PROVINCIAL AND METROPOLITAN PLANNING PROCEDURES FOLLOWING IN THE WAKE OF THE REFORM OF PROVINCIAL GOVERNMENT. REFLECTIONS IN RELATION TO THE CONCEPT OF ADMINISTRATIVE CORRUPTION.

Matteo Pressi[1]

Abstract

This paper aims to highlight some critical aspects contained within the reform of the Provinces implemented with law no. 56/2014, also known as "Delrio reform". In particular, the paper focuses on the analysis of the relationship between provinces and municipalities in the particular context of exercising their respective urban planning functions. The reflection is carried out in the light of the notion of "administrative corruption" developed by the National Anti-Corruption Authority.

TABLE OF CONTENTS

[1] PhD student in Administrative Law, University of Verona.

1. The concept of administrative corruption and its relevance within the urban and territorial planning sector.

For many years, various legislation has been enacted in order to combat corruption by the Italian legislature, which has been steadfastly committed to identifying new instruments for preventing, combatting and punishing the scourge of corruption and maladministration that afflicts various sectors of the central and local public administration.

It is a particularly complex phenomenon, which cannot be encapsulated within the mere criminal law concept of corruption[2]. It is precisely for this reason that the Italian administrative law literature[3] has developed a concept of corruption broader than that provided for under Article 318 of the Italian Criminal Code[4]. It covers not only the conduct of public officials who, when performing their duties or exercising their powers, unduly receive or accept the promise of cash or other benefits, either for themselves or for a third party, but also "conduct that gives rise to liability of any other type or does not expose them to any sanction, but is nonetheless undesirable for the legal order: conflicts of interest, nepotism, clientelism, partisanship, the occupation of public offices, absenteeism and waste"[5].

This paper will consider in particular the definition of corruption developed by the National Anti-Corruption Authority (NACA), as also set out in the national anti-corruption plans issued by the Authority. The definition developed by the NACA within this plans is not only broader than the specific offence of corruption and the overall body of offences against the public administration, but also coincides with "*maladministration*", construed as the adoption of decisions (concerning constellations of interests upon the conclusion of procedures, the resolution of phases within individual procedures, and the management of public resources) that are not conducive to the furtherance of the

[2] See, R. Cantone, *Il sistema della prevenzione della corruzione* (2020).

[3] See, *inter alia*, F. Merloni, L. Vandelli (ed.), *La corruzione amministrativa. Cause, prevenzione e rimedi* (2010); F. Cerioni, V. Sarcone (ed.), *Legislazione anticorruzione e responsabilità nella pubblica amministrazione* (2019); A. Marra, *L'amministrazione imparziale* (2018).

[4] R. Cifarelli, *Corruzione "amministrativa" e controlli: spunti di riflessione*, in 14 Amministrazione in Cammino 1 (04/2013).

[5] B. G. Mattarella, M. Pelissero, *La legge anticorruzione* (2013).

general interest as a result of improper conditioning by special interests[6].

Therefore, this paper will consider to be relevant also "any act or conduct that, whilst not constituting a specific offence, is at odds with the necessary requirement to further the public interest and runs contrary to the legitimate expectations of citizens in the impartiality of the administration and of the persons carrying out activities in the public interest"[7].

Turning to local administrations, it is readily apparent that the most instances of corruption *lato sensu* involve in particular the urban planning sector in which the competence of the local authorities is particularly broad[8]. Moreover, this sector is characterised by the existence of decision-making processes that envisage broad scope for discretion when exercising public powers[9]. In addition, there has been a gradual abandonment of the traditional concept of mandatory urban planning choices towards a search for consensus involving the conclusion of dedicated agreements with private interests which occurs - as has been pointed out by authoritative statements within the literature from

[6] On the concept of "maladministration", see S. Cassese, *"Maladministration" e rimedi*, in 115 Il Foro Italiano 243 (1992). According to the author, "the phenomenon has two different variants. There is the more widely known variant where the administration draws on financial resources in order to conclude contracts for works and supplies. In such cases, there is a disbursement by the state and the "malpractices" are more apparent when contracts are not awarded according to the criteria of impartiality and merit. However, there is also a less apparent variant, where which non-monetary assets are monetised. For example, administrations grant concessions, authorisations, clearances and licences. In such cases, the adoption of an administrative measure may be rendered conditional by the administration on payments being made by private individuals". This issue can also be explored in depth on the light of the concept of institutional corruption, on point see D. F. Thompson, *Theories of Institutional Corruption*, in 21 Annual Review of Political Science 495 (2018).

[7] A. Joannone, I. Maccani, *Corruzione e anticorruzione in Italia*, 57-59 (2017).

[8] For a more detailed study of the relationship between discretion and corruption in the town planning sector, see M. Cappelletti, *La corruzione nel governo del territorio* (2015).

