



Strasbourg, 5 May 2008

**CDL-UDT(2008)016**  
Engl. only

**T-04-2008**

**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**UNIDEM  
CAMPUS TRIESTE SEMINAR  
"MODELS OF REGIONAL DEVELOPMENT"**  
  
**Trieste, Italy  
21 – 24 April 2008**

**REPORT**

**REGIONALISM AND FEDERALISM:  
AN INTRODUCTION**

by

**Mr Sergio BARTOLE  
(Professor, Trieste University,  
Member, Italy)**

1. Regional States and federal States are States whose peculiarity is that they are made up by constituent entities, but there are great differences in the way of their establishment..
2. The federal States are made up by the association of preexisting States which transfer a part of their sovereign powers (foreign affairs, money, war and peace, market) to a new entity, the federal State.
3. The regional States are created by the transfer of some functions of a central State to new regional entities (devolution which is different from the transfer from the central bodies of the State to regional or local bodies of the State itself of some powers and functions).
4. But in recent times some new federal States were established by devolution: this is the case, for example, of Belgium which is declared a federal State notwithstanding that it was reformed by the transfer of functions of the central State to the periphery. In this case the old historical explanation of the advent of the federal States is no more useful, but in any case the devolution can be explained by the exigency of complying with the requests submitted to the State by preexisting linguistic and ethnic local communities. As a matter of fact in these States the people of the State are divided in different linguistic and ethnic communities or a great national majority is confronted by a minority which has ethnic and linguistic features different from those of the majority.
5. A different case are confederations which are also associations of States but differ from federations because the acts adopted by the confederal authorities are not allowed to produce direct effects affecting the citizens of the member States without the intermediation of the member States of the confederation (look at the criticism of the federalist papers about the old articles of the Confederation).
6. The authorities of the federal States can, instead, adopt acts directly affecting the citizens of the member States. The European Union has similar powers notwithstanding that it is not a federal State: perhaps it is a modern type of confederation (La Pergola).
7. The adoption and the revision of the Constitution of the federal States can require the acceptance of the majority of the member States only, while the Constitutions of the regional States do not necessarily require the participation in the constitution making process of the regional entities. In the federal States the constitutions of the constituent entities fall in the competence of the entities themselves. This is not always the case in the regional States where the central authorities prefer to keep at least a say in the matter.
8. The constituent treaties of the Confederation (which are different from the constitutions) and their revision require the adhesion of all the member States.
9. The formation of the regional and federal States has an impact on the way of the distribution of the powers between central authorities and constituent entities. In the federal States the powers of the federal authorities are explicitly listed in the constitution because they are the object of a specific attribution by the member States. In regional States the power of the constituent entities are listed because they are specifically attributed by the central State to the periphery. This arrangement can be amended in the case of the transformation of a regional State into a federal State ( but we have a similar arrangement in Italy, which is still a regional State ). Somewhere there are lists of the regional powers and of the powers of the central State.
10. It is frequent in the legal doctrine (for instance Delpérée) to refuse to make a distinction between the federal States and the regional States because – day by day – the practice and

the revisions of the constitutions are reducing the differences. It is well known that the powers of the central State in federations are growing steadily.

11. The regional States and the federal States have rigid constitutions: it means that the compliance of the constitutional actors with the constitution and the distribution of the powers is guaranteed by the system of the constitutional justice.

12. As a matter of fact we can say that the difference between the federal States and the regional States is still existent when we are dealing with the problem of participation of constituent entities in the national political decision making processes. It is well known that all the federations have a bicameral Parliament made up of an Assembly which represents the people in its unity and of another (second) Chamber which is composed of representatives of the member States. This arrangement can be seen as a kind of prolongation of the old sovereign powers of the constituent entities, which – at the moment of the advent of the federation – choose the way of surrendering only partially their sovereign powers to the federal States and preferred to keep partially some control powers in the making of the national decision.

13. But if they are similar in principles, the second Chambers are different in the way of their formation: the senators in USA are separately elected, State by State, by the people of the different constituent entities, and all these entities have two senators representing their interests notwithstanding their differences in territorial extension and dimensions of the respective people. The German Bundesrat is made up of representatives of the cabinets of the Länder, while in other federal States the members of the second Chamber are elected by the legislative assemblies of the constituent entities.

14. As a matter of fact the constituent entities of the federal and regional States did not have in the past foreign affairs powers, but the present international practice knows an increasing participation of those entities in transfrontier cooperation between local authorities even with the creation of specific entities to provide for the implementation of common economic or social programs.

15. The powers of the constituent entities are usually attributed according the subject matters which are interested by their exercise. In both the case they are legislative and administrative. They can be:

Exclusive if the relevant subject matters are strictly reserved for the constituent entities,

Concurrent if the central State is allowed to intervene in the subject matters reserved for the constituent entities by adopting framework legislation (it means, stating the principles which have to be implemented by the local legislators as in Italy) or by a specific detailed legislation in the presence of the conditions required by the Constitution (as in Germany).

16. In the federal States the residual exclusive powers are attributed to the member States while in the regional States the residual exclusive power pertain to the central State.

17. If we take into consideration the organization of the local government entities, we can say that the matter falls in the competence of the member States of a federal State and the competence of the central State in the regional States, even if it increases the interference with the functioning of the local government of the constituent entities of the regional States themselves.

18. The arrangements of the finance systems of the States we are dealing with are very different. In the regional States the central authorities would prefer to keep all legislative functions on this matter, even if the constituent entities ask for increasing powers on this matter.

In principle the system of the finance of the member States of the federal States is independent and separate, but a coordination is frequently required by the connection which is typical of the contemporary post industrial society.