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Governing decentralised States during the Covid-19 pandemic: challenges of intergovernmental coordination and cooperation in Chile, Italy, and the Netherlands

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Citation

Szmulewicz Ramírez, E. (2025, February 27). *Governing decentralised States during the Covid-19 pandemic: challenges of intergovernmental coordination and cooperation in Chile, Italy, and the Netherlands*. Retrieved from <https://hdl.handle.net/1887/4196377>

Version: Publisher's Version

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Note: To cite this publication please use the final published version (if applicable).

Chapter 4: The Italian system of intergovernmental relations: before and after the Covid-19 storm⁹⁶

Summary of the Chapter

After covering the case of Chile, both in the general debates that were ventilated through the constitution-making process of 2021 and 2022, as well as regarding the centralized governance structure predominant for managing the Covid-19 pandemic in 2020 and 2021, this chapter elaborates in-depth the topic of decentralization and intergovernmental relations in Italy. Its emphasis is on the distribution of power and competences between the central government and the regions, as well as the role of the local governments, in the realm of public health, which was the most notorious public policy domain when observing the governance structure for the Covid-19 pandemic.

After describing the intergovernmental relations structure in Italy, particularly regarding the healthcare sector, and its historical evolution, the chapter analyses the application of the model to the governance of the Covid-19 pandemic. In the absence of cooperative vertical IGRs and given the weak role of the Italian Senate as a chamber of territorial representation, political disputes have been litigated in the Constitutional Court, which has represented a major challenge to the evolution of the system. On the other hand, even though the organization of informal horizontal cooperative mechanisms during the Covid-19 pandemic can be observed as a positive development, they lack the necessary democratic legitimacy and accountability that formal mechanisms could provide. Additionally, despite the fact that these “aformal” mechanisms can have greater flexibility and agility, they raise questions as to what extent the autonomy of decentralised entities can be guaranteed.

On the other hand, coherent with the theoretical expectation, given the executive nature of IGR in Italy, this leaves room for political leadership and personality traits to be an important intervening variable shaping the concrete form that relations will take. In fact, the direct election of Presidents of the Regions only exacerbates this problem, because of the effect it has on the legitimation, mandate and accountability of the regional executives.

⁹⁶ Paper citation: Szmulewicz, Esteban, and Pitto, Simone (forthcoming). “Intergovernmental coordination and essential levels of healthcare services: perspectives from the Covid-19 pandemic management in Italy”. Paper currently under review at a Scopus journal.

This chapter was first presented, in a draft version, at the Giornate di studi Italo-Spagnole (Conference on the studies of Italy-Spain), titled “Lo Stato asimmetrico: prospettive comparate”, celebrated at the University of Genova, Italy, in March 2024. I am greatly appreciative to the participants in this event for their valuable feedback, and particularly to Professor Eleonora Ceccherini for their motivation to participate in the conference as well as her valuable insights on an earlier version of the paper. The Department of Constitutional and Administrative Law at Leiden University provided support to participate in this conference.

While the overall paper is a joint product of the collaborative efforts of both authors, paragraphs 1 to 4 were predominantly elaborated by Szmulewicz whereas paragraphs 5 to 8 were mainly written by Simone Pitto. The conclusions were drafted jointly by both authors.

In terms of the types of intergovernmental relations, during the pandemic the predominant mode was intergovernmental coordination by the central government, particularly after the first few weeks of institutional miscoordination. At the same time, horizontal IGRs were observed by the use of the Conference of Presidents of Regions, and fewer conflicts arose among regional governments than between regions and central government. Yet this horizontal cooperation between sub-national governments (regional and even municipal associations) was marked by conflicts with the central government, and not solely a dynamic aimed at seeking shared solutions to common problems, which highlights the more political and even constitutional nature of intergovernmental relations in Italy.

1. Introduction, research questions, and methodological considerations

Within the rapidly growing field of intergovernmental relations (IGR) scholarship (Hueglin and Fenna 2015), a relatively new body of literature focuses on non-federal countries, such as Italy (Ceccherini 2021) or the United Kingdom (Anderson 2022). These are countries not defined as unitary in their Constitutions but considered as decentralized or devolved States embodying different forms and degrees of regionalism. In this context, the purpose of this chapter is to examine the problem of intergovernmental relations in Italy in the healthcare sector, both before, during, and after the Covid-19 pandemic, in order to analyse how this experience situates in the context of the comparative scholarship about intergovernmental relations in decentralized States.

In terms of research questions, it aims to address the following: 1) how has the IGR system developed in Italy, and how does this country stand in the comparative landscape; (2) how has the pandemic, or even more in general the several crises that have affected the territorial system in Italy, influence the shape and dynamics of intergovernmental relations; (3) what are the future challenges that the Italian intergovernmental relations system in the healthcare faces.

In terms of the methods in order to approach the research questions, the paper will first construct the theoretical framework from a systemic and multidisciplinary analysis of the international literature on intergovernmental relations. From this standpoint, it will proceed then to an in-depth, case-study method of intergovernmental relations in Italy, with a focus on the healthcare sector, reconstructing its historical trajectory as well as the crucial developments during the Covid-19 pandemic and the challenges it has raised. Finally, it will assess the current debates in the literature about the direction intergovernmental relations might be heading in the foreseeable future, also in the context of ongoing debates about reforms to the political system nationally as well as to the current discussions surrounding “differentiated regionalism” (“regionalismo differenziato”), pursuant of article 116.3 of the Italian Constitution.

As opposed to a static picture of the vertical distribution of powers and financial resources, intergovernmental relations are more like a movie, a concept in motion, allowing to account for and analyse trends and patterns (Szmulewicz 2023), which calls for adopting a law-in-action approach. By this perspective, the aim is to analyse the interaction between the public law

framework and the political and public policy context which makes the legal texts operational in real life, sometimes showing a discrepancy between the actual governance practices and the constitutional design of political life (Rhodes 2000).

