EXCEPTIONS TO THE ORDINARY RULES FOR AWARDING PUBLIC CONTRACTS: THE VOLCANIC RISK PARADIGM

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Abstract

The issue of exceptions to the ordinary public contracts rules in the management of risks and emergencies resulting from volcanological phenomena allows for numerous considerations. This topic can be analysed through an interdisciplinary approach, focused on the relationship between technology and law. In order to verify the legitimacy of the application of derogatory rules (Article 140, d.lgs. n. 36/2023, Italian Public Contracts Code) it is essential to consider the three-phase structure of volcanic risk: risk assessment, hazard assessment and mitigation of the event. The centrality of the technical issues requires firstly an examination of the legal profiles involving the use of Article 140 in the case of volcanic phenomena. The first aspect concerns the delimitation of both the concept of "paramount urgency" - a prerequisite for derogating from the ordinary legislation - and which events (whether those that have already occurred or those that have not yet occurred) are susceptible to be included in the field of that provision. In this context, the investigation focuses on the practices of individual local authorities that make use of Article 140, from which a significant interpretative and methodological distance emerges. A further profile of interest is certainly the one concerning organisational issues: up to now, the legislation provides that not only Regions, but also metropolitan cities and municipalities can carry out emergency works under Article 140.

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This paper intends to examine the benefits deriving from a centralisation of competences in the responsibility of the Regions, from two point of view. The first one concerns an attempt to reduce potential corruptive phenomena that could occur in territories where unforeseeable maintenance events occur frequently. The second one is based on the consideration that leaving the competence to the individual local administrations could mean that one municipality could deem the conditions of 'paramount urgency' to exist, while another municipality, possibly a neighbouring one, could deem them not to exist in the exercising of its own discretionary power. Centralisation would thus move in the direction of uniformity of decision. Two other aspects deserve further in-depth analyses. The first one concerns the necessity of an *ex-post* control activity, linked to the centrality of the assessment of the conditions of extreme urgency, and which runs the risk of not being effective considering the extremely restricted time profiles. The second one, seeks to understand whether the exception to the procurement regime also drags in the regime of landscape authorisations or environmental impact assessments: if this were not the case, and if the ex-ante intervention were therefore still necessary, the simplification process of economic operators activities would be inevitably frustrated.

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1. Urgency and emergency between administration and law

The in-depth analysis of the formal and substantive aspects of emergency and civil protection procedures, specifically in cases of volcanic risk, cannot ignore a brief examination of the concepts of urgency and emergency. A latitude that makes their systematic framing within the logic of public powers complex characterizes these concepts. Traditionally, reflection revolved around the attribution of 'urgent' measures to the principle of legality[1], as well as the identification of legal instruments (such as emergency ordinances) that could promptly satisfy the protection of public interests, without following the typical legal framework prescribed by the law for that specific situation[2].

Despite the emergence of numerous enabling provisions regarding the exercise of extraordinary powers and the use of alternative procedures, doctrine has nonetheless considered urgency (as well as emergency[3]) as an opaque notion, far from achieving a clear recognition[4], leading to its categorization as "indeterminate legal concepts."[5]. The difficulty in concretely defining urgency and emergency is compounded by the ontological impossibility of typifying individual calamitous events that would justify the use of derogatory procedures. This reasoning, conducted on emergency management, is also extendable by analogy to cases of urgency. In this regard, it has been argued that the legislator's attention should focus on delineating a series of risks that allow recourse to alternative procedures, certainly more effective in responding to 'urgent' contingencies than ordinary ones[6].

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[1] *Ex multis*, cfr. M.S. Giannini, *Potere di ordinanza e atti necessitati*, in II *Scritti* 950 ff. (2002).

[2] This issue has been investigated, among others, by C. Marzuoli, *Il diritto amministrativo dell'emergenza: fonti e poteri*, in *Il diritto amministrativo dell'emergenza. Annuario 2005* 5-7 (2006), which underlines that the occurrence of 'emergency' events undermines the ordinary relationship between fact and rule.

[3] Recently, G. Bottino, *L'Amministrazione dell'Emergenza*, in 1 *Ceridap* 9 (2024) reasoned on the impossibility, as well as on the inappropriateness, of perimeterising the 'emergency' definition.

[4] M. Gnes, *I limiti del potere di urgenza*, in 3 *Riv. trim. dir. pubbl.* 645-646 (2005).

[5] L. Gianniti, P. Stella Richter, *Urgenza (diritto pubblico)*, in XLV *Enc. Dir.* 901 (1992).

[6] G. Bottino, *L'Amministrazione dell'Emergenza*, cit. at. 5, criticises the classification of individual calamitous events, as opposed to a typification of the interventions, means and powers at the disposal of public authorities to deal with emergency situations.

In the past, the approach considered most functional for legitimizing such prerogatives was essentially formalistic, concentrating on the power of ordinance as a "safety valve", provided by the legal system to address the rigid conditions imposed by the law in emergency situations[7]. On the contrary, contemporary reflections, as will be seen later, focus on the proceduralization of public powers' actions in cases of urgent necessity. This is achieved through the provision of time and economic limits, as well as subsequent control powers aimed at assessing the compatibility of the factual situation with the use of derogatory procedures.

Setting aside the deeper examination of the provision allowing the awarding of public contracts for reasons of urgent necessity (art. 140, Legislative Decree no. 36 of 2023), it may be useful to argue that the aforementioned provision should be read in relation to others, such as that regulated by Article 54, par. 4 and 4 bis, of the Consolidated act on the government of local authorities (Legislative Decree no. 267/2000). Indeed, while the latter provision generally attributes to the Government Official the power to adopt urgent measures aimed at "preventing [...] serious dangers threatening public safety and urban security", Article 140 of the Public Contracts Code specifically outlines the procedural pathway that public administrations must adhere to for the awarding of public contracts in cases of urgent necessity, where "events of unexpected or unforeseeable damage or danger capable of causing actual harm to public and private safety" occur.

Furthermore, within the proceduralising of public powers' prerogatives in cases of 'urgent' activities, transparency and publicity obligations of these administrations also fall under a profile of maximum accountability. This is especially true if they intend to resort to derogatory procedures compared to ordinary ones. The occurrence of calamitous events, whether unpredictable or not addressed through ordinary active administrative tools, necessitates enhanced transparency of public administration activities, as provided for by Article 42 of Legislative Decree no. 33 of 2013. This provision requires all administrations to make public all measures adopted in cases of natural disasters or other emergencies, which may also include those related to volcanic

[7] This is the reconstruction made by M.S. Giannini, *Lezioni di diritto amministrativo* 267 (1993).

events. Among the various obligations placed on public powers, there is firstly the need to justify the reasons for departing from 'ordinary' legal provisions, as well as indicating the time limits for urgent activities and the costs that administrations must bear to carry out such activities.

