



## CHAPTER 10

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# Italy

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Italy is a parliamentary republic characterised by perfect bicameralism, with a second chamber that does not guarantee the representation of territorial interests. The different types of local government (metropolitan cities, provinces, municipalities), along with variations on them (various kinds of inter-municipal cooperation), form part of a system of asymmetrical regionalism, one that includes 15 ordinary and five special regions.

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Local governments are caught between national and regional legislation in a situation in which the national legislature has the upper hand. Although the system of local government was and still is quite symmetrical on the whole, in practice it is less than fully symmetrical with regard both to the performance of local governments and to their role in inter-governmental relations. Local governments are in search of role-clarity amidst a background of unstable politics and several seasons of unfinished (federal) reforms. Meanwhile, intergovernmental relations are complicated by structural challenges, by a range of socio-demographic trends such as urbanisation and the hyper-fragmentation of local governments, and by the unique challenges arising from the financial crisis of 2008 as well as the current Covid-19 pandemic.

## I COUNTRY OVERVIEW

In 2021, the total population of Italy amounted to 59 million, with the largest number of people living in the northern region of Lombardy (about one-sixth of the entire population).<sup>1</sup> Lazio, in the centre, and Campania, in the south, are the second and third most populous regions. The largest cities are located in each of these three regions: Milan, Rome, and Naples. As the capital city, Rome enjoys a special status different to that of any other metropolitan city.

Though not provided for as such in the Constitution, Italy's official language is Standard Italian. Minority languages and local dialects do, however, also remain powerful, and in some parts of the country they form particular language regimes at regional and local levels. This is in line with the constitutional provision for the safeguarding of linguistic minorities, as provided by article 6 of the Constitution. The degree of protection ranges from the relatively weak safeguards afforded by ordinary legislation to the stronger forms of protection enshrined in some of the special regions' statutes.<sup>2</sup> The stronger protective regimes take the form of a multilingual public sphere, one covering either an entire region (as

<sup>1</sup> ISTAT, *Indicatori demografici* (3 May 2021), [www.istat.it/it/archivio/257243](http://www.istat.it/it/archivio/257243) (accessed 20 June 2021).

<sup>2</sup> Elisabeth Alber, 'Italy's Socio-Linguistic Situation and Language Policies: Multifaceted, Multilevel, Asymmetric' (2022) *Forum of Federations—Occasional Paper Series*.

in Aosta Valley and Trentino-South Tyrol)<sup>3</sup> or specific parts of a region's local government system (as in Friuli Venezia Giulia).<sup>4</sup>

Local governance practice also varies in relation to geographical factors, demographic trends, and the characteristics of regional economies. Geographically, plains make up about one-fifth of the country and are confined to the great northern triangle of the Po Valley; the rest of the territory is divided more or less evenly between hilly and mountainous land. In general, the rural population is in decline, with more than two-thirds of the population now living in urban areas. Of Italy's 7904 municipalities, almost 70 per cent have less than 5000 inhabitants and many also have less than 1000 inhabitants. The number of municipalities varies greatly from one region to another.<sup>5</sup> Fiscal capacities also vary significantly between local governments, with metropolitan cities having greater economic strength than other municipalities. Metropolitan cities are evenly distributed across Italy's territory of 302,073 km<sup>2</sup> and enjoy special status, while medium-sized cities are more numerous in the north than in the south.

Other important variables are the territorial differences between regional economies. A north–south cleavage persists in which fiscal capacities vary significantly from one region to another. Estimated at about EUR 35,400, the gross domestic product (GDP) per capita (nominal income) in northern regions is significantly higher than that in the southern regions (estimated at EUR 18,500).<sup>6</sup>

<sup>3</sup> Roberto Louvin and Nicolò Paolo Alessi, 'The Maze of Languages in Aosta Valley (Italy)' (2020) 3–4 *EJM* 167–190; Elisabeth Alber, 'South Tyrol's Model of Conflict Resolution: Territorial Autonomy and Power-Sharing', in Sören Keil and Allison McCulloch (eds) *Power-Sharing in Europe* (Palgrave Macmillan, 2021) 171–199.

<sup>4</sup> Zaira Vidau, 'The Legal Protection of National and Linguistic Minorities in the Region of Friuli-Venezia Giulia: A Comparison of the Three Regional Laws for "Slovene Linguistic Minority", for the "Friulian Language" and for "German-Speaking Minorities"' (2013) 71 *Razprave in Gradivo/Treatises and Documents* 27–52.

<sup>5</sup> ISTAT, *Codici statistici delle unità amministrative territoriali: comuni, città metropolitane, province e regioni* (17 January 2022) (accessed 5 March 2022).

<sup>6</sup> ISTAT, *Conti Economici Territoriali 2020*, [www.istat.it/it/archivio/237813](http://www.istat.it/it/archivio/237813) (accessed 1 June 2021).

## 2 HISTORY, STRUCTURES, AND INSTITUTIONS OF LOCAL GOVERNMENT

### *2.1 The Long Tradition of Municipalities*

Italy's municipal tradition can be traced back as far as the Middle Ages. After the collapse of Napoleon's rule over Italy in 1814, the nation-state declared in 1861 emerged from more than 40 years of civic conflict. Administrative unification was consequently a priority of the Kingdom of Italy, and laws were enacted to establish a network of decentralised ministerial bodies that could exert some control over powerful currents of local identity. The immediate general aims were to seek to protect the unification project against existing centrifugal tendencies; to repair the institutional weaknesses of the pre-unification Italian kingdoms; and to bring local authorities under uniform legislation and administration.<sup>7</sup> However, the highly centralised structure of government proved unable to standardise local realities.

The rise of fascism in 1922 undermined the limited democratic reforms to local government that had been introduced slowly until then. In the post-war period, and with the adoption of the Constitution in 1948, the promotion of local autonomies and administrative decentralisation became a basic principle of the Italian system.<sup>8</sup> Articles 117 and 118 of the Constitution grant both legislative and administrative powers to ordinary regions. The constitutional provisions, however, were not implemented for quite some time. It was only with the creation of ordinary regions in 1970 that the responsibilities of local governments in sectoral policy-making were expanded. In practice, local governments were caught between the demands of regional and national regulatory frameworks, in addition to which the regional legislature was imposing an additional source of law, one that determined (in part at least) the scope of local government. The situation was different for the special regions, as they had the upper hand over local governments.

<sup>7</sup> Robert D Putnam, Robert Leonardi, and Raffaella Y Nanetti, *Making Democracy Work: Civic Traditions in Modern Italy* (Princeton University Press, 1994).

<sup>8</sup> Constitution, article 5.

## 2.2 *The Empowerment of Local Government Since the 1990s*

In 1990, the first general law on local government was enacted—Law 142/1990—and the 1990s saw the adoption of a number of additional measures that enabled local governments to become more active and autonomous. Financial autonomy was increased; preventive control over the legitimacy of administrative acts reduced; and the direct election of mayors and presidents of provinces—a district type local authority of a larger geographical scope between the region and municipalities—was introduced.

The adoption of a number of changes to the regime of administrative functions was also crucial in empowering local governments. The most important of these was Law 59/1997 which (along with its implementing legislative decrees) introduced the principle of subsidiarity and took on constitutional authority in the 2001 reform. Italian constitutional law makes a distinction between vertical and horizontal subsidiarity.<sup>9</sup> Vertical subsidiarity concerns the distribution of powers across different levels of government, whereas horizontal subsidiarity addresses collaborative governance (the foundation of participatory democracy practice) between the public sector and civil society.<sup>10</sup>

In 2001, the Italian national legislature approved a wide-ranging reform of the 1948 Constitution. The distribution of competences between the state (the central level of government) and the regions was significantly altered by the transfer of legislative and administrative power to the regions. Until 2001, ordinary regions could legislate only on a few subjects as listed in the Constitution, and only in the framework specifically provided by national law. The special regions, on the other hand, already enjoyed much broader autonomy within the legislative—often exclusive—powers as laid down by each autonomy statute. The 2001

<sup>9</sup> Giuseppe Martinico, ‘Federalism, Regionalism, and the Principle of Subsidiarity’, in Erika Arban, Giuseppe Martinico, and Francesco Palermo (eds) *Federalism and Constitutional Law: The Italian Contribution to Comparative Regionalism* (Routledge, 2021) 189–205.

