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# RETHINKING HORIZONTAL SUBSIDIARITY IN THE EUROPEAN UNION

## New instruments for community welfare in the Italian experience: the Collaboration Pacts

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## NEW INSTRUMENTS FOR COMMUNITY WELFARE IN THE ITALIAN EXPERIENCE: THE COLLABORATION PACTS

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# Chapter III

# THE LEGAL EXPERIENCE OF SUBSIDIARITY IN ITALY

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## 3.1 The principle of subsidiarity in Italy: origins and development

The principle of subsidiarity was introduced into the Italian Constitution in 2001 through the amendment of Article 118. There is a rather unanimous belief among scholars that this passage originated from the European legal system, which had already recognised it in the Single European Act of 1986 and then in a much more decisive way with the Maastricht Treaty of 1992. This historical truth would, however, be misleading if it were to lead one to believe that the Italian legal system had merely transposed what was envisaged at European level. In fact, the development of the principle in Italy has had unprecedented applications in the European legal system, so that it can also be presented as an interesting case study.

> This is partly due to the obvious consideration that every principle introduced into a legal system is called upon to be conditioned by other principles and values, so that it has to carve out a space that is necessarily original and different from all other systems. It is, therefore, natural to see some discordant application of principles when they are placed in different legal contexts. Secondly, it must be considered that the principle of subsidiarity is a principle with a binding force that is not preemptory, requiring political adaptations and mediations. If, to some extent, this can be said of any legal principle, which is characterised by the indication of guidelines rather than definitive solutions, in the case of subsidiarity this is even more true. Political adaptation makes its legal sanction more difficult, as the European legal system itself testifies. Finally, as far as Italy is concerned, the novelty lies in the fact that the principle is recognised not only in its vertical dimension, but also in its horizontal one. And it is precisely with reference to this last point that the Italian contribution to the application of the principle of subsidiarity stands out for its originality and interest.

In fact, in this key, the principle of subsidiarity has been used to renew the conditions for regulating the institutional and social pluralism that characterises the Italian Constitution. If the pluralistic connotation of the Italian Constitution was already known before the introduction of the principle of subsidiarity, its introduction, with particular reference to its horizontal declination, has produced a significant innovation in the framework of the rules concerning the relationship between institutions and citizens, strengthening its democratic elements. This contribution intends to highlight the main legal innovations that the principle has introduced in Italy over the last twenty years, along the following lines: in the second paragraph some of the most significant legal innovations related to the principle of horizontal subsidiarity will be highlighted (Regulations and collaboration pacts); in the third paragraph reference will be made to the introduction of a new real model of administration whose origin is due to the horizontal subsidiarity, capable also of generating a new general principle (the principle of collaboration); in the fourth paragraph, finally, the contribution produced by the jurisprudence that has measured itself against the theme of subsidiarity will be highlighted. Finally, the last paragraph will be devoted to concluding remarks.

## 3.2
## Direct implementation of the Constitution: the Regulation for the Shared Administration of Urban Commons and the collaboration pacts

### 3.2.1
### The Regulation for the shared care and administration of urban commons

After the introduction of the principle of subsidiarity in the Constitution, which has already been mentioned, its horizontal declination remained unimplemented for a long time. However, in the most recent years, thanks to several factors, economic and financial as well as social, the public authorities, especially local ones, have developed tools that, implementing the constitutional dictate, have allowed this principle to express its potential.

> In a context characterised by a scarcity of economic and financial resources, local authorities have encountered numerous difficulties both in caring for the public city, which is increasingly abandoned to neglect and decay, and in responding to the multiple and heterogeneous demands expressed by society. However, society has shown that it is not only an expression of needs to be satisfied, but also an extraordinary group of people with not only financial but also professional and technical resources and knowledge to make available to local institutions and, in general, to the whole community. Thus, in the face of abandoned urban spaces deprived of their social function, of urban commons left to neglect and degradation, an increasing number of citizens have taken action to take direct care of them, so as to make them fully available to the community. We are, therefore, witnessing an attempt by private citizens to regain possession of the places in their city[97], but not to exploit them for their own personal benefit, but to donate them to society as a whole.

The activation of the community in this sense, its participation in the care of the urban commons, i.e. in their regeneration, has prompted local public authorities to identify instruments capable of giving legal recognition to these activities, which are undoubtedly of general interest, but which were nevertheless born outside the traditional legal paradigms[98].

