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Governing decentralised States under emergency situations: Italy and the Netherlands during the Covid-19 crisis

di Esteban Szmulewicz Ramírez

Abstract: Even though State's territorial distribution is connected to check and balances and grassroots democracy, contemporary governance is as much about limitation of power as it is about building state capacity and organizing power. If so, the Covid-19 pandemic represents an opportunity to rethink decentralisation: initial reports highlight the vertical functioning of the State as a significant variable for understanding the crisis' management. This paper analyses this variable during the Covid-19 crisis in Italy and the Netherlands. The two countries share common elements of legal culture and public law institutions, yet their responses to the pandemic have been different. The dynamics between central and subnational authorities are complex. Therefore, this calls for further assessment of the conditions that facilitate multilevel coordination and/or cooperation, without undermining local and regional autonomy.

Keywords: decentralisation, coordination, cooperation, law in action, Covid-19.

“How can we summarise the Covid year from a broad historical perspective? (...)
Epidemics are no longer uncontrollable forces of nature.
Science has turned them into a manageable challenge.
Why, then, has there been so much death and suffering?
Because of bad political decisions”.
Yuval Harari, Financial Times, February 26th, 2021

1. Introduction and methodological comments

Traditionally understood, territorial decentralisation is defined as the transfer of power, competences, or resources from the centre to peripheral

¹ I am deeply appreciated to the comments by Professor Wim Voermans. Professor Geerten Boogaard contributed to a better understanding of the Dutch situation, as well as my colleagues from Leiden University Constitutional and Administrative Law Department, especially Roel Becker and Joyce Esser. Also, I wanted to express my gratitude to Italian colleagues: Eleonora Ceccherini, Giuseppe Martinico, Francesco Palermo and Giacomo Delledone. I am especially thankful to Professor Ceccherini, whose invaluable guidance and insightful knowledge of Italian constitutionalism and regionalism have been crucial for my research. I am thankful to the Università di Genova for the *premio di ricerca*, which allowed

units². This idea connects at a fundamental level with separation of powers and check and balances. On the other hand, decentralisation is justified also a bottom-up decision-making process, from grassroots democracy ideals. Still, it might be argued that contemporary democratic governance is as much about limitation of power as it is about building state capacity and organizing power. The quasi “natural experiment” situation with the Covid-19 pandemic represents an opportunity to rethink decentralisation, because almost every country in the world has been subject to the pandemic and its effects, during basically the same timeframe. However, countries did not respond to the pandemic in the same manner. Some of them adopted coordinated and nuanced nation-wide policies, while others privileged subnational governments’ autonomy. While most researchers have focused on the horizontal distribution of power³, one also needs to wonder about the territorial/vertical functioning of the State as a significant variable for understanding the countries’ responses to the crisis⁴.

By a comparative method, this paper addresses the question of how countries reacted to the pandemic in their territorial organization and what factors can account for these decisions. The paper looks at secondary sources while also conducting interviews with selected policymakers and researchers. Semi-structured online and in-person interviews were conducted by the author during 2021 and also during a research scholarship in Italy in early 2022. The interviews covered the period of 2020 and early 2021 and, because of confidentiality, the names of the interviewees are omitted in the article. More than a doctrinal or jurisprudential analysis, the article connects constitutional institutions with their actual implementation, introducing preliminary empirical research.

The paper compares the operation and functioning of the territorial distribution of power and the uses of power and competences during the Covid-19 crisis in Italy and the Netherlands, two “decentralised States”⁵, not fully-fledged federal entities, representing different types and degrees of

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² S. Bartole, *Internal Ordering in the Unitary State*, in Rosenfeld and Sajó (Eds.), *The Oxford Handbook of Comparative Constitutional Law*, Oxford, 2012.

³ See the excellent contribution by I. Bar-Siman-Tov, *Covid-19 meets politics: the novel coronavirus as a novel challenge for legislatures*, in *The Theory and Practice of Legislation*, 8(1-2), 2020, 11-48: [10.1080/20508840.2020.1800250](https://doi.org/10.1080/20508840.2020.1800250).

⁴ Especially, among the first to write about this, see F. Palermo, *Is there a space for federalism in times of emergency?*, in *Verfassungsblog*: verfassungsblog.de/is-there-a-space-for-federalism-in-times-of-emergency [Extracted on May 13th, 2020] and F. Gallarati, *La reazione alla pandemia di Covid-19 negli ordinamenti composti: una panoramica comparata*, in *DPCE Online*, v. 47, n. 2, 2021: www.dpceonline.it/index.php/dpceonline/article/view/1327.

⁵ T. Toonen T. and Steen, *Constituting the Cooperative State: Strategies for Collaborative Decentralisation within Unitary States*, in *ZSE*, 3-4, 2007, 497-523.

“decentralized territorial organization”⁶. These cases were selected based on their differences in dealing with the pandemic, as well as considering their common legal culture, particularly in the field of constitutional law. Additionally, both countries belong to the civil law tradition, represent consolidated democratic traditions and rule of law practices, as well as parliamentary democracies with multiparty systems. Although this study is exploratory in nature, it assumes the logic of “the most similar cases” in comparative constitutional studies⁷.

From a conceptual point of view, decentralisation and centralisation are seen as functional categories, which can be measured and categorized in political, administrative and fiscal⁸. Following Lijphart’s classification, countries can be federal or unitary, according to structural and institutional characteristics, and centralised or decentralised, following more political variables⁹. Comparing countries with different degrees of decentralisation, although not fully federal, like Italy and The Netherlands, serves for keeping structural variables relatively similar to address variation (or similarity) in terms of the dynamics between the national and subnational governments¹⁰.