<sup>10</sup> Roberta Bartoletti and Franca Faccioli, ‘Public Engagement, Local Policies, and Citizens’ Participation: An Italian Case Study of Civic Collaboration’ (2016) 2(3) *Social Media + Society*. On local collaborative governance in Alpine states including Italy, see Martina Trettel et al., *Democratic Innovation and Participatory Democracy in the Alpine Area: Comparative Report* (2019), [https://bia.unibz.it/discovery/fulldisplay/alma991005772950001241/39UBZ\\_INST:ResearchRepository](https://bia.unibz.it/discovery/fulldisplay/alma991005772950001241/39UBZ_INST:ResearchRepository) (accessed 1 June 2021).

constitutional reform softened this difference by turning the distribution of legislative powers upside-down.

Now it is the exclusive legislative competences of the state as well as subject matters that relate to concurrent legislation (the state is responsible for the principles and the regions for the details) that are specifically listed in the Constitution.<sup>11</sup> Regions retain residual powers. The reform also eliminated the need for pre-enactment review of regional law and local administrative acts. With regard to administrative functions, the reform constitutionalised the principle of (vertical) subsidiarity.<sup>12</sup> Consequently, administrative functions now have to be carried out by the institutions closest to the citizens, unless these functions are already attributed to the provinces, metropolitan cities, and regions, or to the state.

Due to the absence of interim rules, the 2001 constitutional reform presents many interpretative problems. Regional governments often have asked the Constitutional Court (ItCC) to set aside national measures that infringe on regional competences; as a result, the ItCC has come to assume a quasi-political role in the implementation of the reform, and politics thus continue to hold it back. In its judgment 303/2003, the ItCC used the subsidiarity principle 'as a Trojan horse to reshape the distribution of competences'.<sup>13</sup> The central question of the judgment is whether it is legitimate for the state to retain administrative functions on matters in relation to which it is not vested with exclusive legislative competence. The ItCC held that the rigid, principled allocation of competences just did not work. It noted the need for a certain flexibility and the need for instruments which would guarantee governance through shared interests across government levels. Thus, when the state takes over administrative competences in the name of the principle of subsidiarity, it can likewise assume the corresponding legislative competence, in accordance with the principle of legality. The ItCC also stressed the relevance of the principle of loyal cooperation between the regions and the state whenever the state legislator for reasons of guaranteeing uniformity derogates from the classical application of the principle of subsidiarity. Regarding the constitutional autonomy of municipalities, the case-law upheld the

<sup>11</sup> Constitution, article 117(2) and (3).

<sup>12</sup> Constitution, article 118(1).

<sup>13</sup> Martinico (n 9) 195.

principle of subsidiarity as classically applied, using it as a shield against regional laws (for many see ItCC judgment 179 of 2019).

The 2001 constitutional reform strengthened the financial autonomy of regions as well as local government. In terms of article 119 of the Constitution, municipalities, provinces, metropolitan cities, and regions shall have financial autonomy with regard both to revenue and expenditure (see Sect. 5 for further discussion). However, this financial autonomy has to be balanced against the principles of solidarity, coordination, and cohesion; it is thus limited by actions the state undertakes, particularly actions with regard to the coordination of public finances, which—as provided by article 117(3) of the Constitution—is understood as a concurrent state-regions competence.

### 2.3 *The Many and Complex Types of Local Government*

Municipalities, provinces, and metropolitan cities are the main types of local government in Italy. Indeed, the Constitution, in its article 114(1) (as amended in 2001), envisages Italy as composed of municipalities, metropolitan cities, and provinces. As of early 2022, there are 7904 municipalities; 14 metropolitan cities (10 in ordinary regions, four in special regions); and 83 provinces. These are all autonomous entities with elected bodies and their own statutes, powers, and functions. As the capital, Rome enjoys special autonomy, as provided by article 114(3) of the Constitution, and is specifically referred to in different laws (for example, the fiscal federalism framework law 42/2009 that had foreseen interim rules).

Each municipality answers to a province or a metropolitan city, but municipalities may also directly relate to a region or the state when necessary. A municipality may acquire city status at the behest of the President of the Republic (different rules apply in special regions). Several forms of inter-municipal cooperation (a competence that formally rests with the region) refer to both national and regional legislation. There are three main types of association: by agreement, through consortia, and by the union of municipalities (often as the precursor to municipal merger). Section 4 discusses municipal mergers, and the workings of the recently introduced metropolitan cities.

### 3 CONSTITUTIONAL RECOGNITION OF LOCAL GOVERNMENT

A first reading of article 114(1) of the Constitution appears to suggest that all types of local government enjoy equal standing. The provision lists municipalities, provinces, and metropolitan cities as autonomous entities which have their own statutes, powers, and functions. However, some scholars disagree with such an interpretation, arguing that the article is intended as an expression of the concept of functional spheres, and not of hierarchical levels of government.<sup>14</sup> Such a reading is suggested by the fact that, in practice, different types of local government have different powers and different political weights.<sup>15</sup>

Local authorities have no legislative powers and consequently no original powers of taxation. They may set and regulate taxes only if the national or regional legislatures provide for this—something which is rare. The national legislature holds exclusive competence with regard to the ‘electoral system, the governing bodies, and the determination of the fundamental functions of municipalities, provinces and metropolitan cities’<sup>16</sup>; all other matters are the exclusive competence of regions.<sup>17</sup> This means that the state is unable to undertake comprehensive regulation of the local government system and that local government—at least on paper—falls under the responsibility of the regional and national legislatures.

However, despite the formal allocation of powers, the regional role is in fact rather constrained. This is because, first of all, the ItCC has adopted an extensive reading of the above-mentioned national competence. Secondly, this allocation scheme functions without prejudice to the other responsibilities of the central authority. The latter are not always considered as a competence title in the classical sense but rather have a cross-cutting nature, as is evident, for example, in the concurrent competence of coordinating public finances. In addition, national laws often introduce detailed regulations rather than basic principles. The

<sup>14</sup> Francesco Staderini, Paolo Caretti, and Pietro Milazzo, *Diritto degli enti locali* (Cedam, 2019) 38.

<sup>15</sup> Franco Pizzetti, ‘Le nuove esigenze di “governance” in un sistema policentrico “esplosivo”’ (2001) *Le Regioni* 1153–1196.

<sup>16</sup> Constitution, article 117(2).

<sup>17</sup> Constitution, article 117(4).



exclusive national power as to the ‘determination of the basic level of benefits relating to civil and social rights to be guaranteed throughout the national territory’, as provided by article 117(2) of the Constitution, serves as another example of competences having transversal nature. Irrespective of the matter at hand, whenever a regional law provides benefits that are related to civil and welfare rights (such as health care, education, social assistance, and public transport), there is a duty to comply with predetermined national standards.

According to article 114(2) of the Constitution all types of local government are qualified as autonomous entities. Along with financial autonomy (see Sect. 5 below), the autonomy for a local government to adopt its own statutes is considered fundamental. Even so, this power is constrained by the above-mentioned competence of the state to determine the electoral system and the governing bodies thereof. Although local statutes may be considered as atypical sources of law, the fact that there is a need for a national law prescribing the contents of the statute and the procedure for its development is already very telling.<sup>18</sup> The principles set forth by the national legislature are enshrined in the Consolidated Text of Local Authorities (TUEL), which includes a non-exhaustive list of possible contents (for example, criteria regarding the institutional organisation and the powers of the different organs). Local statutes also establish the basic rules for each local entity, and these rules are ranked higher than regulatory acts in the hierarchy of norms, thanks to the complicated procedure for their approval.