> It is, therefore, to the principle of horizontal subsidiarity that local institutions have resorted to in order to legitimise some of these instruments, by virtue of which they favour private individuals or associations in carrying out activities of general interest and, at the same time, recognise a legal value to them that would otherwise be absent. In fact, by exploiting one of the peculiarities of the principle of horizontal subsidiarity, namely that of being an immediately operational principle, i.e. directly implementable by any level of government, without the need for prior legislative intermediation - state or regional -, as of 2014, some Italian municipalities have begun to adopt Regulations aimed at regulating these forms of collaboration between active citizens and the local administration for the care and regeneration of the commons[99].

These regulatory acts are a novelty within the national legal scene, on the one hand, because, despite their nature of secondary sources, they do not implement any legislative provision, but rather implement directly the constitutional provisions (ex art. 118, paragraph 4, Constitution); On the other hand, because by adopting them, local authorities have placed within a well-defined legal framework unprecedented forms of cooperation that would otherwise have been difficult

97. See F. Cortese, Dentro il nuovo diritto delle città, in “Munus”, 2016, pp. 5-11.

98. See F. Giglioni, Il diritto pubblico informale alla base della riscoperta delle città come ordinamento giuridico, in “Rivista giuridica dell’edilizia”, 2018, pp. 3-21.

99. See F. Giglioni, I regolamenti comunali per la gestione dei Beni comuni urbani come laboratorio per un nuovo diritto delle città, in “Munus”, 2016, pp. 271-313.

100. See L. Muzi, L’Amministrazione condivisa dei beni comuni urbani: il ruolo dei privati nell’ottica del principio di sussidiarietà orizzontale, in F. Di Lascio, F. Giglioni (eds.), La rigenerazione di beni e spazi pubblici. Contributo al diritto delle città, Bologna, Il Mulino, 2017, p. 124.

to achieve, also due to the fear of the institutions themselves of assuming responsibility and, consequently, of incurring possible sanctions[100]. The Regulation on collaboration between citizens and the administration for the care and regeneration of the urban commons regulates every aspect of the relationship between private individuals and associations and the public authorities, from the identification of the commons to be cared for to the determination of the jurisdiction to which the case should be referred in the event of disputes arising in the context of these activities of general interest. Therefore, what characterises this Regulation as an innovative instrument is not only the source from which it draws its legitimacy, but also its content, since it offers a legal framework to an equally peculiar alliance between citizens, who take action together with public institutions to take care of the often abandoned and degraded places and commons in cities.

Despite the fact that the decision to directly implement constitutional provisions by means of a Regulation has been described as a "big jump without a parachute"[101], since February 2014, when the Municipality of Bologna first adopted this instrument, more than 250 local authorities have resorted to it to recognise these new forms of participation legal value. The wide diffusion of the Municipal Regulation for the management of urban commons is due to the speed with which it was adopted and to its flexibility, which makes it easy to modify and adapt to the different needs of the community. In fact, some municipalities, following the adoption of the Regulation by the Bologna municipality, fully incorporated its content into their own acts, while others had no difficulty in adapting it to the needs of their territory. Today, however, it is no longer only these municipalities that have adopted the instrument in question, but also Unions of Municipalities[102], Provinces[103], Metropolitan Cities[104], Regions[105] and some public economic bodies[106] for the same purposes.

## 3.3
## The alliance between citizens and public institutions: the collaboration pacts

The alliance between citizens and public authorities, which finds its legitimacy in the above-mentioned Regulation, is crystallised in an equally peculiar act, namely the Collaboration Pact. The Collaboration Pact is, in fact, "the instrument with which municipalities and active citizens agree on all that is necessary for the implementation of interventions for the care and regeneration of commons"[107]. It is the act through which the relationship between the parties is detailed, e.g. in terms of its duration, the aims to be pursued, the means by which these are to be achieved, the responsibilities and commitments undertaken. Thus, while the Regulation outlines the general aspects of collaboration between active citizens and institutions, without detailing all its elements, the Pact regulates it in detail, in relation to the action of care, management and regeneration of the common good that is to be achieved.