In terms of differences, Italy is a regional State¹¹, while the Netherlands is a unitary State with significant degrees of autonomy at the municipal (*Geemente*) level, which is explained by the fact that municipalities preceded the formation of the State and hence are entitled to self-government¹². On the other hand, in Italy the management of the pandemic was characterized by larger differentiation and discoordination during the initial phase, which then led to top-down coordination. Conversely, the

⁶ G. Ferrari, *Federalismo, regionalismo y descentralización del poder: una perspectiva comparada*, in *Anuario de Facultade de Dereito da Universidade da Coruna, Revista jurídica interdisciplinar internacional*, No. 10, 2006, 361-402; G. Rolla, *L'autonomia delle comunità territoriali: profili costituzionali*. Milano, 2008. See also T. Toonen. “The Unitary State as a System of Co-governance: The Case of the Netherlands”, in *Public Administration*, vol. 68, 1990, 281-97.

⁷ R. Hirschl. *Comparative Matters. The Renaissance of Comparative Constitutional Law*, Oxford, 2014, 245-253.

⁸ On the different types and degrees of decentralization within the European Union countries, see A. Russo, *La Distribución Territorial del Poder en los Estados Miembros de la Unión Europea: El 'Federalizing Process' en Acción (The Territorial Distribution of Power in the EU Member States: Federalizing Process in Action)*, in *Revista de Derecho Constitucional Europeo*, No. 17, January-June 2012: ssrn.com/abstract=2158147. This author already noted the centralizing effects of crises on the territorial organization of the State. Her conclusions regarding the effects of the 2008/09 economic crisis are also valid for the effects of the 2020/21 pandemic crisis.

⁹ A. Lijphart, *Patterns of Democracy* (2nd ed), New Haven, Connecticut, 2012, 177-180.

¹⁰ C. Ragin, *The Comparative Method: Moving Beyond Qualitative and Quantitative Strategies*. Oakland, California, 2013, 13-4.

¹¹ For a comprehensive account of Italian regionalism, see E. Arban, G. Martinico and F. Palermo, *Federalism and Constitutional Law: the Italian Contribution to Comparative Regionalism*. Abingdon, UK, 2021.

¹² I. van Haaren-Dresens, “Local Government in the Netherlands”, in A. Moreno (ed.). *Local Government in the Member States of the European Union: a Comparative Legal Perspective*. Madrid, 2012, 460-3.

Dutch case has seen high levels of coordination throughout the crisis, coupled with criticisms for lacking sufficient accountability and democratic legitimacy. Italy only declared a state of emergency by law, while the Netherlands has resorted to emergency powers regulated in the Public Health and the Safety Regions Acts, except between January and March 2021 in which a night curfew was imposed by the central government based on the Exceptional Powers Act. Having stated this preliminary account, the paper now proceeds to elaborate on each of the cases.

2. Italy

Italy was the first western country to be strongly hit by coronavirus strongly, which affected mainly the northern regions (Lombardia, Veneto, Piemonte, Emilia-Romagna). On January 31st, the Government declared a national state of emergency, based on the Civil Protection Act of 2018, for six months¹³. On February 22nd, a new law decree by the Ministers imposed quarantine for 11 municipalities in northern Italy. Later, on February 23rd, the Council of Ministers adopted Decree Law N° 6¹⁴, which mandated “competent authorities to adopt all appropriate containment and management measures proportionate to the evolution of the epidemiological situation”, initiated the full lockdown phase, and enunciated the containment measures to be adopted by the President of the Council of Ministers, after consulting with the competent Ministers and the Presidents of Regions¹⁵.

After that, the national government has adopted emergency measures in the form of Cabinet decrees with the force of law, also called “decree law” (art. 77 of the Constitution), which needed to be ratified by Parliament within 2 months, also called decrees by the Council of Ministers (CM). These decrees were later specified by administrative acts issue by the Prime Minister (Palermo 2020b), also called decrees by the President of the Council of Minister (PCM). Regarding the territorial distribution of powers, according to article 117 of the Italian Constitution, health is considered a matter of joint/concurrent legislation between the state and the region: the State determines general principles, and the regions can regulate in accordance with these principles. Between February 23rd and April 10th, the Prime Minister adopted nine Decrees and the President signed four law

¹³ The state of emergency was subsequently renewed at least until 15 October.

¹⁴ Converted into Law N° 13/2020, adopted by the Parliament.

¹⁵ C. Kypraios and D. Garrido, *Italy*, in Bonavero Institute of Human Rights, *A Human Rights and Rule of Law Assessment of Legislative and Regulatory Responses to the Covid-19 Pandemic across 27 jurisdictions*. *Bonavero Reports*. 7/2020, 250-4. University of Oxford, Faculty of Law: www.law.ox.ac.uk/sites/files/oxlaw/bonavero_report_7_2020.pdf [retrieved on November 20th, 2020].

decrees to implement lockdown measures¹⁶. Also, under article 32 of the Constitution health is guaranteed as an individual right, as well as a collective interest.

