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Profiles of Potential Unconstitutionality of Legislation Restricting Personal Freedom for the Containment of COVID-19 on the Example of the Italian Republic

Abstract: The Sars-CoV–2 pandemic is changing the main issues of Italian constitutional law. The phases of the Italian normative management of the crisis focused on important and extraordinary measures and brought to light some structural problems of the Italian constitutional legal system. More generally the ongoing health crisis is revealing the lack of an articulated emergency framework in the Italian Constitution and questioning whether existing legislative tools are suitable to face contemporary threats. This article aims to analyse the main issues raised by the Italian government's reaction to the coronavirus: the notion of emergency in Italian constitutional law, the legal forms chosen to fight the virus, the choice of the Italian Government to regulate the emergency by decrees of the President of the Council of Ministers, the role of decree law ('*decreto-legge*'), from the emergency and the compression and restriction of fundamental rights to the balance of the fundamental freedoms with the protection of right to health.
Keywords: emergency, fundamental rights, Italian Constitution, Italian system, Pandemic crisis

Introduction

The pandemic crisis, which has now been going on for over two years around the globe, is not only causing tens of thousands of deaths every day but is also radically changing our way of life.[1] It is fundamentally changing the way each individual lives,

1 N. Chomsky, Precipice, London 2021; Autori Vari, Il Mondo dopo la fine del Mondo, Bari-Roma 2020.

but above all the way in which the individual relates in a society, perceives 'the other', the community, and the way in which each citizen builds the relationship with the established power, in other words the state.[2]

It would be enough to think about the main rules of behaviour recommended to avoid contagion, such as social distancing, mask wearing, the use of the 'green pass' and the prohibition of gathering that are building a world in which, in order to survive, each person must isolate himself, must be alone.

The negative effects produced by the pandemic crisis are at their worst during the so-called 'lockdowns', during which millions of people have been forced to isolate themselves, to avoid leaving their homes, to live like recluses in jail.

Also under Polish law, the COVID-19 pandemic has had a significant impact on legislative activities and human life. Reduced income of enterprises forced the legislator to partially reduce the protective function of the labour law, which is expressed by protecting the durability of the employment relationship and establishing far-reaching facilities for employers dismissing employees in the process of reducing employment.[3]

These experiences also reflect on societies, on their internal articulations, on the mechanisms of functioning, on relations between individuals, and even on relations with the city and with nature. But that is not all. The emergency – this is a recurring term that has constructed a 'new' normality – has led to the adoption of different legal instruments and rules, inspired by logic that does not always comply with the dictates of the constitutions of the countries involved.

We have addressed the various forms of rupture in the fragile balance between freedom, rights and constituted power. This fracture has emerged most strongly in 'Western' legal systems, in Europe, the USA and Canada in particular, with a liberal matrix and a neo-liberal economic system.

In a certain way, the devastation wrought by COVID-19 spread more effectively in countries that we might define as 'democratic' and liberal, where the exercise of certain fundamental rights, first and foremost health, is the prerogative of the individual and where the choices and guidelines adopted by parliaments are the result of moments of confrontation and consultation. The prerogatives of the individual and the lethargy of the centers of power have, in some ways, slowed down and made less effective the capacity to respond and fight the virus. The fragility of capitalist and liberal economies has become even more evident.

The pandemic crisis has in fact exacerbated the weakness of systems that had already been struggling for several years and were incapable of bringing about any redistribution of wealth among citizens.

2 D. Di Cesare, Virus sovrano? L'asfissiacapitalistica, Torino 2020, p. 10.

3 M. Wieczorek, Some aspects of the protective function of labour law in the COVID-19 era, 'Studia Iuridica Lublinensia' 2021, vol. 30, no. 1.

In this way, not only has health been put at risk, but also employment and work. That means the two most important and characteristic aspects concerning everyone have thus been affected.

In synthesis, Western legal models have been put under check. Within a few months, they have shown a certain weakness in first holding up and then reacting to an emergency of extraordinary magnitude. This has led to various degrees and in various ways throughout Europe to an 'emergency' type of crisis management, in which the executive power has taken over prerogatives that had hitherto been the exclusive competence of parliament and in which fundamental freedoms have also been restricted by exceptional legislative sources, thus creating moments of conflict with the constitutions. In some systems, only the intervention of the high constitutional courts ensured that the democratic system did not enter a definitive crisis.

Furthermore, legal sciences is confronted with numerous problems and not only in the field of civil and medical law, but also criminal and administrative law, which is strongly emphasised by German legal literature.[4] Polish criminal law was also affected by changes in the scope of tightening sanctions in the area of crimes against health, such as direct exposure of another person to life-threatening disease.[5]

There is no doubt that the pandemic emergency has put the role of the state and, in general, of the institutions, to which all citizens have turned their gaze to obtain adequate and effective solutions, back on centre stage.

Similarly, however, there is no doubt that the real challenge has been, and still is, to carry out the task of combating the effects of the COVID-19 health crisis in a democratic and constitutionally oriented manner without compromising the personal, civil and political freedoms of EU citizens.

And in such a crisis, we must also remain vigilant and verify that the hundreds of billions allocated by the European Union for the next-generation EU project[6], for the recovery and resilience of European economies, are not spent according to the legal-economic logic of the 'emergency', and of the 'state of exception'. In fact, it is commonly known that such crises, especially those with economic effects, produce corruption and bribery, fraud and money laundering if regulatory instruments are not put in place to ensure a fair, effective and real distribution of resources, not only in favour of individuals but of entire economic systems and territories.

On this point, the challenge we face soon will be to guarantee a social and democratic order in which the human being always remains the end for which action is

4 H. Lorenz, E. Turhan, The Pandemic and Criminal Law – A Look at Theory and Practice in Germany, 'Bialystok Legal Studies' 2021, vol. 26, no. 6.

5 E.M. Guzik-Makaruk, Some remarks on the changes in the Polish Penal Code during the pandemic, 'Bialystok Legal Studies' 2021, vol. 26, no. 6.

6 About Next Generation EU, see https://ec.europa.eu/info/strategy/recovery-plan-europe_en; to see an OCSE perspective see https://www.oecd.org/economy/surveys/european-union-2021-OECD-economic-survey-overview.pdf (accessed 12.12.2021).

taken and not the means. Equity, solidarity, inclusion and sustainability are the cardinal points around which a new European system can be built, capable of reacting definitively to this crisis in a unified and democratic way.