Regardless of the formal and procedural issues underlying the advancement of emergency administration and acknowledging the complexity of pinpointing a precise definition thereof, it is undeniable that one of the fundamental corollaries of urgency lies in the duty to intervene promptly to remove the harmful event or prevent its occurrence[8]. This is with the finalistic perspective of protecting public interest entrusted by law to a specific administrative body. Promptness, which evidently enables the use of derogatory procedures and powers, does not constitute the ultimate "result" for which different legal schemes are followed from those generally provided by law. This is because the purpose of any administrative function, whether 'ordinary' or 'extraordinary,' must necessarily be attributed to the protection of the public interest[9]. This observation, besides allowing the framing of promptness as a general duty of public powers, regardless of the urgent nature of the event[10], opens the way to another characteristic of emergency administration, found in risk management, aimed at "adopting a precautionary approach that allows framing the event in a context of normalcy"[11]. In this context, it is certainly useful to include aspects related to the "technicization" of administrative[12] action, now necessary due to the emergence of (legally and) technically qualified interests requiring a pragmatic approach to solving problems caused by unforeseeable events[13]. These are

[8] L. Gianniti, P. Stella Richter, *Urgenza*, cit. at. 902.

[9] In these terms, F. Giglioni, *Amministrazione dell'emergenza*, in VI *Enc. Dir.* Annali 44 ff. (2013).

[10] L. Gianniti, P. Stella Richter, *Urgenza*, cit. at. 906.

[11] L. Giani, *Dalla cultura dell'emergenza alla cultura del rischio: potere pubblico e gestione delle emergenze*, in L. Giani, M. D'Orsogna and A. Police (eds.), *Dal diritto dell'emergenza al diritto del rischio* 16 (2018).

[12] S. Civitarese Matteucci, L. Torchia, *La tecnificazione dell'amministrazione*, in S. Civitarese Matteucci, L. Torchia (eds.), *La tecnificazione*, in L. Ferrara, D. Sorace (directed by), *A 150 anni dall'unificazione amministrativa italiana* 10 (2016).

[13] R. Ferrara, *Etica, ambiente e diritto: il punto di vista del giurista*, in R. Ferrara, M.A. Sandulli (directed by), *Trattato di diritto dell'ambiente* 30-31 (2014), according to which evolution has led science to "grope too often in the dark" when, on the other hand, one would have expected "certain, reliable and even stable and definitive answers" from the modern conception of science.

useful not only to "overcome that exceptional event/extraordinariness of intervention", but to manage the complex situation through exceptional instruments already provided for within our legal system[14].

This approach evidently not only prevents the image of a "parallel administration" whenever public powers are required to address situations of extreme or urgent necessity, but also reverses the formula of the "normalization of emergency," through which doctrine has criticized the constant recourse to derogatory powers due to the stabilization of emergency circumstances occurring in today's legal system. On the contrary, a purpose of this work is to seek instruments aimed at normalizing emergencies from a radically opposite perspective. It is necessary, from a perspective of legitimizing power, to enhance the precautionary principle of administrative activity as a key element to enable administrations to resort to derogatory and extraordinary powers, which are nevertheless consistent with the principle of substantive legality.

2. The "multiform" concept of urgency in the Public Contracts Code

The issue of urgency in public procurement procedures has long been particularly felt by the Italian legislature, which addressed this aspect in two provisions of Legislative Decree no. 50/2016, the regulatory text that contained, until March 2023, the national discipline on public contracts. The most interesting profiles of these provisions will be examined below (both substantially confirmed by the current Public Contracts Code, Legislative Decree no. 36/2023). The first rule (Article 76) referred to the negotiated procedure without publication of a contract notice

[14] L. Giani, *Dalla cultura dell'emergenza alla cultura del rischio*, cit. at. 19-20. Also case law, with specific regard to the mayor's possibility of exercising the ordinance power provided for in Article 54 of Legislative Decree No. 267 of 2000, has held that there are circumstances, caused by volcanic activity, that do not allow the application of special procedures and the exercise of derogatory powers. The administrative judge argued that the volcanic activity of Stromboli was characterised, in 2016, as that normal and typical of an always active volcano. So it must be considered that such activity was absolutely ordinary and concers constant phenomena so it could and should be dealt with (also by way of prevention) through the ordinary instruments contemplated by the law. In this sense, T.A.R. Sicilia, Catania, Sez. IV, 22.01.2018, n. 150, in *www.giustizia-amministrativa.it.*

and expressly provided in par. 2, letter c) that the use of this procedure was allowed if, for reasons of "extreme urgency" arising from unforeseeable events not attributable to the contracting authority[15], the deadlines for ordinary procedures cannot be met. It was obviously an option that the legislature offered to the contracting authorities, as an "escape" from the stricter rules set by the Public Contract Code[16]; but it represented therefore a residual option compared to the using of selecting procedures more in line with the principle of competitiveness[17]. The character of extreme urgency, however, does not imply that resorting to the negotiated procedure without publication of a contract notice is equivalent to a direct award. This aspect, in fact, emerges both from the last par. of Article 76 - under which the contracting authorities had to select at least five suitable economic operators to consult based on their qualifications, in compliance with the principles of transparency, competition and rotation[18] - and from Article 36, par. 2, letter a), which regulates an hypothesis of direct award for amounts below €40,000 even without prior consultation of two or more economic operators[19]. The evaluation of "extreme urgency", as is evident, implies a considerable margin of discretion for the contracting authorities, who can choose the economic operators to be involved

[15] According to the administrative judges decisions, the urgency must be the consequence of the occurrence of unforeseeable events, while the administration must not be blamed in any way for a lack of adequate organisation or planning or for its inertia or responsibility. In this sense, Cons. Stato, Sez. V, 10.9.2009, n. 5426, in *www.giustizia-amministrativa.it*.

[16] For example, a negotiated procedure without a call for tenders issued by a contracting authority for the performance of a particular cleaning service was declared unlawful where, however, requirements of the urgency 'unforeseeability' that characterises the use of such a procedure were not met. In this sense, T.A.R. Lazio, Roma, Sez. I, 4.9.2018, n. 9145, in *Foro amm. (Il)*, 2018, 9, 1514.

[17] T.A.R Campania, Napoli, Sez. I, 10.5.2021, n. 3106, in *Foro amm. (Il)*, 2021, 5, 848.

[18] Critical of this provision, especially regarding a comparative assessment with the previous regulations, cfr. F. Gambardella, *Le regole del dialogo e la nuova disciplina dell'evidenza pubblica* 143-144 (2016), according to which, regardless of the name 'negotiated procedure', in this case the spaces for negotiation are inexistent due to the actual legal framework.

