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Emergency, reconstruction and territorial vulnerability: challenges and perspectives for public administrations

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Sommario

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Abstract

The growing frequency and intensity of extreme natural events—predominantly attributable to climate change—compel national legal systems, particularly those most exposed, such as the Italian Republic, to reconsider traditional risk management frameworks. This paper examines the various models governing the management of the emergency phase within the Italian legal system and their implications for the subsequent post-disaster reconstruction process. It provides a systematic legal analysis of the function of reconstruction, underscoring its structural asymmetry vis-à-vis the emergency phase, and critically engages with the recently enacted Framework Law on post-disaster reconstruction. The article argues that reconstruction ought to be conceived not merely as a restorative mechanism, but as an instrument of adaptive transformation. Within the Italian legal order, this requires the establishment of a coherent, coordinated, transparent, and unified model, consistent with the principles of legality and effectiveness.

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1. Managing natural disasters as a test for public institutions.

The increasing frequency and intensity of extreme weather events, combined with ongoing land instabilities driven by climate change, pose very complex challenges for crisis management on a global scale. These challenges span both the immediate emergency phase occurring after a natural disaster and the longer-term recovery process.

The effectiveness of disaster response is mainly contingent upon the governance model implemented and on the capacity of public authorities to respond in a timely, rational, organized, and appropriate manner during the emergency phase, as well as in the subsequent process of restoring the social, economic, and territorial dimensions impaired by the catastrophe.

According to a recent analysis of a range of countries[1], even when referring to different kinds of crisis (pandemic, natural disasters, terrorist attacks and economic crisis), a common element seems to emerge: the streamlining of public administration in emergency situations constitutes an essential component of an effective response to crises and extraordinary circumstances. Such streamlining is achieved through the adoption of a range of measures designed to enhance the responsiveness and operational efficiency of public authorities and administrative bodies. A fundamental element of this process lies in the development and refinement of the legal framework governing the functions and powers of state institutions in the context of emergency management.

The skills for programming, planning, and concrete execution of interventions aimed at managing potential crises ought to be developed and refined under ordinary circumstances and progressively updated in the light of new scientific knowledge, through a preventive approach. The adoption of such a method should lead to the exclusion of the possibility of creating new rules, new entities, and special procedures for each emergency event, where not strictly necessary, relying instead on the capacities developed by administrations under normal conditions and on the experience thereby acquired, also with a view to strengthening the accountability of administrative bodies when managing complex situations.

These issues represent global and transversal challenges but, at the same time, they also present themselves as local challenges, insofar as the ability of an administrative apparatus to manage a disastrous event profoundly affects a specific territory, its

* The present paper is a revised version of the oral presentation exposed at the 33rd Annual International Conference of the Global Ecological Integrity Group about "Law, Governance, and Ecological Integrity in the Era of Emergency", held by Università Europea di Roma, on June 24-27, 2025;

[1] Z. MAMYRBAEVA, K. KETNERS, A. ZHEENALIEVA, N. SHERIPOV, O. HUDYMA, *Public administration effectiveness in crises and emergencies: experiences and lessons from different countries*, in *CERIDAP*, April 7, 2025.

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population, and, more broadly, the collective identity of the affected community[2].

2. Assessing territorial vulnerability: the Italian context.

In this general context, Italy stands as a particularly emblematic case, characterized by high seismic and volcanic activity, as well as a pronounced hydrogeological risk, emerging as a privileged context for an in-depth analysis of prevention and emergency management policies[3].

Indeed, the number of nationally significant emergencies declared in Italy has approached 200 over a period of just over ten years. Specifically, between May 2013 and February 2024, the Government declared 193 states of emergency, 39 of which were issued in the past two years alone. Of these, 79% (a total of 152) were declared in response to exceptional meteorological events, floods, and landslides[4].

According to an analysis in 2019[5], 44% of the national territory is exposed to seismic risk; there are 10 active monitored volcanoes; hydrogeological and hydraulic risk affects 91% of Italian municipalities, placing 7.5 million citizens at risk—6 million