Only in 2001 were metropolitan cities constitutionally entrenched as a type of local government, and then only established in law 56/2014. The regions had no role in their creation.

Local governments are allotted regulatory responsibilities of two types: the first is associated with their organisation, and the second with the implementation of their functions, as provided by article 117(6) of the Constitution. They are also charged with carrying out both their own functions as well as delegated administrative functions. As a rule, municipalities take precedence in the allocation of administrative powers. They are liable for all of them, if and to the extent that a certain function shall not be assigned to the upper levels of government if deemed

<sup>18</sup> Enrico Carloni and Fulvio Cortese, *Diritto delle autonomie territoriali* (Cedam, 2020) 55.

necessary pursuant to the principles of subsidiarity, differentiation, and proportionality.<sup>19</sup>

Overall, constitutional guarantees regarding local government are rather weak: the constitutional framework leaves large room for interpretation. Constitutional case-law does argue that neither the regional nor the national legislatures can nullify local autonomy,<sup>20</sup> but it does not exclude interventions by these two to redefine the scope of local autonomy in the exercise of their constitutionally allocated legislative powers.<sup>21</sup>

At the same time, local authorities do not enjoy direct access to the ItCC in the event of the violation of their competences. Their prerogatives can be invoked only indirectly through the regional government, which can raise a question of constitutional legitimacy at the request of the council of local authorities.<sup>22</sup> In addition, constitutional provisions regarding local governments are not self-executing and are bedevilled by frequent use of vague concepts. Similarly, the exercise of administrative functions necessarily finds its legitimation in the (national or regional) law that defines the content and the limits of the related power.

So far, the discussion has dealt only with local government in the ordinary regions. In the special regions, the allocation of competence is decided by the statutes of autonomy. While the general rule is that jurisdiction over local authorities is classified as an exclusive regional power, in the case of the special regions there are profound differences because each of them has a different system of powers in place, one which is the result of bilateral negotiations with the state. On top of that, the effective scope of special autonomy (that is, the content and the boundaries of the powers transferred from the state to the special region) depends on the particular rules set out in the enactment decrees. The latter are by-laws of quasi-constitutional rank adopted on a bilateral basis for the implementation of the autonomy statutes.<sup>23</sup>

<sup>19</sup> Constitution, article 118.

<sup>20</sup> Italian Constitutional Court judgment 83/1997.

<sup>21</sup> Italian Constitutional Court judgment 286/1997.

<sup>22</sup> Italian Constitutional Court judgment 196/2004.

<sup>23</sup> Francesco Palermo and Alice Valdesalici, 'Irreversibly Different: A Country Study of Constitutional Asymmetry in Italy', in Patricia Popelier and Maja Sahadžić (eds) *Constitutional Asymmetry in Multinational Federalism: Managing Multinationalism in Multi-Tiered Systems* (Springer, 2019) 287–315.

## 4 GOVERNANCE ROLE OF LOCAL GOVERNMENT

### 4.1 *Municipalities*

There is no single piece of legislation that comprehensively identifies all the competences of the municipalities. The fundamental areas of competence are derived from a highly complex web of state and regional legislation. These include general administration and management (including personnel); early childhood education and care as well as school infrastructure (for pre-school and primary schools); local mobility, transport, and roads; land management and environmental development; social welfare; and culture and recreation. The upland municipalities—mountainous/remote municipalities—enjoy a larger scope when it comes to development schemes that are linked to national, regional, or EU frameworks for socioeconomic measures.

A directly elected mayor heads a municipality, assisted by a board, only one-third of whose members can be drawn from the council. The system for electing a mayor differs from small to medium and large municipalities or cities. He or she is elected at the same time as the council to whom he or she is responsible. The number of local councillors varies according to the number of inhabitants, and fluctuates between 12 and 60 members.

National legislation specifies how functions shall be exercised if and when municipalities cooperate. With the exception of single-municipal islands (and the exclave municipality of Campione d'Italia), municipalities of up to 5000 inhabitants, or municipalities up to 3000 inhabitants, have to exercise basic functions jointly; there are special rules for the common exercise of functions in the case of municipalities with less than 1000 inhabitants. In case of defaulting municipalities, the prefect of the province, that is the representative of the state, sets a deadline within which action has to be taken; once this deadline has expired, an external commissioner takes over.

Voluntary inter-municipal cooperation takes place in three forms: through agreements, consortia, and the union of municipalities. Agreements can be set up between two or more municipalities for the delivery of a service or the fulfilment of a task for a period of at least three years. Unless the regional legislature has accepted an exception, the general rule is that, for the exercise of certain functions, a minimum demographic limit of 10,000 inhabitants, or (in the special case of mountain communities) 3000 inhabitants, is required. Such agreements are highly adaptable. They can be 'closed' (with a fixed number of members) or 'open' (with

the possibility for others to join at a later stage, and after obtaining the consent of all the municipalities that cooperate in the agreement). Agreements do not foresee the establishment of further bodies, and one of the partnering municipalities functions as coordinator.

Unlike agreements, consortia need to be established with an assembly and a management board. Municipalities and other entities form a consortium when they intend to manage one or more public services together. Meanwhile, unions of municipalities—differing from consortia—jointly exercise an array of functions and services. They are made up of two or more municipalities and have their own by-laws and organs. The minimum demographic limits are the same as for an agreement (though with exceptions that can be set by the region).

It is noteworthy that personnel costs for a union of municipalities must not exceed the sum of staff costs previously incurred by each of the municipalities concerned: indeed, the aim should be to accumulate progressive cost savings. The union of municipalities is often a precursor to the merger of municipalities. Such mergers (which are also regulated by the regional legislature) have been encouraged and regulated by the national legislature since the 1990s, though with little success.<sup>24</sup>

Mergers are bottom-up processes in which it is obligatory to hold a consultative referendum involving all the citizens of the affected municipalities. There are many differences (and some innovative approaches) when it comes to the details of procedure and in the interpretation of the results of such referendums. Regions may adopt a *dirigiste* role or act as a mere executor of the popular will.<sup>25</sup> In addition, Law 56/2014 refers to the possibility of merger by incorporation. With regard to the merger *strictu sensu* (that is, the abolition of the existing municipalities and the establishment of a new municipality), incorporation does not establish a new municipality: it results in the abolition of the incorporated municipality, which then formally becomes part of a pre-existing municipality.

<sup>24</sup> Elisabeth Alber and Alice Valdesalici, 'Framing Subnational 'Institutional Innovation' and 'Participatory Democracy' in Italy: Some Findings on Current Structures, Procedures and Dynamics', in Francesco Palermo and Elisabeth Alber (eds), *Federalism as Decision-Making. Changes in Structures, Procedures and Policies* (Brill Nijhoff, 2015) 448–478.

<sup>25</sup> Elisabeth Alber, *Mergers of Municipalities—A Comparison of Procedures and Their Implications* (Zenodo, 2021), <https://doi.org/10.5281/zenodo.5254948>.

## 4.2 *Provinces*

With the exception of the two autonomous provinces of Bolzano/Bozen and Trento, provinces have competence in the following areas: coordination of territorial and urban planning; transport planning within provincial remit; support services to municipalities (such as data collection); maintenance of schools; and various management issues in the territory concerned. They also exercise fundamental functions such as strategic territorial development; mediating in institutional relations; and (in cooperation with municipalities) carrying out certain aspects of service procurement. The regions may attribute more competences to the province in specific sectors that fall under their own competences. Before 2014, provinces were responsible for many more issues (including the coordination of municipal proposals in matters of regional economic and territorial planning).

