



Press Office of the Constitutional Court

Press release of 4 March 2019

SMALL MUNICIPALITIES NEED NOT PARTICIPATE IN THE SHARED
MANAGEMENT OF ESSENTIAL FUNCTIONS IF THEY PROVE THAT IT
DOES NOT ACHIEVE SAVINGS

The provision requiring municipalities with less than 5 000 inhabitants to engage in the shared management of the essential functions they provide (public transport, police, etc.) is unconstitutional, insofar as it does not allow them to prove that this form of management does not bring about economies of scale and/or improved provision of public services to the populations involved.

This was established by the Constitutional Court in Judgment no. 33, filed today (Judge Rapporteur: Luca Antonini), with reference to Article 14(28) of Decree-Law no. 78 of 31 May 2010. According to the Constitutional Court, the obligation imposed upon municipalities is excessively rigid because it would also apply in all cases where: (a) none of the bordering municipalities are under the same obligation; (b) only one bordering municipality is under the obligation, but the minimum demographic threshold has been reached, such that other non-neighbouring municipalities must also be involved; (c) the geographical positioning of the municipality's borders does not allow them to meet the objectives set by law (which may occur, for example, where the municipalities are located in mountainous regions and present specific anthropogenic factors, a scattered territory and isolation).

The above categories encompass the most disparate situations. However – according to the Judgment – they still deserve attention, because the burden imposed upon the autonomy of municipalities does not bring about the cost savings that the law was enacted to achieve.

In addition, the Judgment draws attention to the fact that, as against the constitutional design, the structure of Italian municipal autonomy has always been considered a “mere reflected effect of other objectives”. Instead, due cooperation on the part of the system of institutions that are directly or indirectly involved should ensure that the challenging objective of a balanced, stable and comprehensive definition of the basic structure of the functions assigned to the local authorities will

be achieved. In this regard, the judgment recalls that other countries (such as France) have devised structural solutions to the problem of the “pulverization” of municipalities, often implementing the differentiations on both organizational and functional levels.

Finally, the Constitutional Court declared unconstitutional the provisions of a Campania regional law on establishing the optimal and homogeneous dimensions of territories for the purposes of performing essential functions, because the provisions had been approved without the requisite consultation with the municipalities having been conducted.

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