[2] About the complex dialogue between territory, authority and rights, see L. GIANI, *L'amministrazione tra appropriatezza dell'organizzazione e risultato: spunti per una rilettura del dialogo tra territorio, autorità e diritti*, in *Nuove Autonomie*, 2021, 3, pp. 551 ss., where the Author, in identifying the Municipality as the primary actor both in defining the common context of the territory and in the process of discerning the evolving needs generated by complexity, contends that appropriateness ought to be conceived not only as the ultimate objective of a (flexible) organizational framework and its actions, but also as the very driver of an institutional learning cycle grounded in experience. Such a cycle, originating from pre-existing rules, unfolds along a trajectory that produces determinate outcomes, from which inferences are subsequently derived and interpreted, potentially leading—though only where strictly necessary—to the revision of the rules themselves. Within this theoretical framework, a further key element emerges for analysis and implementation, namely the "common context", which redirects attention to the identification and mobilization of the available means. In this perspective, and in light of the current distribution of competences, the Municipality should not relinquish, but rather reclaim and enhance, its role as facilitator and as generator of the matrices and foundations required for the construction—primarily—of conscious decision-making processes. This applies both in the public and private spheres, within democratic processes, while constantly safeguarding the centrality of the holders of the right to the city. In doing so, the Municipality sustains that circular trajectory whereby the territory, as the locus of needs, capacities, and resources, re-emerges as the site in which actions ultimately materialize, guaranteeing the rights of those who inhabit and act upon it.

[3] For a recent analysis of the main features of climate during 2022 and for an update about the estimate of climate variations over the last decades in Italy, see the "Climate in Italy in 2022" Report-SNPA (National System of Environmental Protection) no. 36/2023, available at *https://www.snpambiente.it/temi/meteo/il-clima-in-italia-nel-2022/*.

[4] The full list, along with details on the financial resources allocated for emergency response activities, the most urgent interventions, and the competent subjects, is available on the official website of the Civil Protection Department (https://www.protezionecivile.gov.it/it/dipartimento/amministrazione-trasparente/interventi-straordinari-e-di-emergenza/). In total, the authorized expenditure under the Emergency Fund has exceeded €13.5 billion.

[5] S. CASTENETTO, M. SEBASTIANO (eds.), *Le emergenze nelle prime pagine - Vol. III (2009-2017)*, Dipartimento della Protezione Civile, 2019, p. 6, available on the official website of the Civil Protection Department at https://www.protezionecivile.gov.it/it/pubblicazione/fate-presto-le-emergenze-nelle-prime-pagine-volume-iii-2009-2017-0/.

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due to landslides and 1.5 million due to floods; to this, it must be added the risk of forest fires.

Beyond the intrinsic instability of the territory, further contributing factors to the occurrence of catastrophic events are increasingly attributed to land-use planning failures, in particular the progressive sealing of soil surfaces, the construction of buildings in areas subject to risk, and the narrowing of river cross-sections in the vicinity of urban settlements[6].

Over the decades, natural disasters have profoundly affected both the population and the territories of Italy, shaping not only material conditions but also the institutional and legal discourse surrounding disaster management, promoting a system based on prevention and highlighting the importance of a territorial/land use planning based on prevention. Among the most significant events, the Irpinia earthquake of 23 November 1980 constitutes a paradigmatic case. Striking the regions of Campania and Basilicata, the earthquake resulted in hundreds of fatalities and thousands of injured and displaced persons, while simultaneously revealing systemic deficiencies in the institutional response framework. The collective memory of the event was strongly influenced by the contemporary press, most notably through the iconic front page of "*Il Mattino*" newspaper bearing the headline "FATE PRESTO" ("Act Quickly"). This appeal, formulated in urgent and unequivocal terms, reflected both the dramatic scale of the humanitarian crisis and the insufficiency of the administrative apparatus in ensuring timely relief. Equally significant was the assertion published in the same article: "The earthquake begins now, when the earthquake is over", which underscored the enduring vulnerability of affected communities and highlighted the structural and legal complexities inherent in coordinating emergency response, reconstruction, and the long-term governance of disaster-stricken areas.

3. Contrasting paradigms in the legal regulation of emergencies

The approach adopted by the Italian legislator for managing emergency phenomena over time has not developed according to linear and univocal strategies but rather reflects contrasting tendencies[7].

On one side, it seems possible to detect a trend toward the "*normalization*" of the emergency management, where structures and tools to be activated in case of an emergency are pre-established, to ensure a clear framework of competencies, actions, and responsibilities within an ordinary system of power exercise. The main institutional actors involved, based on the National Civil Protection Code adopted in

[6] A. MIOZZO, *Introduction*, in S. CASTENETTO, M. SEBASTIANO (eds.), *Le emergenze nelle prime pagine - Vol. III (2009-2017)*, cit., p. 7.

[7] Recently, G. MANCINI PALAMONI, *Potere amministrativo d'emergenza*, Naples, 2023.

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2018, are the Civil Protection Authorities (such as the President of the Council of Ministers, the Head of the Civil Protection Department and its Delegated Commissioners, the Presidents of the Regions, and the Mayors) and territorial authorities and operational structures, acting individually or in a coordinated manner, depending on the scale of the emergency. In this logic, the exercise of public powers does not necessarily result in an alteration of the ordinary distribution of competencies, although it provides for flexibility mechanisms based on coordination, depending on the specific situation to be addressed[8].