Provincial councils are made up of 10–16 members, who are elected from the mayors and municipal councillors. The president of a province is freely elected by the mayors and municipal councillors of the province from the mayors of municipalities within it. The provincial assemblies are composed of the mayors of all the municipalities within the territory of the province. As with metropolitan cities, Law 56/2014 finds direct application (with regard to provinces) in ordinary regions only. Accordingly, a province shall no longer be a representative entity in terms of population, but rather a large-scale territorial entity. While the state wanted to abolish the province as an intermediate layer of local authority, the constitutional reform proposed for the removal of the provinces was voted down in a referendum on 4 December 2016, and few regions have reduced the actual number of their provinces.

## 4.3 *Metropolitan Cities*

Metropolitan cities are (or at least supposed to be) responsible for all the administrative areas that the Constitution and legislation attributes to provinces. Law 56/2014 outlines six areas of competence: three-year strategic plans; urban planning; the coordination of public services; local infrastructure; economic and social development; and the coordination of infrastructure for information and communication technology.

Three issues in particular are noteworthy. First, Law 56/2014 refers to the creation of metropolitan cities in ordinary regions, while at the same

time urging special regions to provide the necessary framework for their establishment. Secondly, the national legislature did not properly engage in the necessary exercise of revising the spatial and socio-demographic parameters for identifying the metropolitan cities. Finally, a metropolitan city can be established only by a parliamentary change to Law 56/2014. An approach as centralised as this does not leave any room for local populations or municipalities to truly play a role. The main organs of the metropolitan cities are the mayor, the council (24 councillors for the most populated city and 14 for the least populated, with these elected from the mayors and members of the existing municipal councils), and the metropolitan conference, which is made up of the mayors of all the municipalities belonging to the metropolitan city. The metropolitan mayor—unlike the president of the provinces—is not elected by the mayors and council members of the municipalities in the metropolitan city; as a rule, the mayor of the capital of the former province becomes the metropolitan mayor.<sup>26</sup>

## 5 FINANCING LOCAL GOVERNMENT

Article 119 of the Constitution refers to the financial system of territorial entities, including local governments.<sup>27</sup> Following the 2001 constitutional reform, all entities must be fiscally (and politically) accountable for their financing (the self-sufficiency principle). Financial autonomy (with respect to both revenue and expenditure)<sup>28</sup> is to be grounded in the provision of autonomous resources, that is, revenues linked to the fiscal capacity of the territory.<sup>29</sup> Prior to 2001, subnational finance was based mainly on a system of state grants. Now, given the recognition of autonomy on the revenue side, the system requires territorial entities to be more accountable in their financing.

The relevant funding scheme consists of own tax sources, shared taxes, un-earmarked equalisation transfers, and any extra transfers to cope

<sup>26</sup> Milan, Rome, and Naples, however, opted for direct election of the mayor and council.

<sup>27</sup> Alice Valdesalici, 'Financial Relations in the Italian Regional System', in Erika Arban, Giuseppe Martinico, and Francesco Palermo (eds) *Federalism and Constitutional Law: The Italian Contribution to Comparative Regionalism* (Routledge, 2021) 82–99.

<sup>28</sup> Constitution, article 119 para 1.

<sup>29</sup> Constitution, article 119 para 2.

with exceptional circumstances.<sup>30</sup> The Constitution provides a taxonomy of possible local sources and, in a closed list, enumerates the different types of possible revenue. These resources are meant to finance the functions of local governments in full. To the extent that the Italian Constitution is respected (with regard to the principle of the coordination of public finance and the tax system), territorial entities are allowed to set and levy taxes as well as collect revenue of their own. Subnational authorities are also entitled to a share in state tax revenues that are related to their territories, and able (eventually) to profit from solidarity mechanisms. The state is responsible for providing equalisation transfers (with no strings attached) to territories with a lower per capita fiscal capacity. Usually, no further vertical transfers are permitted, but in extraordinary circumstances specific-purpose grants can be allocated to particular entities.

The implementation of these constitutional provisions has been left to the ordinary legislature, which in turn has delegated the task to national government (though the matter ideally would have called for a broader and more stable consensus than that secured by the political majority of the moment). The fiscal federalism Law 42/2009 (along with a number of subsequent governmental decrees) outlines a set of rules that, in general, have not been implemented despite the structural metamorphosis experienced in local financing: between 2010 and 2020, the latter resulted in an overall increase in tax revenues and a corresponding decrease (of 32 per cent) in transfers.<sup>31</sup>

Since local authorities are not vested with legislative powers, local financing in the ordinary regions is based mostly on the devolved taxes set and regulated by the state. Municipalities, by contrast, have certain powers over devolved taxes (though within the limits set by the national or regional legislatures), and are entitled to the revenue generated in their own territories. An illustration of this is that in 2018 tax revenues accounted for 45 per cent of overall municipal revenues, while non-earmarked equalisation transfers accounted for 8 per cent, and extra transfers about 14 per cent (of which 13.3 per cent were from public

<sup>30</sup> Constitution, article 119, paras 2–3, 5.

<sup>31</sup> See IFEL, *La finanza comunale in sintesi: Rapporto 2019*, <https://bit.ly/3gURIr5> (accessed 5 July 2021).

administrations and the balance from the European Union (EU) and private institutions).<sup>32</sup>

Since 2014, the major municipal tax source has been the single municipal tax, a local tax on property or housing (main houses excluded), and a local tax on waste.<sup>33</sup> Municipalities are also entitled to a surtax on individual income tax. This is based on a fixed rate defined by national law and an optional rate that each municipality can determine, though with an upper limit of 0.8 per cent. Tax benefits can be set within the constraints provided by the national legislation. The tourist tax is an interesting example. As municipalities have the power to choose to set it or not, it may be regarded as an own-but-devolved tax. Despite the margin of flexibility allowed, its rate was frozen between 2016 and 2018, with the Covid-19 emergency having brought about its re-centralisation.

An inter-municipal equalisation fund set up by the state in 2012 provides for non-earmarked transfers in order to correct horizontal imbalances. Its aim is gradually to replace the pre-2001 transfer-based scheme that was grounded in ‘historic spending’ (referring to the resources spent in the previous financial year). The new scheme is based on a number of predefined parameters that are to be applied uniformly to all entities according to standard costs and needs. With this in mind, article 11 of Law 42/2009 puts two mechanisms in place. The first ensures the funding of fundamental functions (about 80 per cent of local spending), while the second deals with the funding of all other (non-essential) functions, amounting to about 20 per cent of local spending.<sup>34</sup> Essential functions are to be financed in full through the assessment of standard costs and needs, whereas non-essential functions are financed only in part, and the two categories are equalised differently.

Although the national parliament set up the municipal solidarity fund in 2012, it was only in 2015 that the transition towards the new system began. The solidarity fund is financed through a share of revenue generated from the local tax on properties, with only a selection of local tax

<sup>32</sup> Other sources come from revenue of a non-tax nature (18%), capital revenue (13%), and borrowing (1.3%). See ISTAT, ‘Finanza locale, 2018’, [www.istat.it/it/arcivio/248208](http://www.istat.it/it/arcivio/248208) (accessed 5 July 2021).

<sup>33</sup> In 2020, the local tax for public services provided by municipalities was abolished.

