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Dolores Freda

Rise and fall of a superior court: the Sacro Regio Consiglio v. the Consiglio Collaterale

1. *A state of conflict: the Sacro Regio Consiglio and the great tribunals of the Reign of Naples*

The Sacro Regio Consiglio, the Gran Corte della Vicarìa and the Regia Camera della Sommaria were established by the Aragons since mid-15th century, following to a political process of centralization of jurisdiction started already by the Normans in the 12th century and followed first by the Svevis and then by the Angevins in the following centuries. The superior courts of the Reign of Naples – together with the Consiglio Collaterale, created during the Spanish Viceregno at the beginning of the 16th century – attended by trained, professional judges, extremely powerful and often conflicting between each other in a complicated and often contradictory relationship, were destined to survive until mid-18th century[1]. **1**

The Sacro Regio Consiglio was the most powerful and authoritative court of the Neapolitan Reign. Although the exact date of its foundation is uncertain, legal historians agree that such a supreme court was established between 1444 and 1449 by Alfonso of Aragon, who wanted to reorganise the tribunals of the Reign hierarchically[2]. The supreme court probably originated from an ancient *Consilium Principis*, initially formed by lawyers and members of the aristocracy close to the king and endowed with advisory and judicial powers, then specialized – thanks to the refinement of its judicial powers and to a slow process of exclusion of the noblemen occurred between the 15th and 16th centuries[3] – in a real court of justice attended by trained, professional judges. Since **2**

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1 For a punctual reconstruction of the development of the administration of justice in the Reign of Naples since the Norman age until the 18th century, see R. COLUSSI, Diritto, istituzioni, amministrazione della giustizia nel Mezzogiorno vicereale. La struttura regalistica, in: Storia del Mezzogiorno, Vol. XI, Aspetti e problemi del medioevo e dell'età moderna, (Ed. del Sole, Napoli 1993), 19-98. See also the classics R. PESCIONE, Corti di giustizia nell'Italia meridionale, (Società Editrice "Dante Alighieri", Milano-Roma-Napoli 1924); and V.I. COMPARATO, Uffici e società a Napoli (1600-1647). Aspetti dell'ideologia del magistrato nell'età moderna, (Olschki, Firenze 1974). A more synthetic portrait of the administration of justice limited to the reign of Alfonso of Aragon is offered by A. RYDER, The Kingdom of Naples under Alfonso the Magnanimo. The Making of a Modern State, (Oxford Clarendon Press 1976), 136-168.

2 According to PESCIONE, Corti di giustizia, 196, "models" to the supreme court had been either the Supremo Consiglio of Valentia or the Roman Sacra Rota. See, for a more detailed discussion on the age of foundation of the great tribunal and for a deep analysis of the sources of the period, the classic G. CASSANDRO, Sulle origini del Sacro Regio Consiglio napoletano, in: Studi in onore di Riccardo Filangieri, vol. II, (L'Arte tipografica, Napoli 1959). Cfr. also PESCIONE, Corti di giustizia, 198 ff.; and, for an accurate reconstruction of legal historians' and lawyers' opinions on the uncertainties on the date of the supreme court creation, COLUSSI, Diritto, istituzioni, 34-5, who has concluded that the great tribunal developed through a long and slow process destined to last until the beginning of the 16th century. On the point see also G. VALLONE, Le "decisiones" di Matteo d'Afflitto, (Milella, Lecce 1988), 9-10.

3 Further, on the crisis of the aristocracy and the strenghtening of the *letrados* (lawyers and *officiales*) within the institutions of the Reign, R. AJELLO, Il problema storico del Mezzogiorno. L'anomalia socioistituzionale napoletana dal Cinquecento al Settecento, (Jovene, Napoli 1994), who talks of a real hegemony of lawyers in Naples since the 16th century. On the streamlining of feudality in the Reign see also the fundamental work by A. CERNIGLIARO, Sovranità e feudo nel Regno di Napoli, 1505-1557, vol. I, (Jovene, Napoli 1983).

1533 the court, presided over by a President, was divided into two *Aulae*, each formed by four *legum doctores*, chosen between the most learned and appreciated lawyers of the Reign, who usually took the decisions of the most difficult cases *junctis Aulis* [4]. The President had the power to assign the cases, after a previous and summary examination of their content, to the judges: hence a wide power on his part to steer the activity of the court. In addition to the President and the other judges, a Secretary, five Officers and a Porter of the Secretary Office were also part of the court.