The interpretive approach aimed at "normalizing" the emergency, promoted by eminent legal scholars, is entirely shareable: it seeks to promote a shift from the *law of emergency* to *the law of risk*[9], where the legal order takes into account the "*complexity of the society*", accepting that, even though it is impossible to eliminate the uncertainty surrounding the occurrence of an exceptional event, the goal should be to overcome the binary relationship between "*the exceptional event*" and the "*extraordinariness of the response*". It is – in other terms – a vision of the risk aimed at adopting a preventive and precautionary approach that allows for the framing of exceptional events or unusual scenarios within a framework of normality, to create a resilient administration and a resilient society[10].

However, despite the normalization effort promoted through civil protection code, a contrasting trend in the Italian legal order may be perceived, where the emergency is faced through the appointment, usually by governmental law decree, of extraordinary bodies (so called, "Governmental Extraordinary Commissioners") and their operational structures, granted with very broad and special powers, altering the normal order of competencies and creating ad hoc solutions for each emergency event[11].

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[8] See, F. GIGLIONI, *Amministrazione dell'emergenza* (voce), in *Enc. del diritto*, Annali VI, 2013, p. 59; Also F. GIGLIONI, *Funzione di emergenza e modelli amministrativi alla prova dello stress test degli eventi sismici nell'Italia centrale*, in *Il diritto dell'economia*, 2018, 2, p. 500.

[9] L. GIANI, *Dalla cultura dell'emergenza alla cultura del rischio: potere pubblico e gestione delle emergenze*, in L. GIANI, M. D'ORSOGNA, A. POLICE (eds.), *Dal diritto dell'emergenza al diritto del rischio*, Naples, 2018, pp. 15-30.

[10] L. GIANI, *Infrastrutture, soggetti critici e gestione del rischio. Traiettorie di ricerca per la pubblica amministrazione*, in *Dir. Amm.*, 2025, 1, pp. 75-108, where the Author highlights how the lack of a strategic vision of risk has historically negatively influenced infrastructures policies, leading to a short-sighted choices and ad underestimation of long-term consequences.

[11] According to S. GARDINI, *Note sui poteri amministrativi straordinari*, in *Il diritto dell'economia*, 2020, 2, p. 152, in cases where extraordinary commissarial bodies are established in order to address contingent, occasional, and exceptional needs, "what arises is not merely an alteration of the ordinary distribution of competences conferred upon public entities, but rather, alongside the subjective substitution, there is also the conferral upon the commissioner of 'new' and additional powers. These are ontologically traceable to a different and more substantive conception of extraordinariness, one built around the notion of power in the strict sense and characterized by the atypical nature of the prerequisites and/or of the effects deriving from its exercise, as well as by the derogatory capacity of the acts through which it is expressed".

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The use of this model[12], which, as will be discussed shortly, is widely adopted within the Italian legal system also beyond the emergency phase, appears critical for a variety of reasons. The derogatory regime of powers and procedures is very extensive and potentially conflicting with the principle of legality and the rule of pre-determination and attribution of powers. The creation of new structures leads to organizational complexities and higher costs. The sources of law overlap and potentially conflict, to the detriment of legal clarity and the stability of the legal framework. The ordinary administration is weakened *a priori* without verifying, based on specific data or empirical evidence, the inability by ordinary apparatus to perform certain tasks. The commissioner's appointment, although extraordinary, is extended for a long period, also due to inefficiencies in management, with the consequence that a parallel extraordinary administration is created in a stable way. Negative consequences may also arise in terms of responsibility and judicial oversight.

4. Implications for post disaster reconstruction.

Although it would be reasonable to think that this exceptional model is rarely used, reality shows that it has been (and it is) frequently employed, even outside the emergency phase, particularly during the post-catastrophe reconstruction phase, for the organization of large-scale events[13] (let's think about the Jubilee or sport events or international exhibitions) or to manage national strategic complex infrastructures and projects (such as railways, roads, mass rapid transit systems, ports, water systems, and state construction projects), characterized by a high degree of design complexity, particular implementation challenges, or significant impact on the socio-economic fabric at the national, regional, or local level (starting from Decree-Law No. 32/2019, 42 commissioners were appointed for 112 works and 359 monitored projects, with the possibility of appointing sub-commissioners, in addition to the extraordinary commissioners appointed through specific legislative provisions)[14].

Legal scholars have argued that the organizational complexity stems from the conceptual overlap between risk, urgency, and emergency, which has led to the

[12] About the model and the heterogeneity of its use, G. AVANZINI, *Il commissario straordinario*, Turin, 2013.