[9] B. Boschetti, *La discrezionalità delle scelte di pianificazione generale tra fatti e limiti normativi*, in 15 Urbanistica e appalti 755 (11/2011). As is stressed by the author, "general planning choices […] are an expression of broad discretion, which may only be reviewed on the grounds of manifest illogicality and inconsistency".

the phase in which urban planning configurations are determined onwards[10].

In view of the above, this paper will seek to highlight some critical aspects surrounding to the exercise of the powers vested by the law on urban planning in the supra-municipal bodies provided for under Italian law, namely the provinces and metropolitan cities. These critical aspects are at least theoretically liable to expose such areas to interference by special interest holders - not necessarily from the private sector - thereby compromising administrative impartiality and the proper conduct of the administration.

2. The role of the provinces and metropolitan cities within territorial planning procedures.

In order to introduce the central issue within this paper, it is important to analyse briefly the current allocation of powers over urban planning as provided for under Italian law, areas which now fall under the broader concept of "territorial government"[11] as provided for under Article 117 of the Italian Constitution[12].

A variety of public sector actors are involved, each of which is charged with upholding specific interests pertaining to different levels of planning, which are identified with reference to the principles of subsidiarity, adequacy and differentiation pursuant to Article 118 of the Italian Constitution. It may therefore be readily concluded that public interests that should be protected in

[10] P. Urbani, *L'urbanistica*, in F. Merloni, L. Vandelli (ed.), *La corruzione amministrativa. Cause, prevenzione e rimedi*, 423-436 (2010).

[11] See the definition contained in Article 1(2) of Draft Law no. 3519 of 2005, according to which the expression "territorial government" means "the totality of information gathering, evaluative, regulatory, programming, localisation and implementation activities as well as oversight and control activities intended to achieve the protection and enhancement of the territory, to regulate its uses and transformations as well as mobility in relation to the development objectives for the territory. Territorial government also includes urban planning, construction, the totality of infrastructure programmes, soil defence, the protection of environmental amenities as well as the furtherance of public interests that are functionally related to such matters". On this issue, see also F. Merloni, *Infrastrutture, ambiente e governo del territorio*, in 35 Le Regioni 45 (1/2007).

[12] A. Iacoviello, *La competenza legislativa regionale in materia di governo del territorio tra esigenze unitarie e istanze di differenziazione,* in 9 Rivista AIC 360 (2/2019).

a uniform manner throughout the entire country are regulated by state legislation, whilst it falls to the regions to regulate those aspects of urban planning that are of strictly regional relevance[13].

In addition, local authorities are also involved in urban planning processes, including specifically municipalities, which are responsible for planning at municipal level, and provinces and metropolitan cities, which are responsible for so-called "supra-municipal" [in Italian "*area vasta*", literally "vast area"] planning or "coordination"[14].

The main urban planning function of those bodies lies precisely in planning activity, which consists in the adoption of special administrative measures by municipalities, provinces and metropolitan cities, which are known as "plans"[15].

At the same time, the literature has elaborated a series of conceptual distinctions, introducing the concepts of urban planning plans and territorial plans, which may be distinguished between above all with reference to their compelling effect[16].

Specifically, urban planning plans, for which the municipalities are responsible, have particular effects on private property in regulating "the use of land, stipulating types of building, intended usage, etc."[17]. Territorial plans on the other hand do not have any normative effect on the territory. Rather their objective is to regulate urban planning powers in substantive terms through directives aimed at planning bodies, which do not have any direct effects on the territory or on private property[18].

---

[13] On this issue, see R. Gallia, *Il governo del territorio tra Stato e Regioni*, in 28 Rivista giuridica del Mezzogiorno 65 (1-2/2014); G. Pagliari, *La materia "governo del territorio" nella giurisprudenza costituzionale*, in 30 Rivista giuridica di urbanistica 315 (3-4/2014).

[14] G. Pagliari, *Manuale di diritto urbanistico*, p. 65 (2019); D. De Pretis, E. Stefani, *La legislazione regionale in materia di governo del territorio dopo la riforma costituzionale del 2001*, in 33 Le Regioni 811 (5/2005).

[15] F. G. Scoca, P. Stella Richter, P. Urbani (ed.), *Trattato di diritto del territorio*, pp. 477-490 (2018).

[16] M.S. Giannini, *Istituzioni di diritto amministrativo* (1981). According to the author, the normative effect of urban planning instruments results from its manifestation as "a power that the law vests in certain administrations to stipulate characteristics applicable to persons, property and objects, legal relations and *de facto* relations, acting under discretion within the limits laid down by law".

[17] M.S. Giannini, *op. cit.*

[18] G. Pagliari, *Corso di diritto urbanistico*, pp- 41-49 (2015).

It is possible to discern a further category, specifically the coordination of territorial planning, an activity traditionally reserved to the provinces and the metropolitan cities. Coordination plans, which are sometimes referred to as "supra-municipal" plans, have some features that are typical of urban planning (compelling effect) and others that are typical of territorial planning (normative-regulatory effect), a characteristic that has led the literature to define them as "mixed content plans"[19].

