinge either for the development of the democratic system or for the peripheral control, acting as means between the body of electors and the central Government, however these institutional functions have been absorbed, exclusively and consistently with the constitutional precepts, by the political parties. Progressively, by the separation of the functions between Ministry of the Interior and the Presidency of the Council of Ministers, the peripheral apparatus lost its original power, by transferring many of the competences to other administrations, to become more and more the institutional reference of the relations centre-periphery, as a result of the reforms of the Local Authorities (EE.LL.) and of administrative decentralization, realized in the '70s and above all in the '90s.

Recently, however, the crisis of the political parties, caused as a consequence, a multiplier effect, in consideration of the number of subjects in charge with functions of “driving belt”, to the transfer of the local demand towards the centre.

By enforcement of the powers of local self-governing authorities and the direct choice of the so called local governors (Mayors, Presidents of the Province and of the Region), on the citizens' part, we have assisted to an inexorable proliferation of institutional subjects, endowed with functions of *junction* between centre and periphery.

If we include, then, the participation of ANCI (National association of Commons) and UPI (Union of Italian Provinces) to the intermediation processes, a decision-making polycentrism of this kind risks to lead to a real institutional congestion, as far as the care and representation of general interests are concerned.

³⁹ *Ibid.*

Hence, in the function of coordinator of the State's activities at a peripheral level, the prefect has been provided with instruments aimed at promoting its role and administration, with other local authorities: prefects will be responsible of procedure and proceeding simplifications as well as of making proposals to the Government for the abolition of any organizational or functional duplications. Therefore, it is clear that a section of the statute of peripheral state administration should be inspired by the same principles already applied for the local government.

As maintained in doctrine, the abovementioned reforms, clearly marks the passage from the *peripheral* administration to the *territorial* one, which is defined as such not for the fact of being in periphery, intended as a far place from the centre, but because as a matter of fact it operates on the territory. The government functions, and in general all the remaining operative functions, are attributed to territorial authorities being the natural (though not exclusive) interlocutors.

3. The Role of Prefects in the New Constitutional Italian System

The reform of the Title V of the second part of the Italian Constitution (Constitutional Law n. 3/2001) has deeply changed the administrative system of power amongst central State and local authorities (Region, Province, Municipality, Metropolitan Areas) and has devolved significant powers from the centre. A whole section of the Constitution (section V of the II Part, articles 114-133) was revised (if we also consider the amendments adopted two years before on the system of election of the Regional Presidents and on the "constitutional autonomy" of the Regions (Constitutional law n. 1/1999 (and constitutional law n. 2/2001 for the "special Regions)).

Moreover this amendment process, that lasted for a whole decade, with a succession of different bills prepared by different governments or by parliamentary commissions, took place under the influence of foreign constitutional models.

It can even be argued that there was an excess of consideration for foreign models and a lack of attention to the consequences that could be produced by such models' implementation, or by elements of them, once introduced in the Italian Constitution (and this could be one of the causes explaining the problems now arising in the process of implementation of the constitutional reform).⁴⁰

In particular, the new Constitutional rules provide full autonomy to the local Authorities (art. 117 ss.), with the correspondent dilution of any governmental power of control, with the exception of the models regulated by the Constitution.⁴¹

It's important to underline that in Italy the amended art. 117 of the Constitution assigns to the State the sole legislative power on matters such as, «*electoral legislation, local government and fundamental functions of Municipalities, Provinces and Metropolitan Cities;*» (art. 117, paragraph 2, letter. p), but according to par. 4 of the very same article, the Regions have the unique legislative power for all other matters concerning local government. In addition to this, the EU law tends to transversally overlap with the legislative power of the State and the Regions and also to affect the administrative powers of local authorities.⁴²

⁴⁰ M. Olivetti, 'Foreign Influences On The Italian Constitutional System' (2004) paper presented at the 6th World Congress of the International Association of Constitutional Law, Santiago, Chile <http://www.iacl-aidc.org/en/> accessed 14 April 2014.

⁴¹ T.E. Frosini, 'Introduction To Italian Fiscal Federalism' <http://www.federalismi.it/> N. 19/2009 accessed 14 April 2014.