[19] In these terms, T.A.R. Puglia, Lecce, Sez. III, 13.3.2020, n. 326, in *www.giustizia-amministrativa.it*, which clarifies how the main difference can be found in the provision of a specific and punctual motivation obligation for the use of the negotiated procedure without a call for competition, which is absent in cases of direct award under the Article 36 of the former Public Contracts Code.

in awarding procedures without a specific motivational burden that clarifies the criteria used for the choice.

However, following the approval of the Italian National Recovery and Resilience Plan (PNRR), Article 48, par. 3 of Legislative Decree no. 77/2021 allowed contracting authorities to use negotiated procedures without publication of a notice not only in the "ordinary" cases provided for in Article 63, paragraph 2, letter c), but also when compliance with the terms of ordinary procedures may compromise the achievement of goals or compliance with the implementation times of the PNRR and the related National Plan for complementary investments (PNC). While this provision allows for accelerating the public procurement award procedure, ensuring compliance with programme implementation times and the achievement of planned goals, it also extends the latitude of the concept of urgency and exposes some critical issues. In fact, the provision constitutes an implicit admission that the current system is unable to achieve the goals imposed by the PNRR through ordinary procedures, which is why the "procedural delays" are sought to be overcome through a forced interpretation of "extreme urgency" extending it to scenarios that are far from unpredictable.

Nowadays, a provision that confirms the legislature's attention to cases where the use of ordinary award procedures would not allow for a timely resolution of the problem is Article 140 of the current Public Contracts Code (Legislative Decree no. 36/2023). In cases of "extreme urgency" that do not allow for any delay - despite the absence, unlike Article 76, of any reference to the predictability of the occurrence[20] - the responsible for the procedure "may order [...] the immediate execution of the work within the limit of €200,000 or whatever is necessary to remove the state of prejudice to public and private safety"[21].

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[20] See Cons. Stato, att. Norm., 19.12.2017, n. 2647, in 12 *Foro amm. (Il)* 2414 (2017), who argues that derogating activities do not include those that can be planned in time and do not justify recourse to emergency procedures. For example, the break in an embankment allows the use of the most urgent procedure provided for by Article 163; on the other hand, the purchase of a vehicle that will be used in the future for civil protection action does not allow recourse to derogatory procedures, just as there is no reason to 'act in derogation' if the event for which the work is to be carried out was programmable for time.

[21] See a Council of State judgment, according to which the urgency that exceptionally justifies the early execution of works, services or supplies must be understood as qualified and not generic urgency. Urgency, therefore, must imply

At first glance, the scope of Articles 76, par. 2, letter c) of the former Public Contracts Code, and 140 of the current Code would seem to be substantially the same, with no apparent distinction between the "extreme urgency" that allows for the application of negotiated procedures without notice and the "extreme urgency" that characterizes civil protection contracts. In this regard, Opinion No. 464/2016 of the Council of State maintains that "compared to Article 76, the contracts referred to in Article 140 must be considered further exceptional (according to a 'progression of exceptionality'), and therefore this last provision must be interpreted and applied in a rigorous and restrictive sense. And, in fact, the provision of the delegated legislature ('with the exception of individual circumstances connected to particular needs related to emergency situations') does not seem to anchor the exceptionality to the mere emergency situation but rather to the (additional and peculiar) particular needs related to emergency situations"[22].

Article 140 of the Italian Public Contracts Code is characterized by its proximity to the direct award model, as the immediate execution of works is ordered upon the occurrence of an event[23]. However, an effective ex-post control mechanism must be activated to ensure compliance with the emergency situation (art. 140, para. 7). It is also important to emphasize that the legislator (art. 140, para. 8) states that this type of direct award cannot be allowed for contracts worth equal to or greater than the European threshold. This provision is extremely relevant in the context of balancing the guaranteed regime provided by the Code rules with the procedural simplification for the realisation of works in faster and more efficient ways than ordinary ones. Indeed, arguing that this provision cannot be applied to procedures with a value above the European threshold does not exclude the obligation for

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that postponing the intervention during the time required to complete the ordinary procedure would compromise, with serious prejudice to the public interest, the timeliness or effectiveness of the intervention itself (Cons. Stato, Sez. VI, 21.2.2017, n. 775, in *www.giustizia-amministrativa.it*).

[22] Concerning the difference between extreme urgency, governed by Article 76 of the Public Contracts Code, and extreme urgency, governed instead by Article 140 - even though the paper referred to the former discipline - see G. Delle Cave, *Le procedure "d'urgenza" al tempo della pandemia: alcune riflessioni sugli artt. 63 e 163 del Codice dei contratti pubblici*, in 4 *AmbienteDiritto* 1 ff. (2020).

[23] N. Berti, *Art. 140. Procedure in caso di somma urgenza e di protezione civile*, in R. Villata, M. Ramajoli (eds.), *Commentario al codice dei contratti pubblici* 710 (2024).

contracting authorities to consider and respect the principles underlying the Public Contracts Code in other scenarios.

In March 2023, the new Italian Public Contracts Code, Legislative Decree no. 36/2023, was approved. Regarding the subject matter of these reflections, the regulation appears to be substantially unchanged. Article 76, in fact, confirms the previous provision in its entirety, except for para. 7, which provides for the consultation of three (rather than five) economic operators based on information regarding economic and financial, technical and professional qualifications, in compliance with the principles of transparency and competition.

Similarly, Article 140 of the new Code has not modified the various and graded urgency cases already provided for in Article 163 of the previous Code, nor its detailed provisions. Among the few novelties, regarding situations of extreme urgency and civil procedure, the threshold for works that can be immediately executed to remove prejudice to public utility has been raised to €500,000. Therefore, the legislator appears not to have deemed significant changes to the previous framework necessary. However, a systematic examination of Legislative Decree no. 36/2023 reveals a general change in perspective that will also affect the emergency works procurement. This refers to the introduction of the principle of result as the cornerstone of the entire public procurement sector, meaningfully included in Article 1 of the new Public Contracts' Code[24].

Consequently, despite having the same legal basis (i.e., European Directives 23/24/25 of 2014), the vision of the new Italian Public Contracts Code has changed. Competition is no longer the only guiding light of procurement procedures, but rather a means to achieve a further goal: the selection of the best private contractor and the consequent realisation of the public work in a timely manner and in compliance with high-quality standards. Nevertheless, regardless of the circumstance of the ideological primacy of achieving specific goals, the principle of result is now destined to guide the exercising of discretionary powers. Nowadays, in general, but much more in emergency context, it is

[24] Recently, M.R. Spasiano, *Dall'amministrazione di risultato al principio di risultato del Codice dei contratti pubblici: una storia da riscrivere*, in 9 *Federalismi.it* 206 ff. (2024). The relationship between the result principle and administrative simplification has also recently been highlighted by M. Macchia, *The new public procurement Code: a way to simplify?*, in 1 *It. Journ. Pub. Law* 69 ff. (2024).

an extremely delicate task for the administration to balance the outcome of the tender procedures with the correct exercise of power, in compliance with the principles established for the awarding of public contracts.