3 The Sacro Regio Consiglio had a wide competence in first instance in the civil matter: it judged all trials concerning the feudal matter and all cases of difficult solution exceeding the value of twenty-five ounces. All the remaining cases were decided by the inferior courts of the Reign (the provincial Udienze and the Courts of Barons) and by the Regia Gran Corte della Vicarìa as a court of appeal. Then it was possible to resort to the Sacro Regio Consiglio only as a further and final degree of jurisdiction. The superior court could not judge cases concerning the political matter, normally decided by the Consiglio Collaterale, and trials concerning financial and fiscal interests, judged by the Regia Camera della Sommaria. For what concerns the criminal matter, the Regia Gran Corte della Vicarìa had a general competence in first and second instance, so it was possible to resort to the Sacro Regio Consiglio only after a pronouncement on its part. Nevertheless, should any trial concern the *crimen lesae majestatis* or should it be particularly serious, the supreme court had full jurisdiction over it.

4 Such a complicated relationship between the supreme courts of the Neapolitan Reign gave often rise to conflicts of jurisdiction. The Regia Gran Corte della Vicarìa, formed by five judges (a President and four *jurisperiti*), divided into two «Udientiae» − one civil and one criminal −[5], had, in addition to the already mentioned general competence in first instance in the criminal matter, an exclusive jurisdiction over crimes committed by public officers[6]. Besides, it judged in matter of imprisonment, revolts and atrocious crimes. The supreme court was also endowed with extraordinary powers: it could recur to torture and sentence to death. For what concerns the civil matter, the great tribunal had a concurrent competence with the Sacro Regio Consiglio as a court of first instance for the city of Naples and, at the same time, as an appellate court for the decisions of the provincial Udienze[7]. Against the decisions of such a great tribunal it was possible to resort to the Sacro Regio Consiglio but, although the Regia Gran Corte della Vicarìa was hierarchically

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4 The number of members of each *Aula* increased, between the 16th and 17th centuries, to five members (all legal experts), while the number of the *Aulae* was brought first to three and then to four, for a total number of twenty members, COLUSSI, Diritto, istituzioni, 36. But M.N. MILETTI, Tra equità e dottrina. Il Sacro Regio Consiglio e le «decisiones» di V. De Franchis, (Jovene, Napoli 1995), 143-144, has highlighted that sources show some inconsistencies in the matter.

5 Its sections were destined to become four between the end of the 16th and the beginning of the 17th centuries.

6 «Causas inter criminales, praesertim in quibus vel de capite, vel membri abscissione agitur, tractari, decernique Magna in Vicariae Curia jubemus, ad quam proprie criminalium causarum cognitio spectat, non autem in Consilio, ubi de causis civilibus, non de criminalibus cognosci solitum est, nisi forte de lesae Majestatis crimine ageretur, vel aliud urgenti ex causa, eidem Consilio visum fuerit. Criminis lesae Majestatis cognitio nobis vel judicibus per nos delegatis, sive delegandis, reservatur», L. GIUSTINIANI, Nuova collezione delle prammatiche del Regno di Napoli, (Stamperia Simoniana, Napoli 1805), vol. XI, tit. CC, Pramm. XXXVII, 68.

7 Furthermore, the widows and all kind of "miserable" people could recur to the Corte della Vicarìa *per saltus*. See, for further details on the structure and competences of the great tribunal, COLUSSI, Diritto, istituzioni, 53-8.

subjected to the Sacro Regio Consiglio – at least theoretically – (it was subjected to the Regia Camera della Sommaria and to the Consiglio Collaterale too), there were frequent conflicts of jurisdiction between the two superior courts in practice as their competences were often crossing.

The Regia Camera della Sommaria, presided over by a Luogotenente, formed by lawyers and **5**
accountants (the Razionali) and, since 1596, divided into two sections or «rotae»[8], had, on its part, an exclusive jurisdiction in administrative and financial matters[9]. The court not only exercised a broad power of control over the activity of the other courts in the financial field, but extended it also to the civil and criminal matters: should the Internal Revenue act as plaintiff or defendant in a trial discussed in any other court, the case had to be referred, subject to invalidation, to the Regia Camera della Sommaria. Besides, a *prammatica* (statute) enacted in 1595 established that in presence of an (even slight) financial interest on the part of the Internal Revenue in a trial discussed at the Sacro Regio Consiglio, the Regia Camera had the right to send the Avvocato fiscale or one of its procurators to take part in the hearings: without the presence of such a magistrate, no effective decision could be taken by the superior court[10]. Last but not least, the Regia Camera della Sommaria was an appellate court for the decisions of all the inferior courts in matter of public finance, while against its decisions it was possible to resort to the Sacro Regio Consiglio. The limits of the competences of the Sacro Regio Consiglio and of the Regia Camera della Sommaria – often concurrent − were not entirely clear, so clashes of jurisdiction were quite frequent between them[11].