⁴² C. Bologna, J. O Frosini, P. Leyland, 'Regional Government Reform In Italy: Assessing The Prospects For Devolution' in C. Bologna, J. O Frosini, P. Leyland, A. Ross Robertson, M. Salavdor Crespo, 'Europe, Regions And Local Government In Italy, Spain And The United Kingdom - Europa, Regioni Ed Enti Locali In Italia, In Spagna E Nel Regno Unito' (Bologna, 2003, 65 Ss).

Indeed, one of the main characters of a federal Constitution, the grant of a “*general clause*” in favour of the legislative competence of the Regions (that are, in Italy, the equivalent of the American member States), was actually introduced in the Constitution. Art. 117, par. 4, now states that “*The regions have exclusive legislative power with respect to any matters not expressly reserved to State*” and par. 1 of the same article places on the same level State and regional legislative powers (with the exception of cases in which the Constitution states otherwise). This kind of solution encounters many difficulties in being accepted in a country where the national government is still considered as the general problem solver, also when a given matter lies now under the Regional competence.⁴³

Nevertheless the introduction in the Italian legal system of a criterion, in a way alien to its culture, is being refused at the moment, both from part of the Italian constitutional lawyers (many of which seek in the text of the Constitution clauses that could allow to reintroduce the general competence of the State) and from the Constitutional Court itself.⁴⁴

The Constitutional reform (*Legge costituzionale*) of 18 October 2001, n. 3 completely reforms the Second part of Chapter V of the Italian Constitution, which regulates the powers of the regions, provinces and municipalities. The new Constitution allocates powers to the central state and the regions in a new way. Regions now play a central role.

A further attempt to change the entire Second Part of the Italian Constitution, which envisaged a federal organization of the State and an even more extensive reallocation of administrative powers was approved by the Parliament on the 23rd of March 2005, (*disegno di legge costituzionale n. 2544-B*), but it was definitively repealed by a *referendum* held on 25 and 26 June 2006.

The Constitutional reform of 2001 allows regions, as well as the government, to legislate on certain subjects, with the exception of amendments to the fundamental principles, which are reserved to the central State legislative competence. Regions are granted “concurrent legislative powers” (*potestà legislativa concorrente*) with the central State on subjects such as: international and EU relations at the regional level; the protection and safety of labour; education; scientific and technological research; support for innovation in productive sectors; health protection; and supplementary and 'integrative' pension schemes. The regions are granted exclusive legislative power in areas such as industry, tourism, commerce and vocational training,

It must be said that the constitutional reforms of 2001, significantly overhauled the relationship between the legislative powers, the State's ones and those of the regions. Article 117 of the Constitution sets out the exclusive competencies of the State (for example, foreign policy, defence and armed forces, the administration of justice, immigration, etc.) and the concurrent competencies of the State and regions, whereby the former lays down the basic principles in a national law and the latter specify the contents in more detail fashion through regional laws (for example, foreign trade, health care, scientific research). All the other matters not specified in the Constitution fall within the competence of the regions, which in effect amounts to a residual competence in their favour.⁴⁵

The introduction of concurrent legislative powers triggered a conflict of competence between the central and the regional institutions. The concept of parallel legislative powers leaves room for discretion to both the regional and national legislators, and resulted in a series of disputes between the institutions, which have made frequent recourse to the Constitutional Court (*Corte Costituzionale*) in order to have their rights recognized. This conflict virtually paralyzed the institutions and thus substantially blocked the constitutional reform.

⁴³ Cassese (n 27).

⁴⁴ Olivetti (n 39).

⁴⁵ Frosini (n 40).

In regard to the subject of administrative functions it is very important to underline the new art. 118 of the Constitution provides that “*Administrative functions belong to the municipalities except when they are conferred to provinces, metropolitan cities, regions, or the State in order to guarantee uniform practice; the assignment is based on the principles of subsidiarity, differentiation and adequacy*”. *Municipalities, provinces and metropolitan cities have their own administrative functions and, in addition, those conferred to them by the law of the State or the region according to their respective fields of competence.*” The effect is that Municipalities have an enhanced administrative role and regions have the responsibility to administer matters on which they legislate.⁴⁶ To implement the Constitutional reform, the Government has submitted a law project to the appraisal of the Parliament (d.d.l. *La Loggia*).

