

ABSTRACT

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The principle of adequacy is a young principle, its first track is in the Law. n. 59 of 1997.

In the field of administrative law it states that the organizational entity, which potentially holds an administrative power, it must have an organization suited to ensuring the effective exercise of such authority; the adequacy should be considered with respect to both individual entity, both entities associated on the other end for the exercise of administrative functions. The combined effect of this principle with the principle of subsidiarity shows that if the local authority which is entrusted to an administrative function for which the principle of subsidiarity should be the one closest to the citizen in custody, it does not have the organizational structure to make the service. This function must be attributed to higher territorial administrative entity. While the principle of subsidiarity is the most possible on the floor "by the regulations," the principle of adequacy and what's possible in terms of the organizational suitability". The first chapter reviews the nature, the functions and the sources of such regulations principle. Regarding the first aspect, already from the definition, we can deduce a strong bond with the subsidiarity: the subsidium, in fact, is a second line of reserves, if the first is not likely

to secure the exercise of administrative functions. In fact, according to some commentators, the adequacy should be absorbed by subsidiarity of which it is a mere expression, so surprising that the legislature intended expressly constitutionalize a principle which has no independent existence, but only implications.

On the other hand the doctrine supports a dimensional profile of the adequacy, which in turn factor and upward subsidiarity. The inadequacy of the lower entity must be dimensional entity” in the sense that the function must be carried out at a broader level: this occurs not only when the administrative act has national dimension but also its adoption when it is need for a general vision. The principle of differentiation, however, requires consideration of the factual reality of local institutions in the country and therefore to distinguish, in the allocation of administrative functions discipline and organization, institutions according to their capacity of government, the different economic and demographic situations, to articulate territories. It is possible, therefore, that the same level, in pursuit of the same administrative functions, not only possess different skills, but it can exercise them according to different rules, and nothing would inhibit the abstract predetermination, by the legislature, to give the most appropriate level of performance of the administrative

activity: properly the suitability to lead the differentiation between institutions of the Ordinance of the same level.

The affirmation of the principle of adequacy at Community level and had with the Protocol on the application of the principles of subsidiarity and proportionality, adopted on 2 October 1997 and annexed to the Treaty of Amsterdam and by the name of proportionality: the Union should intervene only if necessary and tend to opt for "lighter half, as long as adequate for achieving the purpose of the Ordinance." In short, for the intervention of higher educational institution requires two requirements: necessity and proportionality. In our system this approach and entirely absent, because the legislature did not intend to use it as a regulator of the A' exercise legislative power state when competing with the regional one. Analyzing this principle, together as subsidiarity and differentiation, as a method of allocation functions of e, if you would refer only to the basic functions the difference between them and the functions conferred scemerebbe and being empowered to perform operation quest1 the state legislature, the competence of the regional legislature laid down' art. 118, paragraph 2, in terms of functions "conferred" would consequently compromised.

With this argument does not assume that these principles are not used for the identification - allocation functions of e 'hardcore' but they can not compete with other criteria individuativi - allocative, as confirmed by the wording of art' 2 of Law La Loggia (l. n. 131/2003). And the latter to root strongly in our system the famous trio of principles. In fact, art. 2 it states, among other things, that the Government should: "... c) exploiting the principles of subsidiarity, adequacy and differentiation in the allocation of e core functions in order to ensure the exercise by the level of local authority, for the dimensional and structural characteristics, ensures their optimal management also by indicating the criteria for the joint management between the municipalities. "The criterion sub c) seems to reiterate what has already been expressed in Article .118 of the Constitution, so it is questionable whether it was so necessary to specify it. In fact, if you consider it a matter of pure reconnaissance of a constitutional constraint exists, there is no hard to accept. The theme of the exercise of administrative functions by municipalities and covered in many important art. 13 LD. 267/2000. It should, pay attention to paragraph 2, which allows the City to implement both forms of decentralization that cooperation with other municipalities and the Province, where this is necessary to ensure the adequacy principle entity e duties to be