<sup>34</sup> As per article 117 para 2 of the Constitution, setting uniform countrywide standards for the basic functions of local entities is an exclusive legislative competence of the national authority.



revenues taken as a benchmark to determine who is entitled to benefit from it.<sup>35</sup> Save for a few minor exceptions, no further transfers are available to municipalities (though an additional fund was established by the national executive to deal with the Covid-19 emergency).<sup>36</sup>

The financing scheme for provinces and metropolitan cities replicates this structure and depends mainly on devolved and/or shared taxes, plus equalisation transfers from the fund for the financial consolidation of provinces. The legal framework, however, is more complex. With regard to the provinces, this complexity is the result of austerity measures that have reduced provincial finances progressively and of an ongoing process of territorial reorganisation, while the entire system of financing metropolitan cities remains undefined. Law 42/2009 (in article 15) assigns considerable tax autonomy to the cities, but subordinates its actual operation to the adoption of a further legislative act. Law 56/2014 similarly fails to provide rules for financing cities, and so, despite cities' augmented functions, the provincial scheme, with its reduced resources, still applies. On account of this, cities are highly dependent on national and regional transfers, with their budgets having been severely affected by national austerity measures adopted to cope with the economic and financial crisis—a situation which has resulted in significant problems of underfunded mandates.<sup>37</sup>

While municipal funding in ordinary regions is mainly centre-driven, this is not the case with special regions. In the first place, national financial rules do not apply directly to them, albeit that they have been asked to reform their financial structures to bring them in line with national basic principles. Specific regulations have to be agreed between each special region and the state in bilateral negotiations. Secondly, a number of special regions (in the north) manage local finances and have been assigned legislative competence in regard to local taxes, fees, and surtaxes

<sup>35</sup> Revenue from the Single Municipal Tax accounted for 38.23% (2015) and 24.43% (2016) of all the resources distributed through the fund.

<sup>36</sup> Article 6, Decree Law 34/2020, converted, with amendments, by Law 77/2020. The endowment of the fund has been increased by article 39 para 1 Decree Law 104/2020, converted, with amendments, by Law 126/2020.

<sup>37</sup> Karl Kössler and Annika Kress, 'European Cities Between Self-Government and Subordination: Their Role as Policy-Takers and Policy-Makers', in Ernst MH Ballin Hirsch, Gerhard Van der Schyff, and Maartje De Visser (eds) *European Yearbook of Constitutional Law* (T.M.C. Asser Press, 2020) 271–300, 292.

on national taxes. Meanwhile, local funding is charged to the regional budget.<sup>38</sup> In Sicily and Sardinia, such arrangements exist in theory rather than practice. While their special statutes allow for local finance as a regional competence, in actuality this remains largely under state control and financial regulation is the same as for local entities in the ordinary regions, although both islands contribute in part to funding local entities from their own budgets.<sup>39</sup>

Italy's territorial entities must all comply with the principle of a balanced budget, with regions (special and ordinary) being responsible for ensuring adherence to this principle. The application of the principle to local authorities is specified in article 9 of Law 243/2012, which, in paragraph 1, prescribes the achievement of a non-negative value—on an accrual basis—in the balance between final revenues and final expenditures.

Local entities can borrow only within well-defined qualitative and quantitative constraints. In terms of article 10 paragraph 1 of the Constitution, they may incur debt only for investment expenditure; the pluri-annual regional budget has to provide the financial backing of the relative amortisation burdens; and the economic burden has to constitute less than 8 per cent (including interest) of current revenue. The aims here are to keep the growth of the debt burden under control and minimise the chances of territorial entities incurring major debt. Any deviations from the equilibrium are allowed only after an agreement has been reached among the interested local governments at regional level.<sup>40</sup> Such infra-regional agreements can result in compensatory measures that allow extra flexibility to certain entities to the detriment of others (though only to foster investment spending). Each region can assign extra financial leeway to some of its local governments. This is done by borrowing financial surplus from those entities that do not spend all the resources at their

<sup>38</sup> Elena D'Orlando and Emanuele F Grisostolo, 'La disciplina degli enti locali tra uniformità e differenziazione', in Francesco Palermo and Sara Parolari (eds) *Le variabili della specialità: Evidenze e riscontri tra soluzioni istituzionali e politiche settoriali* (ESI, 2018) 99–159, 140.

<sup>39</sup> Emanuele Barone Ricciardelli, 'Le novità in materia di finanza delle Regioni Sicilia e Sardegna' (2007) 12(3) *Tributi Locali e Regionali* 331–344, 332.

<sup>40</sup> Such agreements might also be reached on a nationwide basis by involving the national level.

disposal. It is through this mechanism that the ordinary regions have gained traction in local finance.

## 6 SUPERVISING LOCAL GOVERNMENT

Following the elimination of the preventive controls on local acts by the state or the regions in 2001, the instrument of extraordinary annulment<sup>41</sup> is now the main form of control and oversight. Accordingly, the national government—via presidential decree and after consultation with the council of state—has the power to annul any acts of local authorities which are found to be illegal in any way.

As provided by article 120 of the Constitution, the national government can also assume control if a local authority fails to comply with international law (or EU legislation); where there is any serious risk to public safety and security; when it is necessary to preserve the legal or economic unity of the state; and to guarantee basic levels of civil and social rights. Although article 120 was intended as a safeguard clause to be activated only in extraordinary circumstances, the Constitutional Court, in its judgment 43/2004, ruled that this power can also be activated when necessary if specified through ordinary legislation. Any such interventions by the state, however, must be taken only in line with the principles of subsidiarity and loyal cooperation.

These supervisory powers co-exist alongside controls on the structures and functions of local government that arise from the national authority's exclusive legislative competence in regard to local governing bodies. The dissolution of local councils and dismissal of mayors or provincial presidents is allowed under two broad categories of failing performance, the first legal and the second administrative. Dissolution and/or dismissal are permissible, first, when there are either serious infringements of the law (including acts in breach of the Constitution) or severe and persistent violations of the law, or, secondly, on public order grounds. Similarly, concerns about the functioning of an entity and its governing bodies—including lack of approval for specific acts (such as the budget), cases of permanent impairment or resignation of a president of the province or of a mayor, and cases of concurrent resignation of half plus one of the council members—may trigger intervention. The law also foresees special

<sup>41</sup> Consolidated Text of Local Authorities, article 138.

forms of control to monitor compliance with emergency regulations on waste collection and disposal,<sup>42</sup> as well as controls that apply in cases of corruption due to the capture of local government by organised crime.<sup>43</sup>

Administrative controls also exist. They can be either internal or external, that is, applied by the entity itself (reflecting a shift in the management of public affairs) or involving the Court of Audit, a politically impartial body.<sup>44</sup> The Court is vested with both consultative and judicial functions, and is responsible for scrutinising the finances of local governments. Of interest is the fact that local entities within each region have the power to appoint one member per regional section of the Court. The 2012 reform, provided by Law Decree 174/2012, reinforced the role of the Court to cope with new economic and financial pressures. The controls have been strengthened and supplemented in the light of the principles of coordination of public finance and the need to comply with EU obligations.

The Court determines if there are financial imbalances, failures to cover expenses, violations of financial obligations, or flaunting of borrowing constraints. It also assesses the regularity of each local government's financial management, planning, and internal controls, and can impose sanctions on these governments. In case of financial collapse, the declaration of bankruptcy is ordered by a commissioner *ad acta* and the local council is dissolved if it is unable to restore economic and financial regularity.

Dissolutions of municipal councils are increasingly frequent and affect the entire territory. Between 2010 and 2020, the majority of these cases (some 63 per cent) were rooted in political conflicts, with failures in the functioning of the governing bodies (for instance, through a mayor's death or removal from office) accounting for a further 19.2 per cent. Infiltration of local government by the mafia (mainly in southern municipalities) led to 7.5 per cent of dissolutions, while economic breakdown

<sup>42</sup> Law Decree 172/2008.

<sup>43</sup> Law Decree 94/2009.