In terms of the methods, this chapter will first construct the theoretical framework from a systemic and multidisciplinary analysis of the literature on intergovernmental relations. From this standpoint, it will then proceed to an in-depth case study of intergovernmental relations in Italy, with a focus on the healthcare sector, reconstructing its historical trajectory as well as the crucial developments during the COVID-19 pandemic and the challenges it has raised. Finally, it will assess the current debates in the literature about the direction intergovernmental relations might be heading in the foreseeable future, also in the context of ongoing debates about reforms to the political system nationally as well as to the current discussions surrounding “differentiated regionalism” (“regionalismo differenziato”), according to article 116.3 of the Italian Constitution.

2. Decentralization and intergovernmental relations

Before moving to analyse the Italian case from the prism of the public law framework as well as its actual evolution and implementation, it is necessary to clarify certain key concepts of the research. First of all, intergovernmental relations can be defined as the interaction between levels of government, connected to the practice of federalism or regionalism, including cooperative institutions and processes (e.g., consultation, co-decision, and coordination) as well as more conflictual processes of tension, collusion, competition, control, and even coercion (Poirier, Saunders, and Kincaid 2015). Another way to understand IGR is from the point of view of the management of potential conflicts between different tiers of government, as a range of institutional and procedural mechanisms that coordinate (or not) the work of the levels of government in federal, and also regional and decentralized, systems, and should therefore prevent conflicts (Palermo 2021). Consequently, IGR is mostly conducted by governments, rather than legislatures or courts, or less formal institutions like political parties. This has led to the concept of “executive federalism or regionalism” to describe how IGR works (Watts 1989).

In this line, some authors have proposed to distinguish between the formal distribution of powers (intergovernmental constitution), the organizational relationships and linkages between government units (intergovernmental relations), and the problem-solving activities and procedures (intergovernmental management) (Toonen 2010, 34-46). This paper will be focused mostly in the first two meanings of the concept.

In addition, critical to understanding IGR is the distinction between cooperation and coordination among and between levels of governments. Relationships characterized by a dominant role of the central state are understood as coordination, whereas equal footing of all the levels of government involved is considered a key element of cooperation (Ceccherini 2021, 69). In turn, cooperation can be vertical, for instance in the case of voluntary agreements between central and subnational governments, or horizontal, as in the case of inter-municipal

or inter-regional cooperation of various kinds. Cooperative federalism is characterized by this type of IGR (Börzel 2001).

In terms of advantages, IGR might lead to effectiveness and efficiency gains, especially when compared to often times lengthy and complex parliamentary negotiations. Over time, establishing power-sharing institutions tends to create a sense of routinized conversations between partners, be that government levels or interest groups, which can provide long-term stability (Lijphart 2008).

However, IGR can pose challenges to democratic legitimacy and accountability that are critical. For instance, studies have highlighted that the informal coordination mechanisms during the COVID-19 pandemic were prone to misalignment by certain subnational units, as well as lacking the necessary democratic legitimacy and accountability that formal mechanisms might provide (Nader, Fuchs and Méndez 2021). Another criticism is that it weakens and dilutes the accountability of governments towards their respective legislatures and public opinion, because of the distance between the accountable politician and his or her constituency, as well as blame allocation problems by the voters (Greer 2006). The “behind closed doors” nature of IGR can lead to suboptimal solutions, violation of the separation of powers constitutional principle, and more attention to the changes in partisan politics than to the more formalized aspects of federalism.

Hence, the formalization of IGR can present important virtues. Institutional provisions for a certain entity can contribute to the democratic quality of an organization that lacks a more direct democratic mandate, yet this might reduce the flexibility and capacity for innovation of the organization, which can be useful, particularly in emergencies. Also, crucial for realizing the advantages of intergovernmental relations is the role of key bureaucratic officials as intergovernmental actors (Unikowski 2018).

Consequently, the subsidiarity principle, conditioned by the institutional demands of democracy, implies the creation of multiple sites of democratically controlled power, but to maximize the possibilities of achieving better results the institutional design needs to encourage compromises and coordination between government levels (Barber 2018, 184-5, and 187-218). Hence, need to reconcile broad-based inclusive institutions, both in terms of societal interests and territorial structures, with a capacity to provide authoritative and effective mechanisms for reaching and implementing agreements (Gerring and Thacker 2008 9-23).

In the end, in order for constitutionalism and multilevel government to complement each other, it is necessary to provide adequate channels of coordination and cooperation between the different government levels, in order to prevent undermining equality before the law, and to establish more integrated governance and more coherent public policies (Saunders 2020, 347-8).

3. IGR and crisis governance

As it has been pointed out, decentralized countries can be more effective in coordinating crisis responses than centralized policy processes, provided IGR is structured in such a way as to provide pathways through which tensions can be resolved and where subnational governments have the capacity and mandate to negotiate with the centre (Bergström, Kuhlmann, Laffin and Wayenberg 2022, 187). Pluriform governance structures are said to be better than uniform ones because contingencies and contexts vary, while also encouraging local innovation, an argument logically connected to dealing with crises. Authors from organizational theory have highlighted that regarding the handling of complex or ambiguous tasks, decentralized systems are preferable since they are more efficient at dealing with complex and uncertain information (Scott 1987, 151-3).

In fact, some authors see a direct link between decentralization, which is not the same as federalism, and intergovernmental relations, considering that once powers are transferred to subnational levels this generates a multilevel relationship of interdependence and interaction that affects both public services delivery and the overall legitimacy of the political system (Ruano and Profiroiu 2017, 478). In addition, further devolution of power to subnational governments can induce the system towards the so-called “decentralization paradox”: as tasks are transferred from the central to local/regional governments, managing complex coordination becomes a critical issue, hence demanding sophisticated skills at the centre, which in turn calls for a more effective and sometimes even more robust central government (Saito 2011, 488). As will be discussed throughout the case study, even though coordination is always a challenge whenever there is a division of powers between levels of government, the way to manage those intergovernmental relations differs.