In the second phase, once the full lockdown was lifted, some regions started to adopt their own measures and the national government tried to reassert its powers, challenging measures in the administrative courts. This arose from interaction between norms about constitutional rights limitations (Law for the National Health Service and the Law on local government) and the tension between unity and territorial differentiation, given that regions were only consulted prior to the adoption of national regulations, but could adopt their own regulations to the extent that is allowed by national legislation or introduce stricter rules¹⁷. This regulatory mix was further complicated in relation to region-local interaction, since according to articles 117 and 118 of the Italian Constitution both regional and local levels of government have regulatory powers and administrative functions regarding health protection and sanitary measures¹⁸.

Moreover, the normative complexities arose from national, regional and local implementation of said Decree Law number 6, because of the proliferation of decree laws by the CM, PCM decrees, ministerial orders, and decrees of the Presidents of the main regions affected by the virus. Examples of this complex approach are the unilateral decisions by Governors of the Friuli Venezia Giulia and the Marche region, which by late February began imposing restrictions to prevent the spreading of the virus. In fact, the Governor of Marche's decision was challenged by the central government to the Regional Administrative Court, which suspended the governor's order. There are many other examples of decisions by regional and local governments¹⁹, in Campania, Milano and Sicily, conflicting with national provisions, and leading to administrative litigation²⁰. Creative mayors also

¹⁶ F. Nicola and G. Scaccia, *The Italian Model to Fight Covid-19: Regional Cooperation, Regulatory Inflation, and the Cost of One-Size-Fits-All Lockdown Measures*, in *Administrative Law Review*, 73: 1, 2021 pp. 53-75.

¹⁷ M. Simoncini, *The Need for Clear Competences in Times of Crisis. Clashes in the Coordination of Emergency Powers in Italy*, in *Verfassungsblog*, 2020: verfassungsblog.de/the-need-for-clear-competences-in-times-of-crisis/ [Extracted on May 13th, 2020].

¹⁸ G. Delle Donne and C. Padula, *Italy: The Impact of the Pandemic Crisis on the Relations between the State and the Regions*, in E. Hondius, M. Santos Silva, A. Nicolussi, P. Salvador Coderch, C. Wendehorst and F. Zoll (eds.), *Coronavirus and the Law in Europe*, Intersentia Online, 2020, www.intersentiaonline.com/permalink/b605ebd9d8f43a4ec89c0cc475506acb.

¹⁹ The legal foundation for the Mayor's powers to act under emergency situations is found in [article 54 of Legislative Decree 267/2000](#), which allows mayors to adopt "extra ordinem orders, if they comply with "general principles," but these tools are under intense debate". See A. Vedaschi, *Italy and COVID-19: A Call for an "Italian Emergency Constitution"?*, in *Just Security*, May 12, 2020: www.justsecurity.org/70081/italy-and-covid-19-a-call-for-an-italian-emergency-constitution/ [retrieved on September 20th, 2020].

²⁰ The Council of State supported the annulment of a local ordinance imposed by the Sicilian city of Messina, which required all citizens wanting to visit the city to register on the city's website 48 hours in advance, in a move to cut the number of visitors to the city. The Council

exercised their alleged powers. Furthermore, Municipalities decided on closing schools, prohibiting mass concentrations and even restricting entrance to their municipalities for those coming from affected regions, although this latter decision was declared null and void by the Prefect of Naples, acting as representative of the central government²¹.

Another example of the initial hurdles was the decree of the President of the Council of Ministers requiring the lockdown of the Lombardy region (and 14 provinces from other regions), on March 8th, which was published in draft version by one of Italy's most prestigious newspaper, leading to thousands of people leaving Milan to avoid being stuck and thus contributing to the spreading of the virus to the rest of the country²². Given that scenario, on March 9th a new PCM decree extended the lockdown to the entire national territory, until April 3rd.

In order to deal with this complex scenario, Italian law establishes three mechanisms: 1) the Conference of State–Regions; 2) the Conference of State–Municipalities and other Local Authorities; and 3) the Unified Conference of State–Regions–Municipalities and Local Authorities²³. However, these formal mechanisms have not been fully deployed during the coronavirus crisis. On the contrary, the privileged interlocutor of the national government (through the Minister of Regional Affairs) was the Conference of the Presidents of Regions (a body of horizontal cooperation). Additionally, for archiving coordination *ad hoc* emergency tasks bodies between national and regional health authorities were established, as well informal conversations and dialogues with the Presidents of the regions, both bilaterally and multilaterally (interview with former high-ranking official at the Conte's government). Another measure was the approval of Decree Law N° 19, on March 25th, 2020, which reorganised all the adopted decisions and introduced additional coordination instruments²⁴.

of State held that the measure arbitrarily restricted the right to free movement (T. Ginsburg and M. Versteeg, *The Bound Executive: Emergency Powers During the Pandemic*, in *Virginia Public Law and Legal Theory Research Paper No. 2020-52*, U of Chicago, Public Law Working Paper No. 747, 2020, 34: ssrn.com/abstract=3608974 or dx.doi.org/10.2139/ssrn.3608974.

²¹ This latter is the case of the ordinance by the Isle of Ischia (www.comunebarano.it/public/2020/20200223150405ordinanza.pdf), while an example of decision prohibiting mass concentrations, can be found in the ordinance by the municipality of Sesto San Giovanni (www.unimi.it/sites/default/files/2020-02/Ordinanza%20Sesto%20San%20Giovanni_Misure_urgenti.pdf).

²² F. Nicola and G. Scaccia, *The Italian Model to Fight Covid-19*, cit.