[13] S. CIMINI, *I soggetti del sistema: intrecci di competenze e regolazione delle emergenze*, in L. GIANI, M. D'ORSOGNA, A. POLICE (eds.), *Dal diritto dell'emergenza al diritto del rischio*, cit., p.110 ss.

[14] About the model of extraordinary commissioners for infrastuctures, see G. AVANZINI, *Commissari straordinari per le infrastrutture energetiche e garanzie costituzionali*, in *Foro it.*, 2012, I, pp. 385 ss.; C. FRANCHINI, *La figura del commissario straordinario prevista dall'art. 20 del D.L. n. 185/2008*, in *Giorn. Dir. Amm.*, 2009, 5, pp. 561-566; S. AMOROSINO, *Rapidità della realizzazione e qualità del risultato nella disciplina speciale per le opere strategiche "anticrisi"*, in *Urb. Appalti*, 2009, pp. 667 ss.; A. FIORITTO, *I commissari straordinari per il completamento delle opere incompiute*, in *Giorn. Dir. Amm.*, 2005, pp. 1159 ss.; A. AZZARITI, *La realizzazione delle infrastrutture e degli insediamenti produttivi strategici e di interesse nazionale (legge 21 dicembre 2001, n. 443 e d.lgs. 20 agosto 2002, n. 190), Commento all'art. 2, D.Lgs. 20 agosto 2002, n. 190*, in *Le nuove leggi civili comm.*, 2003, pp. 936 ss.

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misuse of the concept of "*emergency*"[15] to justify the application of extraordinary powers and procedures even in contexts that do not meet the traditional criteria for emergencies[16]. This practice has become so prevalent that it represents one of the most evident forms of deviation in the exercise of public administration functions[17]. Thus, events such as large sports gatherings, jubilees, or major exhibitions, while complex, are not inherently unpredictable. The inability to effectively manage these situations (*maladministration*) has resulted in the transformation of what should be an ordinary management scenario into an extraordinary one, with urgency escalating to the point of being classified as an emergency. In these instances, we are not dealing with true emergencies (which are by nature unforeseeable), but with emergencies that are artificially created to serve purposes beyond those intended by the legislator, with the risk of bypassing accountability and judicial oversight[18].

The conceptual overlap, the organizational challenges and inefficiencies, and the need to address complex situations have also influenced the way in which the reconstruction phase, following a disaster, has been dealt with in the Italian legal order.

Indeed, the model of the Extraordinary Governmental Commissioner has been frequently employed in the post catastrophe reconstruction phase[19], assigning extraordinary powers to newly defined and special subjects, within a context of significant regulatory derogation, to address the need for the "*reconstruction*" of the necessary infrastructure and to restore ordinary conditions through a series of heterogeneous activities, which include the management of demolition, removal, disposal, and landfill disposal of debris, planning activities for interventions, awarding contracts.

Often the activities performed by these Commissioners continue, intersect, and overlap with those carried out during the initial emergency phase, in a way that has

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[15] Recently on the notion of emergency, G. BOTTINO, *L'amministrazione dell'emergenza*, in *AIPDA – Annuario 2023, Lo spazio della pubblica amministrazione. Vecchi territori e nuove frontiere, Atti del convegno annuale – Napoli, 29-30 settembre 2023*, Naples, 2024, pp. 381 ss.; also, A. FIORITTO, *L'amministrazione dell'emergenza tra autorità e garanzie*, Bologna, 2008, pp. 218 ss.

[16] S. CASSESE, *I paradossi dell'emergenza*, in *AIPDA – Annuario 2005 – Il diritto amministrativo dell'emergenza*, Milan, 2006, p. 223, critically highlighting, first, the paradox of resorting to the abuse and expansion of emergency powers as a remedy for the chronic slowness of the public administration or as a means of circumventing procedural constraints; and, second, the paradox of invoking emergency powers in circumstances where no genuine emergency exists.

[17] A. POLICE, *L'emergenza come figura sintomatica di sviamento della funzione pubblica*, in *Dalla cultura dell'emergenza alla cultura del rischio: potere pubblico e gestione delle emergenze*, in L. GIANI, M. D'ORSOGNA, A. POLICE (eds.), *Dal diritto dell'emergenza al diritto del rischio*, cit., pp. 92-93.

[18] *Ibidem*.

[19] An historical perspective of the reconstruction trends, with particular attention to most relevant earthquakes in Italy from the aftermath of the Second World War to the present, is offered by F. CUSANO, *L'evoluzione della legislazione e della prassi dalla ricostruzione post-calamità dal dopoguerra ad oggi*, in F. GIGLIONI (eds.), *Le regole della ricostruzione post-calamità*, Pisa, 2025, pp. 289-309.