<sup>44</sup> Stefano Villamena, 'Italy: Organisation and Responsibilities of the Local Authorities in Italy Between Unity and Autonomy', in Carlo Panara and Michael R Varney (eds) *Local Government in Europe: The 'Fourth Level' in the EU Multi-Layered System of Governance* (Routledge, 2013) 183–230, 222.

due to financial collapse or failure to approve the budget accounted for a further 5.9 per cent of cases.<sup>45</sup>

## 7 INTERGOVERNMENTAL RELATIONS

Local governments assert their interests within an intricate web of multi-lateral relations where central or regional governments have the last word. Furthermore, they act in concert through various nationwide associations. The largest of these is the National Association of Italian Municipalities (ANCI). It was established as a non-profit organisation in 1901, and by 2020, its membership had grown to encompass 7107<sup>46</sup> of the country's 7903 municipalities—that is, about 90 per cent of local authorities.<sup>47</sup> Its political significance is manifest also through the role within the formal intergovernmental relations with the state.

ANCI's main objectives are to represent the interests of the municipalities, the various forms of inter-municipal cooperation, and metropolitan cities. It consults with its members and draws up policy papers or draft laws. It has branches in all regions and in the two autonomous provinces. Its national council coordinates the programmatic and strategic direction. This consists among others of the presidents of the regional branches of the association, all the mayors of the capital cities of the regions and provinces, and the mayors of the metropolitan cities. ANCI also draws on special interest bodies, such as the one representing municipalities of up to 5000 inhabitants.

Alongside ANCI, other associations represent small municipalities<sup>48</sup> and mountain communities,<sup>49</sup> while *Unione delle Province d'Italia*

<sup>45</sup> Openpolis, Fuori dal comune. I comuni e gli altri enti sciolti e commissariati in Italia, 2019, <https://www.openpolis.it/wp-content/uploads/2019/12/Fuori-dal-comune-2019.pdf> (accessed 28 February 2021).

<sup>46</sup> See Associazione Nazionale Comuni Italiani (ANCI), [www.anci.it/anci-e/](http://www.anci.it/anci-e/) (accessed 5 July 2021).

<sup>47</sup> See ISTAT, 'Codici statistici delle unità amministrative territoriali, novità per l'anno 2019' (30 June 2021), [www.istat.it/it/archivio/6789](http://www.istat.it/it/archivio/6789) (accessed 5 July 2021).

<sup>48</sup> See Associazione Nazionale Piccolo Comuni di Italia, [www.anpci.it](http://www.anpci.it) (accessed 5 July 2021).

<sup>49</sup> See, for example, *Autonomie Locali Italiani*, an association of 2500 local governments of various sizes (municipalities, provinces, and mountain communities) that, together with certain regions, campaigns for further federalisation of Italy, or *Unione Nazionale Comuni Comunità Enti Montani*, which represents mountain municipalities.

(UPI)) represents the provinces (with the exception of the two autonomous provinces of the special region Trentino-South Tyrol).<sup>50</sup> Despite the broad array of organisations representing local governments, the impact of local governments on national and regional decision-making remains limited and depends very much on contextual factors and the nature of specific issues. Though these activities provide important platforms for representation and guarantee exchange among local actors.

At national level, the Department for Regional Affairs and Autonomies is responsible for the coordination of the relations between the state, the regions, and the local authorities. The Constitution does not outline any specific mechanisms for cooperation between the state and other levels of government. There are two consultative bodies to involve local governments in decision-making, regulated by national legislation only (by ministerial decrees in 1996, and reformed by Decree Law 281/1997).<sup>51</sup>

These two bodies are, first, the State-Cities and Local Autonomies Conference, which brings together representatives of the state and local authorities and deals with state-local government issues. It has advisory and information functions and discusses issues that impact on local government tasks, organisation, and finances. It is chaired by the Italian prime minister or, by delegation, by the Minister of the Interior or the Minister of Regional Affairs; the national ministers of finance, economy, infrastructure, and health also participate. Local authorities are represented by the president of the National Association of Italian Municipalities (ANCI), the president of the Union of Italian Provinces (UPI), 14 mayors appointed by ANCI, and six presidents of provinces appointed by UPI. Through the stipulation that five of the 14 mayors appointed by ANCI must represent major Italian cities, special attention is given to urban areas.<sup>52</sup> In practice, urban areas are over-represented in a context in which 70 per cent of Italian municipalities have less than 5000 citizens. The mayors of major cities not only enjoy a role in the national council

<sup>50</sup> See [www.provinceditalia.it/](http://www.provinceditalia.it/) (accessed 5 July 2021).

<sup>51</sup> Raffaele Bifulco, 'The Italian Model of State-Local Autonomies Conferences (Also in the Light of Federal Experiences)', in Jörg Luther, Paolo Passaglia, and Rolando Tarchi (eds) *A World of Second Chambers: Handbook for Constitutional Studies on Bicameralism* (Giuffrè, 2006) 1051–1083.

<sup>52</sup> Greta Klotz, *Intergovernmental Relations of Local Governments in Italy: An Introduction* (Zenodo, 2021) <https://doi.org/10.5281/zenodo.5255080>.

of the largest interest group, ANCI, but also have formal representation in the Conference's system—this underlines their political significance. This Conference holds meetings (not open to the public) at least once a month, but the prime minister and the presidents of ANCI and UPI are allowed to call additional meetings.

The 26 members of the Conference are simultaneously members of the Joint Conference, the second consultative body. It is further composed of all the regional presidents and the presidents of the two autonomous provinces. This Joint Conference brings together the State-Regions Conference and the State-Cities and Local Autonomies Conference, and brings together three levels of government. In terms of Decree Law 281/1997, this intergovernmental body has to be consulted whenever draft laws affect regional or local affairs. Most of its opinions, agreements, and decisions are concerned with the structure and function of local governments in relation to financial policies and the draft budget law.

The Conferences system is the only institutionalised mechanism through which the executives of local governments meet regularly with members of national and regional governments, yet although its liaison function and advisory role are of paramount importance to the political process, it is—as a mechanism—not well-oiled. Discussions are often limited to technical issues that have been decided on already at other levels of government.<sup>53</sup> Nonetheless, it has allowed for strong though informal relations to form between individual members, albeit that there are considerable differences across territories in the nature of these relations.<sup>54</sup>

Regions, instead of the state, are constitutionally under an obligation to establish an advisory body to enhance cooperation with municipalities in the territory. Following the 2001 constitutional reform, they are required, in terms of article 123 of the Constitution, to set up a Council of Local Authorities (CAL) to act as a consultative body whenever regional legislation impacts on local affairs. The composition and organisation of these councils are open to interpretation. After some

<sup>53</sup> Guido Carpani, 'La collaborazione strutturata tra Regioni e tra queste e lo Stato: Nuovi equilibri e linee evolutive dei raccordi "verticali" ed "orizzontali"' (2009) *federalismi.it*.

<sup>54</sup> Silvia Bolgherini, Marco Di Giulio, and Andrea Lippi, 'From the Change of the Pattern to the Change in the Pattern: The Trilateral Game in the Italian Intergovernmental Relations' (2018) 4(1) *European Policy Analysis* 48–71.

delay, most of the regions established CALs; in addition, the five special regions (for Trentino-South Tyrol: the two autonomous provinces) have all decided to do the same, even though, in terms of Constitutional Court judgement 370/2006, they are not obliged to establish such councils. For the moment, CALs play only a marginal role.<sup>55</sup>

## 8 POLITICAL CULTURE OF LOCAL GOVERNANCE

The performance of local governments is, of course, also affected by instabilities in national and regional politics as well as by the country's limited implementation of federal reforms.<sup>56</sup> Historically, Italian regions (and, with them, their local governments) were 'politically coloured' by their adhesion to particular ideologies or party coalitions and their extremely stable voting patterns.<sup>57</sup> This, however, is no longer the case. Regions once traditionally governed by the centre-left now have major cities where the mayors belong to the centre-right (or even the right *tout court*), while others that usually opted for the centre-right have a growing number of left-leaning municipalities. In short, today's party system is highly unstable and dynamic. The two main coalition blocs of centre-right and centre-left are increasingly fragmented, with the break-up of old parties, the formation of new ones, shifting alliances, and very high voter-volatility becoming the norm. Unsurprisingly, Italian citizens have little faith in political parties.<sup>58</sup>

Voter turnout for elections is declining, as the most recent local elections demonstrate (with an overall turnout of only 54.6 per cent and even lower turnouts below 50 per cent in major cities such as Milan, Naples, Turin, and Rome).<sup>59</sup> Local elections (and especially those in the

<sup>55</sup> Elena di Carpegna Brivio, 'Il CAL tra sogno e realtà. Problemi attuali delle istituzioni di raccordo nel sistema regionale delle fonti' (2018) *federalismi.it*.