3. Volcanic risk in the age of uncertainty

Volcanic risk has been defined as "the product of the probability of an eruptive event occurring and the damage that could result from it" [25]. The fundamental corollaries for assessing volcanic risk are essentially three: a) hazard, which is the probability that a phenomenon of a certain intensity will occur in a certain interval of time and in a certain area; b) vulnerability, which consists of the propensity to suffer damage as a result of the stresses induced by an event of a certain intensity; c) exposure, which essentially describes what is exposed to danger on the territory (number of people, number and type of buildings, etc.).

From a legal point of view, it could be argued that volcanic risk implies – due to the relationship between technique and law[26] - the exercise of "mixed" discretion for public administrations[27]:

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[25] According to M.L. Longo, *Vivere nel rischio. Popolazione, scienziati e istituzione di fronte all'attività vulcanica nei Campi Flegrei (1970-1984)*, in 3 *Quaderni Storici* 808 (2018), risk should be understood as "anticipation of the future".

[26] R. Ferrara, *Scienza e diritto nella società del rischio: il ruolo della scienza e della tecnica*, in 1 *Dir. e proc. amm.* 64 (2021), underlines how "this relationship, not always peaceful and virtuous, represents a kind of systemic constant in the history of mankind".

[27] W. Marzocchi, G. Woo, *Principles of volcanic risk metrics: Theory and the case study of Mount Vesuvius and Campi Flegrei, Italy*, in 114*Journal of Geophysical Research* 1 (2009), confirmed that Volcanic risk plays a fundamental role between society and volcanology, as it is one of the main points of contact between science and public powers. In case law, see Cons. Stato, Sez. VI, 28.1.2011, n. 654, in *www.giustizia-amministrativa.it*, argues that 'volcanism' is one of those geomorphological structures that makes the evaluation of the emergency state widely discretional, limited by the existence of a factual situation that is actually or potentially dangerous, not otherwise effectively dealt with, and therefore even if the situation is not entirely new and/or unforeseeable. It is therefore sufficient '...the subsistence of the current necessity and urgency to intervene in defence of the interests to be protected, regardless of both the foreseeability and the very imputability to the Administration or third parties of the dangerous situation that the measure is intended to remove...', with the motivational burden reduced when it concerns the extension of a state of emergency already declared, which can make use '...of the preliminary inquiries already previously carried out by

firstly, an assessment is carried out by technically competent parties on the evaluation of risk through monitoring activities and data collection; secondly, the discretionary power, typical of the decision-making process, is exerted during the risk mitigation phase, as public administrations will have to make a political assessment of the specific ways in which they intend to operate on the territory (e.g. the responsibility of urban planning choices in the event of volcanic risk does not fall on technical subjects, but on the public authorities). The evaluation of risk is undoubtedly a complex activity[28], as the probability of a volcano erupting must also be considered based on its past history. Precursor phenomena should only be considered as indicators of a process in progress, adequately studied, analyzed, and monitored to identify any anomalies.

These parameters are measured through networks of stations installed on active volcanoes and observed with different methodologies, such as satellite, direct field inspections, or digitalization tools. However, even if these phenomena are studied and monitored punctually, it is not possible to predict with certainty when and how a volcanic eruption will occur[29].

The evaluation of volcanic risk, as all technical-scientific evaluations, has always been the subject of debate regarding its degree of reliability. Some consider it a predictable risk because they believe that precursor phenomena (earthquakes, ground fractures, volcanic edifice deformations) can be recognized and measured, announcing the rise of magma towards the surface[30]. On the other hand, based on those who accept - also in the general theory of law - the uncertain nature of science (and, therefore, in

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the Administration'. In these terms, see also Cons. Stato, Sez. IV, 21.11.2013, n. 5528, in *www.giustizia-amministrativa.it*.

[28] F. Barberi, M.S. Davis, R. Isaia, R. Nave, T. Ricci, *Volcanic risk perception in the Vesuvius population*, in 172 *Journal of Volcanology and Geothermal Research* 224 ff. (2008), consider that the approach to volcanic risk management is an extremely complex activity, as it requires multidisciplinary skills not only with regard to the history - past, present and future - of the volcano, but also knowledge of the territory and the socio-cultural context within which the volcano itself lies.

[29] I. Alberico, L. Lirer, P. Petrosino and R. Scandone, *A methodology for the evaluation of long-term volcanic risk from pyroclastic flows in Campi Flegrei (Italy)*, in 116 Journal of Volcanology and Geothermal Research 64 (2002).

[30] I. Alberico, L. Lirer, P. Petrosino and R. Scandone, *A methodology for the evaluation of long-term volcanic risk from pyroclastic flows in Campi Flegrei (Italy)*, cit. at. 63 ff.

this case, of volcanic risk), there are those who argue that it is extremely complex to attribute an epistemic value to the data provided[31]. It is worth noting that in the field of volcanology, there is also a discussion on the "quantification of uncertainty" because it depends on several factors: physical variability of the volcanic system, i.e. its intrinsic randomness; epistemic uncertainty, which includes uncertainty in choosing the statistical model with which to obtain predictions and uncertainty about the data used to set the parameters of the statistical model. Epistemic uncertainty has often been addressed with expert dialogue methods, which, however, does not necessarily imply a unitary perspective in evaluation (and, therefore, mitigation of risk) due to the not-exact nature of science, which can be the subject of theories and arguments that are radically opposed[32].

Although monitoring activities (both qualitative and quantitative) have significantly progressed over the years, risk assessment models, no matter how sophisticated, always and only provide probabilities, and it is always possible that the measures taken turn out to be excessive. For this reason, it is necessary to abandon the scientific approach that aims at zero risk and instead move towards a culture of acceptable risk[33], which confirms the close relationship between technology and law also (and especially)

[31] As pointed out, *ex multis*, by A. Barone, *Il diritto del rischio*, Milano, 2006, 155 ff. M. Tallacchini, *Sicurezze e responsabilità in tempi di crisi*, in 4 *Riv. Dir. alim.* (2012) according to which "the intrinsic uncertainty of contemporary scientific knowledge does not depend solely on the increase in situations of risk or unpredictability associated with the progress of knowledge, but on the intrinsic incompleteness and indeterminacy of science with regard to the need to define social choices, public policies and legal decisions".

