

The Challenge of Addressing Insularity for National and EU Policymakers

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Constitutionalising Insularity

A few days ago, the Islands Commission General Assembly of the Conference on Peripheral Maritime Regions, a French-based think tank lobbying the EU, gathered to discuss “[A Pact for EU Islands](#)” to be advocated in the upcoming Spanish Presidency of the Council of the EU, starting in the second half of 2023. However, with the exception of a [resolution passed by the European Parliament on 7 June 2022](#) and heralded by a 2021 study¹⁾, in the past five years, insularity has been largely ignored by the EU political discourse.²⁾

The topic remains unexplored also in Italy, despite the recent approval of a [constitutional reform](#) making insularity resurface in the text after more than two decades and acknowledging its disadvantageous condition. As a matter of law, new research aims to demonstrate that insularity clauses in constitutions contribute to the achievement of cohesion policies and help reach supranational goals ([Demuro, 2022](#)). Yet, the practical implications of recognising insularity at the constitutional level, need further investigation. In this blog post, I argue that insularity clauses can have two functions: they can either function as a mere statement of principle or acquire a more substantive interpretation.

Make it to the Cape or Perish on an Island

In the framework of the [EU Cohesion Policy](#), islands of both major and small scale from richer countries are eligible for support from cohesion funds only when matching with the NUTS-2 and -3 conditions ([Nomenclature of Territorial Units for Statistics](#)). This classification does not take into account the geographical constraints of insularity³⁾ despite [Regulation no. 1303/2013](#) including the specific challenges of islands in funding programs. Local actors, therefore, struggle to bring territorial concerns to the attention of the European Union through forums such as the European Committee of the Regions (CoR).⁴⁾ Recent pledges for [specific measures](#) (from the CoR Group on Insular Regions) went unnoticed and claims from islands continue to remain off the political agenda.

Nevertheless, islands of different scale experience several hindrances to full economic and social development, such as scarce natural resources; low development of infrastructures due to physical constraints; high dependence on import and external aid; non-diversified local economies and reliance on seasonal income (e.g. from tourism);

climate-related problems; reduction in population size; dependence on maritime and air transport; and other issues related to the lack of territorial continuity with the mainland (“physical disconnection”). In other words, they face serious inequalities and strive for a better place in the realm of constitutional institutions (Frosini, 2022).

The problem surrounding insularity is addressed by Article 174.3 TFEU which, bearing in mind the general goal of “economic, social and territorial cohesion” as set out by Article 174.1, further specifies that “particular attention shall be paid to [...] regions which suffer from severe and permanent natural or demographic handicaps such as [...] island [...] regions”. Insularity is also a reason for adopting specific Council measures, “including common policies” or other measures adopted through a special legislative procedure, aiming at overcoming a peculiar “structural economic and social situation” (Article 349 TFEU). However, this norm applies only to an enumerated list of outermost regions (“Guadeloupe, French Guiana, Martinique, Réunion, the Azores, Madeira and the Canary Islands”) sharing handicaps such as remoteness, small size, difficult topography and climate, or economic dependency on few products.

Virginia Woolf’s words resonate in the emptiness left by the Lisbon Treaty, which missed the opportunity to think over island-related problems in new territorial cohesion policies: «The little island seemed pathetically small, half swallowed up in the sea. “Poor little place,” he murmured with a sigh». “To the Lighthouse” paints a vivid picture, though islands need to emerge as a multifaceted reality that goes beyond fictional accounts or shiny tourist catalogues promising an idyllic holiday.

Insularity Within the Boot

In Italy, insularity has an undeniable economic impact since there are over 400 islands in the country, two of which are the largest in the Mediterranean. Furthermore, following Brexit, Italy became the European Member State with the highest amount of island inhabitants. Nevertheless, the notion of “Insular Italy” is only used to identify the official constituency for the purpose of the elections of the European Parliament or for national statistics from ISTAT.