Finally the Consiglio Collaterale, a king's council formed by some of the best lawyers of the **6**
Reign and endowed with judiciary and advisory powers, established in 1504 during the Spanish Viceregno[12] in order to balance the (almost unlimited) power of the Vicerè[13] and composed by two "sections"[14], saw its powers and functions so much increased during the first half of the century (also in correspondence to the gradual decadence of the Regia Gran Corte della Vicarìa), that

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8 In 1637 a third *rota* was added, and the number of the judges of the court was brought to a total of twelve members.

9 It seems that the name itself of the court derived from the fact that it examined the private interests of the king ("camera"), and from the way accounts were done ("summariae").

10 «(…) sancimus in posterum perpetuo, ut nullius judex cujuscumque fori extiterit, in causa quae directe, vel indirecte, vel quocumque modo Fisci interesse agatur, sive ea civilis, seu criminalis, vel mixta fuerit, ad definitionem, prolationemque sententiae, vel ad aliquos actus, Fisci, juribus praejudicantes, procedere valeat nisi prius Advocatum, Procuratoremque Fiscales, jura fisci proponentes audieri. Cui sanctioni, si judex non potuerit, ejus sententiam ipso jure nullam, processosque, et acta causae ejusmodi nullius momenti, roborisque esse statuimus. Insuperque judice ipsum in multa, nostrae Majestatis arbitrio reservatam incidisse declaramus», GIUSTINIANI, Nuova collezione, vol. XI, tit. CC, *De officio Sacri Regii Consilii*, pramm. XXXV, 67; «(…) causae inter privatos, Fiscumque nostro in Consilio, sive aliis in tribunalibus, curiisve pendentes, eandem ad Cameram originalibus suis cum processibus devolutas haberi mandamus», Pramm. XXXVII, 68.

11 Cfr., for a more detailed description of the origins, competences and evolution of the great tribunal, COLUSSI, Diritto, istituzioni, 41-9.

12 According to PESCIONE, Corti di giustizia, 229-230, the council was formed by lawyers (*Auditori*) who counseled the king in the legislative and judiciary activity already since the 15th century.

13 See, for a more detailed history of the Consiglio Collaterale, M.L. CAPOGRASSI BARBINI, Note sul Consiglio Collaterale del Regno di Napoli, (1965) 38 Samnium, 202-231; COLUSSI, Diritto, istituzioni, 24-33. For some critical notes on the great tribunal and its relationships with the other Neapolitan superior courts, cfr. also G. GALASSO, Il Regno di Napoli. Il Mezzogiorno spagnolo (1494-1622), in: Storia d'Italia, (UTET, Torino 2005).

14 The Collaterale «di cappa corta», formed by noblemen, and the Cancelleria, formed by lawyers, the powerful *Reggenti*, who exercised jurisdiction.

in practice the tribunal become the supreme political, legislative, jurisdictional, military, financial and administrative authority of the Neapolitan Reign. As such a supreme court exercised judicial, consulting, and chancery functions, it was consequently destined to "fight" against the Sacro Regio Consiglio for the exercise of jurisdiction. In particular, with time (since the beginning of the 17th century) the Consiglio Collaterale tended to become a sort of superior court of appeal for all the decisions of the Sacro Regio Consiglio − despite the formal supremacy and independence of the last one from any other court − and of all the other great tribunals of the Reign, whose judgments were subjected to its control. So conflicts of jurisdiction become very frequent between the two superior courts, each willing to affirm its own *praeminentia* in the Neapolitan legal system.

2. «Nunc est decisus per sententiam regis cum Consilio, quae facit jus universale in Regno»

Such a complicated relationship − and consequent conflicts − between the supreme courts of the Neapolitan Reign was determined by the many, various and overlapping sources of law coexistent in the Reign: roman-canon law, *jura propria*, *jus Regni*, custom (consolidations of norms of various origins, the so called *ritus* followed by the courts, reputed as ratified and collected by the sovereign himself, and consequently considered equal to *leges* [15]), legislation (in addition to the *Liber Augustalis* and the *capitula* of Angevin origins, a huge number of statutes or *prammatiche* [16], chronologically stratified in a hypertrophic production and growth of norms, were in force), together with doctrinal opinions and judicial precedents of all ages and provenience[17]. Each normative source could indifferently discipline actual cases discussed in court within a complicated, overabundant, chaotic, overgrown and unknowable system, which allowed a large use of discretion on the part of the great tribunals. In any case, the superior courts would not permit the imposition of a predefined graduation of the legal sources by any external authority: being they the supreme representatives of the monarch, they considered themselves as implicitly legitimized to a sort of permanent and