[32] Very interesting is the example reported by P. Gasparini, *Il rischio vulcanico: dall'empirismo al probabilismo*, in 4 *Ambiente Rischio Comunicazione* 16-17 (2012), who refers to the episodes of the eruptions of the La Soufriére volcano on the island of Guadaloupe in the French Antilles in 1976. In particular, the author recalls the circumstance that the island's Prefect approached experts from the Institute de Physique du Globe in Paris, and yet 'the opinions were diametrically opposed'. One group of experts believed that the probability of a large volcanic eruption was very high (close to 100 per cent), and another group of experts claimed that the probability of the activity evolving into larger eruptions was very low'.

[33] P. Gasparini, *Il rischio vulcanico*, cit. at. 20.

in the exercise of public powers aimed at dealing with damage arising from volcanic risks[34].

However, volcanic risk, which is becoming increasingly central to urban planning and is closely related to territorial governance issues, should not be considered solely in the risk assessment. Another aspect of interest concerns the mitigation of volcanic risk, which includes a complex of interventions aimed at lowering the risk itself in a specific area, by acting on one or more "risk factors". Mitigating volcanic risk on the hazard factor involves building according to cautionary seismic technical standards (there are, in fact, safety coefficients that consider the seismic mapping of the entire country), or solutions can be designed to develop seismic dampers in social infrastructure in order not to compromise their operation.

Mitigation of risk that acts, instead, on the exposed values factor often occurs through the relocation of infrastructure and buildings to remove specific risky situations for the community. In such circumstances, the administration usually has two options: to intervene with authoritarian measures, without any involvement of the community, or to try to build a shared solution, through informal democratic participation procedures. This is a particularly complex aspect because, especially in homogeneous contexts at the foot of the volcano, while such circumstances can bring about the well-known Nimby syndrome[35], which significantly slows down the process of implementing infrastructure, only through consensus-building techniques, typical of planning in sensitive contexts, could an adequate scientific knowledge of the problem be ensured and the affected citizens sensitised.

Finally, mitigating the risk on the vulnerability factor involves challenging economic and social policy choices, as the

[34] We agree with the opinion of L. Giani, *Dalla cultura dell'emergenza alla cultura del rischio*, cit. at. 26, where she argued that the culture of risk acceptance emphasises the close connection between scientific complexity and legal rationality.

[35] L. Torchia, *La sindrome Nimby: alcuni criteri per l'identificazione di possibili rimedi*, in F. Baldassone, P. Casadio (eds.), *Le infrastrutture in Italia: dotazione, programmazione, realizzazione* 357 ff. (2011); previously, this aspect has also been analysed by L. Casini, *La partecipazione nelle procedure di localizzazione delle opere pubbliche. Esperienza di diritto comparato*, in A. Macchiati, G. Napolitano (eds.), *È possibile realizzare le infrastrutture in Italia* 139 ff. (2010).

reinforcement of existing buildings[36], and, at the same time, the inability to build in an area with a high volcanic risk[37].

3.1 Volcanic risk as a condition for the application of the procedure for awarding works on an urgent basis

Considering that Article 140 of the current Public Contracts Code, refer to even more exceptional cases than those justifying the use of negotiated procedures without a call for tender, the volcanic risk - or, in any case, the damage caused by events attributable to volcanic activity - is certainly a suitable hypothesis to justify direct allocation, albeit for a limited time.

In the past, this procedure was used for the removal of volcanic material fallen in the territory of the Municipality of Giarre following the paroxysmal events of Mount Etna in Sicily, which caused enormous inconvenience to road traffic and inevitable repercussions on the municipal territory, prejudicing public and private safety, as well as essential public services and private economic activities.

In cases like this, the objective prerequisites of "urgent work that leaves no time for timely intervention", which are difficult to achieve through ordinary procedures for awarding works, clearly exist. As well as the timing aspects are also respected, as the duration of the work (less than a month) confirms that the procedure was used exclusively to eliminate the

[36] As emerges, for example, in Campania Regional Law No 16 of 2004, as modified by Campania Regional Law No 26 of 2018, which introduces Article 12-bis, lett. e), which lays down rules on interventions and public works of strategic regional interest 'aimed at improving the conditions of active and passive accessibility of the Red Zone for volcanic emergency of Vesuvius and the Phlegraean Fields (construction and/or adaptation of functional infrastructures to improve the escape routes and logistics facilities provided for in the Plan for the removal of the population residing in the Red Zone)'. The Constitutional Court has also pronounced on this regional law, insofar as this provision would be detrimental to the administrative autonomy constitutionally guaranteed to the municipalities in matters of territorial and urban planning, which could be reduced by the regional law only according to a supra-national interest, punctually identified and contained within limits. See Corte cost., 24.7. 2019, n. 198.

[37] For example, with regard to the Campania Region, within one of the lands falling within the so-called Red Zone, as also confirmed by administrative jurisprudence: T.A.R. Campania, Sez. III, 16.10.2020, n. 4551, in *www.giustizia-amministrativa.it*, which concerned an application for regularisation of an unauthorised building constructed in an area of high volcanic risk.

damaging/dangerous situations for the community. The characteristic of volcanic events, as mentioned, despite their constant monitoring, is systemic uncertainty: in Giarre case, since the allocation of the works, there have been further subsequent paroxysmal events that have partly compromised the works already carried out, aggravated the existing criticalities in the territories, and therefore made it necessary to continue the activities even beyond the initially established deadline for the conclusion of urgent works (removal of volcanic material accumulated in the streets and public spaces).

Another example, which also comes from Sicily, concerns the volcanic activity of Mount Etna between 16 February and 2 March 2021, which produced paroxysmal phenomena with the emission of pyroclastic material and the main fallout of sand and lapilli in the Municipality of Nicolosi. In this case, given the safety issues highlighted by the heavy state of discomfort and danger to the population, the urgent procedures were used to immediately prepare interventions for sweeping and clearing interventions of the ash and lapilli that had fallen on the streets and public spaces. In this circumstance as well, a provision characterized by compliance with all legitimizing prerequisites was immediately declared effective and enforceable: possession of the requirements provided for by the economic operators, respect for the deadline for the completion of the works, and their value.

These two cases briefly illustrated confirm, always following the direction of the principle of result, how it is necessary for the awarding administrations to be able to resort to a derogatory tool of the ordinary procedures.