The wind blows of change are felt across constitutional parlours, with the entry into force of Constitutional Law no. 2/2022 after a popular initiative. A long-sought “insularity clause” has now been inserted in Article 119, spelling out that “The Republic recognizes the peculiarities of the Islands and promotes the necessary measures to remove the disadvantages arising from insularity” (new para. 6). The clause must be read in combination with para. 5, which establishes the purposes of State allocation of additional resources to certain territorial entities. Funds are generally distributed under four conditions: 1) to promote economic development, along with social cohesion and solidarity, 2) to neutralise economic and social imbalances, 3) to promote the effective exercise of personal rights, and 4) to achieve other goals.

Article 119.6 could be used as a standard for constitutional review of present and future legislation. For that to happen, the new clause shall be interpreted as bearing a substantive imperative meaning which goes beyond merely political declamations. However, the generic language adopted in the new paragraph does not help the cause. It is the result of alterations to the original text of the popular initiative (Ddl. cost. n. 865/2018). The intent of the proponents was to constitutionalise “the serious and permanent natural disadvantage resulting from insularity”, seeking recognition of this condition from a specific territorial entity, namely the “State”. Its primary responsibility for reducing territorial imbalances results also from the Constitutional Court’s landmark Judgment no. 6/2019, which sets aside an article in a 2018 state budget law that failed to allocate sufficient funds to the Region of Sardinia, impeding efforts to address the economic gap caused by insularity. This goal was specifically recognised by the same regulation; therefore, the Court declared the contested article unconstitutional since it required the Autonomous Region of Sardinia to make new contributions to public finance, thus violating the principle of sincere cooperation, the principles of reasonableness and proportionality as derived by Article 3 of the Constitution, and other constitutional provisions.

Article 119.6, in the final version approved by both Chambers of the Parliament, acknowledges only the “peculiarities” of islands, using a term which appears somehow oxymoronic when associated with the need to redress serious disadvantages. Furthermore, the clause fails to empower the “State” and rather vests the “Republic” with the promotional role sought by the Court’s judgment to achieve structural change out of territorial imbalances. However, the “Republic” is quite an abstract entity that comprises all governmental levels, including the State. This alteration seems to confer to the clause a more elusive meaning, despite in parliamentary debates the wording was aimed to *broaden* the clause’s scope. This is even more evident when considering that Article 119.3 and Article 119.5 hand over to the State specific developmental tasks for territorial entities (but clearly omit to mention the Republic).

Without considering other highlighted critical aspects (see the dossier by the Italian “Senate of the Republic” at 5 and ff.; Trombetta, 2022, at 14), early academic analyses propose that combining Article 119.6 with Article 3 of the Italian constitution could be a viable approach to prevent the insularity clause from being an empty legal formula (Frosini, 2022, cit.). Such analyses don’t go any further even though it could be argued, building on the mentioned 2019 judgment, that not only insularity can acquire a more substantive connotation when associated with the need for State action to overcome social and economic inequalities among citizens. In addition, constitutional review of legislation that interferes with – or does not take into account – insular concerns may rely upon the more binding effect of both the principles of reasonableness and proportionality. The Court could extend its scrutiny to the merit of the regulation and assess whether the contested provisions are compatible with the overarching goal of achieving substantial equality (“*uguaglianza sostanziale*”). Indeed, established case law declares that a lack of

reasonableness and/or proportionality occurs when a norm does not align sufficiently with its intended purpose. Consequently, the insularity clause would serve as not only an explanatory norm but also an enforceable duty of the state.

Unveiling the Potential of Insularity through Constitutional Reform

Italy joins Portugal and Spain in recognising the special nature of territories characterised by insularity. Article 81(e) of the Portuguese constitution already burdens the state with the duty “to promote the correction of the inequalities derived from the autonomous regions’ insular nature and encourage those regions’ progressive integration into broader economic areas within a national or international framework”. The principle is subsequently reiterated in Article 229, affirming that “the entities that exercise sovereignty shall ensure the economic and social development of the autonomous regions, with a particular view to the correction of the inequalities derived from insularity”.