²³ E. Ceccherini, *Intergovernmental relationships in Italy: a feeble but useful model*, in E. Arban, G. Martinico and F. Palermo (eds), *Federalism and Constitutional Law: the Italian Contribution to Comparative Regionalism*. Abingdon, UK, 2021; J. Woelk, *Loyal cooperation. Systematic principle of Italy's regionalism?*, in E. Arban, G. Martinico and F. Palermo, *Federalism and Constitutional Law: the Italian Contribution to Comparative Regionalism*. Abingdon, UK, 2021.

²⁴ In the same line, article 35 of Decree Law number 9, on the March 2nd 2020, had already forbidden and declared void emergency orders by local mayors, if conflicting with national measures (D. Tega and M. Massa, *Fighting COVID 19 – Legal Powers and Risks: Italy*, in

The need for coordination has also been sustained based on the “loyal cooperation principle” and solidarity, and in order to avoid dangerous fragmentation that undermines certainty of law, and to address the potential violations of the principle of equality when different rules govern equal situations²⁵. The reference to the “principio di leale collaborazione”, and its relation to the conference system as well to the management of the pandemic, has been even highlighted by the President of the Italian Republic, while at the same time the President of the Conference of the Regions recognized the need for “an upgrade of the forms of institutional cooperation”²⁶.

Later, on April 26th, a PCM decree outlined the transition to the transition period or phase 2. While the prohibition of movements across regions remained in place, movements between municipalities were permitted only for work and health reasons, or to visit relatives. Furthermore, on June 11th, a PCM decree regulated the reopening of museums, theatres, restaurants, bars, bakeries, and the like, subjected to the sanitary conditions of the region or provinces where they were located. Conditions for the reopening would be decided at the regional/provincial level, following the nation-wide guidelines, reflecting a much more coordinated and nuanced multilevel governance. However, during the easing phase there has also been some discoordination, like the decision of the Calabria region to reopen many bars and restaurants, as of April 30th, which was challenged by the national government and struck down by the administrative court on May 9th. An even more audacious path was followed by the Bolzano/Bozen region, which issued its own law on May 8th, ordering the complete restart of activities, which was also challenged by the government before the Constitutional Court²⁷.

In this second phase, the State recourse to the concept of “international prophylaxis” for challenging the unilateral, differentiated decisions of some Regions. However, the constitutional jurisprudence has not been uniform and there remains significant debate on the need for a constitutional reform in order to strengthen the power of the central government (a sort of supremacy clause) or the fact that the power of substitution currently mentioned in article 120 could suffice for a more extensive role of the central

VerfBlog, 2020/3/23, [https://verfassungsblog.de/fighting-covid-19-legal-powers-and-risks-italy/\(10.17176/20200323-122747-0\)](https://verfassungsblog.de/fighting-covid-19-legal-powers-and-risks-italy/(10.17176/20200323-122747-0)).

²⁵ C. Fasone, *Coping with Disloyal Cooperation in the Midst of a Pandemic: The Italian Response*, in *VerfBlog*, 2021/3/08, [https://verfassungsblog.de/coping-with-disloyal-cooperation-in-the-midst-of-a-pandemic-the-italian-response/\(10.17176/20210308-154030-0\)](https://verfassungsblog.de/coping-with-disloyal-cooperation-in-the-midst-of-a-pandemic-the-italian-response/(10.17176/20210308-154030-0)).

²⁶ J. Woelk, *Loyal cooperation*, cit., 184-5.

²⁷ F. Palermo, *Devolution and COVID-19: Italy: did the virus infect the regional system?*. In *Forum of Federations*, 2020: www.forumfed.org/wp-content/uploads/2020/05/ItalyCOVID.pdf [Extracted on October 20th, 2020].

government²⁸. The topic of international prophylaxis was introduced by the judgment of the Constitutional Court which declared unconstitutional the Valle d'Aosta Region law N° 11/2020, concerning the regulation of the health emergency Covid-19 in the regional territory (interview with judge from the Italian Constitutional Court)²⁹.

In terms of the pandemic management, Italy has suffered a high number of casualties, which led to the draconian measures at the beginning. Once the situation was more under control, the measures started to be lifted by regional decisions, according to the epidemiological situation of each territory, and with a higher degree of discretion for the subnational authorities. In fact, as early as mid-May 2020, several regions started to issued regulations regarding reopening of bars and restaurants. As of mid-September 2020, the pandemic seemed to be much under controlled, given the stark contrast between the first wave, which led to a total of almost 200.000 cases and more than 25.000 deaths by late April 2020, and the figures during the summer of 2020, around 80.000 cases and almost 9.000 deaths, still very high figures for any account³⁰.

3. The Netherlands

Moving on to the Netherlands case, according to Dutch constitutional law, municipalities and provinces have autonomous authority to regulate and administer their own affairs (Article 124 Constitution). However, subnational authorities can be required by law to cooperate with regulations and orders passed down from a higher government body (co-administration - Article 124 Constitution). Higher government bodies also monitor lower public authorities (Article 132 Constitution). A municipality is headed by the municipal council, the people's representation at local level, while Mayor (appointed by the government, not elected) and councillors comprise the local government. A province is headed by the provincial people's representation – the Provincial Council, the King's Commissioner (appointed) and the provincial executive³¹. The country is divided into 12 provinces with 352 municipalities³². Municipalities and provinces have

²⁸ For an extensive, comprehensive and detailed discussion of these arguments, see particularly A. D'Atena, *L'impatto dell'emergenza sanitaria sul riparto di competenze tra Stato e Regioni*, in *Rivista giuridica on-line ISSiRFA – CNR*. Italian Papers on Federalism, N° 1/2021.

