

## The role of the Regions concerning Security

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1. The role Regions have to play, ten years after the revision of the title V of the Italian Constitution, is yet to be investigated. The new devolution of legislative and administrative competences, provided by art. 117 and art. 118 of the Italian Constitution, is undermined by the interpretation limits that the question “public order-security “ had in the previous edition of art.117 which mentioned the matter of “ urban and rural local police”.

It has been the jurisprudence of the Constitutional Court to separate public order and security from local police, by means of the concept of administrative police, not provided by the constitutional text.

Constitutional jurisprudence’s core idea rested on two prejudices. The first, concerning public order and security, derived from the Constituent Assembly. At those times as a result of the need of a clear cut with the former regime the expression “public order” was never written in the Italian Constitution while the word “security” appears in art.13 referred to public security authorities, in art.16 where it regards freedom of mobility and stay, in art.17 related to the right to gather, in art.25 where it is connected with security measures



to end with art.41 where it pertains to freedom of economic initiative.

The use made by these provisions of the word “security” is very cautious, as it recalls a restraint of liberties by the use of force that might remind the past, as if democracy wasn’t in need of order and security, as if citizens weren’t in the need of security for exercising their rights, as if security itself wasn’t a right as it is now recognized by art.6 CDFUE.

The second prejudice relates to the asset of the relations between the State and the Regions.

As it is well known, either small or big communities settling in a territory have an immediate need to provide for assuring a peaceful life in order to guarantee primary rights - life, freedom and property - to all the members of the community. To achieve this end the very organization of the community itself demands rules to prevent dangers and public nuisance and therefore calls for these rules to be respected and sanctioned effectively. These rules make up the police law.

Police law already existed at the time of the free municipalities, as shown by the fact that in many countries police legal system (Polizeirecht) is synonymous with municipal law (Kommunalrecht).

The originary feature of public organization, in reason of which legislative competence has been endorsed to local bodies in order to prevent common life’s dangers while police powers have been allocated to guarantee peaceful living, has been effectively operating within States and particularly in Federal States. In fact, police authority in federal States is a local authority, as are local all prevention and security powers among different policing areas (commerce, building, road conditions, etc.). In spite of the progress that prevention and security systems and police law have experienced, demanding more and more expertise and means, the local character of security is nowadays still distinguishable. In many federal systems, for example, the prevention of fire and firemen corps are organized locally and acknowledge a strong participation of volunteers, showing how security may be also a feature of social solidarity.



Unitary States such as France, the Kingdom of Sardinia and the Kingdom of Italy experienced similar conditions. In France, after revolution, the matter “local, urban and rural police” was created to be administered by municipal regulations.

This model is acknowledged by the municipal and provincial legislation of the Kingdom of Sardinia and afterwards transferred - without significant arguments - to the Italian republican constitution. Nevertheless, in the Italian constitutional experience the construction of central State has been achieved by a continuous attraction of competences and local functions transferred to the centre. The powers of the Ministry of Interior clearly represent this evolution. At the local level only marginal powers are left and also local legislation is strongly limited, due to a growing tendency towards a general regulation of the whole legal system.

A common opinion makes its way that neither individuals nor communities are in charge of security, but only the State that occurs as a demiurge for its assurance.

When ordinary Regions are established the question is already prejudiced and it is unthinkable of a Region to have legislative powers on the matter of local police, intended as security police.

This is why the Italian Constitutional Court has been so supportive in its rulings, stating that Regions are in charge of administrative police and not of security police powers. This is the orientation of the DPR n.616 of 1977, recognized by art.117 of the Constitution, after the constitutional revision of 2001.

2. Even if it has been written to constrain local police powers and regions’ legislative powers on security, art.117 gives a sense of a different dimension of competences. A significant role in favor of local and regional level is played by the concept of police itself, as it has been conceived through a centuries-old historical process. Letter h) of art.117 sec.2, (“public order and security, except for local administrative police”) must be considered assuming that on one hand the concept of “police” always implies the safeguard of public order and security, while on the other hand public order and security are ruled by



the law as the functioning of administrative powers such as police powers. Legislative sources, prior to constitutional revision, confirm this vision, as shown by art.9 of the DPR n. 616 stating that police power is “a prevention and repression activity who’s aim is to prevent individuals from damage or prejudice performing the activities provided for by the matters of regional competence”. This idea is endorsed also by art.159 of D.Lgs.n.112 of 1998, for which the scope of local and regional police’s action is to adopt “measures to prevent juridical subjects and things from damage or prejudice while carrying out activities related to matters for which competence is given or transferred to Regions and local bodies”. The last source quoted obviously included also a reservation derived from constitutional jurisprudence, allowing the performance of local and regional police actions “without damaging or endangering goods and interests protected in function of public order and public security”.

3. As usually happens many constitutional provisions originate from the legislative language of the time, however their meaning is beyond the laws which support historical-legislative interpretation being the result of a systematic reading of the Constitution. For this reason we must come to terms with the fact that the new allocation of competences, provided for by art.117, represents a significant progress to the former distribution of legislative powers, as it makes clear in letter h) sec.2, the of local police powers, according to the federal notion and tradition.

In this perspective, the Regions should be in charge of local police power, both as a function and as a legislation matter, with a new significance considering that the reversal of the list of powers has allocated to the Regions a “general competence” that meets no limits except for the matters reserved to the exclusive competence of the State. Thus, the clause of letter h) related to public order and security must be considered within this context. In fact, the matter reserved to State competence might not prevent for there to be a regional legislative framework providing for public order and security, otherwise



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the notion of local administrative police might lose all its meaning. The reservation of the matter to State competence only excludes that this power is allocated to Regions in concurrence with the State. Obviously, the term “concurrence” in this case has a different meaning from that recognized by sec.3 of art.117, as it refers exactly to a mutual exclusiveness of sources, as to say that in the space taken by State legislation no regional intervention is allowed.

*(traduzione a cura di Giulia Aravantinou Leonidi)*