On the regulatory context, particularly noteworthy is the recent decree-law no. 140/2023 (commonly known as the Campi Flegrei Decree), which introduces urgent measures to address the ongoing bradyseism phenomenon in the Campi Flegrei area. This statement broadly confirms what has been affirmed by volcanologists' studies, according to which most of the information received by the inhabitants of the Phlegraean Fields occurs during bradyseismic crises[38]. Regarding this profile, which is not of a procedural nature but more specifically relates to the role of citizenship in risk situations, it has also been argued that

[38] T. Ricci, F. Barberi, M.S. Davis, R. Isaia, R. Nave, *Volcanic risk perception in the Campi Flegrei area*, in 254 *Journal of Volcanology and Geothermal Research* 121 (2013).

bradyseismic phenomena show that the fear of the community lies in the fear connected to the loss of material and immaterial values, but not certainly for the risk due to a possible eruption[39]. This provision, for the purposes of this work, proves to be extremely useful because it allows for the practical application of the theoretical coordinates mentioned in the introduction: rules and objectives are identified in the specific case to effectively counter the phenomenon in question, with explicit reference to emergency measures and procedures. It is highly beneficial to mention Article 6 of decree-law no. 140/2023, which is the only provision expressly authorizing the use of emergency and civil protection procedures, now governed by Article 140 of the Public Contracts Code, to implement what is necessary following the assessment of needs.

4. An efficient ex-post control activity as an essential requirement for the sustainability of the system

The use of urgency procedures for awarding contracts, given the significant margin of discretion recognized in favour of the awarding authorities, requires effective controls over the existence of the prerequisites and, more generally, the legitimacy of the contracting entity's activities. As is evident, the control activity in question must necessarily be subsequent, due to the need to start work as soon as possible, to prevent the occurrence of damage that would be difficult to contain if the ordinary procedure for awarding the work were followed.

In this regard, the legislator provides for a dual control power, one relating to subjective aspects, and the other to objective ones. As for the subjective aspect, Article 140, paragraph 7, of the new Public Contract Code assigns the exercising of the control power to the same awarding authorities, to verify whether the economic operator selected meets the participation requirements provided for the awarding of contracts of equal value by ordinary procedure. This is a power/duty (in the sense that it is mandatory) that must be exercised within a reasonable period, compatible with the management of the emergency in question, and, in any case, not exceeding sixty days from the awarding. If, because of the control activity, the requirements are found to be absent, the contracting

[39] M.L. Longo, *Vivere nel rischio. Popolazione, scienziati e istituzione di fronte all'attività vulcanica nei Campi Flegrei (1970-1984)*, cit. at. 814.

entity withdraws from the contract, subject to payment for the value of the work already carried out and reimbursement of any expenses incurred for the execution of the remaining part.

On the rationale of the provision - which essentially reiterates what was already provided for by Article 163 of the previous Code – the administrative judge[40] argued that awarding procedures, even if urgent, cannot derogate from the requirement that economic operators meet the moral requirements prescribed by the law and the *lex specialis*. This prevents unreliable subjects, affected by serious causes for exclusion, from contracting with the administration, exploiting the emergency to profit from it and enjoy generalized immunity. Case law also states that the balance between public interest and that of the private contractor - who may already have partially fulfilled and initiated instrumental activities for the performance - is reached at the time of any negative verification of the requirements. In this case, the administration is required to withdraw from the contract and pay the contractor for the value of the work already carried out and reimburse any expenses already incurred for the execution of the remaining part, within the limits of the benefits obtained, after the necessary cancellation of the award.

In summary, this withdrawal and the previous control activity constitute the exercising of a binding power, as the contracting entity is completely devoid of discretion, both in the "whether" and in the "how". In this case, therefore, the withdrawal represents an ontologically different remedy compared to the ordinary withdrawal provided for by the Civil Code and Article 123 of the new Public Contracts Code, as it is not based on a right of reconsideration, but is justified by the authoritative posthumous assessment of a cause for exclusion.

Regarding this matter, there are those who consider that such withdrawal is similar to that one governed by Article 11, paragraph 4, of Law no. 241 of 1990[41], concerning agreements between private individuals and public administrations. If this were the case, another critical issue concerning the jurisdiction of the administrative judge, whether it exists or not, would be resolved since it would be a withdrawal based causally on the

[40] T.A.R. Lazio, Roma, Sez. II, 4.1.2021, n. 3; T.A.R. Lazio, Roma, Sez. II, 22.5.2020, n. 5436, in *www.giustizia-amministrativa.it*.

[41] M. Gigante, *Procedure in caso di somma urgenza e protezione civile*, in L.R. Perfetti (ed.), *Codice dei contratti pubblici commentato* 1366 (2017).

finding of the illegitimacy of the award in favour of the economic operator [42]. In fact, the circumstance that any dispute should be referred to the rules of public law, and therefore to the jurisdiction of the administrative judge, would find further confirmation in the substantial binding nature of the act under discussion; it is only apparently "internal" to the contract, but instead focused on the genetic defect of the award made in favour of an economic operator lacking participation requirements.

The issue of subsequent control activity cannot be limited to the mere verification of the subjective participation requirements. After publishing on its institutional website the measures relating to the direct award, indicating the reasons that did not allow the use of ordinary procedures, the contracting authority is also required to send the same measures to the National Anti-Corruption Authority (ANAC), in order to allow what the legislator defines a "competence controls", aimed at concretely evaluating the existence of the objective prerequisites justifying the use of the emergency procedure[43].

The control power exercised by this Authority is profoundly different from that examined in relation to the verification of the subjective requirements of the economic operator. Firstly, in this case the control power is exercised not by the same contracting authority but by an external one, meeting the impartiality (independence) requirement and having the necessary technical competence. These elements also contribute to justify the different nature of the control exercised, to the extent that ANAC is called

[42] In accordance with the same principles of the Council of State's Plenary Meeting's ruling No. 14/2014, where it exempts from the abrogation of the relationship conformed as a private potestative right, certain peculiar hypotheses in which the withdrawal is based in a binding manner on a previous public power; see, for example, the paradigmatic hypothesis of the contractual withdrawal operated at the outcome of an anti-mafia interdiction. Cons. Stato, Ad. plen., 20.6.2014, n. 14, in 6 *Foro amm. (Il)* 1671 (2014).

[43] On Anac's intervention supervision, the category under which the control power governed by Article 140 of the new Public Contracts Code also falls, see G. Soricelli, *Il sistema della governance nel nuovo codice dei contratti pubblici. Profili disciplinari ed organizzativi tra potenzialità e limiti*, in 4 *Resp. Civ. prev.* 1370 ff. (2018). On the transversal nature of the control functions attributed to the ANAC, see F. Di Lascio, *Anticorruzione e contratti pubblici: verso un nuovo modello di integrazione tra controlli amministrativi?*, in 3 *Riv. trim. dir. pubbl.* 804 ff. (2019). W. Giulietti, *La vigilanza dell'A.N.A.C. in materia di contratti pubblici tra potere ispettivo e speciale legittimazione ad agire in giudizio*, in 2 *Riv. giur. edil.* 99 ff. (2022), underlines the peculiarity of this control power exercised by ANAC.

upon to carry out an activity essentially like that exercised by the administrative judge on the exercising of discretion power, despite obviously not having the same consequences from the point of view of effects produced.