Hence, the simultaneous pressures for centralization and decentralization in contemporary political systems require addressing the need for both cooperation and coordination in intergovernmental relations, in order to reconcile the principle of autonomy of self-governed constituent units and of accountability of the authorities to the electorate or parliaments in which decisions are made (Benz 2021, 11-19). Accordingly, Benz (2021, 19-22) proposes to distinguish tightly coupled systems, decoupled political system, and loosely coupled systems, depending on the intensity of the linkages between the units and subunits of the system.

Nonetheless, it is imperative to recognize that cooperation and coordination among government entities are intrinsically linked to the assurance of an adequate level of public services and uniformity in their provision, a matter often entwined with the safeguarding of individual rights. Conversely, a deficiency in cooperation and coordination within both federal and non-federal systems can culminate in a mosaic of territorial regions characterized by disparate performances in the delivery of public services, thereby endangering the equitable assurance of certain social rights (Pinelli 2002). Therefore, especially when dealing with a crisis, three types of asymmetries are particularly relevant: information asymmetries, because central government must safeguard overall planning and cohesion; administrative asymmetries, because of the solution to a certain problem transcends the strict boundaries of governments (even nationally as in the case of the Covid-19 pandemic); and policy asymmetries, because of the potential

incoherences or contradiction of the policies that would be implemented by distinct governments (Ruano and Profiroiu 2017, 481-2).

Finally, in order to address the information asymmetries that might imperil the equal performance and delivery of public services, three understandings of coordination can be adopted. Coordination can refer to an outcome, for instance, a vertically coordinated outcome is achieved if policies by the two levels of government are consistent and coherent. Second, coordination can refer to a process, whereby different government levels use strategies and instruments to coordinate organizations or programs. And third, coordination can refer to policy outputs that are the “direct results of the decision-making process”, like a joint declaration, resolution, agreement, or statement which is made public (in writing or at press conferences) (Schnabel and Hegele 2021). All of these non-hierarchical coordination understandings are crucial given the interdependencies and spillover effects across policy fields in most of contemporary challenges (Bolleyer 2018), as the Covid-19 pandemic demonstrated.

4. Context: The COVID-19 pandemic as a stress test for intergovernmental coordination in Italy

As was prominently illustrated by the COVID-19 pandemic, the aforementioned predicaments manifested most conspicuously within the realm of healthcare services. The pandemic's impact on all facets of the public sphere, coupled with the response to the health crisis, served as a significant stress test for the resilience of constitutional systems.

This proved to be a formidable challenge in various domains, notably in balancing the right to health with other constitutional rights, as well as with competing social and economic interests, and the democratic principles, including decentralization and the territorial distribution of powers (Piergigli 2021). The centrality of these goals relates to a richer understanding of constitutionalism, not only encompassing the limits, the checks and balances, and accountability of the State, but also approaching a certain “positive” understanding of the State: constitutionalism recognizing the crucial role of the State in advancing the well-being of the people (Barber 2018, 6-19).

Given the unprecedented measures enacted to confront the multiple challenges posed by the pandemic, the very structure of governance was fundamentally affected, and the proactive or deficient response of central and local authorities to the pandemic emerged as a pivotal factor in subsequent electoral consultations (Grosso 2023). The experience during the COVID-19 pandemic in the two regional states of Europe with the longest history, Spain and Italy, points to the need for institutionalized multilevel coordination bodies (Saunders 2021, 387-9). The management of the pandemic in Spain shows the perils of formally delegating powers, particularly to the territorial conference, that should have been regulated by Parliament⁹⁷.

⁹⁷ This was addressed specifically by the Spanish Constitutional Court, in decision 183/2021, regarding several provisions of Royal Decree 926/2020 that declared a new state of alarm, on October 27, 2021.

Moreover, in federal countries where such forums do not exist or were very weak, such as Argentina, Mexico, Brazil, the United States, Ethiopia, and Nigeria, it was necessary to resort to *ad hoc* arrangements when it was done and possible. These, however, could only be organized several months after the beginning of the pandemic, with the obvious negative consequences (Chattopadhyay, Knüpling, Chebenova, Whittington, and Gonzalez 2021).

Overall, the existing research has reinforced that regardless of the ongoing discussion on whether centralized or decentralized systems are more effective and legitimate in managing crises, the crucial concern for facing crises is to address the problem of weak intergovernmental relations, especially in the context of a regional or territorial chamber at the national legislative level that is not fit for purpose, as well as the building of more equal state capacities across the entire territory, tackling interregional inequalities (Alber, Arban, Colasante, Dirri, and Palermo 2021 30).

5. The Italian model of IGR

All countries have IGR of some sort, provided they have more than one level of government. Moreover, in States where a functional distribution of powers is prevalent, then a permanent relation between government levels should be established: the central government retains the power to legislate in nearly all policies and subnational governments assume an executing role of those policies with limited legislative functions. In Italy, regarding the division of legislative powers between the centre and the regions in the healthcare sector, this is a concurrent competence. Yet concerning policy implementation, regions and municipalities are involved⁹⁸.

The Italian case, however, shows a rich evolution process in the declination of IGR. Indeed, the structure of central-regional-local interactions in Italy has been shaped by a progressive integration of intergovernmental relationships which has been associated with “interstate regionalism” (i.e. a model where sub-national concerns are addressed through intergovernmental negotiations) rather than an “intrastate federalist approach”, which focuses on the representation of state, regional and local interests directly within central government. In a system designed as an interstate regionalism, regional interests are acknowledged primarily through the actions of central institutional bodies (Ceccherini 2008).

A first element to note in this respect is the composition of the Italian Parliament, i.e. the matter that, according to Mortati (1969, 453), has longest and most intensely occupied the Constituent assembly.