In this paper, an attempt will therefore be made to analyze what have been and still are the most harmful effects of the pandemic crisis on the maintenance of the democratic order, on the balancing of the principles and fundamental values sanctioned by the constitutions of some European countries, especially personal freedom and freedom of movement, the right to health and free economic initiative, in order to verify whether the limitation and contraction of some fundamental freedoms has taken place in a manner that is consistent and coherent with democratic values, also provided by the European Convention on Human Rights. The Italian system is chosen here as the reference point for this scientific work for several reasons.

Firstly, because it was the first Western country, as well as the first European continental economic power, to face the COVID-19 emergency. Secondly, because Italy has a rather articulated and well-balanced constitution, since it was derived from the historical-political compromise of the three main political forces that freed the country from fascism: Catholics, communists and liberals. Thirdly, because it is the country where essential services, such as healthcare, still remain the main prerogative of the state and are provided regardless of the economic capacity of the individual citizen. Finally, because Italy's legislative and regulatory system, despite appearing *prima facie* very rigid, i.e. fully inspired by Montesquieu's principle of the tripartition and separation of powers, takes on a certain fluidity and an absolute peculiarity in the continental panorama.

In this way, an attempt will be made to ascertain whether what has been produced by the pandemic (socio-sanitary) crisis has brought to light the capacity of the Italian legal system to respond in an adequate and constitutionally compliant manner to the problems derived from it[7], or whether it is inevitable in the medium term to reflect on an institutional reform that could remodel democratic values in the light of an increasingly globalised context in which politics is weaker and the categories representing citizens are more fragmented and, likewise, less able to ensure the protection of the individual within an organised community. In short, we need to un-

7 A. Algostino, Costituzionalismo e distopia nella pandemia di COVID-19 tra fonti dell'emergenza e (s)bilanciamento dei diritti, 'Costituzionalismo.it' 2021, vol. 1, pp. 1–81; A.M. Cerere, Ruoli e competenze dei diversi livelli istituzionali nella gestione della pandemia Covid 19 in Italia tra distonie sistemiche e carenze strutturali, 'Rivista AIC' 2021, vol. 3, pp. 358–378; D. Morana, Sulla fondamentalità perduta (e forse ritrovata) del diritto e dell'interesse della collettività alla salute: metamorfosi di una garanzia costituzionale, dal caso ILVA ai tempi della pandemia, 'Consulta online', 30 April 2020, p. 2; A. Venanzoni, L'innominabile attuale. L'emergenza COVID-19 tra diritti fondamentali e stato di eccezione, 'Forum di Quaderni Costituzionali', 26 March 2020, pp. 491–503; B. Raganelli, Stato di emergenza e tutela dei diritti e delle libertà fondamentali, 'Il diritto dell'economia' 2020, vol. 3, pp. 35–62.

derstand whether the archetypal traits of the constitutional state remain present even when the protection of the individual takes second place to the guarantee of other values and/or ends.

1. Italy's Response to the Pandemic. Emergency Measures on Movement and Control Over People's Activities

As anticipated, in Italy the pandemic caused by the new coronavirus Sars-CoV–2 gave rise to a health emergency to which an immediate response was given with a series of urgent measures since 31 January 2020, the day on which a state of emergency was declared.

As can be seen from the overview of the measures that have been adopted, the Italian legislator also acted in an emergency manner, often through ministerial decrees and not through laws passed by parliament, as recommended by the constitution when regulating fundamental rights.[8]

The COVID-19 epidemic, in fact, in a first phase was addressed following the provisions of the Civil Protection Code, which regulates the legal acts to be performed to cope with emergency situations, specifically the declaration of the state of emergency by the Council of Ministers, which can be deliberated for a maximum of 12 months, extendable once for another 12, and by the ordinances of the President of the Council of Ministers and the Head of the Department of Civil Protection.

In this same first phase were contingent and urgent ordinances, sources of administrative law, by the Ministry of Health, ex Art. 32 of Law no. 833 of 1978, whose effectiveness can be extended to the entire national territory or part of it, including two or more regions. At the regional level, the same article provides for the issuing of similar ordinances by the president of the regional council or the mayor.

In face of the persistence of the epidemic, the subsequent phases have been characterised by the compression of some fundamental rights provided by the Italian Constitutional Charter, with the aim of preserving the right to health, both individual and collective. The legal instrument used was that of the decree-law containing provisions aimed at the adoption of punctual provisions to cope with the emergency, both health and socio-economic, others with the aim of defining a framework of legal instrumentation for the adoption of subsequent measures to deal with the emergency.[9]

8 A. Formisano, Limiti e criticità dei sistemi costituzionali a fronte dell'emergenza COVID-19, 'Nomos' 2020, vol. 1, pp. 1–18.

9 G. Azzariti, I limiti costituzionali della situazione d'emergenza provocati dal COVID-19, 'Questione giustizia', 27 March 2020, *passim*.

Both Law Decree no. 6/2020 and Law Decree no. 19/2020 have typified the measures introduced in light of the emergency, defining the relationship between the state and the regions, with coordination under the President of the Council of Ministers.

The measures established therein may be taken for specific periods, each lasting no more than fifty days, which may be repeated and modified. The instrument for the adoption of these measures is the Decree of the President of the Council of Ministers, adopted on the proposal of the Minister of Health and other competent ministers, having heard the presidents of the regions concerned or the President of the Conference of Regions and Autonomous Provinces.[10]

Subsequently, Legislative Decree no. 33/2020 marked a change in the management of the pandemic, sanctioning on the one hand a progressive loosening of the prohibitions and constraints put in place in the most acute phase of the pandemic emergency (March–May 2020), and on the other hand allowing the possibility of regional regulation on 'economic, productive and social activities', marking the second phase of the management of the pandemic.

With the arrival of a new critical phase, Decree Law no. 125 of 7 October 2020 was adopted. Decree Law no. 125, in addition to extending the state of emergency and the possibility of adopting the measures to combat the epidemic provided for by Decree Laws no. 19 and no. 33 until 31 January 2021, also introduced the obligation to wear a mask, and the possibility of the regions to adopt less restrictive measures than the national ones ceased to exist.