²⁹ For the official English version of the judgment by the Italian Constitutional Court, number 37 of 2021, see www.cortecostituzionale.it/documenti/download/doc/recent_judgments/Sentenza%20n.%2037%20del%202021%20red.%20Barbera%20EN.pdf

³⁰ For this comparison, see C. Kypraios and D. Garrido, *Italy*, cit., 249.

³¹ W. Voermans, *A Bird's Eye View of Dutch Constitutional Law*, 2016, 10: ssrn.com/abstract=2778622 or <http://dx.doi.org/10.2139/ssrn.2778622> [Extracted on May 11, 2020].

³² The actual number of Municipalities has been updated as to early 2022, although it changes from time to time. <https://www.rijksoverheid.nl/onderwerpen/gemeenten/taken-gemeente>

autonomous authority to regulate and administer their own affairs (Article 124 of the Constitution)³³.

The Netherlands' approach to the Covid-19 pandemic was laid down by a series of strong advices by the central government, coupled with a set of rules from decentralised emergency regulations³⁴. The subnational regulations were elaborated in technical-legal terms by emergency ordinances of the presidents of 25 Safety regions, regulated by the Safety Regions Act (Wet veiligheidsregio's, SRA in English³⁵). This law also required them to follow the "binding instructions" issued by the Ministry of Public Health and the Ministry of Justice and Security (article 7 Public Health Act and article 37 of the SRA)³⁶. The Prime Minister, the above-mentioned Ministries, together with the experts from the Outbreak Management Team (OMT) and the RIVM, formed the so-called Emergency Cabinet, which issued binding instructions during the Covid-19 crisis to the Safety Regions. The content of the Emergency Cabinet instructions is based on the prescriptions of the Public Health Law, whereas the procedure for implementing these instructions is regulated in the Safety Regions Act.

The way this decentralised approach unfolded is the following: on the basis of Article 39 of the Safety Regions Act, the Chair of the Safety Region is authorized to issue emergency ordinances. In practice, however, the Presidents of the Safety Regions referred to the model emergency ordinances established by the Safety Council, which congregates the 25 Safety Regions' Chairpersons³⁷, with some autonomy within the parameters of the law if the subject was not regulated nationally. Even though some Safety Regions have adopted their own measures, for matters such as the regulation of local markets and tourism, bans on honorary edges and certain public areas, the actual differentiation has been limited³⁸. Research showed that emergency regulations deviated very little from the model ordinances in the period up

³³ For a complete overview of the constitutional bases of the "decentralized authorities" in The Netherlands, see P. Bovend'Eert and C. Kortmann. *Constitutional Law in the Netherlands*. Alphen aan den Rijn, 2018, 44-51.

³⁴ A. Meuwese, *The Disjointed Dutch Policies to Fight COVID-19*, in *The Regulatory Review*, 2020: www.theregreview.org/2020/05/18/meuwese-disjointed-dutch-policies-fight-covid-19/ [Extracted on May 25th, 2020].

³⁵ The official English version can be found on this website: www.government.nl/documents/decrees/2010/12/17/dutch-security-regions-act-part-i.

The law sometimes speaks about "safety" regions and other about "security" regions. The paper will use the word "safety" regions.

³⁶ M. Julicher and M. Vetzo, "COVID-19 in the Netherlands: of Changing Tides and Constitutional Constants", *VerfBlog*, 2021/4/22, <https://verfassungsblog.de/covid-19-in-the-netherlands-of-changing-tides-andconstitutional-constants/>, DOI: 10.17176/20210422-101345-0.

³⁷ The Safety Regions Act defines the Security Council as the chairmen of the Safety Regions acting jointly (article 1).

³⁸ J. Esser and G. Boogaard, *25 kapiteins, 1 vloot*, in *Nederlands Juristenblad*, 2020/1445: www.navigator.nl/document/idf5e11efc208b4241a378d3e8aaa09949/nederlands-juristenblad-25-kapiteins-1-vloot?ctx=WKNL_CSL_85 [retrieved on October 22th, 2020].

to December 1st, 2020³⁹. Enforcement of these ordinances relies on individual Mayors, which in turn can take their own safety measures in the absence of Safety Regions' regulation for that matter⁴⁰.

Notwithstanding the text of the law and the lack of formal powers of coordination bestowed on the so-called Safety Council, the fact that during the corona crisis Safety Regions adopted similar rules⁴¹ and practiced sustained frequent communication and meetings, can be traced back to the consensual culture in policy-making in the Netherlands⁴² as well as substantial informal cooperation over time⁴³. In general, the system allowed little territorial autonomy: decisions were made at the national level and municipalities basically must implement them.

“On the local level, Mayors also took decisions and liked to be crisis managers while city councils had a hard time to keep up with them...but perhaps this is only natural in a crisis, that the crisis managers try to be as effective as possible and are less concerned with democratic rules than the bodies that should control them” (interview with public administration expert).

This sort of “top-down” coordination is not the same as cooperation. Relationships characterized by a dominant role of the State are understood as coordination, whereas equal footing of all the levels of government involved is considered cooperation⁴⁴. As the report on the SRA highlighted “safety regions function well individually for risk and crises within their own regional borders but fall short when dealing with cross-border incidents”. Even though this report did not consider the corona crisis management, this conclusion is confirmed by the actual working of the institution during the pandemic (interview with public administration scholar)⁴⁵. Also, there are

³⁹ R. Becker, L. Honée, G. Boogaard J. and Geertjes, *Mate van juridische differentiatie door veiligheidsregio's*, in *Corona Papers*, 2020: coronapapers.nl/nieuws-1/nieuws/mate-van-juridische-differentiatie-door-veiligheidsregio-s. The research covers a total of 559 emergency regulations enacted by the Safety Regions and compares them to the 17 model emergency regulations by the Safety Council.