15 The *ritus* of the Regia Gran Corte della Vicarìa were published and commented by P. CARAVITA, Super ritibus Magnae Curiae Vicariae Regni Neapolis, (Venetiis 1586), and by C. PETRA, Commentaria luculenta et absoluta in universos ritus Magnae Curiae Vicariae Regni Neapolitani, (Neapoli 1664-1693); the *ritus* of the Regia Camera della Sommaria by G. DE GAETA, Ritus Regiae Camerae Summariae Regni Neapolis, (Neapoli 1689); the *ritus* of the Sacro Regio Consiglio, apart from an attempt by Moscatello, were never collected. According to VALLONE, Le "decisiones", 74 ff., in addition to the *prammatiche* and the *ritus*, the *stylus curiae* of the Sacro Regio Consiglio produced limited effects on the procedure followed by the court itself.

16 The most recent and important collections of *prammatiche* were published by Domenico Alfeno Vario in 1772 and by Lorenzo Giustiniani in 1803-1805. Giustiniani collection was meant to be a new and complete work, containing all the extant *prammatiche*, in alphabetical order and by title, with the addition of a chronological table and of an index of the different matters examined. An attempt to arrange (and translate into Italian) the huge amount of the extant *prammatiche* had been also done by F. DE JORIO, Introduzione allo studio delle Prammatiche del Regno di Napoli, (Stamperia Simoniana, Napoli 1777). See finally, for a comment of the *prammatiche*, G. GRIMALDI, Istoria delle leggi e magistrati del Regno di Napoli, (Stamperia Simoniana, Napoli 1770).

17 MILETTI, Tra equità e dottrina, 105, talks of the existence of a legislative «*mixtura* ».

authentic interpretation of law[18]. It should not be forgotten that the *decisiones* of the great tribunals of the Neapolitan Reign were also called *constitutiones Regni Neapolis*, which clearly demonstrates that the decisions of the superior courts (with particular reference to the Sacro Regio Consiglio) were considered as being a fundamental and constituent part of the *jus Regni* [19] .

In particular, the decisions of the Sacro Regio Consiglio, formed by expert *legum doctores*, enjoyed **8**
a jurisdictional *praeminentia* on every other court of the Reign. The supreme court had, infact, wide interpretation powers as it represented the sovereign, judged *nomine regio* and, consequently, its authority was considered equal only to the authority of the monarch, while its decisions were regarded as an authentic interpretation of law. The same title "Sacro" referred to the tradition of the direct administration of justice in court by the sovereign *ex divina potestate*: hence the sacredness of the judges who judged «tanquam Deus». The "sacredness" of the court referred also to the informality of the procedure followed by the great tribunal, which had to conform exclusively to *veritas*, *aequitas* and *conscientia*. In practice, thanks to its large discretionary and equitable powers delegated to it by the monarch, the Sacro Regio Consiglio was able to administer justice «de plano, sola facti veritate inspecta»[20], without any strict observance of the *jus commune* and the statute law[21].

The *decisiones* of the Sacro Regio Consiglio, as pronounced by the court «sub nomine Regiae **9**
Majestatis»[22], were considered final and incontrovertible, i.e. they could not be challenged through ordinary remedies[23]. Against a *decisio* of the court it was only possible to resort to the extraordinary remedy of the *reclamatio*, in order to claim the revision of the judgment on the part of the same judges who had pronounced it (although the revision process did not stop the execution of the legal effects of the decision itself). In particular, the *decreta* delivered by the Sacro Regio Consiglio «junctis Aulis» (i.e. by the two *Aulae* joined together in case of «maxima causae cognitio») were reputed legally binding. Besides, the authority of the supreme court's judgments was so increased in case of analogous decisions in similar matters, that the *usus fori* of the great tribunal were directly regarded as legally binding: according to the common practice of the *binae judicaturae*, a double analogous

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18 While according to Rovito the *prammatiche* were to be considered part of the *jus Regni*, De Franchis believed that the Sacro Regio Consiglio only could interpret them with certainty: there was a «legislative absolutism tempered by the courts», MILETTI, Tra equità e dottrina, 105-121.