Articles 1-quinquies and 19-bis of Decree Law no. 137 of 2020 regulated the publication of the results of monitoring related to the epidemiological emergency, also defining a procedure for the identification of the regions targeted by restrictive measures. More specifically, the Ministry of Health was committed to publish, on its institutional website and on a weekly basis, the results of the monitoring of health risk related to the evolution of the epidemiological crisis.[11] On the basis of the data acquired, the Ministry of Health, following consultation with the Technical-Scientific Committee, can identify by ordinance, after consulting the presidents of the regions concerned, the regions with the highest epidemiological risk. These regions will adopt more restrictive measures than those applicable to the entire national territory, as defined by the relevant prime ministerial decree.[12]

The Decree of the President of the Council of Ministers of 17 June 2021, as amended by the Prime Ministerial Decree of 17 December 2021, implements Art. 9,

10 A. Lucarelli, Costituzione, fonti del diritto ed emergenza sanitaria, 'Rivista AIC' 2020, no. 2, p. 558 ff.

11 https://www.salute.gov.it/portale/nuovocoronavirus/dettaglioContenutiNuovoCoronavirus (accessed 12.12.2021).

12 M. Luciani, Il sistema delle fonti del diritto alla prova dell'emergenza, 'Rivista AIC' 2020, no. 2, p. 119 ff.

paragraph 10, of Law Decree 52 of 2021 (so-called Reopening) in the specific matter of COVID-19 Green Certifications and governs the procedures for the issue of said certifications aimed at facilitating the free movement of citizens in safety within the national territory and the European Union (see Council Recommendation (EU) 2021/961 of 14 June 2021).

As a preliminary remark, it should be noted that the COVID-19 green certification – EU Digital COVID Certificate, which will be in force for one year starting from 1 July 2021, was adopted following the provision created at the European level of a common technical platform for Member States (gateway) active from 1 June 2021 to ensure that certificates issued by European states can be verified throughout the EU.

With regard to this, Regulation (EU) 2021/953 of 14 June 2021 was adopted for the definition of the Community framework for the issue, verification and acceptance of interoperable certificates of vaccination, testing and recovery for the movement of EU citizens and Regulation (EU) 2021/954 of 14 June 2021 for third-country nationals legally residing in the territory of the Member States during the COVID-19 pandemic.

On 5 July 2021, a corrigendum to the 36th Recital was published in OJEU L regarding the principle of no direct or indirect discrimination of persons who are not vaccinated, not only for medical reasons, but because they are not in the target group for which the COVID-19 vaccine is currently administered or allowed, such as children, or because they have not yet had the opportunity to be vaccinated, but also because they have chosen not to be vaccinated.

Since 1 July 2021 the COVID-19 green certificate is in fact valid as an EU Digital COVID Certificate to allow free travel within all EU countries and the Schengen area. On 17 June in Italy the national platform at the Ministry of Health (DGC platform – digital green certificate) was activated, allowing members of the public to obtain the green certificate, both in digital and printable format, containing identification data validated by a QR code relating to vaccination or recovery or even the type of test carried out that shows a negative result regarding infection (Annex A to the decree). It can be requested to be shown at public events, to access nursing homes or other facilities, or to enter or exit territories classified as 'red zone' or 'orange zone'. In addition to allowing the collection, modification and verification of the data of the certifications, the platform guarantees interoperability with the information systems of other EU countries, also for the purposes of monitoring the data collected (Attachment B to the decree).

2. Restriction of Fundamental Freedoms and Emergency Legislation

The lockdowns, to which Italy also has been subjected as a result of the COVID-19 pandemic, have had an impact on the fundamental freedoms provided for by the

Italian Constitution, thus limiting even the constitutionally guaranteed rights: right to work (Art. 4), the freedom and secrecy of correspondence (Art. 15), freedom of movement (Art. 16), freedom of assembly (Art. 17), freedom of religion (Art. 19), to some extent freedom of thought (Art. 21), the right to education (Art. 33–34), the right to strike (Art. 40) and the freedom of private economic initiative (Art. 41).[13]

During the pandemic, all of these freedoms and rights should have been balanced with the right to health (Art. 32), which is defined by the Italian Constitutional Charter as 'the interest of the community'.[14] However, the balance was not carried out in an adequately considered manner. Although, as will now be shown, the Constitution allows for the limitation of fundamental rights, public health reasons were much preferred.

Constitutional foundations 'legitimise' limitations to freedoms: as regards freedom of movement, in the 'reasons of health or safety' (Art. 16); freedom of assembly, in the 'proven reasons of safety and public security' (Art. 17); private economic initiative, since it cannot be carried out in contrast with social utility or in such a way as to damage security, freedom, human dignity (Art. 41).[15]

In any case, there are certain requirements to be met for restrictive measures to remain within the constitutional perimeter: 1) temporariness; 2) proportionality and reasonableness; 3) dialogue with the executive power:

1. the compression of fundamental freedoms must be time-limited and permanently linked to the state of affairs giving rise to them;
2. the compression of fundamental freedoms must be strictly proportional and reasonable with respect to the protection of health but, at the same time, since it is a question of limitations to some fundamental rights and freedoms, the balancing must lead to protecting the other rights as much as possible, while preserving the right to health. For example, the balancing of rights arises when personal data are tracked both for prevention purposes and in order to track contacts of persons testing positive for the virus;
3. the respect of forms and balances in relation to the executive power arises to the extent that the adoption of emergency measures entails forms of concentration of powers in the hands of the executive and in general with the other constitutional bodies. This implies the need to ensure the exercise of the guaranteeing role of the president of the Republic, as well as of parliament,

13 A. Algostino, COVID-19: primo tracciato per una riflessione nel nome della Costituzione, 'Rivista AIC' 2020, no. 3 *passim*.

14 F. Scalia, Principio di precauzione e ragionevole bilanciamento dei diritti nello stato di emergenza, 'Federalismi.it', 18 novembre 2020, p. 186 ff.

15 T.E. Frosini, La libertà costituzionale nell'emergenza costituzionale, (in:) T.E. Frosini (ed.), Teoremi e problemi di diritto costituzionale, Milano 2008, p. 116 ff.

which should be constantly informed. When converting decree laws, parliament should express its opinion on the measures adopted by the executive.

In any case, the restriction of fundamental rights can only be tolerated in cases of absolute 'emergency'.

Although the Italian Constitution does not provide for the notion of 'emergency', it has proved that it is flexible enough in dealing with exceptional events[16]. In fact, the Italian constitutional fathers wanted to avoid introducing a so-called 'state of emergency'[17] into the constitution in order to prevent it from legitimising the adoption by the executive or legislative powers of measures aimed at changing the established order or altering relations between powers and between powers and citizens.

Given serious emergency situations, the Italian Constitution provides that the executive power can take over from the legislative power; however, this substitution must take place in the form of an urgent decree ('*decreto-legge*', as provided by Art. 77 of the Italian Constitution), precisely because it is the unpredictability of the emergency that justifies its adoption as it gives rise to a conflict between fundamental rights.