It is widely recognized that the bicameral system outlined in the Italian Constitution is distinguished by the functional equality of the Chambers in the legislative process. The main distinction between the two Chambers, besides the number of components and the structural setup, is established by Article 57 of the IC. The provision envisages that the Senate is elected

⁹⁸ Although the provinces are also a part of the territorial structure of the Italian State, only certain autonomous provinces, like Bolzano in northern Italy, have competences relevant to the healthcare sector. Hence, in general provinces have only been considered with a very limited role in the IGR system.

“on a regional basis”⁹⁹. Although the proposal to make the Senate a representative chamber of the regions was rejected by the Constitutional Assembly, this expression was retained. Scholars concur, however, that the Senate's capacity as a potential forum for discussion of regional interests has been poorly explored in practice within the Italian “material constitution” and the scope of Article 57 primarily focuses on establishing principles aimed at determining electoral districts¹⁰⁰.

A second element that should be underlined in the Italian case is the peculiar role of the municipalities. These are directly mentioned by the Italian Constitution¹⁰¹, which after the constitutional reform of 2001 fostered what scholars indicated as “an equal institutional pluralism”¹⁰², between the State and the lower territorial bodies that form the Italian Republic¹⁰³. In addition, the differentiation in powers that characterizes the Italian model of regionalism (ex Art. 116.1 of the Italian Constitution) can also be observed in the context of lower territorial entities. Except for the Regions, lower territorial bodies possess administrative competence but lack legislative powers. However, within the Italian provinces, the “autonomous provinces” of Trento and Bolzano are exceptions, as they possess legislative powers regulated by the statutory law of the Trentino-Alto Adige region.

Given the above-mentioned framework, it is commonly agreed, then, that the Italian model of IGR is grounded on the institutionalization of the system of conferences (“conferenze”) as a means to reach the agreements needed for intergovernmental negotiation. Among the main conferences are the State-Regions Conference (Conferenza Stato-regioni), the State-city-local autonomy Conference (Conferenza Stato-città-autonomie locali), and the Unified Conference (Conferenza unificata), the latter envisaged by Legislative Decree no. 281/1997 and chaired by the President of the Council of Italian Ministers (Ceccherini 2021). The Unified Conference marks the specificity of the Italian case *vis-à-vis* other experiences in comparative law. In fact, Italy may count on institutional bodies made up of expressions of both the central entity, the regions and the local autonomies, i.e. provinces and municipalities (Desideri and Torchia 1986). Notably, the Italian Unified Conference has been described as “an institution of shadow federalism” (Ruggiu 2000).

⁹⁹ See, *ex multis*, Pinelli 2017 and Casanova 2023.

¹⁰⁰ See Fusaro and Rubechi 2008 and Paladin 1984.

¹⁰¹ Article 114 of the Italian Constitution states that “The Republic consists of Municipalities, Provinces, Metropolitan Cities, Regions and the State. Municipalities, Provinces, Metropolitan Cities and Regions are autonomous entities with their own statutes, powers and functions according to the principles established by the Constitution. Rome is the capital of the Republic. State law governs its organization”.

¹⁰² See Mainardis 2008, 1038. According to scholars, the wording of the provision resulting from the 2001 reform rejects a hierarchical model of relations between the lower territorial bodies and the State, considering that their relations should be deemed solely regulated by the distribution of competences envisaged by the Constitution and the law. This does not mean that the lower bodies (Comuni, Province, Città Metropolitane, and Roma Capitale) are completely equal to the State, as clarified by the Constitutional Court in cases 274/2003 and 367/2007, pursuant to the principle set forth under Art. 114 of the Constitution. Yet, it implies an “equal institutional dignity” of all different levels of government within the framework of the Constitution. See Rolla 2014.

¹⁰³ Among the reasons for the peculiar role attributed to the lower territorial entities by the Italian system is the historically central role of the municipalities (Comuni) in the political and institutional life of the Italian Peninsula since the Middle Ages and the Renaissance. In addition, it should be emphasized that the effective organization and functioning of the Italian regions envisaged by the Constitution of 1948 was only achieved in the 1970s (Rolla 2014, 31).

Therefore, in contrast to other countries, the Italian legal framework has established inclusive avenues for participation not only for regional autonomies but also for local ones. This deviates from the conventional structure observed in comparative legal systems, where the central focus of local entity organization and operations typically revolves around the territorial level immediately subordinate to the central state (such as Regions, Provinces, Cantons, etc.). This reiterates the distinctiveness of the Italian case, wherein local entities derive the foundations of their autonomy directly from the Constitution, symmetrically as to that of the Regions.

Moreover, it is important to emphasize the desire to emulate the collaborative model among territorial entities also under the regional level. Initially outlined in legislative decree number 267 of 2000 (the Consolidated Text of laws governing the organization of local entities), this intention was then formalized by Article 123 of the Italian Constitution (further to the 2001 Constitutional Reform). The aforementioned provision dictates that in each region “the Statute governs the Council of local autonomies, serving as a consultative entity between the Region and local entities”.

The Italian Constitutional Court (hereinafter “ICC”) has further augmented the set of instruments aimed at reinforcing the intergovernmental relations system in Italy, thus averting a mere consultation between distinct levels of governance.

The most notable result of the hermeneutical efforts of the ICC is the jurisprudence on the principle of loyal cooperation (“*principio di leale collaborazione*”) between the State and the Regions, which should also be applicable, more generally, to all of the relations between different branches of the State and the local territorial entities, and which can allow a number of different coordination formulation depending on the case (Alessi and Palermo 2022 198).

The principle is explicitly outlined in Article 120 of the Italian Constitution (as amended in 2001), but its reach has been significantly expanded by the jurisprudence of the Italian Constitutional Court (ICC) (Dirri 2021, 60). As will be detailed below, one of the functions of the State-Regions Conference is precisely to approve guidelines in order to ensure coordination in healthcare services, with a limited role in influencing legislation.

6. IGR and Italian healthcare sector before the “storm”

Notably, in decentralized states, the healthcare emergency frequently precipitated a re-centralization of functions and prerogatives, at times leading to conflicts of authority between various tiers of government (Cuocolo 2020, 43; Spagnoli 2020).