19 M.N. MILETTI, Stylus judicandi. Le raccolte di «decisiones» del Regno di Napoli in età moderna, (Jovene, Napoli 1998), 24.

20 T. GRAMMATICO, Decisiones Sacri Regii Consilii Neapolitani, (Venetiis 1588), had affirmed that «Sacrum Regium Consilium debet ministrare justitiam facti veritate inspecta, et juris solemnitatibus omissis. (…) Domini Consiliarii de Sacro Consilio sunt judices superiores (…) et possunt judicare secundum conscientiam», dec. 19, 89 ;«quod potest Sacrum Consilium judicare secundum conscientiam (…) quod debet attendere ad veritatem principaliter potius quam ad subtilitatem (…) in curiis parlamenti procedatur juris solemnitatibus non servatis, sed sola facti veritate inspecta», dec. 63, 353; «Sacrum Consilium consuevit judicare secundum veritatem et aequitatem naturalem, et habet supremam jurisdictionem, et principem repraesentat», dec. 76, 477.

21 See, for a general survey of the docrines on the judicial *arbitrium* in the early-modern period, M. MECCARELLI, Arbitrium: Un'aspetto sistematico degli ordinamenti giuridici in età di diritto comune, (Milan 1998).

22 M. DE AFFLICTIS, Decisiones Sacri Regii Consilii Neapolitani, (Venetiis 1584), dec. 383, para. 8; «Sacrum consilium repraesentat personam Regiam», dec. 120, para. 6.

23 M. DE AFFLICTIS, Decisiones: «Sententiae (...) habent vim generalis legis in Regno», dec. 383, para. 8; «ista est nova decisio Sacri Consilii, quae habet vim legis, et sic facit jus», dec.169, para. 9; «nunc est decisus per sententiam regis cum Consilio, quae facit jus universale in Regno», dec.190, para. 7.

decision by the Sacro Regio Consiglio would lead to the creation of a real *consuetudo judicandi*, bringing about the consolidation of a coherent and constant jurisprudential trend or *stylus curiae* within the Reign.

10 In fact, the decisions delivered by the Sacro Regio Consiglio were considered legally binding not only for the great tribunal itself, but also for all the inferior courts of the Reign, which were bound to uniform their judgments to the *decisiones* of the supreme court (even if *contra legem*!), being such decisions pronounced by technically and professionally superior *doctores juris* [24] . Should the inferior courts not adhere to the *decisiones* of the Sacro Regio Consiglio, the last one could issue a summon and decide the cases *per saltus* or, alternatively, it could recur to the *jus corrigendi*, acting in appeal against their judgments or, finally, it could declare the *injustitia* or *nullitas ipso jure* of a decision pronounced by an inferior court «contra stylum» or even «contra jus commune»[25]. In fact, although no rule of *stare decisis* had been formally affirmed, and although the *decisiones* of the Sacro Regio Consiglio were not officially regarded as sources of law, the court tended to consider them as bearing *vis legis* in practice and, consequently, as being binding for the future. In conclusion, the decisions of the Sacro Regio Consiglio played the role of real sources of law: the jurisdiction of the supreme court theoretically included the *potestas condendi leges* [26].

11 The theory of the *vis legis* of the *decisiones* of the Sacro Regio Consiglio − which were published in numerous collections widely circulating inside and outside the Neapolitan Reign[27] − originated a *topos* in the juridical culture destined to be adopted by most of the European superior courts of the 16th century. Nevertheless, and although there is general agreement as to the undisputed jurisprudential character of the *jus commune*, the binding *vis legis* of the *decisiones* of the Sacro Regio Consiglio in practice has been recently questioned by legal historians, who have noted the distance between the theoretical authority of judicial precedents affirmed by the Neapolitan judges and advocates (as, e.g., Matthaeus De Afflictis *in primis*) and the real judicial practice of the court, and the presence of a gap between lawyers' theories and real legal practice.

12 In particular, scholars highlighted the ideological character of the Neapolitan lawyers' insistence on the binding authority of the judicial precedents of the Sacro Regio Consiglio, aimed to celebrate and increase the powers of the superior court and of the corporation of lawyers. To such a theoretical affirmation corresponded, in practice, the absence of any official theory of the *vis legis* of its judgments, the private and unofficial status of the collections of *decisiones*, their doctrinal character (sometimes they resembled more to *tractatus* than to reports of cases, with a prevailing attention on

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24 «Decreta Sacri Consilii ut leges habendae sunt», GIUSTINIANI, Nuova collezione, vol. XI, tit. CCIX, pramm. LXII, 83-4.