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been defined as "*stabilized emergencies*"[20]. This creates, once again, additional complexity from an organizational perspective, in terms of coordination between different authorities and clarity and consistency of the legal sources.

However, the reconstruction process presents its own unique set of challenges and requires a careful balance between the need for speed in restoring normal conditions, the impact of the long-term choices over the affected territories and the reconstruction of the economic and social fabric.

As pointed out by legal scholars, reconstruction should no longer merely be understood as a simple replication of the destroyed physical infrastructure, but it should also be regarded as an opportunity to rethink the territory and adapt it to the new needs of reconnecting the system of relationships, aiming for a stable and definitive restoration of territorial functionality[21]. This includes interventions in urban regeneration, reduction of building and urban vulnerability, social and economic development of the affected community, and the conditions for a full return to active and concrete participation in public life.

These needs, far from justifying episodic, diversified and inconsistent regulations, should lead, instead, to promote a unified reconstruction model, conducted within a stable and coherent legal framework, where subjects, powers and procedures are predefined, allowing a predetermined yet flexible management and excluding derogatory and extraordinary powers as a default option. This would better align with the imperative to guarantee legal clarity, transparency, accountability and efficiency of the interventions[22].

5. The law on post catastrophe reconstruction (Law no. 40/2025): a framework for unity.

In this perspective, due recognition should hereby be accorded to the recently approved "*Framework Law on Post-Catastrophe Reconstruction*" (the law March 18th 2025, no. 40), aimed at rationalizing and uniformly defining "*the coordination of*

[20] See S. STAIANO, *Brevi note su un ossimoro: l'emergenza stabilizzata*, in S. STAIANO (eds.), *Giurisprudenza costituzionale e principi fondamentali. Alla ricerca del nucleo duro delle Costituzioni*, Turin, 2006, pp. 649-661, where the Author critically refers to "*stabilized emergencies*" and "*recurring emergencies*".

[21] M. D'ORSOGNA, *I contributi pubblici alla ricostruzione da parte dei privati: una occasione di rilancio dei territori*, in F. GIGLIONI (eds.), *Le regole della ricostruzione post-calamità*, cit., p. 84; M. DUGATO, *Terremoto, ricostruzione e regole degli appalti*, in *Munus*, 2017, 3, pp. 485-496; T. BONETTI, *Diritto amministrativo dell'emergenza e governo del territorio: dalla "collera del drago" al piano della ricostruzione*, in *Riv. Giur. Edilizia*, 2014, 4, pp. 127 ss.; M. CAMMELLI, *L'Italia dei terremoti: quello che c'è e quello che c'è ancora da imparare*, in *Aedon*, 2013, 2, pp. 1-5.

[22] P. DE ROSA, *Per una nuova stabilità istituzionale nella ricostruzione post-sisma*, in *Amministrativ@mente*, 2022, 3, p. 182, emphasizes that the overlap of functions and responsibilities across the different levels of government makes "rendering account" – that is, the accountability of the various institutional actors involved – even more difficult, and, in fact, impossible. It is essential to maintain a clear framework of "who does what," thereby simplifying the system and allocating to each level both the corresponding responsibilities and the financial resources necessary for the performance of public functions.

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procedures and reconstruction activities in territories affected by natural or anthropogenic disasters, for which the national state of emergency has been terminated or revoked"[23].

At the present time, eight long lasting reconstruction processes are ongoing across the Italian territory, managed by distinct methods and regulations with overlapping but differing governance and procedures. Therefore, this initiative is appreciable, and it is a considerable step towards the consolidation of a single model for future reconstruction processes, fostering certainty, stability, and speed of response.

From an organizational standpoint, the new law outlines a governance model structured across different institutional levels, with the central role being assigned to the extraordinary commissioner for reconstruction. This figure can be the President of the affected Region (or one of the Presidents of the affected Regions in the case of an interregional calamity) or, alternatively, someone with specific managerial competence, considering the complexity and importance of the reconstruction process. The commissioner is responsible for planning, coordination, guidance, and monitoring and presides over the Coordination Cabinet for Reconstruction, composed of representatives from different levels of government, such as Casa Italia Department of the Presidency of the Council of Ministers. The governance is further integrated by the entities implementing public reconstruction interventions (such as Regions, Municipalities, ANAS S.p.A.), a central procurement office for tender procedures, and a multisectoral body called the Permanent Conference.

Even though it is not possible to offer a comprehensive analysis of the law, some critical observations about the new legal regime may be outlined.