This phenomenon is particularly intriguing when examined within the context of Italy and its public healthcare system (hereinafter referred to as the “IHCS”), grounded in the principles of universality, equality, and equitable access, as well as the multilevel governance of healthcare services (Bergamante, Canal, and Marucci 2000).

This complexity arises, *inter alia*, from the division of healthcare competence between the central State and Italian regions, as well as the guarantee of essential levels of healthcare services (“*livelli essenziali delle prestazioni sanitarie*” - “LEP”) (Luciani 2011).

Since the early 1990s, Italy has experienced a process of "regionalization" of the healthcare system, entailing a progressive devolution of functions that conferred a more substantial role upon the Italian decentralized governing bodies, i.e., the "Regioni" or Regions (Laus 2019, 283–291), despite the fact that article 32 of the Italian Constitution (hereinafter "IC") safeguards the right to health as a fundamental right of the individual and an interest of the whole national community¹⁰⁴.

The Italian healthcare system presents elements in common with the Beveridge models. In fact, the Italian Statute Law No. 833/1978 ensures universal and equitable access to a National Health Service (SSN). The functioning of the SSN entails a network of different powers and responsibilities, the enforcement of which is attributed by Article 1 of the Statute Law No. 833/1978 to the State, the Regions, and the Municipalities ("Comuni"), as local territorial entities.

Notably, Article 117, section 3 of the IC stipulates that health protection is a "concurrent competence". Under this configuration, Italian regions are entrusted with legislating on matters related to health protection, albeit subject to the "fundamental principles" established by national laws. Nonetheless, the central State retains exclusive competence over guaranteeing essential levels of public services encompassing civil and social rights, including health, as per Article 117, section 2, letter m).

Applied to the healthcare policies, this means that the State determines the basic levels of health services that must be guaranteed throughout the country and allocates national funds to the regional entities, while the Regions are responsible for the organization and the performance of healthcare services (Scaccia and D'Orazio 2020, 109).

Furthermore, at the local level, community health services and primary care are directly administered by local health authorities, while secondary and specialty care are provided by public hospitals but also by private health service providers (Dirri 2021, 52).

Consequently, there has been a configuration where regional health systems exhibit considerable variation, with disparities observed from one Region to another in terms of service quality, efficiency, and cost-effectiveness.

In this framework, the most significant healthcare policy decisions have been reached through "agreements" and "pacts" between the State and regional governments. These agreements, often referred to as "Health pacts", represent the mutual commitments made by regional and central political actors during the State-Regions Conference and subsequently codified into law by the Italian Parliament.

The last Health Pact (2019-2021) was approved on December 18, 2019, by the State-Regions Conference and envisaged a financial and programmatic agreement between the national Government and Regions. Among the contents of the agreement are the public financing and planning of the National Health Service (SSN) but also the Essential Levels of Assistance (LEA), the human resources, pharmaceutical and medical device governance, research and

¹⁰⁴ It is worth underscoring that this is the only case in which the IC defines a right as fundamental.

prevention, and co-payment fees. The validity of the 2019-2021 Pact for Health has been later extended by Article. 4.7-bis, of the Decree-Law no. 198/2022, until the new Pact for Health is adopted¹⁰⁵.

This framework of intergovernmental relations, characterized by agreements and understandings in Italian health policy, has been described as an “intergovernmental method” (Colasante and Iacoviello 2017) or “sanitary federalism” (Ciardo 2008).

Spain, Italy, and also the UK among others, have developed a wide network of vertical inter-ministerial conferences that in practice have become key instruments for coordination among the levels of government in the realm of healthcare, among others (Cuesta-López 2014).

7. ...and after the “storm”

More recently, the debate surrounding the Italian intergovernmental method and the Health Pacts has taken a new direction, marked by a growing call for centralization in healthcare services, driven by the repercussions of the 2008 financial crisis and the pandemic. Both crises underscored, as will be emphasized in the conclusions, the vulnerability of the Italian system of multilevel territorial governance and intergovernmental relations (IGR) centred around conferences when facing external systemic shocks.

On one hand, the austerity measures implemented in response to the 2008 crisis had a profound impact on the Italian HCS, resulting in shortages of personnel and resources. This impact, however, varied significantly among different regions of Italy, often leading to marked disparities in the quality and appropriateness of healthcare services across regions (in a system that portrayed deep asymmetries between the different regions even before the pandemics). In fact, this is not really surprising since, as it has been noticed, the different regional healthcare systems presented relevant disparities even before the 2008 crisis.

On the other hand, the pandemic exposed numerous vulnerabilities, particularly highlighting the fragility of certain regional experiences in the face of the outbreak of the infection. For instance, it has been acknowledged that while the southern regions experienced lower levels of contagions compared to the northern and central regions, the impact of the pandemics on household incomes, unemployment rate and loss of revenue among municipalities was more significant in the southern region compared to the rest of the country (Dirri 2021, 63).

¹⁰⁵ Previous agreements between the State and the Italian Regions in the realm of healthcare have been adopted as of 2001. For the triennium 2002-2004 and adjustment in 2001 (Agreement between the Government, the Regions, and the Autonomous Provinces of Trento and Bolzano of August 8, 2001), in 2005 (Agreement on March 23, 2005, pursuant to Article 8, paragraph 6, of Law No. 131 of June 5, 2003, implementing Article 1, paragraph 173, of Law No. 311 of December 30, 2004, between the Government, the Regions, and the Autonomous Provinces of Trento and Bolzano) in 2006 (Agreement on October 5, 2006, pursuant to Article 8, paragraph 6, of Law No. 131 of June 5, 2003, between the Government, the Regions, and the Autonomous Provinces of Trento and Bolzano concerning a new Health Pact) in 2009 (Agreement on December 3, 2009, pursuant to Article 8, paragraph 6, of Law No. 131 of June 5, 2003, between the Government, the Regions, and the Autonomous Provinces of Trento and Bolzano concerning the new Health Pact for the years 2010-2012) and 2014 (Agreement on July 10, 2014, pursuant to Article 8, paragraph 6, of Law No. 131 of June 5, 2003, between the Government, the Regions, and the Autonomous Provinces of Trento and Bolzano concerning the new Health Pact for the years 2014-2016). Cf. <https://www.salute.gov.it>.