25 On the relationship between the Sacro Regio Consiglio and the inferior courts of the Reign see, further, MILETTI, Stylus judicandi, 195-215.

26 On the *vis legis* of the *decisiones* of the Sacro Regio Consiglio, MILETTI, Stylus judicandi, 103-154; VALLONE, Le "decisiones", 41-105.

27 Between the most important collections of the second half of the 15th and the first half of the 17th centuries are the works by De Afflictis, Capece, Grammatico, Minadoi, De Franchis and Tapia. The *decisiones* of the Sacro Regio Consiglio have been deeply studied by MILETTI, Stylus judicandi; MILETTI , Tra equità e dottrina. See, for the various editions of the extant collections, M. ASCHERI, Tribunali, giuristi e istituzioni dal medioevo all'età moderna, (Il Mulino, Bologna 1995), 211 ff.

the part of their authors for the abstract and theoretical aspects of the cases than for the decision, very often missing), the frequently contradictory content of the supreme tribunal's decisions, and the usual recourse by the superior court to the practice of the *révirement* (i.e. the faculty to change its judicial trend and contradict its previous decisions thanks to its sovereign powers)[28]. For the same reasons, notwithstanding the recognized existence of the obligation to adhere to the *stylus* of the Sacro Regio Consiglio on the part of the inferior courts, the difficulty to apply this rule in practice has been noted by legal historians, who tend to believe that such a rule was applied only approximately. In conclusion, it seems that the Neapolitan lawyers' theories corresponded more to an ambition of the *doctores* than to reality: in fact, such theories appear to be abstract, self-praising and continuously contradicted by judicial practice, while the *decisiones* of the Sacro Regio Consiglio appear to enjoy only a limited authority in practice[29].

It is also necessary to take into consideration the absence of any duty to express the reasons (i.e. the *ratio decidendi* or legal grounds) of its judgments on the part of the Sacro Regio Consiglio – the *vota* expressed by its judges were, infact, to remain secret –, and the consequent difficulty to hold its *decisiones* as judicial precedents binding for the future. The great tribunal (together with the Senati of Northern Italy), was not required to give reasons for its judgments: being a "sovereign" court, it asserted that it was not bound to give account for its judgments, formally because it boasted of administering justice *in nomine principis*, who kept the law *in scrinio sui pectoris* – hence, again, the sacredness of its decisions – but, as a matter of fact, to preserve its power and autonomy in order to be able to escape, in this way, from the monarch's control[30]. The duty to express the reasons of its decisions was imposed upon the Neapolitan great tribunal only in 1774, but in fact it was only in force for fifteen years[31].

28 MILETTI, Tra equità e dottrina, 53-81.

29 MILETTI, Stylus judicandi, 100-215. VALLONE, Le "Decisiones", 58 ff., attributed only a "persuasive" authority to the Neapolitan *decisiones* because of their unofficial status; while G.P. MASSETTO, "Sentenza" (diritto intermedio), in: Enciclopedia del diritto, XLI, (Giuffrè, Milano 1989), 1203 ff.; and R. SAVELLI, Tribunali, "decisiones" e giuristi. Una proposta di ritorno alle fonti, in: G. CHITTOLINI, A. MOLHO, P. SCHIERA eds., Origini dello Stato. Processi di formazione statale in Italia tra medioevo ed età moderna, (Il Mulino, Bologna 1994), 441, similarly noted the contradictory character of the lawyers' theories in the matter of *vis legis* of the decisions of the other supreme courts.

30 According to M. TARUFFO, L'obbligo di motivazione della sentenza civile tra diritto comune e Illuminismo, in: La formazione storica del diritto moderno in Europa, Atti del III Congresso internazionale della Società italiana di Storia del diritto, vol. II, (Olschki, Firenze 1977), 598-633, the duty of some of the great tribunal to express the reasons of their judgments was an instrument of control by the monarchs of the European states; while V. PIANO MORTARI, Gli inizi del diritto moderno in Europa, (Liguori, Napoli 1980), 427-430, regarded it as a further sign of the enforcement of political power in the hands of the European absolute monarchs. See further, on this theme, MASSETTO, "Sentenza", 1224-1245.

31 R. AJELLO, Il tempo storico delle «riflessioni», nota critica alle Riflessioni politiche di Gaetano Filangieri, (Bibliopolis, Napoli 1982), highlighted that, still in the 18th century, the Sacro Regio Consiglio reaffirmed that the court must respond only to the king, while the subjects had the duty to blindly trust decisions of the great tribunal.

