

The Re-Emergence of the Italian Regional State Issue and the Coronavirus Emergency

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I. Introduction: A Background in the Development of Italian Unification

In 1861, there was the unification of Italian (*Risorgimento*). Before this period, there was much division among politicians over the territorial organization of the country. On one side, there were those supporting a federal or regional state, while others favoured a unitary state. The latter prevailed, and accordingly, the *Statututo Albertino* provided for a unitary state divided into provinces and municipalities. However, this debate continued with numerous proposals and discussion for further decentralization. In particular, after the end of the First World War, the idea of administrative decentralization was supported by the newly-established Italian People's Party (*Partito Popolare*)¹. Nevertheless, with the advent of Fascism, any right to territorial autonomy was vehemently denied. At the end of the Second World War and with the fall of Fascism, the issue decentralization re-emerged and was highly debated during the Constitutional Assembly, who had the primary aim of introducing the new democratic Constitution.

II. The Italian 1948 Constitution

The result of these efforts was the 1948 Constitution, which is currently in force. The newly adopted Constitution firmly establishes that Italy is a Regional State. In fact, according to art. 5 of the Constitution, included within the “fundamental principles,” is the following –“The Republic is one and indivisible.” It further recognizes and promotes local autonomies, and implements the fullest measure of administrative decentralization in those services which depend on the State. The Italian Republic adapts the principles and methods of its legislation to the requirements of autonomy and decentralization. Moreover, Part II – Title V of the Constitution is devoted to the rules concerning Regions, Provinces, and Municipalities. In particular, art. 114 cl. 1-2 Const. provides, in part, the following:

The Republic is composed of the Municipalities, the Provinces, the Metropolitan Cities, the Regions, and the State. Municipalities, provinces, metropolitan cities, and regions are autonomous entities having their own statutes, powers, and functions in accordance with the principles laid down in the Constitution.

¹ Christian democratic political party established in 1919 and succeeded in 1926 by the Christian Democracy (*Democrazia Cristiana*). Its ideology was inspired by the Catholic social teaching. It was the leading party in Italy since the establishment of the Republic to the political crisis of the 1990's.

In 2001, Title V of the Constitution had been widely amended to strengthen further the autonomy of regions concerning political, legislative, and administrative powers. Hence, while Italy is composed of 20 regions [See, fig. 1], there exist five “special regions” that includes Friuli-Venezia Giulia, Sardinia, Sicily, Trentino-Alto Adige/Südtirol, and Valle d’Aosta/Vallée d’Aoste. [See, fig. 2]. These special regions have a right to special forms and conditions of autonomy, according to their respective statutes. While all regions in Italy have specific cultural traditions, this is particularly true in the case of the special regions, where there are distinct minorities and linguistic rights are recognized. For example, in Trentino-Alto Adige and Valle d’Aosta, besides Italian, also German and French are considered as official languages.



Figure 2.



III. The Regional State: Legislative, Administrative and Fiscal powers

According to art. 117 of the Constitution, legislative power is vested not only in the National Parliament but also in the Regional Councils. Both governmental institutions have to conform to the Constitution as well as to the constraints deriving from EU legislation and international obligations when adopting laws.

In particular, art. 117 provides for the allocation of legislative competences, establishing:

- a) a list of matters reserved to the State (art. 117 cl. 2)
- b) a list of matters where “concurring legislation” is admitted. This clause means that the national Parliament adopts a general law and the Regions have the power to adopt specific rules within the framework established by the national law (art. 117 cl. 3)
- c) a “residual clause” (art. 117 cl. 4), according to which “[t]he Regions have legislative powers in all subject matters that are not expressly covered by State legislation.” This clause is similar to the implied powers in the U.S. Constitution, but it works in the opposite sense.

Regions usually make extensive use of their legislative powers with the effect that Italian legislation is a complex system where, according to the matter, different levels of power interact. Conflicts among the State and the Regions, as well as among the Regions on possible abuse of legislative power, occur frequently and lead to controversies before the Constitutional Court.

Administrative powers – according to the principles of subsidiarity, differentiation, and proportionality – are first conferred to Municipalities, in second place to the provinces, then to metropolitan cities, to the regions and only finally to the State (art. 118 Const.). This means that there is a preference for administrative functions to be performed at the most local level. Therefore, administrative functions are performed by Majors, Presidents of Regions, etc. with a wide range of acts including orders (*ordinanze*), circulars (*circolari*), regulations (*regolamenti*), or other similar laws.