As mentioned, the motivations (published on the institutional website of the contracting authority) that led to the use of the emergency procedure are also provided to ANAC, which analytically examines them to verify whether the administrations derogated from ordinary procedures in the presence of an emergency context. If the control activity has a negative outcome, however, the legislator does not provide for any sanction, at least not in terms of invalidating the procedure and the related award. Therefore, it is a control that is only apparently invasive; although only in this evaluation is it possible to verify whether the principle of competition has been legitimately (and correctly) sacrificed on the altar of speed in the name of actual and imminent dangers to the public safety of the community, or whether the use of the emergency procedure was instead a way to circumvent the protective rules provided for by the Public Procurement Code.

From the practice, it emerges that the control carried out by ANAC does not solely fulfill a function related to verifying the legitimacy of a single procedure, but also serves as guidance regarding future (possible) scenarios in which a contracting station intends to resort to the urgent procedure pursuant to Article 140 of the Public Contracts Code. In a recent case reviewed by this Authority, in which a distorted use of the provision was revealed - illegitimately used for completion works related to the recovery and maintenance of a building, without presenting any connection with the removal of a state of danger - the guidance function emerges precisely where the same Authority invites the awarding municipal administration to duly take into account what was specifically noted and considered in order to avoid the same criticalities being found in future assignments[44].

Regarding Article 140, paragraph 7, of the new Public Contracts Code, and more specifically concerning those hypotheses in which the work or the service is not subsequently authorised by the administration, if it is true that on the one hand the rule provides that the person who started the work must receive a sort of indemnity for the amount invested to carry out the work, it is

[44] Anac 28.10.2020, n. 922, in *www.anticorruzione.it*.

equally true that there is a risk of generating a vacuum of protection, especially from the public finances, for the 'authorising' official. For this reason, it may be useful to retrieve some statements of constitutional jurisprudence that, while referring to Article 191 of the Consolidated Law on Local Authorities, refers to a case of entrusting public works in the event of extreme urgency.

In this case, the Constitutional Court considers that "the third party contractor, in agreeing to carry out works of "extreme urgency" [...] cannot ignore the fact that, if subsequently there is no authorisation by the body, the contractual relationship must be considered to have been entered into directly with the official (or administrator) and therefore voluntarily assumes the risk resulting from the final identification of the contracting party (and patrimonial responsibility)". However, the same Court subsequently ruled that "since the contractual relationship exists exclusively between the third party contractor and the official (or administrator) who authorised the execution of the works of extreme urgency, if on the one hand it is true that the third party can bring the contractual action only against the official (or the administrator) to obtain the consideration for the works, it is also true that the latter, while it is exposed to suffer in its own assets the impoverishment caused by the exercise against it of the other contractor's right to obtain the price, has no specific action to bring against the entity in whose assets the enrichment occurred".

On the one hand, therefore, the conditions exist in favour of the official (or administrator) for him to be able to exercise the action under article 2041 of the Civil Code against the body within the limits of the enrichment obtained by the latter; on the other hand, and as a consequence, the private contractor is legitimated, *utendo iuribus* of the official (or administrator) who is his debtor, to act against the public administration - also at the same time as the application for payment of the price is made against the latter - by way of subrogation under article 2900 c.c. "to ensure that his reasons are satisfied or preserved" when the assets of the official (or administrator) do not offer adequate security [. ..] And since, in the final analysis, the body, within the limits of its enrichment, is obliged to pay compensation, and the private contractor is entitled to obtain, within the same limits, compensation for the decrease in assets suffered, it follows that it appears unfounded, in the terms in which it was put forward, the criticism of the unreasonableness of the provision complained of, which - in the context of a more

complex set of rules intended to restore the finances of local authorities in distress - is designed to ensure strict application of the accounting rules and thus strict control of expenditure'[45].

5. Emergency response procedures, volcanic risk, and urban planning: seeking balance for administrative simplification

As previously mentioned, volcanic risk can be addressed by using data obtained from monitoring past events, such as the occurrence of anomalous seismic activity. While one of the goals of volcanology is to try and predict an eruption, in terms of territorial planning, predictability of the event is important for making precautionary and preventative choices for damage control[46], safeguarding people and assets, organizing rescue efforts[47], and responding to emergencies[48].

Urban planning tools can play a pivotal role in public policies for risk prevention and (potential) infrastructure development[49] associated with volcanic risk[50]. To understand the advantages and limitations of planning tools, it can be helpful to

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[45] M. Ventricini, *Servizi amministrativi e responsabilità del pubblico funzionario*, in 7-8 *Giust. civ.* 283 ff. (2007).

[46] T.A.R. Campania, Napoli, Sez. IV, 9.3.2020, n. 1041, in *www.giustizia-amministrativa.it*, according to which the decision refusing to issue the single permit including the building permit for the construction of a new roadside petrol station is lawful, since this activity would affect the so-called Red Zone of the Phlegraean Fields, characterised by a high volcanic risk.

[47] In this sense, T.A.R. Campania, Napoli, Sez. III, 4.2.2019, n. 609, in *www.giustizia-amministrativa.it*, underlines that there are several provisions - Article 3 of Campania Regional Law No 10/2004 and Article 5 of Campania Regional Law No 21/2003 laying down town-planning rules for municipalities in volcanic risk zones in the Vesuvian area - which do not provide for a suspension of the determination of the requisite authorisations (permits or amnesties), as a safeguard measure, but rather impose a prohibition, for which the rejection of the application for amnesty is clearly justified.

[48] This aspect was emphasised, in particular, by F. De Leonardis, *Il principio di precauzione nell'amministrazione del rischio*, Milano, 2005.

[49] In this regard, although the author refers to seismic risk (and not volcanic risk), we fully agree with the observations made by M. Dugato, *Terremoto, ricostruzione e regole degli appalti*, in 3 *Munus* 485 ff. (2017).

[50] In doctrine, the question arises about the reason why, notwithstanding the various regulatory prescriptions, the process of urbanisation even at the slopes of active volcanoes is constantly ongoing, cfr. S. Peppoloni, *I rischi naturali: conoscerli per difenderci*, in 4 *Nuova informazione bibliografica* 824 (2015).

briefly analyze a rather emblematic case, such as the planning choices made in the aftermath of several events that affected the Vesuvius area in the Campania region.

The current National Plan for Vesuvius Risk divides the area surrounding Vesuvius into three zones: the Red Zone, the Blue Zone, and the Yellow Zone. The Red Zone is that area that could be destroyed by pyroclastic flows and mudslides and must therefore be completely evacuated starting ten days prior to the expected eruption date. The Yellow Zone, which covers approximately 1,125 square kilometers, is the surface area on which (depending on atmospheric conditions and the direction of high-altitude winds) ash, pumice, and lapilli could deposit in quantities exceeding the limit of roof collapse for buildings, and from which only part of the population is planned to be evacuated later. The Blue Zone, covering approximately 98 square kilometers and located in the northern part of the Yellow Zone, is the area that could be affected by floods and mudslides due to the morphology of its terrain.