The Collaboration Pact is characterised by the fact that it is an instrument whose nature is not authoritative, since the parties are called upon to decide together on all its contents, without one of the two, in particular the public institution, being recognised as having the power to define them autonomously, as, on the contrary, happens in the case of the adoption of an administrative measure. Therefore, the Collaboration Pact represents the final result of a process of co-planning between two parties placed on the same level, which, by allying themselves, jointly identify

101. G. Calderoni, I patti di collaborazione: (doppia) cornice giuridica, in “Aedon”, 2/2016.

102. Such as the Bassa Reggiana Union, the Union of “Valtenesi” municipalities, and the Romagna Faentina.

103. To date only the province of Chieri has adopted this act.

104. Reference is made to the Regulation adopted by the Metropolitan City of Milan in 2019.

105. So far, only the Lazio Region has adopted its own Regulation on the shared administration of commons, implementing the provisions of Regional Law No. 10 of 26 June 2019, entitled "Promotion of the shared administration of commons" ( “Promozione dell’amministrazione condivisa dei beni comuni”).

106. Specifically, we refer to the Regulations adopted by the Milan Public Housing Authority.

107. Art. 5 of the Bologna Regulation on cooperation between citizens and administration for the care and regeneration of the urban commons.

all that is necessary for the pursuit of a general interest, which is the ultimate goal to which the activities governed by this act must in any case tend. As a consequence, if the implementation of the latter may jeopardise the fulfilment of the general interest identified, or that of other interests, the parties may withdraw from the agreement without incurring any sanction or penalty[108].

Another element that characterises the Collaboration Pact is its informality, which is a consequence of the need to ensure flexibility and simplicity in the relationship between active citizens and the public administration. The regulations themselves recognise this feature[109], pointing out, however, that the relationship between the parties only takes place in compliance with specific formalities when this is provided for by law. The potential of this characteristic can be grasped to a greater extent when attention is paid to the individuals that can be part of the alliance sealed with the Collaboration Pact.

### 3.3.1
### The parties of the alliance: active citizens and public institutions

As mentioned above, the Pact represents the final result of a process of co-planning, in which the public administration and active citizens work together. In this process, the public administration has to favour the participation of private individuals in carrying out the activities of care and regeneration of the urban commons, as enshrined in article 118, paragraph 4, of the Constitution, and, for this to happen, it is called upon to change its modus operandi, orienting it according to certain principles, such as collaboration, mutual trust, autonomy, responsibility and informality. By virtue of these principles, the municipal authority places itself on an equal footing with the citizens, whose autonomous initiative to take action to care for and regenerate abandoned or disused commons is encouraged, but from whom, at the same time, commitment is required to ensure that these activities are carried out in practice. Thus, on the one hand, the administration is responsible for ensuring that private individuals achieve the general interest, for example by cutting red tape or simplifying certain bureaucratic procedures, but, on the other, the active citizens themselves are responsible for implementing the activities favoured by the former[110].

Active citizens are the other fundamental part of this unprecedented alliance; it is only through their activation that the principle of horizontal subsidiarity can actually be achieved, since otherwise public institutions would have no activities of general interest to promote[111].

All citizens can sign the collaboration pacts, and according to the last paragraph of Article 118 of the Constitution, they can do so either as individuals or as associations. It should be pointed out that, when reference is made to the case of active citizens who sign pacts, the concept of citizenship that underlies them does not coincide with the legal one, so it follows that even those who are not Italian citizens, but who live in a given territory and intend to take care of it, may also subscribe to such acts. At the same time, private individuals who do not reside in the local authority's territory, but who work or study there, may also sign a Collaboration Pact with a local authority.

Regardless of this broad meaning attributed to citizenship, in general, the range of private actors who can enter into a pact with public institutions is very wide. Indeed, it is with reference to the

108. This lack of sanctions is explicitly provided for in Article 12 of the City of Milan Regulation.

109. See Bologna Regulation, art. 3, par. 1, lett. h); Prototype Regulation - Labsus, art. 3, par. 1, lett. l).

110. See L. Muzi, L'Amministrazione condivisa dei beni comuni urbani: il ruolo dei privati nell'ottica del principio di sussidiarietà orizzontale, in F. Di Lascio, F. Giglioni (a cura di), La rigenerazione di beni e spazi pubblici. Contributo al diritto delle città, op. cit., p. 125.