Among the positive remarks, the law emphasizes the role of administrative coordination.

Administrative coordination, understood as an organizational relationship that presupposes a prior harmonization of the multiple emerging interests within a complex scenario involving various public and private entities, appears to be the most suitable organizational tool to guide the reconstruction process according to a coherent, rational, and organic logic. This logic requires, at the outset, a shared understanding of the objectives and outcomes to be pursued in the complex reconstruction process under a unified direction, and subsequently, a shared approach in the concrete execution of the activities necessary to achieve those objectives[24].

The approach seems coherent with the Sendai Framework for Disaster Risk Reduction 2015 – 2030[25], adopted at the Third UN World Conference in Sendai,

[23] Art. 1, Law no. 40/2025.

[24] See S. SPUNTARELLI, *Il coordinamento dei soggetti responsabili della ricostruzione*, in F. GIGLIONI (eds.), *Le regole della ricostruzione post-calamità*, cit., pp. 51-64.

[25] The Framework was adopted at the Third UN World Conference on Disaster Risk Reduction in Sendai, Japan, on March 18, 2015, available at *https://www.undrr.org/publication/sendai-framework-disaster-risk-reduction-2015-2030.*

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Japan, on March 18, 2015, which highlights in the Priority no. 4 - Enhancing disaster preparedness for effective response and to "*Build Back Better*" in recovery, rehabilitation and reconstruction – the need "*to promote the cooperation of diverse institutions, multiple authorities and related stakeholders at all levels, including affected communities and business, in view of the complex and costly nature of post-disaster reconstruction, under the coordination of national authorities*".

It is, indeed, a priority to promote the participation of the affected communities in the reconstruction process: the new Italian law provides that the extraordinary commissioner ensures comprehensive involvement of the affected populations by establishing the procedures for citizen participation and engagement in decision-making processes pertaining to territorial planning, as well as in the adoption of key acts and measures governing the reconstruction process[26]. It will therefore be necessary to await the practical application of this provision to assess how, and to what extent, public participation will be ensured[27].

A means of public participation can be found in the provision requiring the publication of all acts by the Extraordinary Commissioner relating to appointments and designations of experts and consultants, the planning of works, projects, services, and supplies, as well as procedures for awarding public contracts for services, supplies, works, and projects, and the disbursement and granting of public funds for private reconstruction, except for the specified exceptions[28]. Transparency serves as a mechanism to ensure citizen participation in complex decision-making and constitutes the foundation for active engagement and influence in programming choices and widespread oversight of interventions.

Another positive element of the law concerns the provision about the centralization of procurement procedures (art. 16). The entities responsible for implementing interventions concerning the repair, restoration, or reconstruction of public works and cultural heritage – which are the Regions, or the Municipalities delegated by them, the Ministry of Culture, the Ministry of Infrastructure and Transport, the dioceses, and universities – are authorized to employ the mechanism of centralization of procurement procedures by delegating to national or regional central purchasing bodies the execution of all activities necessary for the realization of public interventions[29].

The centralization of procedural execution is deemed appropriate not only to avoid the fragmentation and dispersion of the numerous contracts and assignments that

[26] Art. 8, par. 1 and par. 3, law no. 40/2025.

[27] See, M. MORANDO, A. GIOIA, *La ricostruzione delle comunità*, in F. GIGLIONI (eds.), *Le regole della ricostruzione post-calamità*, cit., pp. 255-259, for some critical insights.

[28] Art. 21, law no. 40/2025.

[29] Art. 2, par. 16 of the Directive 2014/24/UE defines the "central purchasing body" as a contracting authority providing centralised purchasing activities and, possibly, ancillary purchasing activities.

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might occur if such activities were entrusted to local authorities – who frequently lack the requisite expertise, capacity, and resources – but also to foster the creation of entities with a high degree of specialization and proficiency in post-disaster reconstruction efforts. This approach should enhance efficiency, ensure consistency in implementation, and improve the overall effectiveness of reconstruction initiatives. It should also be noted that, pursuant to the new Italian Public Procurement Code[30], central purchasing bodies also perform an auxiliary function consisting of providing contracting authorities with consultancy on the execution and design of procedures. Accordingly, the expertise accumulated by these entities could benefit less specialized bodies, thereby strengthening their competencies.