Furthermore, healthcare systems in certain southern regions have suffered (and will suffer) from severe underfunding, mostly due to the reduction of healthcare spending after the 2008 crisis coupled with the augmentation of the demand of sanitary services and healthcare spending during and after the pandemic¹⁰⁶. The contraction of the public revenue resulting from the new economic crisis which followed the pandemic is also a matter of concern.

As a result, in regions such as Calabria, albeit the appointment of a special commissioner by the national government, the administration failed to adopt an effective mitigation strategy and even to provide reliable data on the contagions, thus underscoring a dysfunctional cooperation between levels of government and the dependence of the region from the central State (Dirri 2021, 62-3).

Regarding the general effects of the COVID-19 pandemic in the country, it needs to be highlighted that Italy was the first Western stable democracies to be hit by the outbreak of the pandemic and thus had to move in a quite unexplored field.

Unlike other constitutional frameworks in comparative law, the Italian Constitution lacks specific provisions pertaining to states of emergency or exceptional regimes¹⁰⁷.

On the contrary, it is widely recognized that various legal systems incorporate pre-established provisions for such circumstances (such as in Spain, France, and Germany), encompassing constitutional provisions pertaining to diverse emergency scenarios.

Notwithstanding the above, Italian legislation envisages a declaration of a state of emergency that is governed by ordinary legislation (i.e. the Civil Protection Code). However, the Code does not provide clear specifications as to the powers that the national government may wield during the emergency.

Within this legislative and constitutional framework, the urgent provisions to face the pandemics were adopted mainly in the form of Prime Ministerial Decrees, Decree-law adopted by the government and converted into statute laws by the Parliament, and special ordinances of the head of the Department of Civil Protection (DPC). The latter could derogate from existing provisions, although they had to comply with the general principles of the Italian legal system (Dirri 2021, 54)¹⁰⁸.

It is worth noting that the central government played the role of a protagonist in the management of the emergency, especially in the first phases (at least until 2020). However, in a second phase, contrasts arose between Italian regions and the central government with respect to the provisions adopted to avoid the diffusion of the virus and, later, their withdrawal.

¹⁰⁶ According to Neri (2019) this is due, *inter alia*, to the fact that healthcare policy consultation between central and regional governments has decreased significantly in recent years.

¹⁰⁷ The sole provision addressed by the Constitution that impacts the entire system is the state of war delineated in Article 78, which is declared by the Chambers, empowering the central government with the required authority.

¹⁰⁸ For a detailed analysis of the effect of the emergency on the sources of law and the territorial distribution of competences, see Palermo 2022.

Actually, the Presidents of the Italian regions were entitled to adopt orders in the field of civil protection in case of sanitary crisis¹⁰⁹, and similar powers are attributed to mayors within the territory of the municipalities (“Comuni”).

This resulted in a mosaic of legislation that contributed to diminishing legal certainty, especially considering that numerous regional and municipal orders were later declared void by administrative courts. Examples of this complex approach are the unilateral decisions by Governors of the Friuli Venezia Giulia and the Marche region, which by late February 2020 began imposing restrictions to prevent the spread 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 order¹¹⁰.

Probably, most of the contrasts between the State and the Region in the government of the pandemic arose during the final stages of the pandemic, regarding the progressive removal of prohibitions. Examples of this include 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 Court (Szmulewicz 2022, 681).

In this regard, one could note that the centralization of crisis management has been favoured also by the jurisprudence of the ICC. Particularly noteworthy among the rulings of the Constitutional Court is Judgment No. 37/2021 which imposed limitations on regional competence related to the pandemic. The Court intervened regarding a statute law of the Italian Region Valle d’Aosta deemed to allow the reopening of certain business activities (i.e. Regional Law No. 11 of December 9, 2020, titled “Measures to contain the spread of the SARS-COV-2 virus in the social and economic activities of the Autonomous Region of Valle d’Aosta in relation to the state of emergency”)¹¹¹.

The decision to suspend the regional law was a consequence of the Court’s interpretation of the legislative measures adopted in response to the pandemic. According to the Court, such measures had to be considered as “international prophylaxis” and thus fall within the exclusive competence of the State under Art. 117.2 (q), of the IC¹¹².

This centralization of powers has been criticized by part of scholars as it implied, *de facto*, the preclusion of the powers of mayors to adopt urgent and necessary orders established by the legislative framework on local autonomies¹¹³. In addition, the greater proximity of Regions to the population was seen as an element that should have recommended their involvement according to the principle of subsidiarity envisaged by Article 118 CI (Ripamonti 2021).

¹⁰⁹ See Legislative decree no. 267/2000.

¹¹⁰ Further examples of regional and local measures that conflicted with national ones can be reviewed in Szmulewicz 2022, 679-80.

¹¹¹ Which had previously been temporarily suspended by Order No. 4/2021 (D’Ignazio 2023).

¹¹² Notably this did not prevent other regions from continuing to adopt ordinances deemed to loosen the restrictions.

¹¹³ Namely the Legislative Decree no. 267/2000 but also the statute law no. 833/1978 (Luciani 2020).

Despite the above, the decentralized entities also found their voice restricted in the conference system, which, as mentioned above, can be seen as the main pillar of the Italian IGR model.

Especially in the first stages of the pandemic, the occasions of consultation and mutual cooperation between different levels of government in the conferences were rare, which led to the imposition of epidemiological standards that did not consider the differences between regions regarding their healthcare system capacities, hence leading to a formal uniform response that negated relevant regional diversities¹¹⁴.