111. For G. Arena, Amministrazione e società. Il nuovo cittadino, in "Rivista trimestrale di diritto pubblico", 2017, p. 50, in fact, the principle of horizontal subsidiarity lives only if citizens make it live.

multitude of individuals eligible to be potential signatories of Pacts that at least two innovative elements can be identified, which contribute to characterising these instruments, differentiating them from those which traditionally govern the relationship between public authorities and recognised voluntary associations. First of all, signatories of collaboration pacts can also be individual citizens who do not belong to any well-structured organisation but who, autonomously and spontaneously, when faced with the neglect and degradation of the places in which they live, decide to take care of them. This recognition, in line with the provisions of the last paragraph of Article 118 of the Constitution, marks a 'break' with the legislation regulating the Third Sector, which has always favoured structured and organised entities as counterparts to be entrusted with the care of certain general interests[112]. There is also a break with the aforementioned legislation when the regulations recognise as possible signatories of pacts even informal groups, neighbourhood committees, or unstructured associates, who can also be defined as 'volunteers for a day'[113]. Obviously, recognised and structured voluntary associations can also sign a Collaboration Pact with public administrations, as can profit-making companies.

> However, the informality that characterises the Pact, or rather the collaborative relationship that is regulated by it, is redimensioned when it provides for compliance with certain minimum formal requirements, which, from the point of view of private actors, consists in identifying the formal representative, i.e. the direct interlocutor with the public administration, or the list of active citizens who make up the informal group that signs[114]. These minimum indications, which must therefore be observed irrespective of the nature of the signatories, aim to strengthen the commitment that active citizens undertake to fulfil vis-à-vis public institutions.

Although up to now reference has always been made to the Collaboration Pact as an instrument through which the public administration and active citizens, either individually or in association, agree on all that is necessary for the implementation of interventions for the care and regeneration of the commons, it should be pointed out that the parties that may sign it may be more than two. In fact, what leads to the stipulation of a Collaboration Pact is a process of open co-planning - aimed at guaranteeing the greatest possible inclusiveness -, which translates into recognising the possibility for several individuals to intervene, even in itinere, and to make their skills and resources available. The participation of a greater number of subjects, both private and public, in the process of defining the contents of the Collaboration Pact can also be understood as an attempt to guarantee the widest possible democratic nature of choices[115], destined to produce important effects on the territory and the entire community.

### 3.3.2
### L'animus donandi of the collaboration pacts

> Each Collaboration Pact has its own specificities, due both to the type of goods covered by the agreement and to the skills made available to the signatory parties. However, it is possible to distinguish two types of pacts, which differ in the degree of complexity of the activities to be carried out. Depending on whether it is a simple or a complex Collaboration Pact, what generally changes is its approval process, the public bodies involved in it, and the time required to reach its signature.

Despite the different complexity of the process, in both cases, the process starts when the parties make a proposal for collaboration. It is this proposal that triggers the co-planning process, at the

112. Even the definition of "volunteer" that is provided in Article 17(2) of Legislative Decree No 117 of 2017 is still very much centred on traditional voluntary activities.

113. Thus G. Arena, Amministrazione e società. Il nuovo cittadino, cit., p. 46.

114. See. F. Giglioni, A. Nervi, Gli accordi delle Pubbliche amministrazioni, Napoli, Edizioni Scientifiche Italiane, 2019, p. 274.

115. Cfr. L. Muzi, L'Amministrazione condivisa dei beni comuni urbani: il ruolo dei privati nell'ottica del principio di sussidiarietà orizzontale, in F. Di Lascio, F. Giglioni (a cura di), La rigenerazione di beni e spazi pubblici. Contributo al diritto delle città, op. cit., p. 123.

end of which the Collaboration Pact is adopted and signed. This proposal may come from the public administration, which invites private individuals to take action on a specific common good, or it may be put forward by active citizens themselves.

> Whichever party first expresses an interest in collaborating to take care of the common good, once the other party has shown its willingness to start such a relationship, both are called upon together to define all its contents.

The collaboration referred to does not have a synallagmatic character, since the Pacts do not relate to property. In fact, citizens act spontaneously to take care of certain commons, without receiving any remuneration from the public administration for the activities carried out. The public authorities, in order to facilitate the implementation of the latter, may provide incentives, such as insurance cover for individuals or payment for the utilities used by them to carry out activities in the general interest, but these elements do not, however, contribute to characterising the Pact as an agreement with remuneration. On the contrary, it is the animus donandi of active citizens that characterises collaboration pacts[116], a cause that is difficult to find in contracts for pecuniary interest and which, therefore, helps to exempt the former from European and national rules on public procurement.