performed. If legislator is not more careful about who and what you are managing but how to run, anxious to ensure a reorganization of the administrative system that balances subsidiarity and adequacy. The article in question, confirms head to the region responsible for stimulating the exercise associated functions by municipalities, especially if small. But the distribution of e is reformed administrative functions for the formulation art. 118 of the Constitution: administrative tasks are usually carried out at the municipal level, except that, to ensure the exercise unit, be conferred on the higher levels up to the state. The criteria established for the dislocation of the administrative functions at the various levels are, once again, the subsidiarity, differentiation and adequacy. Belongs to, particularly, the small towns, the increased difficulty in maintaining a management services consistent with the principle of adequacy. It is difficult, in fact, improve the quality of services without losing sight of the costs: the small municipalities buy at higher prices due to small amounts of e; difficult to privatize services because of the limited size limits their profitability, they make a low use of e expensive equipment purchased for the management of services, have rigid budgets and reduced organic. Small municipalities can benefit from school mutual cooperation, as long as the scope is neither too small (the principle of

adequacy), nor too large (principle of subsidiarity). Both extreme situations you can not reach our goal of a reduced domain would not solve the problem of the effectiveness and efficiency of services; too broad a scope would run the risk of losing touch with the 'user. He felt that the ideal population size is around 20,000 inhabitants, a town like that would be able to have the right level of expertise and resources necessary to better manage the complexities and business services. Unfortunately, in Italy authorities consistency with this demographic are only 3.36%. For small municipalities the right solution and the associated management of services and functions. But how could the associated management practice, what would be the advantages and the problems that may arise? Please refer to the curiosity of the reader to the development of this interesting topic. It is evident, however, that the main new features for small municipalities are contained in dl 78/2010, as well as from school converted to Law no. 122/2010, which requires the compulsory nature of A associated management functions of many of the small towns. L 'art. 24, paragraphs 27 to 31 of Decree Law Obligations of A requires the associated management of e fundamental functions in the municipalities up to 5,000 inhabitants, that paragraph 28 also extends to those with a population established from e regional laws and in any case less than 3,000

inhabitants, which belong or belonged to mountain communities through union and / or convention. II paragraph 29, however, prohibit the operation of the singular fundamental functions managed so associated and the use of more than one form of association for the same function. II paragraph states that it is up to the regions, e matter within their competence, in concert with the municipalities, the determination of optimal territorial dimension, excluding the municipalities obligation provincial capitals and those with more than 100,000 inhabitants. II paragraph 31 specifies that the President of the Council must enact, within 3 months from the date of entry into force of this decree, a decree setting out the terms within which municipalities must "in any event" to implement these provisions and the minimum population size of the associated management. The associative forms have been introduced from time to time in our system with continuous interventions about their nature. Originally our system provided for a single aggregation module between local authorities, the consortium, a monofunctional character, that is intended to perform only one type of activity. Sara then the law 142 of 1990 to write a configuration to systemic forms of association: First we find the consortia which, however, are no longer configured as real local authorities, but they assume the profile of instrumental

bodies of local authorities, but the real novelty and represented the Union of Municipalities is a real local authority consists of two or more municipalities for the year associated with more functions or services in order to get there, in the time period up to ten years, to a complete fusion of the same in a new Municipality, any contributions regional objective is often not easy to get to, the excessive parochialism. Law 142 of 1990 is also involved in the field of mountain communities, in the sense first of all be recognized as true local intermediate between the municipalities and the provinces within areas mountain. Subsequently, the Law 265 of 1999 (so-called Napolitano - Vigneri) provides the necessary exercise associated with all municipal functions and not just those conferred, always within the range optimal identified by the regional legislature, drastically modifies the regulation of e unions of Municipalities categorizing them as mere forms of association in multifunctional nature, not necessarily involving more melting, introduces the island communities, qualification mountain communities as unions mountain. II TUEL confirms much of what has already been provided by the Law no. 265 of 1999, the new definition of mountain communities, no longer as Unions mountain, but rather as' Unions diComuni. Article. Tuel 13 states that "the common, for the exercise