⁴⁰ There are few examples of Mayors who decided to stop or minimize enforcement of rules which they did not agree with (M. Van Der Steen, *Overheidssturing in de coronacrisis: perspectieven, praktijken en dilemma's*, in Loof, J., Korzelius, J., van den Brink, J.E., van der Steen, M., *Bestuursrecht in crisistijd*. Boom juridisch, Den Haag, 2021).

⁴¹ In previous crisis more differentiation did occur (See Evaluatiecommissie Wet veiligheidsregio's, *Evaluatie Wet veiligheidsregio's*, 2020, available at <https://open.overheid.nl/repository/ronl-ba7df199-91c7-4f4b-8469-5e775b4fc4aa/1/pdf/tk-bijlage-evaluatie-wet-veiligheidsregio-s.pdf>).

⁴² F. Hendriks and L. Schaap, *The Netherlands: Subnational Democracy and the Reinvention of Tradition*, in Frank Hendriks, Anders Lidström, and John Loughlin (eds.), *The Oxford Handbook of Local and Regional Democracy in Europe*. Oxford, 2010.

⁴³ T. Toonen T. and Steen, *Constituting the Cooperative State*, cit., and also interview with public administration scholar and interview with political science scholar.

⁴⁴ E. Ceccherini, *Intergovernmental relationships in Italy*, cit., 69.

⁴⁵ Also considering that public order and management of local emergency situations are regularly competences of the Municipalities (arts .172-174a, and 175 and 176, respectively,

coordination problems between the safety regions and related institutions for crisis: structures at municipal level, the GGD (public health organization)⁴⁶ and the provincial structure.

Some scholars have raised doubts about the constitutionality and legality of the restrictions imposed by the emergency regulations enacted by the Safety Regions, and the high degree of uncertainty that derives from a regulatory blend of soft and hard law⁴⁷. Others stated that since there is no democratically elected body on the level of the Safety regions, any kind of accountability is barely impossible⁴⁸. There is also the problem that, whenever confronted by local councillors, Mayors generally responded that their decisions in the context of the corona crisis were adopted in their capacity of Chairpersons of the Safety Regions, and not as Mayor of a single, individual municipality (interview with southern Netherlands councillor). In some cases, some form of accountability was possible by informal networks (for instance, of alderman or alderwomen from one small municipality connecting with their peers from larger municipalities) or through information gathering from organizations connected with safety regions. For instance, a meeting at a GGD regional coordination body where information about measures adopted in the context of the Safety Regions were discussed (interview with alderwoman from central Netherlands). In this realm, a word that commonly appears regarding city councils' role during the pandemic is "understanding": city councils assumed that the nature and urgency of the crisis required a more passive/concurrent role than normally (interview with alderwoman from central Netherlands).

Against this background, public actors have voiced concerns over the equal treatment of all Municipalities in the country, considering that main/larger cities are the key players while concerns by smaller communities are downplayed (interview with Mayor and councillors from two different Municipalities, especially interview with councillor from central Netherlands). Even within Safety Regions, there is concern about municipalities from cities different than the one from which the Safety Region Chairperson is the Mayor at the same time (normally, the largest

both of the Municipality Act).

⁴⁶ The GGD organization is also regionalized, headed at the regional level by aldermen representing the municipalities conforming their region, but they do not exactly correspond to the same distribution as the Safety Region, nor do they correspond to the provinces, further complicating the decision-making and decision-controlling processes.

⁴⁷ A. Meuwese, *The Disjointed Dutch Policies*, cit.

⁴⁸ The legitimacy and accountability problem has been noted in previous studies of "regional structures and institutions" in the Netherlands, pointing to a prevailing issue of legal design where there is a trend to transfer powers and competences to regional institutions without the necessary legitimacy and accountability mechanisms (see Hulst, J. R. (2005). "Regional governance in unitary states". *Local Government Studies*, 31(1), 99-120, and R. Andeweg, G. Irwin and T. Louwse. *Governance and Politics of the Netherlands*. London, 202-3: doi.org/10.1080/0300393042000332882).

municipality within the region) (interview with councillor from central Netherlands).

Also, there are concerns as to what extent the enhanced role of executive leadership (Mayors in Municipalities and Chairpersons of the Safety Regions) is balanced out by representative and deliberative institutions⁴⁹, particularly city councils (interviews with councillors from different Municipalities). In this vein, accountability mechanisms for the decisions under the SRA are very limited. On the one hand, city councillors could raise questions to Mayors, but this could only work in municipalities where the mayor is, at the same time, Chairperson of the respective safety region. In reality, very few city councillors have made use of this mechanism (interview with subnational governance researcher and Councillor from southern Netherlands). On the other hand, Chairpersons of the Safety Regions must submit a report detailing their decisions and reasoning for policies adopted, but this is only done once the crisis is over, which in the case of the corona crisis meant several months after the first decisions were made (report of the SRA and interview with public administration scholar). Still, positive examples like the case of the Municipality of Oss, in the Noord-Brabant Safety Region, where the Mayor and Vice-Chairperson of the Safety Region concurred to another city's council to explain some measures, showed that the positive advantages of local accountability can be achieved to a certain extent⁵⁰.