## 3.4
## The Shared Administration of Commons

> The instruments with which the principle of horizontal subsidiarity has been implemented - and which have found their legitimacy in it - namely the Regulation and the collaboration pacts, define a new model of administration, theorised since the end of the 1990s and referred to as Shared Administration. At the basis of this new model, in fact, is the idea that equal collaboration between citizens and public institutions, sealed with the Pacts, can allow for a better solution to the problems affecting the community, compared to models of administrative action based on the opposition between the administration and the administered. With Shared Administration, there is no longer any antagonism between the two poles, public and private, which, on the contrary, join forces to pursue general interests and meet the needs of the community.

The affirmation of this model of administration, which sees collaboration between the parties as its distinctive feature, requires a radical change both in the principles that guide administrative action and in the vision that public institutions have of citizens, who are no longer mere recipients of decisions but active participants in their construction. In fact, in this paradigm, citizens become allies, to be listened to and involved in defining and implementing activities of general interest. Their participation must be encouraged (ex art. 118, paragraph 4, Const.), incentivised and guaranteed, and in this sense the Regulations on Shared Administration, however they are called, have contributed significantly.

> Public institutions are called upon to place their trust in citizens who voluntarily place themselves at their "disposal"; however, this must not result in the exploitation of private resources and capacities. Shared administration presumes that the two parties work together, each according to their own competencies, in pursuit of the general interest; in fact, the many experiences of caring for the commons, through collaboration pacts, show how citizens are not left alone by public institutions in carrying out the defined activities, but how they are supported by them, both in the co-planning and operational phases. At the same time, the activation of

116. So notes P. Michiara, I patti di collaborazione e il regolamento per la cura e la rigenerazione dei beni comuni urbani. L'esperienza del Comune di Bologna, in "Aedon", 2/2016.

117. This refers to the essay by G. Arena, Introduzione all'Amministrazione condivisa, in "Studi parlamentari e di politica costituzionale", 1997, pp. 29-65.

private individuals in taking care of certain commons does not mean that the public institutions are withdrawing from the action carried out in that area; for example, the care activities promoted by citizens in relation to urban green spaces do not replace the maintenance activities usually carried out by municipal offices, but complement them to better meet the needs of the community.

Moreover, the principle of collaboration that characterises the paradigm of Shared administration is not limited to the relationship between citizens and public authorities, but also characterises the relationship within the offices of the latter. This translates into a change in the modus operandi within public administrations themselves, where offices, used to working in watertight compartments, are instead called upon to collaborate with each other in order to facilitate the action of active citizens[118].

The latter, in the new model of administration, by becoming active in the shared care, management and regeneration of the commons, shed their traditional role as administrators and put on that of co-administrators. In defining the content of the Pacts, in fact, together with the public institutions they identify the general interest to be protected, the methods and everything necessary to fulfil it. They become, together with the institutions, responsible for the fulfilment of the general interest.

With Shared Administration, therefore, we are witnessing an evolution on both sides of the relationship, with private individuals no longer in a position of subordination to the public administration, which, placing itself on the same level as them, favours them and helps them to make their resources and knowledge available to the entire community.

To date, the model of shared administration, an expression of the principle of horizontal subsidiarity, is not regulated by any national legislation, although it is gradually gaining important recognition, especially jurisprudential. The Constitutional Court, in its ruling of 26 June 2020, no. 131, recognised shared administration as an alternative model to that of profit and the market, in which the relationship between the public and private sectors is not of a synallagmatic nature, as is the case with contracts.

## 3.5
## The principle of horizontal subsidiarity and legal standing

An equally interesting application of the principle of horizontal subsidiarity in the legal system is the one made by administrative jurisprudence in order to expand the number of individuals entitled to take legal action for the protection of various diffuse interests, such as environmental interests[119]. Indeed, recourse to the principle has not always been useful in achieving this extension, since it is possible to identify several rulings in which, although referred to, the principle of horizontal subsidiarity has only contributed to strengthening certain legal institutions already consolidated in the system[120].

In these contexts, therefore, this principle has not been recognised as having any innovative force, a characteristic which, on the contrary, is attributed to it by that

118. On the organisation of offices by some local authorities see P. Bonasora, C. Leggio, Come si organizzano gli uffici per l'Amministrazione condivisa?, in "Rapporto Labsus 2019", pp. 40-1.

119. In the doctrine there are several authors who have dealt with the relationship between horizontal subsidiarity ex art. 118, paragraph 4, Const. and the role of privates in the process, among them see the works of P. Duret, Riflessioni sulla legitimatio ad causam in materia ambientale tra partecipazione e sussidiarietà, in "Diritto processuale amministrativo", 2008, pp. 688-788; Id, Taking "commons" seriously: spigolature su ambiente come bene comune e legitimatio ad causam, in "Rivista quadrimestrale di diritto dell'ambiente", 1/2013, pp. 2-65; F. Giglioni, La legittimazione processuale attiva per la tutela dell'ambiente alla luce del principio di sussidiarietà orizzontale, in "Diritto processuale amministrativo", 2015, pp. 413-56.