The Plan provides that citizens fleeing from the Red Zone be directed and housed in other regions of Italy (all except Sardinia, Trentino-Alto Adige, and of course Campania), each of which is "twinned" with one of the eighteen municipalities involved. The distance of some destinations from the area of origin and, above all, the dispersion throughout the national territory of a community characterized by a strong identity, such as the Vesuvian one, appear to be elements that are not very appropriate, and even less effective, for the Plan. An additional critical aspect is represented by the planned complete evacuation of the Red Zone with 10 days' advance notice before the expected eruption. Such notice does not allow for a decision to be made in a situation of reasonably contained uncertainty about the probability of the eruption occurring or not. It should also be emphasized that the danger of a false alarm, which would have serious consequences for the economy and the lives of citizens, is equal to 50%.

Despite measures being dated, it is very interesting to note that in 2002, the Campania Region approved the 'Guidelines for regional land planning', which address volcanic risk as one of the aspects of environmental risk management within the context of land management issues. The focus is particularly on mitigation policies aimed at discouraging any permanent residential and productive urbanization, aiming to transform the Vesuvian territories into a tourist-environmental area over a 30-year time

frame. Above all, the aim is to obtain a settlement decompression through the relocation of the currently resident population with consensual policies to alleviate the problem of a possible evacuation.

Thirty years later, while it is true that the urban planning tools of the municipalities located in the Red Zone have not allowed for an increase in residential construction[51], it is also true that, despite numerous incentives for relocation, citizens continue to accept the risk, which remains anything but unexpected but can still be monitored thanks to the verification by the scientific community and civil protection. The target pursued, consisting of a slow and non-conflictual "preventive evacuation" has therefore simply translated into bringing the risk to an acceptable level, trying to reconcile the assessments of experts with the desires and expectations of residents.

6. Conclusions

Considering the examination of the Italian regulations on emergency works in the context of volcanic risk, a few brief considerations emerge. The significant margin of discretion granted to contracting authorities in the use of exceptional award procedures, as well as the substantial ineffectiveness of the control activity provided for, has often led in the past to an abuse of the urgent procedures. This risk of improper use of the emergency procedure has recently been fueled by Legislative Decree no. 56/2017, which expressly provided that the emergency procedure should be used not only in the case of natural disasters that may lead to the declaration of a state of emergency of national relevance, but also in cases of emergencies of a limited territorial scope that must be addressed with extraordinary powers, or even cases of events that can be dealt with "ordinarily" by single authorities. This choice has been expressly criticized by the Council of State, which

[51] T.A.R. Campania, Napoli, Sez. III, 3.1.2020, n. 31, in *www.giustizia-amministrativa.it*, which states that in such circumstances the increase of building for residential purposes by means of an increase in the habitable volumes and urban loads deriving from settlement weights is prohibited, excluding mere functional and hygienic-sanitary adaptations of existing buildings. In these terms, see also T.A.R. Campania, Napoli, 15.5.2020, n. 1806, in *www.giustizia-amministrativa.it*, and T.A.R. Campania, Napoli, Sez. III, 11.11.2014, n. 5788, in *www.giustizia-amministrativa.it*.

in its opinion on the legislative measure denounced how such dilatation tends "on the one hand to make it possible to use extraordinary procedures even to overcome situations or inconveniences of limited scope that are currently dealt with by ordinary means, and on the other hand to detach the urgency requirement from the issuance of an order by civil protection authorities".

At the same time, the pivotal role that could be played by territorial governance planning tools has not yet been adequately valued by the national (and regional) legislator. A comprehensive territorial planning, combined with an effective delocalization process, would indeed make it possible to define in advance the areas and settlements where urban and building renovation interventions, environmental redevelopment and recovery, as well as enhancement of historic centers fagarcould be carried out through a rethinking of the role of cities [52]. However, in this regard, the need arises to resort to consensual planning models, to avoid delocalization investments that, in the absence of adequate "compensation" or without the consent of the community, would not be feasible[53]. Notwithstanding the tripartition of volcanic risk assessment, it is necessary, in the context of the relationship between public powers and the community, to apply certain strategies aimed at enhancing the centrality of risk perception for the community[54]. In this regard, it seems useful to recover the paradoxical difference between the perception of risk that the community has for the potential eruption of the volcano Etna and that of Vesuvius. In fact, even though it is well known that the eruption of the former would certainly have fewer negative effects than the latter, Sicilian citizens have more information than those

[52] G. Gardini, *Alla ricerca della "città giusta". La rigenerazione come metodo di pianificazione urbana*, in 24 *Federalismi.it* 44 ff. (2020), argues how the current era is characterised by policies of reuse and preservation of the existing rather than 'expansion' building and urban planning.

[53] This aspect is correctly underlined by M. De Donno, *Il principio di consensualità nel governo del territorio: le convenzioni urbanistiche*, in 5 *Riv. giur. edil.* 279 ff. (2010), according to which the principle of consensus in urban planning choices would empty the relationship between administration and citizen of 'authoritativeness' and would allow for a higher level of social control through popular participation in the choices that have the greatest impact on the community.

[54] M.S. Davis, T. Ricci, L.M. Mitchell, *Perceptions of Risk for Volcanic Hazards at Vesuvio and Etna, Italy*, in *The Australasian Journal of Disaster and Trauma Studies* 1 (2005).

in Campania affected by the volcano[55]. Regarding this information gap, one proposed solution relates to the formalisation of informative meetings, coordinated by the regional Civil Protection, which should make the community understand the importance of developing risk mitigation strategies with respect to the specific area concerned, taking into account the specific characteristics of individual volcanoes[56].

[55] F. Barberi, M.S. Davis, R. Isaia, R. Nave, T. Ricci, *Volcanic risk perception in the Vesuvius population*, in *Journal of Volcanology and Geothermal Research*, cit. at. 254, According to a sample collection of data and information gathered by interviewing the community, they claim that most of citizens received insufficient information regarding the effects of the Vesuvius potential eruption.
[56] According to F. Barberi, M.S. Davis, R. Isaia, R. Nave, T. Ricci, *Volcanic risk perception in the Vesuvius population*, in *Journal of Volcanology and Geothermal Research*, cit. at. 245, with specifically regard to Vesuvius, there has been a lack of attention paid to public communication and information during periods of long-term volcanic inactivity, which has negatively affected knowledge of the potential risks underlying the volcano's eruption.