Furthermore, the DPCMs (i.e. the decrees of the Prime Minister), which served as one of the major normative instruments to address the pandemic, did not provide for any mechanism of agreement and cooperation with the Regions and the municipalities (Ripamonti 2021, 215)¹¹⁵.

Additionally, alongside the erosion of the conference system and intergovernmental relations in general, further impulse towards centralization of pandemic response and marginalization of decentralized entities was facilitated by the role of expert scientific committees. Notably, the Technical-scientific Committee (CTS) acted as the formal institutional advisor to the central government during the pandemic. Nevertheless, its composition included only one representative from the Conference of Regions and Autonomous Provinces while no representatives of the municipalities were included¹¹⁶. This so-called “dysfunctional cooperation” has also been pointed out as one of the main reasons why many of Italy’s federalizing reforms since the late 1990s have failed to be fully implemented (Alber et al. 2021, 26).

8. Current debates about institutional reforms

It is noteworthy that the ongoing shifts in Italian intergovernmental relations, some of which seem to indicate a trend towards increasing centralization, have to be assessed also in light of the significant reforms currently underway in Italy. Of particular relevance is the implementation of measures outlined in the Italian Recovery and Resilience Plan (PNRR), which have had a significant impact on healthcare and the National Health Service (SSN), along with the potential implications of the new phase of the enactment of Article 116.3 of the Italian Constitution (IC).

Concerning the PNRR, scholars have argued that during the initial phases, sub-national governments were essentially excluded, while the enactment of many of the provisions of the Plan required their cooperation and effort (Ripamonti 2021, 208).

¹¹⁴ For the theoretical elaboration of this argument about the justification of an asymmetrical approach for dealing with crises, at least potential asymmetry, as well as its specific application to the Italian and comparative Covid-19 situation, see Palermo 2022, pp. 51-4.

¹¹⁵ Furthermore, the use of “DPCM” has been objected as per its legal validity and compliance with the Constitution (Luciani 2020).

¹¹⁶ See Decreto del Capo Dipartimento n. 371/2020 (Istituzione del Comitato scientifico). The CTS had its last meeting on 30 March 2022 and was later dissolved.

Conversely, Article 116 IC permits the granting of additional special forms and conditions of autonomy to ordinary regions (i.e. regions which have no special autonomy) in matters falling within the third section of Article 117 of the IC. Notably, this includes health protection (Balduzzi 2019). The process has reached a notable level of advancement, especially with regards to the regions Veneto, Lombardia and Emilia-Romagna,¹¹⁷ and has been endorsed by the majority of the Parliament supporting the Government led by Giorgia Meloni¹¹⁸. The “Calderoli” proposal of law no. 615 / 2023 envisaging a general framework to enact Article 116.3 of the IC is currently pending before the Italian Parliament but has already been accompanied by a chorus of criticism by Italian scholars¹¹⁹. This reform seems indeed of interest also with regard to IGR since, as it has been noted, the asymmetry may represent a response to structural difficulties in intergovernmental relations characterized by the need of “variable speed” (Piperno 2020, 57). In addition, the Calderoli reform is suitable to have a significant influence on the Italian organization of healthcare and the essential levels of sanitary services (LEP)¹²⁰.

Moreover, to bolster the ongoing trend toward progressive centralization, it is pertinent to mention other institutional reforms, primarily concerning the central State. Firstly, the reduction in the composition of the Parliament (from 630 to 400 members in the Chamber of Deputies and from 315 to 200 in the Senate), was enacted through Constitutional Law no. 1/2020. Given that the Italian Senate is elected on a regional basis, it has been argued that this constitutional amendment resulted in weakening the already feeble link between the regions and the national legislative assembly, thereby marginalizing a potential forum for discussion and the pursuit of possible agreements on matters of interest for the State and the Regions (Dirri et al. 2021, 65)¹²¹. In the absence of cooperative vertical IGR, and considering the weak role of the Senate, at least as a chamber for territorial representation, political controversies are often litigated at the Constitutional Court, leading to a judicialization of the regional model and political conflicts. On the other hand, the weak multilateral forum gives way to bilateral negotiations, which benefit the more powerful regions (often special regions i.e. “Regioni a statuto speciale”), further accentuating the de facto and de jure asymmetries of the Italian regional system (Alber et al. 2021, 30).

Secondly, the ongoing discussion in Parliament regarding the reform of the form of government and the role of the Prime Minister, which also encompasses provisions aimed at modifying the electoral system. Some scholars suggest that the proposal to introduce a direct election of the Prime Minister may indeed contribute to further consolidating the centralization of functions at

¹¹⁷ For a complete overview of differentiated regionalism, its evolution, and particularly its consequences in terms of IGR, see Alessi and Palermo (2022, 192-5), noting still the differences between special regions and ordinary regions even if the reforms of 1999-2001 were to be fully implemented, which makes the overall territorial system in Italy even more asymmetrical, and very prone to bilateral informal negotiations between the central government and the regions (pp. 213-4).

¹¹⁸ Although it seems that only a component of the majority (namely the “Lega” party) sees this reform as a real priority.

¹¹⁹ See *inter alios* Pallante 2023 and Spadacini 2023.

¹²⁰ See in this regard Zammartino 2023.

¹²¹ The authors additionally observed that this may pose challenges to the attempts aimed at reforming the Senate into a true chamber of the regions.

the central government level, although the distribution of legislative competences in the realm of the healthcare is not included in the reform.

Aside from these ongoing developments (which are still evolving and therefore difficult to assess), it is evident that both the financial and pandemic crises have underscored the vulnerability of the Italian system of multilevel territorial governance and intergovernmental relations (IGR), centred around conferences, when confronted with external systemic shocks. In the absence of cooperative vertical IGR and taking into account the weak role of the Senate, at least as a chamber of territorial representation, political conflicts are litigated in the Constitutional Court, leading to a judicialization of the regional model in Italy. In other words, the institutions designed to prevent conflicts or manage intergovernmental differences before they reach a more conflictual mode, are failing in that regard, hence opening the door at constitutional and administrative litigation rather than political bargaining.