Moreover, the 1978 Spanish constitution contains four notable articles referring to insularity (69.3, 138.1, 141.4 and 143.1). They all provide an institutional dimension to the speciality of islands in the framework of the Autonomous State. The insularity clause can be identified in Article 138.1, providing that “the State guarantees the effective implementation of the principle of solidarity [...] safeguarding the establishment of a just and adequate economic balance between the different areas of Spanish territory and taking into special consideration the circumstances pertaining to those which are islands” (*“las circunstancias del hecho insular”*).

The brief overview emphasizes the need to endorse the constitutional dimension of islands and incorporate them in a shared vision for European islands. I argued that the utilization of the term “insularity” in the Constitution surpasses a mere symbolic or formal assertion, as it holds significant institutional weight, indicating a political and constitutional obligation. It is widely recognized that the constitutional recognition of a specific interest worthy of protection raises the likelihood that its interpretation adapts to changing societal developments, expanding the scope of protection to encompass new subjective circumstances. A good example is the protection of the right to privacy, based only on the constitutional reference to the liberal right of confidentiality in correspondence. In addition to that, greater legislative efforts are required to attain constitutional objectives related to insularity.

The upcoming Spanish Presidency can play a key role in this effort by bringing in cues from its successful national model (Villar Rojas and Betancort Reyes, 1999; Márquez Fernández, 2003). While the introduction of new insularity clauses in the constitution can be a way to combat the marginalization of islands and ensure equal access to fundamental rights and public services, their effectiveness depends on the given interpretation and practical implementation through tailor-made regulation.

In this regard, to efficiently address the development of islands and ensure equitable treatment and opportunities for their residents, it is recommended to push for targeted exemptions from state aid limitations at the EU level and enhance ad hoc funding to

promote social and territorial cohesion (see the [2023 Palma Declaration](#)). These efforts require a unified frontline of policymakers upholding insular sustainability as a righteous goal. However, it is crucial to establish a foundational constitutional framework at the national level as a prerequisite for institutional changes in countries impacted by the issue.

References

- ↑1 See the research for the REGI Committee made by D. Haase, A. Maier, *Islands of the European Union: State of Play and Future Challenges*, 2021, available [here](#).

- ↑2 Previously, see the European Parliament resolution of 4 February 2016 on the special situation of islands (2015/3014(RSP)). See also a relevant, though outdated, report on “[The Development of the Islands – European Islands and Cohesion Policy \(EUROISLANDS\)](#)” was released by the EU-funded ESPON Project on 2013

- ↑3 See M.C. Carta, *Coesione territoriale e principio di insularità nell’ordinamento dell’Unione europea*, in *Studi sull’integrazione Europea*, 3(2015), 599-619.

- ↑4 See the CoR [Opinion](#) on Entrepreneurship on Islands: contributing towards territorial cohesion (2017/C 306/10).

- ↑5 In 2020, the Region of Sicily made an in-house econometric [analysis](#) of the costs of this condition, (perhaps overly) estimated at 6,54 billion euros.

- ↑6 Translation from the author. Previously, the principle of insularity existed in the old version of Article 119, spelling out that “To provide for certain purposes, and particularly to enhance the South and Islands, the state law to assign individual regions special contributions”. The text was then abrogated by [Article 5 of the Constitutional Law no. 3/2001](#).

- ↑7 It stated that: “The State acknowledges the serious and permanent natural disadvantage resulting from insularity and takes the necessary measures to ensure effective equality and enjoyment of individual and inalienable rights” [translation of the author].

- ↑8 Article 5 of the Constitution states that the Republic as a “one and indivisible” entity “recognizes and promotes local autonomies”. See also Article 114.1, pursuant to which “The Republic is composed by the Municipalities, the Provinces, the Metropolitan Cities, the Regions and the State [...]”.

- ↑9 For an overview of the several expressions used by the Court to trigger these principles, see A. Ruggeri, A. Spadaro, *Lineamenti di giustizia costituzionale* (Giappichelli, 2014), 126.

- ↑10 See G. Scaccia, ‘L’insularità e le parole della Costituzione’, in G. Armao (ed.), *Condizione e costi dell’insularità in Italia ed in Europa* (Rubbettino, 2022), 59.

References

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