As regards such plans, Article 20 of Italian Legislative Decree no. 267 of 2000 (known as the "Consolidated Text on Local Authorities") is undoubtedly relevant in assigning to the provinces the task of adopting the "territorial coordination plan" which must set out "general guidelines for territorial configuration", and in particular:

a) the various potential usages of the territory depending upon the prevailing vocation of its individual parts;
b) the general location of major infrastructures and the principal lines of communication;
c) lines of intervention for water management, hydro-geological and hydro-forestry projects and in general for the purpose of soil consolidation and water regulation;
d) the areas in which it would be appropriate to establish natural parks or reserves.

It is apparent from an analysis of the provision that, whilst it is a "mixed content" planning instrument, the provincial coordination plan may also be considered to be predominantly a plan setting out directives as it is required to stipulate "general guidelines for territorial configuration", which are directed mainly at the municipalities.

This aspect is rendered even clearer by Article 20(6) of the Consolidated Text on Local Authorities, which provides that "for the purposes of the coordination and approval of the territorial planning instruments drawn up by the municipalities, the province shall exercise the functions vested in it by the regions,

[19] P. Urbani, S. Civitarese Matteucci, *Diritto Urbanistico, organizzazione e rapporti* (2017).

and shall under all circumstances have the task of ascertaining the compatibility of those instruments with the terms of the territorial coordination plan". The Provincial Territorial Coordination Plan (PTCP) is thus "the instrument that sets out not only general planning guidelines but also local arrangements for implementing provincial choices and stipulates directly the 'territorial invariances' on which the municipalities have limited or no scope at all for discretionary assessment when drawing up their own urban planning instruments"[20].

This is therefore an instrument capable of incisively delineating the scope of discretionary assessments within municipal planning in terms of the various options for the development and conservation of the territory, the latter aspect being particularly significant. In fact, according to Article 57 of Italian Legislative Decree no. 112 of 1998, every region must stipulate through dedicated legislation that the PTCP "shall have the value and effects of protection plans within the sectors of nature protection, environmental protection, groundwater protection, soil protection and the protection of environmental amenities"[21]. This means that regions have the task of introducing specific constraints with the aim of protecting the environment and the ecosystem, which are capable of further limiting the scope for discretion vested in the municipalities in relation to the elaboration of their own urban planning plans[22].

In keeping with the above, legislation in a number of regions vests the provinces with broad sanctioning and oversight powers in order to ensure compliance by municipalities with Provincial Territorial Coordination Plans.

For example, Veneto Regional Law no. 11 of 2004, entitled "*provisions on territorial government and landscapes*", contains numerous provisions to this effect[23]. In particular, according to Article 14 of the Regional Law, it is for the province to approve the urban planning plans of the municipalities (along with any

[20] P. Urbani, S. Civitarese Matteucci, *Op. cit*, p. 225.
[21] *Ibidem.*
[22] Cf. P. Falcone, *Pianificazione territoriale di coordinamento e pianificazione di settore,* in 4 Urbanistica e appalti 5 (1/2000).
[23] On point, see V. Domenichelli, *La nuova legge urbanistica della Regione Veneto*, in E. Ferrari, P. L. Portaluri, E. Sticchi Damiani (ed.), *Poteri regionali e urbanistica comunale*, pp. 379-386 (2005).

variants), whilst the provincial authorities may also make any changes on their own initiative that are necessary in order to ensure that municipal urban planning plans are compatible with the PTCP[24]. Moreover, Article 30 of Veneto Regional Law no. 11 of 2004 provides that the president of the province may appoint a special commissioner in the event that "any municipality fails to adopt any act or carry out any action, or fails to do so within the time limits prescribed by law, which it is expressly obliged to do by law in relation to the formulation or amendment of urban planning instruments". In addition, the Regional Law also vests the president of the province with the power to annul "municipal measures that authorise any action that is not compliant with the requirements of urban planning instruments or building regulations, or that otherwise violate the urban planning or construction law applicable at the time they were adopted".

It is evident that these powers of oversight are particularly far-reaching, so much so as to entail the power of a province or metropolitan city to annul municipal down planning measures under certain circumstances.

It has been considered on various occasions within the literature whether this institute constitutes the specific manifestation of a general rule, consisting in the power to "annul a measure issued by a different body", namely the municipality, "which is naturally vested with the power to annul the act in question, and the autonomy of which is guaranteed under the Constitution"[25].

According to the case law, that power of annulment vested in the provinces and the metropolitan cities constitutes a "special exercise of the general power of annulment *ex officio* [...], which is characterised within this specific legislation by the allocation of powers not to a body that is hierarchically superior to the municipality, but rather to the body that shares [...] jurisdiction over urban planning with it, according to a model under which

[24] Article 14 of Veneto Regional Law no. 11 of 2004.