<sup>56</sup> Günther Pallaver and Marco Brunazzo, 'Italy: The Pendulum of "Federal" Regionalism', in Ferdinand Karlhofer and Günther Pallaver (eds), *Federal Power-Sharing in Europe* (Nomos, 2017) 149–180.

<sup>57</sup> Ilvo Diamanti, *Mappe dell'Italia politica. Bianco, rosso, verde, azzurro ... e tricolore* (il Mulino, 2009).

<sup>58</sup> In a national survey in 2020, 48% of respondents thought democracy could function without political parties. Gruppo L'Espresso, *Gli Italiani e lo Stato – Rapporto 2020* (23), [www.demos.it/a01794.php](http://www.demos.it/a01794.php) (accessed 1 June 2021).

<sup>59</sup> On 2–3 October 2021, local elections were held in 1153 municipalities, among them 19 capital cities of provinces and six capital cities of regions.



capital cities of provinces and regions) are generally taken as an indicator of the popularity of national parties, and their outcomes are consequently ‘nationalised’ by the media. In this sense, they can also be regarded as ‘second-order’ elections which send messages to the parties in office at the national level.<sup>60</sup> Accordingly, electoral results in major cities are often interpreted as a confirmation (or not) of the strength of a party in the respective region, and as the prelude for a realignment of power relations at the national level.

At the same time, though, the territorialisation of parties is an emerging trend both in the regions and at local levels.<sup>61</sup> Local party systems include a high number of civic movements that respond to local interests and do not follow the ideologies of national parties. Although the bipolar party system continues to dominate in some strategically important municipalities, this is increasingly challenged by the presence of civic movements.<sup>62</sup> The latter are highly diverse in nature, differing from one local government to another, and often take the form of a list centred on a particular individual.

Mayors have been elected directly since 1993, and while this undoubtedly has contributed to the democratisation of local politics, it has also worked to ‘personalise’ local elections. The political influence of the mayor has increased as the influence of political minorities has decreased.<sup>63</sup> This trend is reinforced by the electoral system in place for municipalities with more than 15,000 inhabitants. In this system, if a mayoral candidate does not win the election with an absolute majority, a second ballot takes place to force a choice between the two candidates with the most votes in the first ballot. It often results in a competition

<sup>60</sup> Davide Angelucci and Aldo Paparo, ‘Le Elezioni in Italia’ (2019) 82 *Quaderni dell’Osservatorio elettorale* 191–217.

<sup>61</sup> Marco Brunazzo and Günther Pallaver, ‘From Important Parties to Pivotal Parties: The Role of Regional Parties in Italy’s Second Republic’, in Robert Kaiser and Jana Edelmann (eds) *Crisis as a Permanent Condition? The Italian Political System Between Transition and Reform Resistance* (Nomos, 2016) 35–59; Alessandro Chiamonte and Vincenzo Emanuele, ‘Multipolarismo a geometria variabile: Il sistema partitico delle città’ (2016) *CISE Centro Italiano di Studi elettorali*, [https://cise.luiss.it/cise/wp-content/uploads/2016/07/DCISE8\\_129-138.pdf](https://cise.luiss.it/cise/wp-content/uploads/2016/07/DCISE8_129-138.pdf) (accessed 1 June 2021).

<sup>62</sup> Angelucci and Paparo (n 60).

<sup>63</sup> Bolgherini, Di Giulio and Lippi (n 54) 62.

between candidates who are ‘tied’ to politics at national level, and this is especially the case in elections for metropolitan cities.<sup>64</sup>

With regard to gender representation, the number of women in local executives remains imbalanced, though here there are significant differences between Italy’s various subnational governments.<sup>65</sup> None of the 14 metropolitan cities has a female mayor, while Ancona is the only one of the 20 regional capital cities to have a woman as mayor.<sup>66</sup> In 2017, there were only 1087 female mayors out of more than 7000 mayors in total.<sup>67</sup>

To increase the representation of women, several regulations have been put forward regarding lists of candidates as well as the composition of local executives. For municipalities in ordinary regions, Law 215/2012 introduced the rule that, for municipalities with more than 5000 inhabitants, no gender may be represented by more than two-thirds of the candidate lists. The same law introduced the ‘double gender preference’ option: this provides the possibility of casting two preference votes, but if both votes are used, then they must be divided between male and female candidates.

The special regions also have their means of promoting equal opportunities in politics. For instance, Regional Law 2/2018 of the autonomous region of Trentino-South Tyrol prescribes that each gender can have no more than two-thirds representation on a candidate list, while the special regions of Sicily (as provided by Regional Law 17/2016) and the Aosta Valley (as provided by Regional Law 1/2015) have introduced systems with, respectively, two (one vote per gender) and three (at least one has to be for a different gender) preference votes.

<sup>64</sup> Many politicians begin their careers at the local level. One example is Matteo Renzi, who was mayor of the City of Florence and then became the country’s prime minister. In a reverse phenomenon, national politicians, such as former ministers, run for mayors of major cities or presidents of regions.

<sup>65</sup> Domenico Carbone and Fatima Farina, ‘Women in the Local Political System in Italy: A Longitudinal Perspective’ (2020) 12(3) *Contemporary Italian Politics* 314–328.

<sup>66</sup> Data refer to October 2021.

<sup>67</sup> *Il Sole 24 Ore*, [www.ilssole24ore.com/art/solo-due-sindache-donna-25-capoluoghi-AEal8ImB](http://www.ilssole24ore.com/art/solo-due-sindache-donna-25-capoluoghi-AEal8ImB) (accessed 1 June 2021).

## 9 COVID-19'S IMPACT ON THE ROLE OF LOCAL GOVERNMENT

On 31 January 2020, one day after the World Health Organization (WHO) declared the Covid-19 outbreak a public emergency of international concern, the Italian government declared a national state of emergency. The country's first cases were reported on 17 February 2020 in two small towns in Lombardy and Veneto. At that point, the national strategy was to contain the pandemic through local ordinances, while a regional ordinance (introducing quarantine measures for some Lombardy municipalities) was issued on 21 February. The national government vested subnational authorities with the power to adopt containment and management measures adequate and proportionate to the evolution of the epidemiological situation, as provided by article 1 para 1 of Law Decree 6/2020 of 23 February. Later decrees and ordinances—issued by the prime minister, the civil protection department, and Minister of Health—addressed the issue of who the competent subnational authorities were and what their margin of action was in more detail. Regulatory chaos and court litigation fast became the rule, with examples abounding of the tug of war between local and regional authorities, on the one hand, and the national government, on the other. Many local and regional ordinances were (rightly) nullified on the grounds that such ordinances may not contradict national legislation and that they may not, in the absence of a specific health risk, restrict freedom of movement.<sup>68</sup>

From early March 2020, the prime minister imposed a 'hard lockdown' (to last until May) on the entire country through a series of ministerial decrees. Local authorities were left with little room for manoeuvre, despite the fact that the TUEL grants them the power to issue emergency ordinances.<sup>69</sup> Despite the centralisation of authority, municipal power was

<sup>68</sup> Elisabeth Alber, Erika Arban, Paolo Colasante, Adriano Dirri, and Francesco Palermo, 'Facing the Pandemic: Italy's Functional "Health Federalism" and Dysfunctional Cooperation', in Nico Steytler (ed), *Comparative Federalism and Covid-19: Combatting the Pandemic* (Routledge, 2022) 15–32.