In this sense, this reform provides guidelines concerning, particularly, the function of the prefect as the Government’s commissioner, as included in the new law n. 131/2003 (i.e. *Law La Loggia*) approved by the Parliament in 2003, with the purpose of enacting the constitutional reform. In this respect, a preliminary statement seems to be necessary. When dealing with the powers assigned to the Prefect under the legislative decrees nn. 300 e 303 of 1999, we also mentioned his function as the Government’s commissioner and the powers assigned to him for carrying out such specific tasks.

However, by a recent amendment to the Title V, Second Part, of the Italian Constitution, article 124 Cost, which introduced for the figure of the Regional Commissioner (Government superintendent), was repealed, and in the same way Regions no longer exercise control over local administration.

To fill the void created by the explicit repealing of the constitutional act, in compliance with the innovations of the constitutional reform of 2001, and attempting to “replace” the functions already carried out by the Regional Government Commissioner, the Minister for the Regional Affairs Sen. E. La Loggia proposed an appropriate Law concerning “*Disposizioni per l’adeguamento dell’ordinamento della Repubblica alla legge costituzionale 18 ottobre 2001, n. 3*”.

The goal of this act, as aforementioned, is to implement the constitutional reform. Specifically, on the matter we are dealing with, special provisions are provided for the institution of the State Representative, when relating with the self-governmental system, whose functions are carried out by the prefect, as holder of the *Ufficio territoriale del governo* in the regional capital. Art. 10 of law 131/2003, in fact states that “*In every region under ordinary statute (regioni a statuto ordinario) it is established a State representative for the relations with the system of self-governing authorities*”.

Particularly, the aforementioned art. 10, after declining the functions assigned to the State representative, which in the end closely traces those already assigned to the Government commissioner, revised and corrected in the light of the constitutional and administrative amendments made (see in this connection the possibility for the prefect to ensure the observance of the principle of loyal collaboration between state and region as well as the junction among State institutions on the territory *also by means of the conferences as in art. 11 of the decreto legislativo of 30 July 1999, n. 300* [cfr. art. 8, par. 2 lett. a) of law 131/2003 *cit.*]), establishes that the prefect, in discharge of his functions as holder of the *Ufficio territoriale del Governo* in the regional capital “*avails himself for this purposes of the structures and employees of the U.T.G.*” (art. 10, par. 3).

Finally art. 10 of the last paragraph, states that “*In the rules of the legal order, that are in conformity with the dispositions of the constitutional law of 18 October 2001, n. 3, the reference to the Government commissioner is meant to the prefect, holder of the U.T.G. in the regional capital as representative of the State*”.

⁴⁶ Caravitta Di Torritto (n 2).

Let us make a mere note on this occurrence with regard to the Regional Statute of the Sicily. The Sicilian statute, in fact, unlike other regional statutes, assigns to the Government commissioner exclusively the function of control over regional laws, providing that the syndicate of constitutionality of Sicilian laws is carried out under a special procedure (artt. 28 e 29 of the *Statuto della Regione Siciliana* and the abolished art. 124 of the Constitution). Indeed, it fails any reference to the Government commissioner and to his functions in accordance with those of which we have mentioned so far.

In order to conform the extant these provisions assign new function to the prefect, it is made clear that the appointment measure to the prefecture is taken in agreement with the Minister for the regional affairs (art. 8, par. 4), as well as the substitution of art. 4, par. 3 of legislative decree n. 303/99 and the cancellation only of paragraph 3 of art. 11 of legislative decree 300/99, stating: "*The prefect holder of the Government territorial office in the regional capital also takes in charge the functions of Government commissioner*".

In the light of this rule, the Constitutional Court with the decision n. 314 of 2003 has retained compatible the figure of the Government commissioner with the reformed Constitution and the powers that the Sicilian Statute recognized to him (specifically to promote judgement on the control of constitutional legitimacy of regional laws).⁴⁷

The new Title V of the Constitution reflects a vision of institutional pluralism in which the central government, regions and local governments ideally have equal standing. On the legislative side, parity among them is not, nor can it be, complete. The central government has exclusive powers over the "State's tax and accounting system", while the regions acquire the concurrent legislative power to coordinate local finance and the exclusive legislative power to institute regional and local taxes. Equal status implies recognition of the "financial autonomy of revenue and expenditure" of municipalities, provinces, metropolitan cities and regions. Compared with the "old" Article 119, the explicit reference to "revenue and expenditure" is meant to underscore that the power to spend must be flanked by a corresponding competence in the tax field.⁴⁸