of functions in specific areas appropriate implements both forms of decentralization and cooperation with other municipalities and the province." II Consolidation Act provides as forms of association convention, the consortium, the Union of Municipalities, the Community montana / island. More collaboration tools provided by the regional legislation are the Association of municipalities and the program agreement. Also in the second chapter we look at each of these forms of association by developing their regulatory developments, the regional legislation in matter, the court decisions, financial support, the constitution and organizational structure. On the other hand, the end of the larger, better exert their functions by divisions smaller, established in them, always in accordance with the principle of adequacy, for which the law defines as instruments of decentralization districts, municipalities and districts . Among the forms of cooperation, as we previously announced, there are also agreements between public administrations (Conventions, covenants, ...) treated, however, in the third chapter. They offer an opportunity to address the issue of A concerted administrative and one concerning the use of private tools in the public domain. We are witnessing, in other words, a loss of centrality of the public order, on the one hand and on the other hand, however, the deployment of e pactional

between public figures. What is evident, and the reduction in the last decades, the scope of the A dell' autoritativita PA: the essence of the phenomenon administrative moves from profile 'authority to that of function, in fact, the public powers are characterized as such only for the functionalization for the purposes stated by law and not by the imperative. To reflect this issue and the debate the nature of such agreements: public, private or third category? But only with the art. 15 The 241/90 that the exercise of administrative power becomes consensual in administrative action alternative way of being authoritative exercise thereof. This provision states that "even outside the cases provided for in Article 14, public administrations can always conclude agreements among themselves to govern the conduct of activities in collaboration of common interest. For those agreements are observed, in as much applicable, the provisions of Article 11, paragraphs 2, 3 and 5, paragraph 2 provides for the conclusion, in writing procedural requirements, unless otherwise specified, and the applicability of the principles of statutory in terms of obligations and contracts, unless an exception and incompatibility, a reminder that brings with it, again consisting baggage of doubts and doctrinal debates. After the general discussion will take under review, specifically the conventions and agreements of the program, always

following the same procedure used to analyze other forms of association.

The small towns are most at risk of survival for the above reasons. Given their apparent difficulty in maintaining a service management with the principle of adequacy, best solution and the associated management of services and functions. In terms of efficiency, the municipalities that join can achieve both economies of scope (reduction in unit costs since the utilization of the same resources) and economies of scale (unit cost reduction combined with the growth of e produced from the group of institutions). For there to be an improvement in terms of effectiveness, understood both as improvement of services already provided, both as granting new: higher professional of workers available, specialization in every field. The other objectives related to the improvement of the service are: 1) simplification of administrative procedures, 2) extension of e best practice (benchmarking), 3) homogeneity both political and managerial choices of e, 4) uniform and timely transposition of e legislative news; 5) greater efficacy of e tendering and competition, thanks to the increase of A'' critical mass (eg., the starting price of a supply) 6) obtaining state and regional contributions more consistent, thanks to the scope of the supra-municipal applicant; 7) retrieval of

the same incentives provided by state and region management associated to e. This rosy picture, however, could be spotted from possible problems: 1) excessive pride, 2) deficiencies in the design of the associated management and lack of coordination, and 3) resistance of'' bureaucratic apparatus, 4) staff unprepared / not encouraged; 5) procedural confusion, 6) dispersion of responsibility; 7) technological limitations , 8) excessive differences geomorphological, historical, cultural, organizational. the light of these critical points, and not part of the doctrine expressed in a very conducive to joint management. He started a process of aggregation that has only touched institutional levels, affecting only certain tasks and neglecting municipal territorial development programs in meaningful. More than just new organizational structures, and is treated of modest forms of cooperation. Surely we are facing at the first signs of a new collaborative mentality, but that is not likely to disrupt the basic structure and philosophy of traditional functioning of local authorities, which mostly remained unchanged. The modern development methodologies, which require adequate territorial areas, are difficult to reconcile with the current mentality, still tied to a localist vision of territorial policies.