A third positive element of the law relates to the creation of an insurance system. The Government, within twelve months since the law's enactment, shall issue legislative decrees establishing insurance schemes to indemnify individuals and businesses for building damages caused by natural disasters and catastrophic events. These schemes will define eligible beneficiaries and properties, coordinate with existing public interventions, specify covered risks and compensation limits, and ensure nationwide uniformity. Private insurers will be engaged to mitigate the financial impact on public funds and support effective recovery. The provision, in line with the measures introduced by the 2024 Budget Law (Law No. 213 of 30 December 2023)[31], promotes a system shifting from predominantly ex-post interventions funded by public finances to a new approach focused on prevention and the insurance-based mutualization of risks. The issue is of primary importance considering that, according to data from EIOPA, the European Insurance and Occupational Pensions Authority, at the European level, less than a quarter of losses caused by climate-related disasters are currently insured and that Italy ranks, after Greece, as the European country with the largest gap between high natural disaster risk and low levels of insurance coverage[32].

Although the issue is very complex – as it requires balancing of multiple public and private interests –various contributions and reports, including those based on international experiences, highlight the advantages of cooperation between the

[30] Art. 62 of the Leg. Decree no. 36/2023.

[31] S. DE POLIS, Segretario Generale IVASS, *L'assicurazione obbligatoria delle imprese per i danni da catastrofi naturali*, contribution in the final acts of the Conference "*L'assicurazione dei rischi catastrofali*", organized by La Sapienza University of Rome – Rome, 12 February 2025, available at https://www.ivass.it/media/interviste/documenti/interventi/2025/2025-02-12-sdp-sapienza-catastrofali/SDP_Rischi_catastrofali_12_02_2025.pdf, where the Author says that the new Italian approach to catastrophic risks outlines a universalistic and mutualistic framework capable of significantly reforming and modernizing the national system for managing physical risks and resilience, understood as the capacity to absorb and overcome shocks. Furthermore, it lays the foundation for reducing underinsurance in the damage sector and enhancing the social role and responsibility of the insurance industry.

[32] EIOPA Dashboard, available at *https://www.eiopa.europa.eu/tools-and-data/dashboard-insurance-protection-gap-natural-catastrophes_en.*

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public sector and the insurance industry, the benefits of increasing awareness among stakeholders about their risk exposure, and best practices for risk mitigation, as well as potential strategies for risk adaptation that reduce pressure on public budgets[33].

Despite the positive points emphasised, which are comprehensively appreciable, some critical points may be discussed.

Regarding the extension of powers, the law states that the extraordinary commissioner "*shall also act through ordinances, with prior agreement, to be formalized within the coordination cabinet referred to in Article 4, with the involved regions and autonomous provinces as well as with representatives of the affected provinces and municipalities*." These ordinances may even override legal provisions, provided there is a clear justification and compliance with criminal law, the general principles of the legal system, the anti-mafia laws, and the provisions of the Code of Cultural Heritage and Landscape, as well as mandatory EU-related constraints.

At first glance, the extension of the commissioner's powers in the legislation in comment seems broad, and the law appears somewhat vague in not specifying which legal provisions could be overridden.

However, the phrasing "*may also override*" suggests that the extraordinary commissioner could exercise derogatory powers only when deemed necessary, with specific justifications. This approach would exclude the automatic use of derogations unless deemed absolutely necessary.

In balancing the need for speed and effectiveness in interventions, the decision to act under a derogatory regime should be adequately justified, favouring the use of ordinary tools and accelerators already foreseen by standard legislation, such as the public procurement code. This approach could help prevent the unjustified expansion of derogatory powers, promoting the commissioner's functions of coordination and monitoring, while limiting the use of derogations for active administrative tasks. The clear rationale underpinning the Commissioner's derogatory decisions acquires substantive significance, as only through a transparent articulation of the reasons and factual premises justifying the shift from ordinary regulations can the rationality, appropriateness, and proportionality of such decisions be effectively evaluated and subjected to judicial review[34].

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[33] M. BIGNAMI, C. DESIDERI, *Il ruolo delle assicurazioni*, in F. GIGLIONI (eds.), *Le regole della ricostruzione post-calamità*, cit., pp. 205-218. See also, United Nations Office for Risk Disaster Risk Reduction (2025). Global Assessment Report on Disaster Risk Reduction 2025: Resilience Pays: Financing and Investing for our Future. Geneva, https://www.undrr.org/gar, Chapter 6, p. 159 ss.; R. CESARI, L. D'AURIZIO, *Quaderno n. 13, Calamità naturali e coperture assicurative: valutazione dei rischi e* policy options *per il caso italiano*, in *IVASS*, 2019, *https://www.ivass.it/pubblicazioni-e-statistiche/pubblicazioni/quaderni/2019/iv13/Quaderno_13.pdf*.