[25] P. Marzaro, *Il potere di annullamento dei provvedimenti comunali in materia urbanistico-edilizia: profili sistematici ed esegetici*, in 15 Rivista Giuridica di Urbanistica 513 (3-4/1999).

functions are allocated concurrently, with both bodies on an essentially equal footing"[26].

However, if the province has the power to annul municipal urban planning or construction measures, or even the power to act *in lieu* of the municipal authorities in the event that the latter fail to adopt urban planning plans, it is logical to suppose that, when exercising its own powers of supervision and control, it must necessarily have third party status vis-a-vis the municipalities, so as to guarantee respect for the principle of impartiality within its own administrative procedures, in particular in the area of urban planning, far removed from any form of "improper conditioning by special interests"[27].

3. The procedure applicable to the adoption and approval of supra-municipal plans in the light of Italian Law no. 56 of 2014.

The position stated above appears to be difficult to reconcile with the current reality of Italian provinces and metropolitan cities. In fact, in 2014 the legislature adopted a radical reform of the governance of supra-municipal areas, establishing an entirely new model under which the provinces and metropolitan cities were reduced to the status of "second-level" bodies, no longer directly elected[28].

Before setting out the current configuration of the provinces, it is important to recall albeit briefly their salient characteristics before the 2014 reform.

---

[26] Regional Administrative Court for Lombardy, Brescia, 23 June 2003, judgment no. 873. On this point see also A. Frigo, *L'annullamento dei provvedimenti comunali in materia edilizia,* in 4 Rivista di Giurisprudenza ed Economia d'Azienda 1 (2008).

[27] NACA, National Anti-Corruption Plan for 2016.

[28] G. Vesperini, *La legge "Delrio": il riordino del governo locale* in 19 Giornale di diritto amministrativo 786 (8-9/2014); C. Benetazzo, *Le Province a cinque anni dalla legge "Delrio": profili partecipativi e funzionali-organizzativi*, in 17 Federalismi.it 1 (5/2019); F. Pizzetti, *la legge Delrio: una grande riforma in un cantiere aperto. Il diverso ruolo e l'opposto destino delle città metropolitane e delle province,* in 5 Rivista AIC 1 (3/2015); F. Merloni, *Sul destino delle funzioni di area vasta nella prospettiva di una riforma costituzionale del Titolo V*, in 35 Istituzioni del Federalismo 215 (2/2014); L. Vandelli, *La provincia italiana nel cambiamento sulla legittimità di forme ad elezione indiretta*, in 46 Revista catalana de dret públic 90 (2013).

In particular, prior to the entry into force of Italian Law no. 56 of 2014, the province was defined as an intermediate local body between the municipality and the region charged with the function of representing the local community, pursuing its interests and promoting and coordinating its development. In order to do so, the provinces were able to count on broad autonomy under provincial statutes and law, and also in terms of organisation, administration, taxation and finance. As far as governance is concerned they were headed by a president and a council, both directly elected by local residents, a fact which ensured their autonomy also on a political level[29].

With the approval of Italian Law no. 56 of 7 April 2014, the Italian legislature launched a process intended to transform local government for so-called "supra-municipal areas"[30]. This operation, which affected both the provinces and the metropolitan cities, was based on a twofold approach:

1. the almost complete redefinition of the identity, functions and institutional structure of the provinces[31];
2. the establishment of the metropolitan cities, which have been listed as one of the constituent elements of the Republic since the 2001 reform of Article 114 of the Italian Constitution, which had not however been followed up in the intervening period with the enactment of any legislation providing for their establishment[32].

[29] On point, see F. Pinto, *Diritto degli Enti locali*, pp. 312-316 (2012).

[30] C. Pinelli, *Gli enti di area vasta nella riforma del governo locale di livello intermedio*, in 36 Istituzioni del Federalismo 569 (3/2015).

[31] M. Bertolissi, G. Bergonzini, *Province: decapitate e risorte*, pp. 6 et seq (2017). As regards the "new" bodies for provincial governance, the most significant aspect is the manner in which they are elected. Specifically, the president of the province and the provincial council are now elected through so-called "second level" elections. The electorate (and the persons eligible for election) is comprised of the mayors and municipal councillors of the municipalities from each province. Alongside these (indirectly) elected bodies there is also a third non-elected body: the assembly of mayors. It is vested with particularly significant tasks, including in particular the approval of the balance sheet for the body.

[32] For a detailed consideration of the institutional structure and the functions of the metropolitan cities, see D. Mone, *Città metropolitane. Area, procedure, organizzazione del potere, distribuzione delle funzioni*, in 12 Federalismi.it 1

The extent of the change is already apparent from the new definition of the province (Article 1(5)), which the legislation intended should turn into a "supra-municipal territorial body"[33] vested with certain fundamental functions as well as certain so-called "contingent" functions.