In this perspective, Law 42/2009, sets out the measures for implementing fiscal federalism "*Delegation to the government in the matter of fiscal federalism further to article 119 of the Constitution*", with the task of adopting legislation to establish and organise fiscal federalism. It should be said that the principle that informs the law is "*institutional loyalty among all levels of government*", which applies to the whole process of implementation of fiscal federalism, as well as the principle of "*participation by all public administrations in attaining the objective of the national public finances consistent with the restrictions imposed by the European Union and international treaties*".⁴⁹

⁴⁷ A Ruggieri, 'Il Controllo Delle Leggi Siciliane E Il 'Bilanciamento' Mancato' (2003) <http://www.forumcostituzionale.it/site/> accessed 14 April 2014. F. Teresi, 'La Inaspettata Cristallizzazione Del Sistema Di Sindacato Costituzionale Delle Leggi Siciliane Prevista Dallo Statuto Speciale In Una Discutibile Sentenza Della Corte Costituzionale' (2003)) <http://www.forumcostituzionale.it/site/> accessed 14 April 2014.

⁴⁸ M. Savino, 'The Institutional Problems Of Fiscal Federalism: The Necessary Reforms, In The Review Of Economic Conditions In Italy' (3/2009, 417 Ss).

⁴⁹ Frosini (n 40).

4. The Prefects in the Last Regulation

To implement the constitutional reform and the law n. 131/2003, it was emanated the legislative decree of 21 January 2004, n. 29 which amended the entire art. 11 of the decree 300/99 making it compliant with the constitutional reform of 2001. In fact, the new general administrative function recognized to local authorities (municipalities, provinces and metropolitan cities) by art. 118 of the Constitution, imposed a reconsideration of the last regulation.⁵⁰

The U.T.G. is now renamed "*Prefettura-Ufficio territoriale del Governo*". In other words, the prefectural institute recovers its original denomination and enforces the role of the prefect in the field of coordination of the administrative activities of other State peripheral offices and to guarantee the implementation of the principle of loyal collaboration of these offices with the local authorities (art. 1, *regulating the coordination of the relevant activities*).⁵¹ In this new role the prefect "*have competence over all functions that have not been specifically attributed to specific offices*".⁵²

The Decree of 2004, from a certain point of view, as in the past, rules two kinds of Commissions. The first Commission (*Conferenza regionale permanente*), established in the *Prefettura-Ufficio territoriale di Governo* of any capital of Region composed by the Prefect, who is in charge of the government local office, and by the persons in charge of the peripheral regional structures of the State. Similarly, the Prefect holder of the government local office in the capital of the Province is supported by a permanent conference made up of the representatives of the peripheral structures of the State.

The "*Prefettura – Ufficio Territoriale del Governo*", by means of the First Commission has a significant role and it is a true institute of social mediation, a clearing house of local level conflicts, which is intended to bring together the greatest possible number of territorial authorities.

More recently, the Presidential Decree n. 180/2006, stresses even more the relationship between the "*Uffici Territoriali di Governo*" and local authorities.

Art. 2, lett. c) of the aforementioned decree, which introduces new rules related to the "*Prefetture – Uffici Territoriali del Governo*", provides that the Prefect "*supports and promotes, also referring to the criteria and guidelines given by the Prime Minister or by the Ministers delegated by the latter, the implementation by State peripheral bodies, of the coordination measures in the relationship between State, local authorities, defined by the "Conferenza Stato – città ed autonomie locali" as provided by art. 9, comma 5, of the legislative decree of August 28th 1997, n. 281. For this purpose, with apposite decree of the Prime Minister, will be defined the coordination steps between the Prefetture and the Peripheral offices of the Conferenza Stato-città ed autonomie locali*".

Therefore, there is a greater coordination than before between the *Prefetture* and the *Offices of the Conferenza Stato – Città e autonomie locali*, for the exchange of information and the acquisition of common interest for the purpose of ensuring the efficiency of the administration to public interest.⁵³

⁵⁰ L. Violini, 'I Nuovi Uffici Territoriali Di Governo: Quale Rapporto Con Il Sistema Delle Autonomie?' in 'Le Regioni' (2001, 241 Ss).