Additionally, some Mayors did inform their city councils on the measures to be adopted by the Safety Council during its weekly meetings in the first phase of the pandemic. The example of the Mayor of Amsterdam, and Chairwoman of the Amsterdam-Amstelland region stands out. The more approachable attitude and the interlocution with her city council were signalled as positive.

“They have a debate like this. And I remember watch this and thinking...well...she sees herself as accountable to her own city councillors...and she was there in the city council, she explained what they have done...” (interview councillor from southern Netherlands).

In addition to all of this, there is evidence that the workings of the Safety Council may have an important impact on regionalisation and intergovernmental relations in the Netherlands. This confirms the intuition

⁴⁹ This power shift towards the executives, and away from local and provincial had been already noted by scholars. See, among others, W. Voermans, “Chapter 15: Constitutional Law”, in E. Hondius, W. Voermans, J. Chorus, *Introduction to Dutch Law* (5th edition). Alphen aan den Rijn, 2016; and H. Vollar, G. Boogaard, J. van der Berg and J. Cohen. *De Gemeenteraad; Ontstaan en Ontwikkeling van de Lokale Democratie*. Amsterdam, 2018.

⁵⁰ R. van de Lustgraaf, *Ze hebben het in de coronacrisis voor het zeggen, maar wie controleert de Veiligheidsregio's eigenlijk?*, in *Trouw*, 2020: www.trouw.nl/binnenland/ze-hebben-het-in-de-coronacrisis-voor-het-zeggen-maar-wie-controleert-de-veiligheidsregio-s-eigenlijk~bdf99587/ also confirmed by interview with Mayor from Brabant region and interview with subnational governance researcher.

that the original consultative nature of the body had somewhat transformed, in practice, to a more coordination role during the crisis⁵¹, probably also because of the lack of a middle level government powerful enough and with the competences to assume coordination during crisis management (interview with alderwoman from central Netherlands). According to our definition, it appears as a coordination body, mediating between the government's decisions affecting the territories, than a cooperative institution, allowing regional involvement in national policy making⁵². This new interactions between multilevel institutions have revealed themselves during the pandemic:

“These relations have to be discovered and negotiated along the way, and that is actually what happened. In the first instance it was central government that tried to come up with all kinds of regulations, which were often about telling others that they were responsible themselves and should manage themselves...but along the way it became clear that others also were involved, for instance the Mayor who had to enforce the rules that were made at the central level, by the crisis team at the centre. And also Mayors tried to communicate with the centre to have an influence in what the rules were about and also within the Safety Regions there was a delegation of Mayors which discussed how the rules should take place and this was also the lobby group or the group that negotiated with the central government...” (interview with public administration expert).

In fact, the report on the evaluation of the Safety Regions even calls for a stronger and formalized position of the Safety Council, in order to increase the decentralised management structure of crisis, without entirely changing the coordination and policy-defining role assigned to the central authorities⁵³. Moreover, the tendency to strengthen the municipal (or regional) executive was already reported, at least since the 2002 legislative reform⁵⁴. Another issue to consider is that the nomination procedure of the Mayors, which does not include direct election like in any other western

⁵¹ W. Boonstra, “Veiligheidsregio's volgden veelal modelverordening”, in *Binnenlands Bestuur*, 2021: www.binnenlandsbestuur.nl/openbare-orde-en-veiligheid/nieuws/veiligheidsregio-s-volgden-veelal.15516229.lynkx.

⁵² A caveat should be introduced in the sense that the Safety Council only coordinates the regions for the purposes of the Safety Regions Act, and no other policy areas or domains. Naturally, during the corona crisis this seems to cover many areas, and their powers appeared extended, but in normal times this ought not to be the case.

⁵³ Evaluatiecommissie Wet veiligheidsregio's, cit.

⁵⁴ M. de Groot, B. Denters, and P. Klok, *Strengthening the Councillor as a Representative and Scrutiniser: The Effects of Institutional Change on Councillors' Role Orientations in the Netherlands*, in *Local Government Studies*, 36:3, 2010, 401-423 (10.1080/03003931003730469) and M. Mazza, *The Local Government in the Dutch Constitutional System: A Comparative and European Perspective*, in Giuseppe Ferrari, Reijer Passchier and Wim Voermans (eds.), *The Dutch Constitutional beyond 200 Years*, The Hague, 2016.

European country⁵⁵ has been justified mainly because of their “executive” nature, meaning that they are “above” local politics in order to secure a proper management and implementation of public policies (interview with subnational governance researcher).

Finally, in terms of the corona crisis numbers, The Netherlands saw a severe increase in cases by mid-March, which led to the already mentioned national lockdown, followed by a flexible easing of the measures by mid-May, in light of improving figures. During the summer, numbers declined significantly, which led to a further relaxation of the measures, only to return to a steep rise by late-September 2020⁵⁶.

4. Conclusions and comparative remarks

Among the key similarities observed, the crucial role of national leadership needs not be understated. Researchers have pointed to centralisation in decision-making by former national executives in Italy (interview with constitutional law professor), while in the Netherlands scholars have also called into question an analogue trend⁵⁷, although in this case it is also a consequence of the institutional design of the Safety Regions Act. Additionally, both countries resorted to new legal instruments, which can be an advantage because since they can tailor it to the particularities of the pandemic. Even though the Netherlands had the Public Health Act and the Safety Regions Act, both were conceived only for short-term emergencies. Italy also needed to develop new instruments and the key was that it lose some time at the beginning of the pandemic. Naturally, the evolution of the relations between the national and subnational governments has changed during the course of the pandemic. A future paper will address the changing nature of this relationships, especially in light of the dynamics taking place during 2021, which were not covered by the interviews conducted.