The core of the fundamental functions may in turn be subdivided into three categories: management (environment, roads, school buildings), planning (urban planning, public transport and the schools network) and the provision of assistance to local authorities[34].

Specifically, insofar as of interest for the purposes of this paper, it should be recalled that pursuant to Article 1(85) of Italian Law no. 56 of 2014, the province exercises fundamental powers in relation to "the coordination of provincial territorial planning, as well as the protection and enhancement of the environment, in relation to the areas falling under its competence".

In addition, Italian Law no. 56 of 2014 made significant changes to the institutional framework of the provinces, severing the link between the electorate and provincial governmental bodies by introducing a system of so-called "indirect election" under which the electorate is comprised only of the mayors and municipal councillors of the municipalities within the province[35] and no longer of local residents entitled to vote. Similarly, the position of president of the province may only be held by mayors, whilst only mayors and municipal councillors are permitted to serve on the provincial council.[36]

To sum up, according to the applicable legislation, the governmental bodies of provinces (presidents and provincial council) are elected by representatives of the municipal authorities within the province, with only municipal councillors being eligible

(2/2014); L. Vandelli, *Ruolo e forma di governo delle Città metropolitane. Qualche riflessione*, in 11 Osservatorio sulle fonti 1 (2/2018).

[33] G. F. Ferrari (ed.), *Nuove province e città metropolitane: Atti del Convegno dell'Unione Province Lombarde, Milano*, p. 6 (2017).

[34] G. Tarli Barbieri, *Le Città metropolitane. Dimensione costituzionale e attuazione statutaria: considerazioni introduttive*, in 11 Osservatorio sulle fonti 1 (2/2018).

[35] F. Straderini, P. Caretti, P. Milazzo, *Diritto degli enti locali*, pp. 142-149 (2011).

[36] Cf. L. Vandelli, *Il sistema delle autonomie locali*, (2015); L. Vandelli, *Città metropolitane, province, unioni e fusioni di comuni. La legge Delrio, 7 aprile 2014, n. 56 commentata comma per comma* (2014); F. Pizzetti, *La riforma degli enti territoriali. Città metropolitane, nuove province e unione di comuni* (2015).

to serve as provincial councillors, and only mayors as presidents of the province.

The institutional framework for the metropolitan cities as laid down by Italian Law no. 56 of 2014 is not entirely dissimilar. In this case, the mayor of the principal municipality of the metropolitan city automatically serves as the metropolitan mayor, and is assisted in the governance of this special supra-municipal body (which is in reality nothing other than an amalgamation of provinces) by a council elected by the mayors and municipal councillors of the municipalities falling within the metropolitan city. Also in this case, the position of metropolitan councillor may only be held by the mayors and municipal councillors of the municipalities falling within the metropolitan city[37].

As regards the tasks allocated to the metropolitan cities, Article 1(44)(b) of the Delrio Law vests the metropolitan cities with the fundamental function of "general territorial planning, including communications structures, the network of services and the infrastructure falling under the competence of the metropolitan community, also", it is important to stress, "imposing constraints and objectives on the activities carried out and the functions performed by the municipalities falling within the metropolitan territory". In addition, the Law also vests the metropolitan cities with the same fundamental functions as the provinces, including the coordination of provincial territorial planning.

According to the combined effect of the two provisions cited above, the metropolitan cities are under an obligation to adopt a general territorial plan for the metropolitan city (PGTM), which is a "twin" of the Provincial Territorial Coordination Plan planning instrument (PTCP)[38].

The procedure governing the adoption of both instruments, PGTM and PTCP, is governed by the specific individual town planning laws enacted by each region. For example, Article 23 of Veneto Regional Law no. 11 of 2004 (cited above), entitled "*provisions on territorial government and landscapes*" governs the

[37] E. Carloni, F. Cortese, *Diritto delle autonomie territoriali,* pp. 141-146 (2020).
[38] On this issue see R. Briganti, *Città metropolitana tra pianificazione e territorio*, in 16 Federalismi.it 1 (12/2018); R. Gallia, *Il governo del territorio nella riforma degli Enti territoriali*, in 28 Rivista giuridica del mezzogiorno 725 (4/2014).

procedure applicable to the adoption of and any variation to the Provincial Territorial Coordination Plan.

According to the legislation cited, power of initiative lies with the president of the province (who, as mentioned above, is also the mayor of one of the municipalities within the province)[39], who is required to draw up a preliminary document setting out the general objectives of the PTCP. Thereafter, the provincial council (comprised only of mayors and municipal councillors) adopts the plan, which is lodged at the central administration of the province for a period of 30 days in order to enable any person to consult it and to submit any observations considered appropriate. Upon expiry of the time limit for submitting observations, the province transmits the plan to the region within the following sixty days for final approval along with any observations received and the relative rebuttal arguments of the provincial council[40].