3. *The Sacro Regio Consiglio v. the Consiglio Collaterale*

The great power and authority of the Sacro Regio Consiglio were destined to be rescaled between the 16th and the 17th centuries. As we have seen, the Regia Gran Corte della Vicarìa, notwithstanding the strong powers exercised and the large number of trials managed, was reputed to be subjected to the Sacro Regio Consiglio (although such a subjection expressed, at the same time, a functional dialectic between the two great tribunals). The fact itself that two out of the five judges of such a superior court were to be members of the Sacro Regio Consiglio too contributed to give credit to the decisions of the great tribunal; besides, before deciding in matter of perjury, the Regia Gran Corte della Vicarìa had to wait for a special *licentia* by the Sacro Regio Consiglio; furthermore, when the Sacro Regio Consiglio sent to the Gran Corte della Vicarìa the file of a case so that the court could act in appeal, it specified in details all the future legal deeds that the great tribunal had to carry out. Finally, if it is true that the *ritus* of the Regia Gran Corte della Vicarìa applied to all the inferior courts of the Neapolitan Reign, this represented only the heritage of an old preeminence, more formal than actual: in fact, the supreme court, which could theoretically impose its *stylus* to the inferior courts, was not able to exercise control over their activity in practice. **14**

Things were different for what concerns the relationships between the Sacro Regio Consiglio and the Regia Camera della Sommaria. As we have previously seen, already in mid-16th century in the Reign of Naples there was in practice a double vertex within the administration of justice: the Sacro Regio Consiglio on one hand, the Regia Camera della Sommaria on the other. The relationship between the two superior courts was almost equal as the Regia Camera della Sommaria, thanks to its peculiar competences in the financial matter, was more autonomous than the other great tribunals and exempt from any procedural subjection to them[32]. Its decisions, differently from the *decisiones* of the Regia Gran Corte della Vicarìa, were more rarely subjected to the revision by the Sacro Regio Consiglio, while only the Consiglio Collaterale could address directives to it. Besides, as we have already seen, the Sacro Regio Consiglio was bound, in case of presence of interests on the part of the Internal Revenue, to adjourn the exam of the cases in court in order to wait for a pronouncement by the Regia Camera della Sommaria over prejudicial matters. Furthermore, both the great tribunals exercised the jurisdiction «coram Rege»; both enjoyed the privilege of an immediate execution of the effects of their decisions; both had to transmit each other the original copy of the legal deeds concerning any trial in matter of finance. **15**

Interferences between their activity were obviously unavoidable: sometimes the same cases were contemporary discussed in both the great tribunals (while one court judged in matter of private law, the other one dealt with all the aspects connected to the interests of the Internal Revenue); at the same time, the Avvocato fiscale had the right to take part in every trial celebrated in every other superior court should a prejudice to the Internal Revenue derive from the judgment (although, in fact, the Sacro Regio Consiglio admitted the presence of the Avvocato fiscale only to avoid the **16**

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32 G. MUTO, Magistrature finanziarie e potere ministeriale a Napoli alla metà del Cinquecento, in: Diritto e potere nella storia europea, Atti in onore di Bruno Paradisi, (Olschki, Firenze 1982), 500; COMPARATO, Uffici e società, 65-6.

remission of the case itself to the Regia Camera della Sommaria). Nevertheless, the two superior courts were competent in and acted within two separated spheres of interest, each autonomous and fundamental.

The Sacro Regio Consiglio, superior to the Regia Gran Corte della Vicarìa (which was destined to decade during the 16th century) and – at least theoretically − equal to the Regia Camera della Sommaria, was in fact, during the 16th century, the fulcrum of the Neapolitan legal system. And the great tribunal considered itself such a fundamental jurisdictional organ of the Reign that it pretended to exercise the function of *arbiter super partes* during the frequent conflicts occurring between the different superior courts, affirming in this way the substantial unity of jurisdiction within the Reign of Naples. Such a situation was destined to change with the establishment of the Consiglio Collaterale at the beginning of the 16th century. Conflicts between the superior courts of the Neapolitan Reign appear to be more frequent between the end of the 16th and the beginning of the 17th centuries in accordance to the will of the Spanish to take advantage of the existing competition between the great tribunals of the Reign in order to increase, in this way, their own political and economical power in Naples. **17**

