

## LOMBARDIA: RECONFIRMATION OF THE MUNICIPALITIES COMPETENCE IN RECLAMATION

The Constitutional Court, with the sentence n. 160 of 24 July 2023, declared the art. 5 of the regional law of Lombardia n. 30/2006 – with which the administrative competence of reclamation procedures was attributed to the Municipalities – unconstitutional.

The Environmental Code, *i.e.* the Legislative Decree n. 152/2006, attributes the same functions to the Regions, establishing that the Municipalities intervenes only through the issuing of opinions regarding the approval of the decontamination projects of polluted sites. Consequently, the regional regulation achieved an illegitimate reallocation of the competence in the subject, since there wasn't any law which allowed this reallocation, neither in the constitutional structure nor in the Environmental Code. According to the *Consulta*, the regional legislation of Lombardia on this subject is a violation of the constitutional parameter of the article 117 of the Constitution, which establishes the exclusive authority of the State; only the latter could have the authority to evaluate the adequacy of the territorial level to whom this matter could be entrusted.

The practice – that was widespread in various Italian regions and then censored by the constitutional judges - is however legitimized by the subsequent intervention of that national adequacy assessment. In fact, on 10 August 2023, the so-called Asset decree, the legislative decree n. 104/2023, contained the necessary regulatory coverage of the aforementioned regional law and the conferment of the functions to the Municipalities, in order to avoid a block in reclamation activities<sup>1</sup>. Therefore, the art. 22 of the decree specifies that the administrative functions regarding reclamation can be conferred upon local authorities by regional law, regulating *"the powers of direction, coordination and control over the functions by the Region, the technical-administrative support to the bodies to which the functions are transferred and the exercise of substitutive powers by the Region, in the event of verified inactivity of the municipalities"*.

On the basis of this decree-law and pending its conversion process into law, the Regional Council of Lombardia approved the law proposal "Conferral of functions regarding the reclamation of contaminated sites to municipalities ", on 18 September 2023. In light of the government-led regulatory provision, the Region essentially proposes the same set of responsibilities previously censored by the Court: *"it confers the administrative functions inherent to the reclamation and safety procedures as well as the environmental repair and restoration measures of contaminated sites (articles 242 and 242 bis of Legislative Decree 152/2006) which fall entirely within their territory, considering the municipalities to be the most*

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<sup>1</sup> The last sentence of the art. 22 of the legislative decree n. 104/2023 provides that the regional provisions which transferred the aforementioned administrative functions remain valid, even if previous to the law entering into force.

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*adequate bodies, as they are closer to territorial needs than the Region*"<sup>2</sup>. The art. 2 specifically regulates: the list of activities through which the Region exercises the power of direction, coordination and control; the control powers, in order to guarantee a unique regional oversight of the delegated functions; the list of tools through which technical-administrative support is guaranteed, by means of the establishment of consultation bodies and training activities; the replacement procedure, referring to the regional law n. 1/2012. Finally, the art. 3 provides for transitional regulations for reclamation activities started between the ruling of the Constitutional Court and the entry into force of the law. The procedural phases in which the Region has already taken steps by convening the services conference remain within its competence; all those on which the Region has not intervened in the meantime remain in the hands of the municipal administrations, which therefore legitimately exercise their competence. The last paragraph of the cited article establishes that the Council specifies the methods for exercising regional functions, within 30 days from the entry into force of the law.

Once the Asset decree is converted into law n. 136 of 9 October 2023, the regional law proposal of the region Lombardia is equally approved and will be published in the Official Bulletin on 13 October 2023. In the course of the approval of the regional law – which is the law n. 3 of 10 October 2023 – an article entitled "evaluation clause" is added; it regulates the monitoring of the exercise of functions relating to the reclamation of contaminated sites, through a three-year report drafted by the regional Council, describing the activities carried out by the Region to support the Municipalities, the results obtained and any criticality.

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<sup>2</sup> Illustrative report of the law proposal of region Lombardia n. 927/2023.