Finally, according to art. 119 cl. 1 Const., “[m]unicipalities, provinces, metropolitan cities, and regions shall have revenue and expenditure autonomy.” This clause provides that regions and local bodies have fiscal autonomy. However, the effective implementation of this provision is limited due to substantial national restrictions on regional and local discretion in establishing and collecting taxes.

An example of the complex interaction between national and regional functions is the health care system. According to art. 114 cl. 3 Const., health protection is a concurring matter. This means that regional differentiation is admitted, but only within the framework provided by national legislation, to guarantee the right to health on an equal basis in the whole Italian territory, including all social rights. Notably, art. 117 cl. 2-m Const. provides the basic level of benefits shall be guaranteed throughout the national territory by the State. In essence, this means that, in principle, the same healthcare standard should be recognized on the whole territory, even though it is admitted that the health care system shall be organized on a regional basis. However, as an effect of the concrete implementation of this complex system, there are considerable differences in terms of efficiency

among each regional health care system. In particular, there is a wide gap between the health care systems of the Northern regions and the health care systems of the regions of the South.

As this example demonstrates, the regional system in Italy is not perfect. Many problems arise regarding the frequent conflicts on the allocation of competences between the State and the Regions, the problematic implementation of politics of coordination between State and Regions, and other issues among Regions. These various conflicts have emerged in the current coronavirus emergency.

IV. Regional State and the Coronavirus Emergency

The major emergency caused by the spread of the coronavirus pandemic in Italy is very well known. To stop the diffusion of the virus, the national government has been forced to adopt in a very short time stringent rules limiting the most basic liberties of the citizens, including, in particular, the right to movement and assembly. Within this context, all the complexities of the Italian regional State flared up.

In particular, decree law n. 6/2020 (adopted on March 2, 2020), subsequently converted into law, with issued with the focus to manage the health emergency and authorized the adoption of the following administrative acts:

- decrees of the President of the Council of Ministers, affecting the whole national territory
- necessity orders (*ordinanze contingibili e urgenti*), to be adopted by the Minister of Health, the Presidents of the Regions and the Majors, having an effect, respectively, in the whole or part of the national territory (comprising one or more regions), in the whole or part of the territory of a region (comprising more than one municipality) and in each municipality.

These measures mean that, at a regional level, both the President of the Council of Minister, the Minister of Health (national level), and the President of the Region (regional level) can adopt emergency orders.

A strong preference for the use of emergency powers at the national level emerged immediately. Indeed, the Minister of Health adopted, in agreement with the Presidents of the Regions, emergency orders for Regions Emilia Romagna, Friuli Venezia Giulia, Lombardia, Piemonte, and Veneto. Also, he adopted a model to be followed by the other Presidents of the Regions when adopting new emergency orders.

However, this did not prevent the Regional and local authorities from adopting emergency orders introducing measures not provided or in contrast with the national decrees. The effect was that conflicts arose between the measures introduced at the national level and Regional emergency orders. In particular, some Presidents of Regions adopted orders introducing stricter measures than those provided by the national decrees (e.g., emergency order Region Marche, n. 1/2020, emergency order Region Campania, n. 8/2020, emergency orders Region Lombardia). It is the national or the regional rule that should prevail in this case?

According to art. 3 of decree law n. 19/2020 (adopted on March 26, 2020), if a case is not regulated yet by a decree of the President of the Council of Minister, the Regions can adopt orders introducing stricter rules than the national ones. However, these rules shall cease to have an effect on the day of the adoption of the national decree and can be adopted: a) only with reference to new specific

situations of deterioration of the risk of infection in the regional territory; b) only within the regional competences; c) provided that they have not the effect of limiting manufacturing and strategic industry. In contrast, the Majors are never allowed to adopt emergency decrees in contrast with national decrees.

V. Conclusion

Based on Italy's historical resolution as to regionalism, it appears that these issues still exist. As it is evident, the rules mentioned above do not seem to provide practical solutions to avoid or solve conflicts between the national and the regional level in the coronavirus emergency. On the contrary, the legal framework becomes even more complicated – with a lot of new and often contradictory rules overlapping each other – and the cases for new conflicts are growing. However, these new issues also present a new opportunity to address these lingering matters to seek effective resolutions.