



PANDEMIC AND HUMAN RIGHTS: ITALY AND THE STATE OF EMERGENCY AT THE TIME OF THE CORONAVIRUS

The essay deals with the emergency measures enacted by Italian Government in order to halt the spread of the virus Sars-Cov-2. Such measures have restricted several fundamental rights, protected both under Italian Constitution and under the European Convention on human rights (ECHR) and the International Covenant on civil and political rights (ICCPR).

However, the aforementioned international treaties include two provisions (art. 15 of the ECHR and art. 4 of the ICCPR) which allow States parties to temporarily suspend the guarantee of certain human rights, in order to face and overcome a state of emergency «threatening the life of the nation». To date, Italy has not resorted to these clauses yet.

The essay argues the need to activate such legal mechanism of suspension of guarantees: in this way, the consistency of Italian restrictive measures with the ECHR and the ICCPR would be ensured. Indeed, the article shows that the current pandemic, due to Sars-Cov-2, appears to be a relevant state of emergency under art. 15 of the ECHR and art. 4 of the ICCPR. Moreover, it explains why ordinary limitations to fundamental rights allowed by the aforementioned treaties cannot be considered sufficient to ensure the international legitimacy of Italian restrictions.

Furthermore, the essay points out that a constitutional provision allowing the suspension of guarantees is missing in the Italian legal system.

Finally, several reflections will be provided about judicial guarantees related to the restrictive measures at issue and about the need to ensure democracy and the rule of law during states of emergency, with specific reference to the role of the Italian Parliament.