Another similar theme that emerged is the lack of accountability for the decisions adopted at the regional level. In the Italian case, this is a feature already observed by scholars⁵⁸, but has been especially visible during the Covid-19 crisis. In the Dutch case this stand out as a distinctive problem with the SRA (interviews with city councillors). The Maastricht case reveals

⁵⁵ Congress of Local and Regional Authorities, *Report on the Monitoring of the application of the European Charter of Local Self-Government in the Netherlands*, Congress of Local and Regional Authorities, Council of Europe, 2021, search.coe.int/congress/pages/result_details.aspx?ObjectId=0900001680a42001.

⁵⁶ For updated figures, consult the special Covid-19 webpage of the National Institute for Public Health and the Environment: www.rivm.nl/en/novel-coronavirus-covid-19/current-information.

⁵⁷ This is Wim Voermans' opinion, see F. Hendrickx, *Raadsleden eisen rol op bij coronabeleid, terecht?*, in *de Volkskrant*, 23 August 2020, www.volkskrant.nl/nieuws-achtergrond/raadsleden-eisen-rol-op-bij-coronabeleid-terecht~b48a28ee/ [Extracted on September, 24th, 2020].

⁵⁸ E. Ceccherini, *Intergovernmental relationships in Italy*, cit., 66.

that Mayors resorted to the argument of their “national role”, their position as Chairpersons of the Safety Regions representing national government in the territories, as the reason not to be accountable to their own city councils (interview with council member from southern Netherlands and interview with subnational governance researcher).

Finally, the role of experts in decision-making, and especially those bureaucrats advising political leaders, as well as implementing policies or assisting in the design of public policies, has been crucial for managing the pandemic. The well-oiled bureaucracy at the local level in the Netherlands, with a high degree of continuity and multilevel technical cooperation (interview with public official at one municipality), has been essential for a good management of the pandemic. In Italy this has also been the case, especially in some regions with a much more fine-grained bureaucracy, notwithstanding the high degree of socioeconomic differences among regions (interview with constitutional law scholar).

To conclude, the comparative observation of the pandemic’ responses in Italy and the Netherlands highlights the relationship between institutions for coordination and an effective response to emergencies. Centralised approaches in both countries were adopted which somehow alters decentralized competences and traditions: the strong tradition of local democracy in the Netherlands⁵⁹ and significant federalizing trend in Italy. This traditions of accommodation and compromise, that were somehow re-invented to incorporate 21st century democracy and citizen participation, are called into questioned when government structures tend to centralize decision-making⁶⁰. On the other hand, decentralisation may increase public policy innovation, by the diversity of policy solutions and the learning process between territories: decentralised structures may have advantages for solving difficult problems since they empower several subunits to search for policy solutions in parallel, and to share and coordinate the information discovered⁶¹.

It seems that any approach trying to explain the functioning of the systems would need to account for cooperation. For instance, “centripetal theory” say that the main question is not whether power, competences and resources are distributed, but rather how institutions promote coordination and convergence in decision-making⁶². On the other hand, “cooperative

⁵⁹ A tradition that has been coined as “a unitary state with federal characteristics” (F. Hendriks, “Democratic reform between the extreme makeover and the reinvention of tradition: the case of the Netherlands”, *Democratization*, 16:2, 2009, 243-268, DOI: 10.1080/13510340902732482).

⁶⁰ For a review of this tradition and re-invention of consensus tradition on the Dutch case, see F. Hendriks and T. Toonen (eds.). *Polder Politics. The re-invention of consensus democracy in the Netherlands*. Aldershot, 2001.

⁶¹ Kollman, Miller and Page, “Decentralization and the Search for Policy Solutions”. *The Journal of Law, Economics and Organization*, Vol. 16, N° 1, 2000, 102-128.

⁶² J. Gerring and S. Thacker, *A Centripetal Theory of Democratic Governance*, New York, 2008.

federalism” consist of a culture of multilevel bargaining and consensus-building⁶³ and to the idea of “power sharing” between the centre and the periphery⁶⁴. This latter idea can also be applied to non-federal States and has been connected to a more effective management of emergencies⁶⁵. In this light, the “competitive” relations between national and regional authorities in Italy (interview with constitutional law scholar), especially during the first phase of the pandemic, can be contrasted with the more “consensual” or “cooperative” mode observed in the Netherlands (interview with political science scholar). Moreover, the importance of cooperation beyond the formal distribution of powers, represented by the instruments and institutions for promoting cooperation among levels of government as well the cooperative dynamic inside the party system have also been highlighted by

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⁶³ T. Börzel, T. *States and Regions in the European Union: Institutional Adaptation in Germany and Spain*. Cambridge, 2001.

⁶⁴ D. Vese, *Managing the Pandemic: The Italian Strategy for Fighting COVID-19 and the Challenge of Sharing Administrative Powers*, in *European Journal of Risk Regulation*, 1-28, 2020 doi:10.1017/err.2020.82

⁶⁵ M. Moorkamp, R. Torenvlied and E. Kramer, *Organizational synthesis in transboundary crises: Three principles for managing centralization and coordination in the corona virus crisis response*, in *Journal of Contingencies and Crisis Management*, 28, 2020, 169–172.