In fact, the creation of the Consiglio Collaterale, a council separated from and prevailing on the other superior courts of justice of the Reign, was part of the program and politic of centralization by the Spanish Vicerè[33]. Consequently, especially thanks to the reinforcement of the judicial "section" of the Consiglio Collaterale (the so called Cancelleria), the balance of powers were destined to change: the powers of the Sacro Regio Consiglio were compressed, while, at the same time, the Regia Camera della Sommaria was radically rescaled in an authoritarian direction (years 1533-40)[34]. For what particularly concerns the Camera della Sommaria, it was established that the Luogotenente had to be accountable to the Consiglio Collaterale for all his own decisions. Besides, and more in general, although the *decisiones* of the Sacro Regio Consiglio and of the Regia Camera della Sommaria were formally reputed final, it was always possible to recur directly to the sovereign in order to obtain the concession of the *gratia*, which meant in practice the possibility to issue an application to the Consiglio Collaterale, who had to pronounce on the matter and who very often jeopardized the previous decisions of the other superior courts. Furthermore, the Vicerè, aiming to exercise control over the judges of both great tribunals, tried to obtain their favor increasing the power of lawyers to the detriment of noblemen, who were finally emarginated from the superior courts[35]. **18**

So the Consiglio Collaterale was to become the vertex of the legal system at the end of the 16th century: as it was a supreme council *a latere* of the Vicerè, it was reputed to be necessarily above the other superior courts and, consequently, above the Sacro Regio Consiglio itself. And the leadership exercised by the last one between the 15th and 16th centuries was destined to pass to the Consiglio Collaterale during the 17th century. The subjection of the Sacro Regio Consiglio, partially deprived of its authority by the Consiglio Collaterale, gave place to harsh conflicts and, consequently, to a strong **19**

33 GALASSO, Il Regno di Napoli, 473.

34 MILETTI, Tra equità e dottrina , 219; CERNIGLIARO, Sovranità e feudo,100.

35 See further MUTO, Magistrature finanziarie, 48 ff.

rivalry between the two great tribunals. In practice, three supreme courts remained in Naples: first, the Consiglio Collaterale, above and at the head of all the other great tribunals of the Neapolitan Reign, then the Sacro Regio Consiglio and, finally, the Regia Camera della Sommaria, both in a "subjected" position to the first one[36].

In any case, a tempering between old and new judicial organs seemed to take place, a sort of **20**
acceptation of the old structure, together with an exercise of control over it on the part of the new organ, the Consiglio Collaterale, to which the best functions and powers of the previous one, the Sacro Regio Consiglio, were to be transferred. But in fact, if it is true that the Consiglio Collaterale was devoted to the exercise of the political and administrative powers, while the Sacro Regio Consiglio was deputed to the administration of justice, the last one was frequently subjected to a turnover and moving of its personnel and to new appointments, which was a clear affirmation of a principle of mobility expressing the subjection of the great tribunal to the sovereign[37]. The President of the Sacro Regio Consiglio, whose powers would be dramatically reduced during the 17th century – in 1632 a decree issued by the Consiglio Collaterale denied that he could decide cases, establishing that he could only supervise their instruction –, together with the judges of the superior court, tried and defend their role and dignity complaining and fighting against the continuous abuses practiced by the Consiglio Collaterale: the Collaterale often intervened, regardless of the existence (or not) of any competence on its part, in cases already examined and decided by the Sacro Regio Consiglio, inhibiting in fact – thanks to the issue of a bill of *nihil innovare* – the exercise of jurisdiction on the part of the great tribunal and causing, consequently, delay and inefficiency in the administration of justice in the Reign.

In conclusion it appears that the Sacro Regio Consiglio, created as the expression of the power of **21**
the king during the Aragonese Reign, started losing its great authority at the end of the 16th century, when the political and judicial powers, personified by the powerful *Reggenti* of the Cancelleria, mostly passed to the Consiglio Collaterale, an organ endowed with a strong political and legislative character. So the Sacro Regio Consiglio, initially born as a political organ, then specialized in a superior court of justice deciding cases *in nomine Regis*, still formally remaining the supreme jurisdictional organ of the Neapolitan Reign, was finally forced to use its powers to claim its own authority against the powers now exercised by the Consiglio Collaterale.

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36 According to MILETTI, Stylus judicandi, 40-1, the change of the relationships between the supreme courts of the Neapolitan Reign is clearly recognizable in the collections of *decisiones* (e.g. De Franchis collection), as their authors concentrated on the decisions of Sacro Regio Consiglio during the 16th century, and on the judgments of the other supreme courts since the beginning of the 17th.

37 GALASSO, Il Regno di Napoli, 416 ff.; AJELLO, Il problema storico, 61.