120. Among the many, it is sufficient to mention Consiglio di Stato (Council of State), section IV, 2 October 2006, no. 5760; Consiglio di Stato, section V, 19 February 2007, no. 826; Consiglio di Stato, section VI, 13 September 2010, no. 6554.

group of rulings according to which a wider range of individuals are identified as having the legitimacy to take legal action, for the protection of general interests, by virtue of their participation in the administrative procedure which led to the adoption of the harmful act. On the basis of this orientation, in essence, the care of diffuse interests, of which the private subjects admitted to the procedure are the interpreters, continues also in court.

Highly innovative is the interpretation of the principle of horizontal subsidiarity provided by case law, which recognises the locus standi of certain individuals not because of their subjective characteristics, but to guarantee effective protection in court of a widespread interest. In these terms, the purpose attributed to the constitutional principle is primarily that of guaranteeing widespread social control of general interests. It is from this interpretation that, consequently, it is assumed that it is necessary to grant to a greater number of individuals, including those social organisations lacking significant levels of representativeness, the legitimacy to take legal action, in order to guarantee a stronger protection to these interests, threatened by the act that one intends to challenge.

## 3.6
## Concluding remarks

The analysis carried out in the preceding paragraphs provides an image of the principle of horizontal subsidiarity capable of introducing significant innovations in our legal system, from at least three points of view. First of all, from a normative point of view, since its immediately operational character has allowed public authorities, especially local ones, to implement it directly through the adoption of Regulations for the shared administration of material and immaterial commons. These instruments, in the absence of legislative regulations, define a certain legal framework within which to bring experiences of collaboration between active citizens and administrations, which have arisen outside the traditional legal paradigms. The adoption of these instruments has enabled institutions to favour the carrying out of activities of care and regeneration of the tangible and intangible commons by active citizens, who, by providing their resources and skills, have proved to be valid allies in guaranteeing the pursuit of various general interests.

The horizontal declination of the principle of subsidiarity by the aforementioned Regulations and collaboration pacts has, therefore, also brought about considerable innovations in the relations between public institutions and active citizens, whether individuals or associations. In fact, by recognising the distinctive character of collaboration between the parties, the Shared Administration model sees the public authorities place themselves on the same level as active citizens and collaborate with them to pursue the general interest, identified in synergy. At the same time, therefore, the way in which private citizens are conceived also changes, as they become subjects capable of integrating the skills and competences present within public administrations, making their own resources and knowledge available to them. However, the collaborative spirit that characterises the new model of administrative action is not limited to the relationship between public authorities and active citizens, but also concerns the bodies within the administrations themselves. In fact, it is only by orienting internal and external relations within the administrations towards this principle of collaboration that it is possible to effectively implement the provisions of the constitutional article 118, last paragraph, and thus favour the performance of activities of general interest.

121. Ex multis see Consiglio di Stato, section IV, 2 October 2006, no. 5760; T.A.R. Puglia-Lecce, section I, 5 April 2005, no. 1847; T.A.R. Emilia-Romagna - Bologna, section I, 6 July 2007, no. 1618.

122. See in particular the considerations made by T.A.R.. Liguria, section I, sentence 18 March 2004, no. 267; T.A.R.. Lombardy-Milan, sec. II, sentence 22 October 2013, no. 2336; T.A.R.. Lazio-Roma, section II-quater, sentence 20 April 2007, no. 3518.

However, the legal innovations attributable to the application of the principle of horizontal subsidiarity are not limited to those just mentioned. By resorting to this principle, it has been shown that case law has even been able to innovate consolidated institutions in our legal system, such as the legitimacy to appeal before the courts for the protection of diffuse interests. In fact, it is by virtue of the original legal interpretations that have been given to this principle that a wider plethora of private individuals have been recognised as having the possibility of bringing an action before the courts and, therefore, of protecting the general interests threatened by the act considered illegitimate.

In the light of what has been emphasised in this work, it is undeniable that horizontal subsidiarity is a principle driving the transformations of the legal system, some of which have not yet been fully expressed, that mark the passage of new phases in democratic systems and the active participation of citizens.

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