The acts of necessity and urgency are therefore only constitutionally provided if the intervention of the executive power is then subject to the control of parliament within the following 60 days (as provided for by Article 77 of the Constitution[18]) and if the measures adopted in the decree respect the principles of temporality, proportionality and adequacy mentioned above. Only if these conditions are fully observed are acts having the force and value of law (*decreto-legge*) also compatible with the principle of reservation of law ('*riserva di legge*'). This principle states that matters governing fundamental principles must always be regulated by law and with parliamentary control and not by sub-legislative sources.

16 F. Rimoli, Emergenza e adattamento sistemico. Sui limiti di resilienza degli ordinamenti democratici. Parte Prima, in Lo Stato, 'Rivista Semestrale di Scienza costituzionale e teoria del diritto' 2020, no. 14, p. 164 ff.

17 A. Algostino, Costituzionalismo …, *op.cit.,* p. 6; for further analyis,G. Bascherini, L'emergenza e i diritti. Un'ipotesi di lettura, 'Rivista di Diritto Costituzionale' 2003, p. 3 ff; A. Pizzorusso, Emergenza, state of (in:) Enciclopedia delle scienze sociali, Roma 1993, p. 551; F. Modugno, D. Nocilla, Problemi vecchi e nuovi sugli stati di emergenza nell'ordinamento italiano, (in:) Scritti in onore di M.S. Giannini, Milano 1988, vol. II, p. 515.

18 Art. 77 of the Italian Constitution states that: '*The Government may not, without delegation from Parliament, issue decrees that have the force of an ordinary law. When, in extraordinary cases of necessity and urgency, the Government adopts, on its own responsibility, provisional measures with the force of law, it shall on the same day submit them for conversion to the Houses of Parliament which, even if dissolved, shall be specially convened and shall meet within five days. Decrees shall cease to have effect from the outset unless they are converted into law within sixty days of their publication. The Houses may, however, regulate by law the legal relations that have arisen on the decrees that have not been converted into law.*'

In certain matters, therefore, it is essential that the law should always dictate the rules to bind the executive power. In fact, the issue of the compatibility of emergency sources with the constitutional framework has arisen precisely in relation to those secondary sources that have been adopted to deal with the pandemic crisis.

As has also emerged from what has been partly evoked in the second paragraph, the Italian legislator has faced and responded to the urgencies and emergencies of the pandemic crisis especially using 'decree laws' (*decreti-legge*). These instruments appeared to be the most effective in ensuring a rapid and constitutionally oriented intervention. The intervention of the parliament, which, pursuant to Article 77, converts the decree law (*decreto-legge*), therefore promotes the regulatory activity of the government, ensuring compliance with the fundamental principles of reservation of law and legality.

However, the 'formal' respect of the rules does not always determine a 'substantial' respect of rights. In fact, despite this, the promotion and protection of the public interest in health has severely limited the exercise of the above-mentioned fundamental rights.

The distorted use of sources of law during the pandemic, however, cannot be substantially denied. In fact, it is already possible here to highlight how the Italian Constitutional Court has twice intervened on the relationship between legislative instruments (decree laws and decrees of the President of the Council of Ministers (DPCMs)) and the emergency, and on the division of competences between state and regions in the management of the same.

In the first case, in fact, the Constitutional Court, in its judgment No. 37 of 2021[19], intervened following the Italian Government's challenge to Valle d'Aosta's regional law No. 11/2020, by which the region had intervened concerning the containment of COVID-19. On that occasion, the court affirmed the unconstitutionality of the regional law for violation of the state's exclusive competence by the region in the field of international prophylaxis because in the face of highly contagious diseases capable of spreading globally, logical and not only juridical reasons impose on the constitutional system the need for unitary discipline at the national level, capable of preserving and guaranteeing the equality of persons in the exercise of the fundamental right to health and at the same time protecting the interests of the community. In view of the seriousness of the pandemic and the need to ensure equality among citi-

19 Cf. M. Mandato, Sulla titolarità delle competenze in materia di emergenza sanitaria. A proposito della sentenza della Corte Costituzionale no. 37/2021, 'Rivista Quadrimestrale di diritto pubblico' 2021, p. 529 and following; V. Baldini, Conflitto di competenze tra Stato e regione nella lotta alla pandemia. Un sindacato politico della Corte costituzionale? Riflessioni a margine della sent. no. 37 del 2021 della Corte costituzionale, 'dirittifondamentali.it' 2021, no. 1, p. 415; G. Caggiano. I vincoli di legittimità costituzionale, sovranazionale e internazionale quale garanzia dei diritti fondamentali degli stranieri nell'ordinamento italiano, 'Studi sull'integrazione europea' 2021, p. 9 and following.

zens from the outset and not to prejudice citizens, the Court used the 'precautionary suspension of the law' for the first time in its history, thus avoiding further risks of contagion.

The main interesting aspect of the pronouncement given by the Constitutional Court therefore relates to the importance of having placed the subject of 'international prophylaxis'[20] among the exclusive competences of the state, excluding that the epidemiological emergency constitutes a legislative sector in which both state and regions can intervene. The pronouncement thus goes beyond the principle of loyal cooperation between state and regions, admitting that discretion is primarily the prerogative of the state. The Constitutional Court, in practice, did no more than confirm the central government's operational model that had been pursued since the beginning of the pandemic, which has provided for a form of centralisation of the management of the virus containment procedures, effectively limiting the discussion with the regions to a 'consultation' phase.[21]

In the second case, by sentence no. 198/2021[22], the Italian Constitutional Court rejected the issue of constitutional illegitimacy concerning the emergency legislation with which the government managed the initial phase of the COVID-19 pandemic.[23] In particular, the question of legitimacy was raised by the judge of Frosinone, who doubted the conformity of certain provisions of Decree Law no. 6/2020 and Decree Law no. 19/2020, with Articles 76 and 77 of the Constitution (about the legislative procedure of '*decreti legislativi*' and *decreto-legge*), in the part in which the regulations in question were essentially delegating the legislative function, typical of parliament, to the government. It was therefore a question of putting the spotlight on the very frequent use of DPCMs in 2020 and 2021 in Italy. The instruments in question, in fact, are not laws of parliament but government decrees (such as administrative acts[24]); therefore, they are not the same source.

The issue of constitutionality originated from a request made by an Italian citizen not to execute an administrative sanction imposed for violating the prohibition to move without justified reason from his home, provided for by the Prime Ministerial Decree of 22 March. The doubt of constitutionality raised by the referring court, con-

20 M. Mezzanotte, Pandemia e riparto di competenze Stato-Regioni in periodi emergenziali, 'Consulta online' 2021, p. 329 and following.