⁵¹ M. Cammelli, 'Un Passaggio Chiave Del Federalismo Amministrativo: Il Riordino Dell'amministrazione Periferica Dello Stato' in *Aedon*, 1998 <http://www.aedon.mulino.it/archivio/1998/2/camme.htm> accessed 14 April 2014.

⁵² D. De Pretis, 'Italian Administrative Law Under The Influence Of European Law' <http://www.ipl.eu/archive/2010/issues-11/italian-administrative-law-under-the-influence-of-european-law> 2010/1, 23 accessed 14 April 2014.

⁵³ C. Mosca, '*Il Prefetto. Rappresentante Dello Stato Al Servizio Del Cittadino*' (Rubbettino, 2010).

The provision of art. 2 lett. c), of the Presidential Decree n. 180/2006, has been recently fulfilled in the Prime Minister's decree of 27 July 2007, which disciplines the exchange of information and the acquisition of elements "to provide concrete implementation of coordination measures and promotion of initiatives in order to verify the functioning of the administrative system".

As also provided by Art. 2 of the Decree, the Secretariat of the "Conferenza Stato-città autonomie locali" has the duty to inform the "Prefetture-Uffici territoriali del Governo" of many activities and especially of "every element which may be of interest for the activities "Prefetture- Uffici territoriali del Governo" and of the e delle "Conferenze Permanenti" as referred by art. 4 of the decree n. 180/2006".

At the same time, the Secretariat of the "Conferenza Stato-città autonomie locali" can ask the "Prefetture-Uffici territoriali del Governo" all necessary information for the activities of the Conference and the Prefect that will be enabled to make proposals to the Secretariat for technical evaluation of all the main themes dealing with the relationship between peripheral offices of the State and local authorities.⁵⁴ New relevant prefect's competencies are connected with the economic crisis. The Law Decree n. 185/2012, converted by the Law n. 2/2009 (art.12 c.6), created the "Monitoring centre of credit" (*Osservatorio sul credito*) in all Italian region's capital. The prefect became a "social mediator" with the task of monitoring credit services and to protect bank's costumers.

During 2010 the Centres ceased The Law Decree n.29/2012, converted by the Law n.62/2012 (art.1 bis), established the National Monitoring Centre of credit services. In this contest the prefect can apply the Banking and financial ombudsman (*Arbitro bancario e finanziario*) in the procedure for the settlement of disputes between customers and bankers intermediaries.⁵⁵

The Law Decree n. 95/2012, converted by the Law n. 135/2012 (art.10), related to the measures of spending review, gives to the prefect new competencies on general organization powers with the task of efficiency of territorial State administration.

As some authors have correctly expressed their opinion, it seems that the Prefect is assuming a different role, along with the changing of relationship between politics and administration. Hence, this is the birth of a new model of prefect capable of ensuring in the peripheral contexts the union and coordination of the State functions, guaranteeing a substantial legality and compliance with fundamental rights.⁵⁶ Conclusively, the prefect will provide the functioning of a plural structure and, at the same time, will ensure the accomplishment of the principles of the Italian Constitution.⁵⁷

In sum, the new prefect's competences include new functions in a perspective inspired by the role of problem solver of social, economic and administrative problems according to Fried's analysis about the striking characteristic of the essentially intact endurance of the prefectural system throughout modern Italian history "organized in much the same way to serve much the same purposes".⁵⁸

⁵⁴ S. Paino 'Per Il Prefetto Un Futuro Da Sentinella Dei Diritti, In Amministrazione Civile' (2008, 12 E Ss).

⁵⁵ E. Minervini, 'L'arbitro Bancario Finanziario Ed Il Prefetto, in *Le Nuove Leggi Civ. Comm.*, 2013, N. 4, 735 Ss.

⁵⁶ E. Midena, 'Amministrazione Statale Periferica' in S. Cassese (ed), 'Dizionario Di Diritto Pubblico' I, (Milano, 2006, 275 Ss).

⁵⁷ Paino (n 53).

⁵⁸ Fried (n 5).

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