In order that may predispose associated management will require a number of essential conditions:

- the existence of a solid and broad political agreement inherent in a development project of a vast area, which is free from the existence of administrations of different color;

- the use in the project of the best human resources available;

- the unification of structures, notwithstanding the provision of front office in the institutions;

- the use of appropriate technological solutions to efficiently connect the entire scope (Internet, Intranet), for each service using the same software;

- the determination of simple rules, applicable to all (eg regulations only);

- the presence of political leadership (mayor / president) and a technical leadership (Secretary / Director), head of the project, ensuring the necessary coordination.

Municipalities can associate their functions and services. The distinction between the two terms is not entirely clear, in fact they are often used interchangeably both in practice, both by the legislature itself, as conceived in a relationship species to genus. With regard to the management of services through associative forms local public, it

is necessary to make a distinction based on the economic importance of the latter. Our analysis must have as initial point of the art. 112 of Legislative Decree no. 267/2000 (Tuel), entitled "Services and local public interventions." Article. 112, introduction of such evidence, states that "local authorities, within their respective powers of e, provide for the management of public services which have as their object the production of goods and activities designed to achieve social purposes and to promote economic development and civil of local communities. "II legislator absorbs and summarizes the two traditional categories of public service: 1) public services in the subjective sense, ie the activities pertaining to public entities, and 2) public services in an objective sense, ie the services provided in order to achieve the public interest. In terms of the A method of managing the Tuel in the revised text by the Finance Act of 2002, local public services divided into two groups: the services to industrial importance (Article 113), to be managed by a company with share capital , selected by tender, other local public services (art. 113a), which can be managed in economics or licensed to third parties, or even contracted directly institution, a special company, a company incorporated or owned by the local authority. this classification to be

easily replaced from school distinction between services with or without economic significance.

II increased load of tasks and activities that the principles of decentralization and subsidiarity (vertical) have passed on to municipalities has led the region to facilitate the establishment of forms of associated management functions and services, financing both projects and studies aimed at the establishment of themselves as well as projects aimed at testing the feasibility and opportunity of enlargement and improvement of the A joint management of new functions or services, finding solutions so that this extension does not lead to a proportional increase in public spending and maintained, and even improved, the level efficiency product. Before activating an associated project management, you need to prepare a feasibility study, which seeks to provide administrators with the necessary demented analysis from both the legal and organizational, study, is usually done by a group of secretaries, directors, responsible for service bodies, supported by external consultants and guided by a political reference. From the content point of view, in the generated object of O study and the collection and analysis of the following aspects:

- nomiativo framework of reference;

- Institutional and organizational bodies (size, population, territory, articulation of the A structure and levels of responsibility, staffing,);
- functions and services lines of activity, current forms of management, staff assigned, indicators of product and process, level of computerization,

The study is based on two sources of information: interviews with directors, managers and staff connected to the activities subject to evaluation of alternative forms of management and the analysis of the A documentation of the institution or other legislation (statutes, regulations, resolutions, plant organic ..), which helps to build a project for the development of e functions which focuses on the study.

This careful study must lead to e following conclusions: 1) what are the points of excellence of individual institutions, to be possibly shared; 2) what the challenges are, and 3) the services to be associated with and which organizational model (analysis cost - benefit), 4) the scope optimal; 5) the most suitable form of association in this case, 6) the steps needed to establish the optimal conditions of the associated management. Starting with the right foot and essential to minimize the risk of being faced with initial obstacles such as waiting too long in

the transposition of the initial results, misunderstandings, false sense of each element.