21 M. Mandato, Sulla titolarità …, *op.cit.,* p. 536.

22 *Ex multis,* A. Arcuri, La Corte Costituzionale salva i DPCM e la gestione della pandemia. Riflessione e interrogativi a margine della sentenza no. 198/2021, www.giustiziainsieme.it, 19 gennaio 2021 (accessed 10.12.2021).

23 In general, about the topic, A. Iannotti Della Valle, F. Marone, Parlamentarismo e regionalismo alla prova della pandemia: bilancio costituzionale di un'emergenza, 'Le Regioni' 2021, p. 725 and following.

24 M. Calamo Specchia, F. Salmoni, A. Lucarelli, Sistema normativo delle fonti nel governo giuridico della pandemia. Illegittimità diffuse e strumenti di tutela, 'Rivista AIC' 2021, no. 1, p. 400.

cerning the special legal framework governing, *ratione temporis*, the measures that may be adopted by the President of the Council of Ministers and the sanctions connected therewith, would have led to the conduct of the appellant being deemed legitimate. From the point of view of the judge of Frosinone, the DPCM adopted by the prime minister would derogate to ordinary and primary laws, in violation of Art. 76 and 77 of the Constitution.

The argument raised by the judge of Frosinone relied on the fact that the reference made by the decree laws to the prime ministerial decrees translated into the attribution of a power to dictate real and proper general and abstract rules derogating from regulatory sources of ordinary or primary rank, i.e. having the force of law, 'thus delegating to administrative acts the decrees of the President of the Council of Ministers, the regulation of new offences, first criminal and then administrative'.

Nevertheless, the Italian Constitutional Court, in rejecting the merits of the question posed by the judge of Frosinone, does not fully clarify the nature of the DPCMs adopted during the first phase of COVID-19; the reference to the possibility of qualifying them, now as general administrative acts, now as ordinances adopted for reasons of urgency, remains not fully explicit. At the end the Court stated that the containment measures were in any case subject to determination by the primary source. It is the law that ultimately provides the measure and limits of the exercise of the prime minister's administrative matrix power.

Through this decision, the Constitutional Court basically 'saves' the standardisation model adopted during the most severe pandemic phases, consisting mostly in the exercise of the substantial legislative power by the government. Thus, what cannot be denied is that the Italian Parliament has long been ousted from exercising its function.

To date, the balance of legislative and executive power does not appear to have been restored; on the contrary, it seems that a new relationship between these two kinds of institutional powers has been achieved with a pre-eminence of the former over the latter.

3. Article 32 of the Italian Constitution. Health Protection and Balancing Mechanisms in Protecting Fundamental Rights

As has already been pointed out, one of the peculiar and main effects of the pandemic crisis in Western democratic systems has been recorded in the exercise of constitutionally guaranteed rights and duties. Already during the first phase of the pandemic, the so-called 'lockdown' emphasised the emergence of a deep and lacerating conflict of values within the democratic and liberal state, which has as its object precisely the relationship, or rather the balancing act, between the protection of life (*über alles*) on the one hand and human dignity on the other, understood as the set of

rights, freedoms and prerogatives attributed to the citizen in his dealings with public power.[25]

Also in Italy, the legislator had to question whether it was really appropriate to give absolute primacy to the protection of the life and physical integrity of the citizen (guaranteed in Art. 32 of the Constitution) and, therefore, to ensure adequate standards of public health and hygiene, and refraining from promoting effective balancing mechanisms between the constitutional values involved – as seen, first and foremost, health, personal freedom (Art. 13 of the Constitution) and freedom of movement (Art. 16 of the Constitution) right to education (Art. 34 of the Constitution), private autonomy (Art. 41 of the Constitution.); all this has raised some doubts as to the adequacy and proportionality of the restrictive and restraining measures adopted with respect to the prefixed purpose of protection, namely the reduction of contagion and the maintenance of an efficient health service.

Article 32 of the Italian Constitution expresses a unitary vision of the good of health as the object of both individual and collective interest, marked by a strong element of novelty compared to the basic approach that characterised previous periods.

The Constituent Assembly, when examining Article 26 of the Draft of the Italian Constitution, highlighted the connection between health and the integral realization of freedom and equality of individuals.

The constitutional provision, in fact, places health in a condition of well-being, as a value perceived by the individual as a result of elements internal and external to the subject and, in this respect, differs from the content of the other constitutional rights, since it does not refer directly to a material activity or legal conduct.[26]

The collective shock generated by the diffusivity and lethality of the virus, and the unpreparedness of almost all the countries involved, including Italy, made it easier for citizens to accept that the bodies delegated with legislative and regulatory powers could act in an emergency manner, adopting binding measures that restricted constitutionally guaranteed rights and sanctions to enforce the measures.[27]

Here, a reference is made to the enhancement of the right to health[28], as set out in Article 32 of the Italian Constitution, which has led to the adoption of measures restricting personal freedom and movement rights.

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25 J. Habermas, K. Gunther, Nessun diritto fondamentale vale senza limiti, inwww.giustiziainsieme.it, 30 May 2020 (accessed 10.12.2021).

26 R. Bifulco, A. Celotto, M. Olivetti (eds.), Commentario alla Costituzione, Torino 2006, pp. 659–660.

27 M. Luciani, Il sistema delle fonti del diritto alla prova dell'emergenza, in Liber Amicorum per Pasquale Costanzo, 2020, in www.giurcost.org; G.L. Gatta, Emergenza COVID-19 e "fase 2": misure limitative e sanzioni nel d.l. 16.5.2020, no. 33 (nuova disciplina della quarantena), www.sistemapenale.it, 18 maggio 2020 (accessed 9.12.2021).

28 C. Clemente, La salute prima di tutto. Art. 32 della Costituzione italiana: testo integrale del dibattito costituente e attualità di un'analisi sociologica, Milano 2020.

In order to provide a brief overview of what has happened, it is sufficient to recall that, precisely because of the need to protect the right to health, the first lockdown, in the spring of 2020, led to the total closure of all shops, schools and universities and, in general, most workplaces, except for essential ones such as supermarkets and pharmacies, and the obligation for Italian citizens not to leave their homes for any reason whatsoever, except for health reasons (having to go to the hospital), for work reasons (having to go to one's workplace, provided that it was a public body or a company that had not adopted smart working) or for other reasons clearly stated by the public authority.[29]

In addition, citizens wishing to leave their homes were required to prove the existence of one of these circumstances by completing a so-called 'self-certification' that the police authorities could request in the event of a check.[30] Violation of this obligation or the drawing up of false self-certification would have led to the imposition of administrative and criminal penalties (in the case of the crime of forgery or in the case of violation of the quarantine obligation due to COVID-19).