---

[39] In fact, the provision establishes a power of initiative for the provincial council, a body abolished with the entry into force of Italian Law no. 56 of 2014. Subsequent legislation has clarified that the powers of the provincial councils, which have in the meantime been abolished, have been transferred to the president of the province.

[40] To date Veneto Region has not yet made provision to regulate the procedures for approving the GTPM. Provision has been made in this area by Regional Law no. 30 of 30 December 2016, "In relation to the Regional Stability Law for 2017", including in particular Article 3 "Urban planning functions of the Metropolitan City of Venice", paragraphs 1 and 4 of which respectively provide as follows:
"1. Until the approval of the three-year strategic plan for the metropolitan territory and the general territorial plan provided for under Article 1(44)(a) and (b) of Italian Law no. 56 of 7 April 2014, the Regional Executive shall exercise all powers relating to urban planning previously vested in the Province of Venice following the approval of the Provincial Territorial Coordination Plan (PTCP) pursuant to Article 48(4) of Regional law no. 11 of 23 April 2004 'Provisions on territorial government and landscapes'"
"4. Following the approval of the strategic plan and the general territorial plan provided for under paragraph 1, the Regional Executive shall make provision within sixty days of the publication of the decision to approve the latter of the two plans concerning the arrangements applicable to the transfer of urban planning functions to the Metropolitan City of Venice.".
However, Veneto Region has not yet amended its own sectoral legislation in line with the provisions of Italian Law no. 56 of 7 April 2014 with the result that, at the present time, the previously applicable framework under Regional Law no. 11 of 23 April 2004 "Provisions on territorial government and landscapes" is still in force, which applies where compatible also to the Metropolitan City of Venice.

It is apparent that the municipalities may play a fundamental role within the procedure for adopting territorial coordination plans (albeit indirectly through the choices made by their representatives on the governance bodies of the supra-municipal area bodies) due to their ability to impinge upon the contents of an instrument - the PTCP - that has *inter alia* also the function of directing and delineating the discretion of the municipalities in relation to urban planning.

The effective result is to overturn the hierarchical relationship between the municipalities and supra-municipal bodies, as the former are able to heavily condition the political and administrative choices made by the latter owing to the control exerted over its governance organs.

It must now be considered whether this fact is at least theoretically liable to impair the proper exercise of the urban planning powers vested in the provinces and the metropolitan cities, with reference to one of the core issues considered in this paper, namely the ability of Provincial Territorial Coordination Plans (and the general territorial plans for metropolitan cities) to prevail over municipal level urban planning instruments.

In other words, it is necessary to ask, also in the light of the content of the concept of administrative corruption, whether or not the current institutional framework for the provinces and metropolitan cities is able to guarantee their impartiality, above all vis-a-vis the municipal administrations affected by the choices made within supra-municipal area planning.

4. The necessary distinction between municipal urban planning and the coordination of territorial planning: the risk of short-circuits within decision-making.

The reform of the provinces implemented in 2014, which overhauled the electoral system and provided that institutional positions within the province should be held by the equivalent official from the municipality, gave rise to a risk of genuinely "short-circuited decision making"[41]. In particular, it is possible to

[41] The expression has been adapted from M. Pompilio (ed.), *Le Funzioni di Governo del Territorio nella Riforma delle Autonomie,* p. 8 (2017).

identify a serious lack of coordination between the legislation that governs in general terms the division of construction and urban planning powers between the local authorities and the legislation that now governs the framework of the provinces and metropolitan cities, which are rooted in an opposing perspective.

The above is confirmed by Article 19(1) of Italian Law no. 135 of 2002, which lists the fundamental functions of the municipalities, clearly stating in letter (d) that they have competence over urban planning and construction at municipal level, which is clearly distinct from the territorial planning function (competence over which lies with the provinces and metropolitan cities), to which the municipality contributes only through the participation of its officials. The same concept is also apparent within Articles 5 and 7 of the 1942 Law on urban planning, which is still in force.

On the other hand, since the Delrio Law entered into force the same people have served as municipal and provincial councillors, thereby interfering with the separation which, at least theoretically, should prevail between the planning procedures of these two bodies. This change will inevitably end up exposing the provinces and the metropolitan cities to significant interference by the municipalities, which will no longer be mere addressees of provincial and metropolitan city urban planning requirements, but will *de facto* be elevated to co-decision makers by virtue of their almost complete control over the governance bodies of the provinces and metropolitan cities.

In addition, the oversight function performed by the provinces over the municipalities appears to have been significantly undermined. In fact, as noted shortly above, under applicable legislation municipal urban planning instruments and any variants thereof only become fully effective once they have been approved by the province or, where established, the metropolitan city. As has been clarified, those bodies are highly dependent on the municipalities on a political level, a fact which is difficult to reconcile with the need to assess the planning choices made by the municipalities as objectively as possible.