9. Conclusions

In the end, the conference system proved to be ineffective in promptly responding to the demands of the early stages of the emergency. Furthermore, it was politically unsuccessful in subsequent phases, when reaching agreements with the central government on a unified strategy became challenging, sometimes leading to open conflicts between national and regional laws. This also contributed to exacerbating the differences between regions of Italy as per the number of casualties and in the response to the emergency in general. At the same time, the highly political and constitutional nature of IGR, is not properly counterbalanced by an adequate technical support structure, and a professional bureaucracy that could sustain intergovernmental management¹²². Here, Toonen's (2010) distinction between the intergovernmental constitution, intergovernmental relations, and intergovernmental management is relevant (Toonen 2010). If existing, these more operational relations could assist in the construction of a sort of network governance through consistent interactions over time, continuity of personnel, sectorial subcommittees, and other practices that the literature highlights as conducive to cooperative IGR, particularly when dealing with crises and emergencies (Unikowski 2018; Bergström, Kuhlmann, Laffin and Wayenberg 2022). Advantages would include the sharing of information, policy learning, coordination, and which are still not present or underdeveloped in the Italian system of conferences.

Hence, the main interlocutor of the national government was actually the Conference of the Presidents of Regions, which saw its role deviated from its primary function of platform for horizontal cooperation among regions. Moreover, to facilitate coordination for emergency tasks, *ad hoc* bodies were established between national and regional health authorities, alongside informal discussions and dialogues with the Presidents of regions, conducted both bilaterally and multilaterally (Szmulewicz 2022). This seems to indicate that horizontal IGR are working, and lesser conflicts arise between regional governments, than between regions and

¹²² In this regard it is worth noting that the role of the technical committees during the COVID19 pandemics was only temporary and no similar structures have been established after the emergency ceased.

the central government. This horizontal cooperation between subnational governments (regional and even municipal associations), can help reduce transaction costs by sharing resources and knowledge, but must also keep in mind the need to address the unequal distribution of capabilities and financial resources between and within regions in Italy (Mavrot and Malandrino 2022)¹²³. Besides, agreement among regions was marked by their opposition to the central government, and not so much by a dynamic aimed at seeking common and shared solutions, as could be for example cooperative harmonization of the heterogeneous and at times chaotic legislation produced by the regions (Ceccherini 2021, 204).

Another aspect of IGR that stands out as a relevant difference between the Italian system and other models is the crucial role that Municipalities play in Italy, especially when compared with similar regional States¹²⁴. They are incorporated in the Integrated Conference, they have a large role in the execution and implementation of public services, including in the healthcare sector. Still, relations between the representatives of the municipalities and the national government are complicated, not least because of the frequent local government complaints about budgetary cuts by the central government. In addition, they can also assume further functions when so delegated by certain Regions. This critical role might be explained by the history of the development of IGR in Italy, particularly considering the relatively recent construction of Regions in comparison to the longer and consolidated position of municipalities and cities in the political system of Italy, as it has been underscored above.

This also highlights that, even though the system of conferences has reached an important degree of formalization, there is a discrepancy between the law in the books and the law in practice. Given the inconsistency between the actual practices of governance and the constitutional design of political life, this is a subject where interdisciplinary studies, combining law and political science, are highly necessary and could shed better light on the scientific questions of a research program (Rhodes 2000). For example, given the executive nature of IGRs in Italy, this leaves room for political leadership and personality traits to be an important intervening variable shaping the concrete form that relationships will take (Hueglin and Fenna 2015), which is even more accentuated in Italy given the direct election of the Presidents of the regions and its effects on the direct legitimization, mandate, and accountability of these authorities¹²⁵. Moreover, given a certain instability and lack of continuity in the structuring of IGR in Italy, this may contribute to the blurring of lines of accountability, representing a serious problem for multilevel constitutionalism (Saunders 2020).

Furthermore, as mentioned in the theoretical part, cooperative IGR is a matter not only of institutional design but also about sustained practices over time and a supportive political culture. As the Covid-19 pandemic has shown, cooperative federalism and cooperative decentralization cannot be forced by the constitution or legal rules, although formal rules may

¹²³ For an overview of the theoretical implications and debates regarding interterritorial financial solidarity and intergovernmental cohesion, see Contipelli 2015.

¹²⁴ Poirier and Saunders (2015, 485-6) discuss this topic in their seminal work on intergovernmental relations in federal countries, highlighting the interesting inclusion of local governments in formal IGR in South Africa and Brazil. The Italian case was not included in that volume.

¹²⁵ Similar conclusions may regard the direct election of the Prime minister currently envisaged by the proposal of reform of the Italian Constitution according to the DDL Meloni AS 935/2023.

encourage and incentivize it, but have to be part of a certain “mindset”, a political culture that relies on cooperation and a shared constitutional commitment (Tierney 2022 233).

Although these mechanisms, which Ceccherini describes as “aformal”, have greater flexibility and agility, the question arises as to what extent these forums can guarantee the autonomy of the decentralized entities and to what extent they do not degrade into places for the mere exchange of information and transmission of deliberations already adopted elsewhere (Ceccherini 2021, 201). Moreover, the formalization of IGRs, in the absence of practices and procedures that make the system more fluid, can reduce the organization's flexibility and capacity for innovation, which can be particularly useful in crises.

Still, even when resorting to *ad hoc* mechanisms, the central government is not fully effective at managing coordination and interdependencies, particularly in the face of increased decentralization of public services, like the healthcare sector, which is coherent with the “decentralization paradox” highlighted in the theoretical considerations. This is all the more concerning the crucial mandate to the central government in the context of the fundamental right to health as well as the guarantee of essential levels of healthcare services (“livelli essenziali delle prestazioni sanitarie” - LEP). These various factors have reignited calls for the centralization of functions within the State, particularly in the realm of healthcare (Dirri et al. 2021, 64).

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