The protection of public health, linked to the need to limit contagion among the population and the overloading of hospital facilities, had thus led the Italian government, having established the 'state of emergency' currently still in force, to adopt the DPCMs[31], i.e. a sub-legislative regulation, with which, in fact, the restriction or limitation of certain fundamental rights was given shape, precisely on the assumption that the need to ensure the collective protection of health should not be delayed. Personal freedom, freedom of movement, freedom of education, free private economic initiative and the right to health itself, if understood as a prerogative of the individual (Art. 32, paragraph 1, of the Constitution) who freely chooses whether and how to protect his integrity, were indirectly deemed expendable rights.

In order to understand how it was possible to adopt these decisions without a direct intervention of the Italian Constitutional Court[32], aimed at restoring and affirming due equality and, therefore, a rational and proportional balance between all the rights in question, it is useful to investigate the content of the right to health, as desired by the constitutional fathers in 1946.

29 F. Ancora, Coronavirus, spostamenti, motivazioni, autocertificazione, 'Sanità Pubblica e Privata' 2020, vol. 3, pp. 5–8.

30 L. Marilotti, Contenimento del contagio, limitazioni domiciliari e salute psicofisica nell'attività di polizia sanitaria anti-coronavirus, 'in federalismi.it' 2021, vol. 1, pp. 214–258; G.L. Gatta, Emergenza COVID-19 e 'fase 2', op. cit. pp. 1–5; V. Tamburrini, La limitazione dei diritti costituzionali in tempo di pandemia: alcune osservazioni sul carattere fondamentale dell'interesse della collettività alla salute, G. Scaccia (ed.), Emergenza COVID-19 e ordinamento costituzionale, Torino 2020, p. 34.

31 See § 2.

32 In the past for Constitutional Court's interventions, S. Barbareschi, Tecniche argomentative della Corte Costituzionale e tutela dei diritti sociali condizionati. Riflessioni a partire dal diritto alla salute, 'in federalismi.it' 2018, vol. 13, p. 10.

It is now appropriate to remember how the right to health, as anticipated enshrined in Article 32 of the Italian Constitution[33], is protected both in an individual dimension, precisely as a right[34], and in a collective dimension, as a public value connected to the safeguarding of public health. In its collective dimension, health is defined as a public 'interest'[35], i.e. as a super-individual interest that unites an entire collective or society, for the protection of which all members of the community are required to adopt a certain behaviour or to avoid it.

The right to health is therefore protected from a perspective that ensures a balance between individual and collective reasons. In this context, the human being is placed at the very centre of the protected interest and not as an instrument to be placed in relation to the state, as the final subject to be protected.[36]

This is demonstrated by the fact that any citizen may be subjected to compulsory health treatment (such as, for example, the vaccine[37], which is still under discussion in Italy) except by provision of law, following a parliamentary debate, and provided that fundamental human rights are not violated and that there is a 'cost–benefit' ratio between the inoculation of the population and the associated spread of harmful events for human health.

In fact, Art. 32 of the Italian Constitution provides that 'the Republic protects health as a fundamental right of the individual and as interest of the community and guarantees free treatment for the indigent. No one may be obliged to undergo a given medical treatment except by provision of law. The law may in no case violate the limits imposed by respect for the human person.'

The right to health, as constitutionalised in Italy, actually reveals a sort of 'opposition', a perennial conflict between two different ways of conceiving the human being and his dignity.[38]

At present, for example, the introduction of compulsory vaccination to protect against COVID-19 infection is being discussed in Italy. This field is a constant battleground between scientists and politicians.

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33 Ex multis, A. Simoncini, E. Longo, Art. 32, in Commentario alla Costituzione. Rapporti etico-sociali, (in:) R. Bifulco, A. Celotto, M. Olivetti (eds.), Commentario..., *op. cit.,* pp. 659–660.

34 G. Bianco, Persona e diritto alla salute, Padova 2018.

35 A. Pizzorusso, Interesse pubblico e interessi pubblici, 'Rivista Trimestrale diritto e procedura civile' 1972, pp. 58–87.

36 A. De Cupis, Integrità fisica, Enciclopedia Giuridica, Roma,1989, vol. 17, pp. 1–2.

37 About vaccines and obligations, see C. Magnani, I vaccini e la Corte costituzionale: la salute tra interesse della collettività e scienza nelle sentenze 268 del 2017 e 5 del 2018, in Forum di quaderni costituzionali, pp. 10–15.

38 In the Italian perspective, ex multis, F. Sacco, Note sulla dignità umana nel diritto costituzionale europeo, S. Panunzio (ed.), I diritti fondamentali e le Corti in Europa, Napoli 2005, p. 609; S. Prisco, La dignità nel dibattito biogiuridico e biopolitico. Linee ricostruttive, 'BioLaw Journal' 2019, vol. 2, pp. 61–82.

In any case, these provisions, according to which medical treatment can only be imposed by law and in no case can it 'violate the limits imposed by respect for the human person', have been further specified by constitutional jurisprudence. In fact, it has been clarified that 'Article 32 of the Constitution postulates the necessary balancing of the individual's right to health (also in its content of freedom of treatment) with the coexisting and reciprocal right of others and with the interest of the community', so that the law imposing medical treatment is not incompatible with Article 32 of the Constitution[39]. Treatment is intended not only to improve or preserve the state of health of the person subjected to it, but also to preserve the state of health of others; if it is provided that it does not adversely affect the state of health of the person who is obliged to undergo it, except only for those consequences that appear normal and, therefore, tolerable; and if, in the event of further damage, the payment of a fair indemnity in favour of the injured party is provided for, regardless of the parallel protection of compensation.

More broadly, about the provisions on the right to health, the general consideration that these fundamental rights are decisive 'for the construction of the identity of their holders', but at the same time they establish the order of a political and social community.

In this sense, it is fundamental to reflect on whether 'health reasons' can determine freedom of movement and freedom of assembly in the respective provisions that consecrate them at constitutional level. The same question would also seem to apply to other constitutional rights, the exercise of which presupposes assembly as is the case for the enjoyment of religious freedom (e.g. the profession of worship); or the right to education; or the right to work.

What actually matters, in order to ensure a minimum level of proportionality and reasonableness to be respected in the limitation of constitutional rights, is that the limitation should take place only as a last step, for an absolutely circumscribed period of time and for the achievement of an objective of common interest and only after the legislator has acknowledged that the individual citizen is absolutely unable to contribute with his own autonomous and free behaviour to the safeguarding of the collective interest.