A similar consideration may be made in relation to the power of the president of the province to annul any municipal acts or resolutions that do not comply with the requirements laid down in urban planning instruments. It must be stressed in

relation to such a scenario that the choice made within the Veneto regional legislation is highly singular, in vesting that power of annulment in a political authority - the president of the province - which as such operates with reference to considerations that are not exclusively technical in nature, thus leaving scope for conditioning, including undue conditioning, by the municipalities. This scenario is clearly liable to undermine the foundations on which the entire structure of supra-municipal area planning is based since, in order to be fully effective, such planning must feature a high level of impartiality vis-a-vis specific local interests.

5. Possible high-risk events and measures to combat corruption in the National Anti-Corruption Plan (NAP) and within the planning of provinces and metropolitan cities.

The particular configuration of the relationship between municipal urban planning functions and the planning functions of the provinces and metropolitan cities has also attracted the interest of the NACA. In fact, in the NAP for 2016, the authority identifies some "potentially risky events" in relation to the dynamics of that relationship, such as:

1. the failure to act prior to the expiry of the statutory deadline for the provinces and metropolitan cities to adopt a decision;
2. the acceptance of rebuttal arguments submitted by the municipality in response to previous observations made by the province and the metropolitan city, notwithstanding the lack of adequate reasons;
3. the failure to appoint a special commissioner in the event of the failure by the municipality to adopt a municipal urban planning instrument;
4. the failure by the president of the province to exercise the power to annul municipal acts or resolutions that do not comply with the requirements laid down in urban planning instruments.

For these reasons, the authority decided to lay down rules to prevent corrupt practices, including in relation to the various phases of the procedure for adopting and approving territorial plans. These guidelines, which are contained in the National Anti-

Corruption Plan, are reiterated and substantiated in the anti-corruption and transparency plans adopted by the individual provincial and metropolitan administrations.

The following considerations result from an analysis of the plans drawn up by the Provinces of Verona and Vicenza and the Metropolitan Cities of Turin and Naples, which are emblematic in terms of their completeness and depth of analysis of corrupt practices in the area of urban planning.

One shared aspect becomes clear upon reading these plans: all administrations identify territorial planning and urban planning procedures as being particularly exposed to corruption, classifying them as medium to high risk. As highlighted by the NACA in the NAP for 2016, the existence of that risk is strongly related to certain characteristic features of the situation:

a) the extreme complexity and breadth of the area of law, which is reflected in the lack of cohesiveness within the reference legislation (also due to the continuing validity of fragmentary pre-constitutional legislation enacted with reference to Law no. 1150 of 17 August 1942 on urban planning);
b) the difficulty in identifying and delineating the powers vested in the various administrations involved in planning procedures;
c) the variety and number of public and private interests that must be taken into account;
d) the difficulty in applying the principle of distinguishing between politics and administration within decision making (broad discretion);
e) the existence of information asymmetries between public bodies and private persons underlying planning choices;
f) the scope of the land registry income in play[42].

In view of the above, all provincial and metropolitan administrations considered as examples have taken steps to map the individual decision making processes occurring within the various stages of the planning process. These have accordingly identified at-risk events, as well as possible means of countering

[42] National Anti-Corruption Authority, National Anti-Corruption Plan for 2016, pp. 55 et seq.

them in relation to the phases of drafting, publication-consultation and finally definitive approval of the plan.

As regards the first phase mentioned, the drafting phase, in all cases a risk is identified in relation to the lack of clear and specific preliminary indications from political bodies regarding the development policy objectives that are to be pursued through the territorial plan. These policy indications constitute a necessary precondition for the development of appropriate project instruments, but above all for the establishment of a process for verifying that the technical solutions adopted are consistent with the underlying policy choices.

The Anti-Corruption Plan of the Province of Vicenza identifies certain corrective measures that are particularly effective, and at the same time easy to implement. In particular, it lays down an obligation to publish a preliminary document setting out the general criteria that will be used during the investigation phase for assessing planning choices. As a result, the choices made are always transparent and identifiable, and it is also possible for major stakeholders to participate in the planning procedure right from the outset. The formalisation of a variety of preliminary indications that must be adhered to when drafting the plan is particularly important where the drafting of the plan is left predominantly to self-employed experts from outside the administration.

In such an eventuality, the 2016 National Anti-Corruption Plan requires the administrations to publish the reasons for the choice to outsource drafting of the plan, should they decide to do so, and also to explain the manner in which the self-employed professional appointed is to be elected, after establishing that there are no grounds for incompatibly or conflicts of interest.

In this sense the Anti-Corruption Plan for the Metropolitan City of Naples is particularly far-sighted in that, when confronted with the need to secure specialist resources from outside the administration, it has decided to work if possible in partnership with universities, public research bodies and professional associations, all of which are particularly qualified and capable of guaranteeing a high degree of impartiality vis-a-vis the interests at stake. Similar measures are contained in the Anti-Corruption Plan for the Metropolitan City of Turin, which reiterates the need to use on a priority basis any resources from inside the administration.