[34] Recently, F. FICHERA, *La Motivazione*, in F. CARINGELLA, R. CHIEPPA, B.G. MATTARELLA (eds.), *Trattato di diritto amministrativo*, vol. II, Milan, 2025, 659-689, emphasized that the motivation has the function of a benchmark for the democratic system, insofar as the requirement to justify the exercise of power also serves as a driving force for the implementation and reinforcement of the system's foundational values.

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Another critical point stems from the fact that the new law introduces additional derogatory provisions to the public procurement regulations, extending to public reconstruction projects the simplified and accelerated procedures originally designed for contracts under the National Recovery and Resilience Plan (PNRR).

These provisions significantly expand the powers of the Commissioner concerning the selection of contractors, as well as the awarding and execution of public works, services, and supplies. This expansion results in a complex layering of legal norms, which could lead to operational inefficiencies, undermines legal certainty, and compromises market transparency. The full application of the Public Procurement Code, which is already oriented towards achieving the prompt awarding and execution of contracts with the best possible balance between quality and price, while respecting the principles of legality, transparency, and competition, would have been more consistent and would have reduced uncertainties in the application of the rules, promoting the accelerating mechanisms already provided for in the Code.

The broad derogatory latitude conferred upon the commissarial authority corresponds to an expansion of the discretionary margin and, consequently, of administrative discretion in the balancing of interests pertinent to the case at hand. Such discretion, pursuant to the approach enshrined in the public procurement code, shall not be regarded with disfavour, but rather construed as a procedural safeguard designed to bolster the administrative capacity to adopt responsible, appropriate, and effective decisions pursuing the objectives established for the benefit of the relevant community[35].

A further critical aspect in relation to the regulatory framework introduced by the new legislative deserving emphasis pertains to the capacity to concretely implement planning determinations and complex administrative decisions that embody the abstract expression of administrative will.

Upon the establishment of the configuration of public and private interests during the phase of administrative volition, it is imperative that the administrative activity culminates in an actual modification of the factual circumstances, thereby achieving the intended objectives. The execution phase of the comprehensive reconstruction project thus assumes pivotal significance, as it constitutes the juncture at which the realization of the public interest, predetermined in the preliminary phase, may be verified through the manifestation of tangible benefits for the communities concerned.

The concrete realization and fulfilment of the interests of the pertinent communities, executed in a manner that is prompt, coherent, and proportionate, consequently serve as benchmarks of the legitimacy of administrative action pursuant to the principle of result-oriented administration. This principle presupposes adherence to

[35] See, F. D' ANGELO, *PNRR, infrastrutture e attività amministrativa di esecuzione*, in *Dir. Amm.*, 2025, 1, pp. 147 ss.

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formal legality and requires the achievement of the public interest as envisioned by the legislature and implemented by the administration throughout the procedural process.

6. Closing reflections.

Italy's approach to emergency management exemplifies a complex duality. While there is a commendable shift towards "normalizing" the governance of emergencies —embedding the response within ordinary functional and organizational administrative frameworks through coordination and predefined competences —the prevalent reliance on extraordinary governmental commissioners, endowed with extensive derogatory powers, introduces significant organizational challenges. The risks of this approach are legal fragmentation, reduced accountability, and an overextension of emergency powers beyond their appropriate scope.

This approach has also influenced the way post-catastrophe reconstruction has been managed over time; however, for this very reason, the management of reconstruction within an emergency logic proves incompatible, insofar as such a logic imposes contingent choices dictated by emergency situations, urgency, potentially entailing the sacrifice of certain interests to the benefit of others, without the necessary consideration for future implications. The reconstruction process, instead, requires the adoption of decisions that have long-term effects on the configuration of territories and the relevant population, and therefore demand a stable and unambiguous legal framework and proper legitimization, to reconcile the imperative of rapid restoration with the strategic objectives of long-term socio-economic and territorial development. Reconstruction goes beyond the rebuilding of physical infrastructure, it entails rethinking and adapting the territory to new social, economic, and environmental needs, including urban regeneration and vulnerability reduction.

The recently enacted Framework Law on Post-Catastrophe Reconstruction offers promising institutional innovations by enhancing administrative coordination, centralizing procurement procedures, and promoting active participation of affected communities. These elements align with international disaster risk reduction principles, particularly the Sendai Framework, fostering resilience and reinforcing public trust through transparency and accountability. While the expanded discretionary powers of extraordinary commissioners are necessary to address complex reconstruction challenges, their exercise must be grounded in legal clarity, proportionality, and strict adherence to the principle of legality. The legitimacy of administrative action ultimately depends on its ability to concretely achieve the public interest as legislated and operationalized throughout the procedural course. Prompt, coherent, and proportionate implementation of reconstruction initiatives is

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therefore essential to restore community wellbeing and uphold the rule of law.

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