Only in this hypothesis could the absolute ineffectiveness of health protection as a right of the individual in a community perspective give way to the use of instruments and regulatory measures that compulsorily tend to achieve the above-mentioned objective.

Definitively, what can be said is that the Italian Constitution, therefore, does not impose a 'model' but, on the one hand, seeks to ensure that each individual can develop his own capacity for self-determination even in the field of the right

39 About that, see F. Modugno, Trattamenti sanitari «non obbligatori» e Costituzione, 'Dir. e Soc.' 1982, p. 313; S. Panunzio, Trattamenti sanitari obbligatori e Costituzione, 'Dir. e Soc.' 1979, p. 875.

to health, choose treatment in the light of informed consent or even not have any treatment at all.

However, the state may intervene when the right of the individual is not capable – by itself – of ensuring the 'public interest' of the community, i.e. a safe and adequate public health situation.

The collective value of the right to health can sometimes justify compulsory health treatments such as, only in cases strictly provided for by law, vaccines. This was recently recognized by the Council of State's ruling no. 7045/2021[40], which stated that 'the selective compulsory vaccination introduced by Article 4 of d.l. no. 44 of 2021 for medical personnel and, more generally, of health interest responds to a clear purpose of protection of these personnel in the workplace and, therefore, for the benefit of the person, according to the personalist principle'[41], but also for the protection of patients and users of healthcare, public and private, according to the principle of solidarity, which animates the Constitution, and more particularly of the most fragile categories and the most vulnerable individuals (due to the existence of previous illnesses, even serious ones, such as cancer or heart disease, or advanced age), who are in need of care and assistance, often urgent, and for this reason are in frequent or continuous contact with healthcare or social-healthcare personnel in places of care and assistance. The *ratio* for this specific provision is to be found not only in the introduction to Decree Law 44/2021, which highlights 'he extraordinary need and urgency of issuing provisions to ensure homogeneous national activities aimed at containing the epidemic and reducing risks to public health, with particular reference to the most fragile categories, also in the light of the data and medical and scientific knowledge acquired to deal with the epidemic of COVID-19 and the commitments made, including at international level, in terms of prophylaxis and vaccination coverage', but also in the same text of Art. 4, when in paragraph 4 it expressly recalls the 'purpose of protecting public health and maintaining adequate conditions of safety in the provision of treatment and care services'.

The Constitutional Court too, in 2018[42], rejected an appeal by the Veneto region[43], subordinating its legitimacy to a series of requirements: circumstances such as to require a 'pact of solidarity' between citizen and state; negative consequences that are absent or normally tolerable for the obliged party; limited number of compensations for more serious cases regardless of fault; scientific reasonableness.

40 See Constitution Stato, sent. 20 October 2021, no. 7045, 'Rass. dir. Farmaceutico' 2021, p. 1400.

41 G. Zampini, L'obbligo di vaccinazione anti Sars-Cov-2 tra evidenze scientifiche e stato di diritto, 'Il Lavoro nella giurisprudenza' 2021, p. 221.

42 Italian Constitutional Court, sent. no. 5/2018.

43 See L Durst, Il modello italiano di vaccinazione obbligatoria tra giurisprudenza costituzionale e sviluppi legislativi, 'GiustAmm.it' 2019, no. 1, p. 13.

Conclusions

In the space given to me to examine the case of Italy, it has certainly not been possible to highlight all the various profiles, both positive and critical, that characterize this legal system in relation to the pandemic emergency.

The Italian legal system has overall proved to be adequate, thanks to the flexibility and plurality of legal instruments provided for in the Constitution, first and foremost the *decreto-legge*, although the balance between the powers of the state seems to be skewed in favour of the government, in responding to legislative needs for an immediate response to Covid. If, however, from a formal point of view any significant profiles of constitutional incompatibility have emerged yet, from a substantial point of view some critical profiles remain.

There is no doubt that the decision to prioritise the protection of the public interest of health over the exercise of many individual rights and freedoms (movement, association, religion, etc.) was not the result of a proper weighing up of the interests at stake, which should have taken place in parliament, but the result of an emergency situation.

Certainly, profiles of unconstitutionality may emerge if the 'state of emergency' does not come to an end within a few months. Recently, it has been prorogated until March 2022. Nevertheless, if the pandemic crisis, as it seems to be, continues to be the reality and not only a passing emergency, the Italian state should intervene only with law promulgated by the parliament, ensuring an effective and objective balancing of all interests, rights and liberties. Only in this way can the Italian democracy prevail over the pandemic and over other emergencies.

REFERENCES

Algostino A., Costituzionalismo e distopia nella pandemia di Covid-19 tra fonti dell'emergenza e (s)bilanciamento dei diritti, 'Costituzionalismo.it' 2021, vol. 1.

Ancora F., Coronavirus, spostamenti, motivazioni, autocertificazione, 'Sanità Pubblica e Privata' 2020, vol. 3.

Arcuri A., La Corte Costituzionale salva i DPCM e la gestione della pandemia. Riflessione e interrogativi a margine della sentenza no. 198/2021, in www.giustiziainsieme.it, 19 January 2021.

Autori Vari, Il Mondo dopo la fine del Mondo, Bari-Roma 2020.

Azzariti G., I limiti costituzionali della situazione d'emergenza provocati dal Covid-19, 'Questione giustizia' 27 March 2020.

Baldini V., Conflitto di competenze tra Stato e regione nella lotta alla pandemia. Un sindacato politico della Corte costituzionale? Riflessioni a margine della sent. no. 37 del 2021 della Corte costituzionale, 'dirittifondamentali.it' 2021, no. 1.

Baldini V., Emergenza sanitaria e Stato di prevenzione, 'Dirittifondamentali.it' 2020, no. 1.

Barbareschi S., Tecniche argomentative della Corte Costituzionale e tutela dei diritti sociali condizionati. Riflessioni a partire dal diritto alla salute, 'federalismi.it' 2018, vol. 13.

Bianco G., Persona e diritto alla salute, Padova 2018.

Bifulco R., Celotto A., Olivetti M. (eds.), Commentario alla Costituzione, Torino 2006.

Caggiano M., I vincoli di legittimità costituzionale, sovranazionale e internazionale quale garanzia dei diritti fondamentali degli stranieri nell'ordinamento italiano, 'Studi sull'integrazione europea' 2021.

Calamo Specchia M., Salmoni F., Lucarelli A., Sistema normativo delle fonti nel governo giuridico della pandemia. Illegittimità diffuse e strumenti di tutela, 'Rivista AIC' 2021, no. 1.