As far as the second phase is concerned, specifically the publication of the plan following its adoption, there is a risk of the emergence of information asymmetries between public administrations and private individuals, committees and associations. In order to deal with that risk, the National Anti-Corruption Plan imposes an obligation on administrations to put in place suitable instruments to facilitate awareness of planning choices, including the preparation of summary documents written in non-technical language or the establishment of information points for the general public in order to promote so-called "social control" by the public of the choices made by administrations.

As regards the last of the three phases identified, namely the definitive approval of territorial plans, the main risk identified consists in the possibility that certain persons from outside the administration (in the case of Provinces and metropolitan Cities, these external parties can also be Municipalities) may improperly direct and condition planning choices as a result of the improper use of the right to present observations and objections[43].

To that end, the National Anti-Corruption Plan drawn up by the NACA includes an obligation to provide detailed reasons for decisions to accept observations that have the affect of altering the plan adopted, with particular reference to environmental, landscape and cultural impacts. This requirement has been implemented in particular within the Anti-Corruption Plan of the Province of Vicenza which, in contrast to others, requires the

[43] For a more detailed consideration of the concepts of "observation" and "objection", see the Regional Administrative Court for Sicily, Palermo, 3rd Division, judgment no. 1865 of 11 September 2012.
"[T]*here is an ontological difference between the concept of 'observation' concerning the draft plan and 'opposition' to the plan adopted* […] *which arises out of the provisions of the so-called Law on urban planning (no. 1150 of 1942) and has been reiterated by the regional legislature within Regional Law no. 71 of 1978, both of which are still in force. Indeed, private individuals may become involved during the adoption of the urban planning instrument, participating actively through both remedies. As regards the former, it is a widely held view within the case law that they must be regarded as a mere form of civic cooperation, so much so that their rejection may be motivated ob relationem by the rebuttal arguments of the municipality, it being sufficient that the rebuttal arguments, even if provided in summary form, be capable of demonstrating that the cooperative and critical contributions of private individuals have been taken into account. Objections may only be filed by the owners of properties affected by the plan, have the status of genuine legal remedies and oblige the competent authorities to examine and decide in relation to them."*

conduct of a detailed technical investigation in order to avoid the risk of the territorial plan being altered as a result of the acceptance of observations and objections that are at odds with the general interests of the protection and rational configuration of the territory, which must apply throughout all planning activity. This solution thus tends to reduce the margin of discretion available to political bodies when analysing observations and oppositions, thus tendering more remote the possibility that the prerogatives of political authorities may be exercised inappropriately.

6. Conclusions.

It is clear from the above that urban planning activity is particularly exposed to the occurrence of corrupt practices or maladministration for a variety of reasons: complexity within the law, the scale (including financial) of the interests, and the broad discretion within planning choices[44]. These critical issues affect all stages of the planning process and may be encountered at all levels of planning.

One highly controversial aspect, as this paper has attempted to demonstrate, concerns the relationship between planning at municipal level and at supra-municipal area level, which is particularly exposed to corrupt practices and maladministration, as noted also in the NACA.

As has been argued above, this is a particularly insidious relationship, which ends up curtailing the effect of systems of administrative controls over urban planning activity, thus increasing the likelihood of the occurrence of corrupt practices and instances of maladministration.

It is without doubt true that municipalities and supra-municipal bodies, provinces and metropolitan cities are required, in accordance with the competences vested in them, to exercise town planning functions from an integrated and systemic perspective; however, it is important not to overlook the fact that

[44] For an analysis of the impact of socio-economic and financial factors on urban political corruption, see B. Benito, M. D. Guillamòn, F. Bastida, *Determinants of urban political corruption in local governments*, in 63 Crime Law and Social Change 191 (3-4/2015).

the two levels of planning can in some cases protect mutually conflicting interests.

Whereas municipalities pursue the objective of the highest level of development of their local territory and their socio-economic structure, supra-municipal bodies on the other hand seek to coordinate (and in some cases to halt) the choices made by individual municipalities in the light of the principles of rational exploitation of the local territory, safeguarding the environment and ensuring sustainable urban development (by for example requiring municipalities to upgrade traffic infrastructure).

In order for the right balance to be struck between conflicting interests, there has to be a relationship of parity between stakeholders. As has been seen, this principle has been called into question on a factual level by the enactment of Italian Law no. 56 of 2014, which vested the municipalities with significant influence over provincial and metropolitan city bodies. This potential imbalance *de facto* limits the real effect of the regulatory measures adopted by supra-municipal bodies in the area of urban planning.

It is therefore necessary to restore effective and substantive political and administrative autonomy to provinces and metropolitan cities so as to enable them to engage with municipalities as (genuinely) overarching bodies, which as such are called upon to coordinate local government in an effective manner according to the principles of impartiality and proper administration, pursuing only the general interest.