<sup>69</sup> According to articles 50(5) and 54 of the TUEL, mayors can enact urgent and necessary ordinances in the event of local health emergencies. The same law also grants the mayor the power to enact ordinances acting as officer of the national government in situations when public safety and urban security are under threat. Furthermore, article 32(3) of Law 833/1978 raises the possibility for mayors to adopt emergency ordinances in areas normally falling under the jurisdiction of the Minister of Health.

not entirely compromised, and local governments proved to be essential in handling the emergency, given that local government in Italy plays a crucial role in the delivery of health services.

The national health service is structured to work at national, regional, and local levels. Health protection is a competence shared between the state and the regions: the national government sets the fundamental principles and goals; determines the core benefit package of health services which are guaranteed across the country; and allocates national funds to the regions. Regions, in turn, are responsible for the organisation and delivery of health care. Local health authorities run community health services and primary care directly, while secondary and specialist care is delivered either directly or through public hospitals and accredited private providers.

Similarly, all civil protection responsibilities necessarily involve local governments. Within the civil protection system, local (and regional) governments, acting in terms of a framework of national regulations, formulate and implement their own emergency programmes, and transmit data to the national civil protection department as the operative arm of the national government. Meanwhile, the coordination of municipal police and national police forces has been crucial for monitoring Covid-19 containment measures.

Local governments were at the forefront when it came to decoding, understanding, and communicating national Covid-19 measures to citizens and monitoring local measures. With regard to socioeconomic action, (in)activity at the local level demonstrated how (un)prepared local authorities were, how relevant they were, and how much potential they hold as institutions. Solidarity and socioeconomic relief measures were implemented through public–private partnerships and territorial networks that mobilised informal relationships among communities.

From autumn 2020 onwards, the national government continued to rule by decree (and on the basis of calculations linked to a catalogue of 21 indicators). It imposed a policy of phased lockdowns in which subnational entities transitioned from stricter to softer measures and enjoyed increasing latitude in their responses to Covid-19. All in all, whether subnational authorities maintained a stance in favour of or against the central government hinged largely on their financial dependence on Rome and their internal leadership capacity. Local governments as a rule were unable to fulfil costly responsibilities in pandemic management on their own, not least because they were suffering from severe fiscal consolidation

measures due to Italy's debt burden (reaching 134.8 per cent of GDP in 2019). They thus became more dependent on the state.

## 10 EMERGING ISSUES AND TRENDS

Article 5 of the 1948 Constitution emphasises the need for decentralisation and local self-government. In this, it acknowledges Italy's long tradition of local government. Historically, local entities have enjoyed very limited competences, and it was only with the TUEL reform of 1990 (and subsequent associated legislation) that their governance role was significantly enhanced, with the 2001 constitutional reform creating a design for a federal-like governance structure. In and through these initiatives, municipalities, provinces, metropolitan cities, regions, and the state were accorded the same nature of constitutive entities, in a logic of governance based on the principles of subsidiarity and loyal cooperation.

The 2001 constitutional design reconstructed Italy according to a bottom-up legal logic, but so far Italian politics has failed to bring this logic to realisation through actual implementation. Local governments remain caught between national and regional legislators, and in practice they have limited space for manoeuvre. The latest major reform, Law 56/2014, illustrates the situation well. Here the state reasserted its power over local government (in the ordinary regions), a position that was affirmed by Constitutional Court judgement 50/2015—the latter marks the Court's shift from decisions favouring the regions to ones favouring the central authority in times of economic crisis.<sup>70</sup>

As can be seen from the discussion in this chapter, clarifying the role of local government in relation to the national and regional legislators is anything but simple. Although article 114 of the Constitution places them on an equal footing, municipalities, provinces, and metropolitan cities are all affected differently by acts that originate from upper levels of government, while additional differences come into play from one

<sup>70</sup> Four regions challenged 58 paragraphs of Law 56/2014 before the Constitutional Court on the alleged grounds that they were interfering with regional competences. The arguments—ruled as baseless—were: regions must have a role in creating metropolitan cities; any modification of boundaries of local authorities is of regional competence; and the new provisions regarding metropolitan cities create a democratic deficit for local self-government. Erik Longo, 'Local Governments and Metropolitan Cities', in Erika Arban, Giuseppe Martinico, and Francesco Palermo (eds) *Federalism and Constitutional Law: The Italian Contribution to Comparative Regionalism* (Routledge, 2021) 152–163, 159–169.

ordinary region to another. Such differences depend largely on the dominance of party-political cultures that have never fully embraced the idea of a genuinely decentralised Italy. The situation in special regions in part differs.

It is clear that, in the years to come, the number, size, and role of the different types and sub-types of local government will remain at the centre of debate in both academia and politics. At the same time, relations between the different types of local government, the regions, and the state will continue to be path-dependent, with local political idiosyncrasies crucially affecting the performance of local governments. Local governments (and regions) will continue to take positions for or against the state based mainly on the extent of their financial dependence on Rome.

The authoritative Local Autonomy Index (which assesses European local governments) gives Italian municipalities a relatively high score of two out of three for their decision-making power.<sup>71</sup> In practice, though, municipal capacity is limited and the system of inter-administrative cooperation is generally considered to be poorly developed, as reported by an expert panel to the Congress of Local and Regional Authorities of the Council of Europe (CoE) after its most recent monitoring visit.<sup>72</sup> The 2017 Congress Report noted that the principle of self-government in Italy is soundly anchored from a constitutional viewpoint, but it also pointed out that (from the perspective of the principles and standards enshrined in the European Charter of Local Self-Government of the CoE), the system of self-government has a number of significant weak points.<sup>73</sup> These include a lack of the necessary financial resources and personnel; the absence of effective consultation on financial matters; significant democratic deficits with regard to the organisation of metropolitan cities and provinces; a lack of clarity with regard to the competences of metropolitan cities and provinces; and a general lack of clarity on relations between

<sup>71</sup> Andreas Ladner, Nicolas Keuffer, and Harald Baldersheim, 'Dataset: Appendix A', in *Local Autonomy Index for European countries (1990–2014)* Italy (ITA), Release 1.0 (Brussels: European Commission).

<sup>72</sup> Jakob Wienen and Stewart Dickson, 'Local and Regional Democracy in Italy', *Report of the Congress of Local and Regional Authorities CG33* (2017) 17 (18 October 2017) 14.

<sup>73</sup> The Charter was adopted in 1985. Italy ratified it in 1990 without reservations or territorial limitations.

metropolitan cities and provinces to other local governments and between the latter three and the upper levels of government.

In essence, Law 56/2014, not being based on a detailed and participatory exercise of revising the role and necessities of local government, has augmented imbalances and complex relations between and across levels of government instead of favouring territorial simplification and quality in service delivery.

The effects of the Covid-19 pandemic have impacted significantly on all forms of local government. For the immediate future, rather than fulfilling their constitutional role as local administrative policy-makers, they will continue to act simply as intermediaries with the state (and regions). However, the capacity for innovation and cost-effectiveness that local governments exhibited during the pandemic could make a difference inasmuch as the response to the pandemic underlined the value of active citizenship and community engagement, both of which are central to the notion of local government. If so, the pandemic will have shown the importance of the old injunction to ‘make a virtue of necessity’.

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