Caravita B., L'Italia ai tempi del coronavirus: rileggendo la Costituzione italiana, 'Federalismi.it' 2020, no. 6.

Cerere A.M., Ruoli e competenze dei diversi livelli istituzionali nella gestione della pandemia Covid 19 in Italia tra distonie sistemiche e carenze strutturali, 'Rivista AIC' 2021, vol. 3.

Chomsky N., Precipice, London, 2021.

Clemente C., La salute prima di tutto. Art. 32 della Costituzione italiana: testo integrale del dibattito costituente e attualità di un'analisi sociologica, Milano 2020.

Clementi F., Il lascito della gestione normativa dell'emergenza: tre riforme ormai ineludibili, 'Osservatorio AIC' 2020, no. 3.

De Cupis A., Integrità fisica, Enciclopedia Giuridica, Roma1989, vol. 17.

Di Cesare D., Virus sovrano? L'asfissia capitalistica, Torino 2020.

Durst L. Il modello italiano di vaccinazione obbligatoria tra giurisprudenza costituzionale e sviluppi legislativi, 'GiustAmm.it' 2019, no. 1.

Formisano A., Limiti e criticità dei sistemi costituzionali a fronte dell'emergenza Covid-19, 'Nomos'2020, no. 1.

Frosini T.E., La libertà costituzionale nell'emergenza costituzionale, (in:) T.E. Frosini (ed.), Teoremi e problemi di diritto costituzionale, Milano 2008.

Gatta G.L., Emergenza COVID-19 e "fase 2": misure limitative e sanzioni nel d.l. 16.5.2020, no. 33 (nuova disciplina della quarantena), www.sistemapenale.it, 18 March 2020.

Giuffré F., Calamità naturali ed emergenza nella transizione costituzionale italiana: spunti a proposito di retaggi statualistici e nuova ispirazione autonomistica, 'Diritto e società' 2001, no. 1.

Guzik-Makaruk E.M., Some remarks on the changes in the Polish Penal Code during the pandemic, 'Bialystok Legal Studies' 2021, vol. 26, no. 6.

Habermas J., Gunther K., Nessun diritto fondamentale vale senza limiti, www.giustiziainsieme.it, 30 May 2020.

Iannotti Della Valle A., Marone F., Parlamentarismo e regionalismo alla prova della pandemia: bilancio costituzionale di un'emergenza, 'Le Regioni' 2021.

Lorenz H., Turhan E., The Pandemic and Criminal Law – A Look at Theory and Practice in Germany, 'Bialystok Legal Studies' 2021, vol. 26, no. 6.

Lucarelli A., Costituzione, fonti del diritto ed emergenza sanitaria, 'Rivista AIC' 2020, no. 2.

Luciani M., Il sistema delle fonti del diritto alla prova dell'emergenza, 'Rivista AIC'2020, no. 2.

Magnani C., I vaccini e la Corte costituzionale: la salute tra interesse della collettività e scienza nelle sentenze 268 del 2017 e 5 del 2018, 'Forum di quaderni costituzionali'.

Mandato M., Sulla titolarità delle competenze in materia di emergenza sanitaria. A proposito della sentenza della Corte Costituzionale no. 37/2021, 'Rivista Quadrimestrale di diritto pubblico' 2021.

Marilotti L., Contenimento del contagio, limitazioni domiciliari e salute psicofisica nell'attività di polizia sanitaria anti-coronavirus, 'federalismi.it' 2021, vol. 1.

Mezzanotte M., Pandemia e riparto di competenze Stato-Regioni in periodi emergenziali, 'Consulta online' 2021.

Morana D., Sulla fondamentalità perduta (e forse ritrovata) del diritto e dell'interesse della collettività alla salute: metamorfosi di una garanzia costituzionale, dal caso ILVA ai tempi della pandemia, 'Consulta online', 30 April 2020.

Modugno F., Trattamenti sanitari «non obbligatori» e Costituzione, 'Dir. e Soc.' 1982.

Ormanni A., Necessità (stato di), 'Enc. Dir.', vol. XXVII, Milano 1995.

Panunzio S., Trattamenti sanitari obbligatori e Costituzione, 'Dir. e Soc.' 1979.

Prisco S., La dignità nel dibattito biogiuridico e biopolitico. Linee ricostruttive, 'BioLaw Journal' 2019, vol. 2.

Pizzorusso A., Interesse pubblico e interessi pubblici, 'Rivista Trimestrale diritto e procedura civile' 1972.

Raganelli B., Stato di emergenza e tutela dei diritti e delle libertà fondamentali, 'Il diritto dell'economia' 2020, vol. 3.

Razzano G., L'amministrazione dell'emergenza, profili costituzionali, Bari 2010.

Rimoli F., Emergenza e adattamento sistemico. Sui limiti di resilienza degli ordinamenti democratici. Parte Prima, 'Lo Stato, Rivista Semestrale di Scienza costituzionale e teoria del diritto' 2020, no. 14.

Sacco F., Note sulla dignità umana nel diritto costituzionale europeo, (in:) S. Panunzio (ed.), I diritti fondamentali e le Corti in Europa, Napoli 2005.

Scalia F., Principio di precauzione e ragionevole bilanciamento dei diritti nello stato di emergenza, Federalismi.it, 18 November 2020.

Silvestri G., Covid-19 e Costituzione, in UniCost.eu.

Simoncini A., LONGO E., Art. 32, in Commentario alla Costituzione. Rapporti etico-sociali, (in:) R. Bifulco, A. Celotto, M.Olivetti (eds.), Torino 2006.

Tamburrini V., La limitazione dei diritti costituzionali in tempo di pandemia: alcune osservazioni sul carattere fondamentale dell'interesse della collettività alla salute, G. Scaccia (ed.), Emergenza Covid-19 e ordinamento costituzionale, Torino 2020.

Tripodina C., La Costituzione al tempo del Coronavirus, 'Costituzionalismo.it' 2020, vol. 1.

Venanzoni A., L'innominabile attuale. L'emergenza Covid-19 tra diritti fondamentali e stato di eccezione, 'Forum di Quaderni Costituzionali', 26 March 2020.

Wieczorek M., Some aspects of the protective function of labour law in the COVID-19 era, 'Studia Iuridica Lublinensia' 2021, vol. 30, no. 1.

Zampini G., L'obbligo di vaccinazione anti Sars-Cov-2 tra evidenze scientifiche e stato di diritto. 'Il Lavoro nella giurisprudenza' 2021.