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2020 PANDEMIC: EMERGENCY DECREES AND ORDINANCES

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1. THE LEGAL RULES AGAINST 2020 PANDEMIC: A *TERTIUM GENUS*

The recent institutional developments – started with the Council of Ministers deliberation of January 31, 2020 and followed through emergency decrees providing a catalogue of possible ordinances at disposal (law-decree of February 23, 2020

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converted into law n. 13 of May 5, 2020 and law-decree n.19 of March 25, 2020) – seem to have brought back rules which, from the common background of declaration of state of siege, took different avenues more than one century ago, beginning with the legal scholarships after the 1908 earthquake in Calabria and Sicily.

After a few years, law-decrees were distinguished from pre-existent administrative extraordinary and urgently implementable local ordinances (*ordinanze contingibili e urgenti*), the necessity and urgency ordinances (*ordinanze di necessità e urgenza*) adopted by the Prefect or Minister of Interior (*Ministro dell'Interno*),, and the power vested with the Government of organizing emergency assistance (1919) which, was then later structured as national service of civil protection (1970).

The latter is the institutional development which was inspired by the state of siege and was turned into the emergency declaration which, in time, first legitimized public officials and amongst them Ministries of Public Works, and, as such, some Presidents of the Regions, then again the Ministries of Civil Protection, and last the President of the Council of Ministries to act by resorting first to extraordinary resources and then by enforcing ordinances in derogation to any other rule currently in force.

2. THE NEW COMPETENCES DIVISION AMONG ADMINISTRATIVE EMERGENCY POWER HOLDERS

In the healthcare sector (*Igiene*) and since the unification of Italy, the power of issuing extraordinary and urgently implementable ordinances (*ordinanze contingibili e urgenti*) has always been vested with the Mayor, the Prefect and the Minister of Interior. After the healthcare reform of 1978, the regional government and the Minister of Sanitation, later renamed Minister of Health, were also granted the power of issuing these ordinances. In the remaining areas of housing and public policy, extraordinary and urgently implementable ordinances (*ordinanze contingibili ed urgenti)* for public safety reasons are adopted at local level by Majors in their capacity as Government officials, and over and beyond them, by the Prefect while at national level, this power is vested with the Minster of Interior. When it comes to public order, the power of issuing administrative necessary and urgency ordinances (*ordinanze amministrative di necessità e urgenza*) is definitely vested with the State administrative bodies and is shared between the Prefect and the Minister of Interior.

When it comes to other considerations in terms of civil protection, the process starts with the nation-wide deliberation by the Council of Ministers on the state of emergency and, according to the nature and type of circumstances, on its timespan and territorial coverage. Such deliberation also sets forth both limits and modalities on the adoption of ordinances of *civil protection* also in derogation of *any legal rule currently in*

force, yet in full compliance with the general principles of public policy and EU law (articles 24, 25, legislative decree n. 1 of 2018).

These *civil protection ordinances* – specifically ground and enforced only upon prior agreement with the Regional Governments and the Autonomous Provinces concerned – are issued by the Prime Minister or – if not otherwise provided in the declaration of emergency – by the Head of the Department of Civil Protection, by delegation granted by the latter (article 5 and 25, legislative decree n. 1 of 2018).

The concept of emergency and powers so granted bridge both the national and local levels, first granting priority to orders by Majors and Presidents of Regional Governments (see law-decree n. 6 of 2020, cit. art. 1, presiding authorities), then legitimizing regional ordinances only in a second instance (pending the Prime Minister decrees and for a specific timespan only), namely in the event of a definite and proven worsening of health risks within their territory. Therefore, these ordinances are allowed only insofar they are more restrictive, but without affecting the productive activities and the ones of strategic significance for the national economy (article 3, law-decree n. 19 of 2020). Last, the extraordinary and urgently implementable ordinance (*ordinanze contigibili ed urgenti*) issued by Majors do not have effect if against measures enforced by the President of the Council of Ministers or any other measure provided by the law-decrees.

For the duration of the emergency, the Prefect may schedule the deployment of all actions permitted by law upon agreement with all parties involved whenever needed to guarantee the effectiveness, or the congruity, of the application of the emergency measures (article 1, law-decree n. 19 of 2020, cit., Tar Calabria, 9 May 2020, n. 841).

3. LACK OF FORCE OF LAW AND ADMINISTRATIVE NATURE OF THE EMERGENCY ORDINANCES

A second merging has taken place because of the question of the effects that pools together the two types of ordinances. They both lack the force of law, despite it is commonly acknowledged that, implicitly – the necessity and urgency ordinances (*ordinanze di necessità e urgenza*) and the extraordinary and urgently implementable ordinances *(ordinanze contingibili e urgenti*) – or explicitly – the civil protection ordinances *(ordinanze di protezione civile)* –they may detach from the legal rules currently in force.

Once a clear-cut separation is made between administrative ordinances and law-decrees, and rolled back to the theories on the constituent power any further definition of necessity, – acts of facts – as source of laws, the term ordinance legally defines some judicial (articles 131, 134 Civil Procedure Code; article 21, l. 6 December 1971, n. 1034) also some administrative actions, like orders based on need and urgency and/or emergency situations.

The question which is often raised of granting to the administrative extraordinary and urgent ordinances[2] force of law has been solved by acknowledging that a law-maker is not permitted to grant (or cancel) force of law to legislative and/or administrative deeds, since such power is only vested in the Constitution, and the same goes for laws (article 70

[2] See C. Cost. no.. 8/1956; no. 26/1961; no. 100/1987; no. 14/1971.

§§ Constitution) and acts having force of law (article 76 and 77 Constitution) that according to the Constitution must be reviewed by the Constitutional Court (article 134 Constitution).

The impossibility of granting the force of law to the necessity and urgency ordinance (*ordinanze di necessità e urgenza)* as well as the extraordinary and urgently implementable ordinances (*ordinanze contingibili e urgenti*) has always forced to acknowledge their administrative nature, thereby making them subject to the limitations generally applicable to administrative acts. The ordinance, on the one hand, as the acts with the force of law, is bound to the constitutional rules, substantial (articles 13, 21, 32, 41, 42 Constitution) and procedural (see statutory reserve); on the other hand, and this is a peculiar treat, it is not able to deviate from the *principles of the legal order, even if not of constitutional rank.*

This because the ability to derogate from rules currently in force, although expressly provided, can always be tracked back when it comes to interpretation and compliance to the statutory rules of an ordinance, which more and more explicitly prevent the ordinances to deviate from the principles of the legal order, a limit which proves the downgraded status of administrative ordinances compared to law-decrees.

The legislation on the civil protection of the 70s expressly states that civil protection ordinances might be issued 'in derogation to the legislation currently in force', marking a formal difference compared to the necessity and urgency administrative ordinances whose statutory rules only provided the power of issuing 'extraordinary and urgently implementable' ordinances or 'needed acts' to put an end to or deal with a state of necessity.

The Constitutional Court, as we shall see later, by resorting to a case law by the Court of Cassation dating back to the second half of the XIX century, gives a restrictive interpretation of them, setting the limit based on the principles of legal order for both ordinances – the extraordinary and urgently implementable (*ordinanze contingibili e urgenti)*, the necessity and urgency ordinances (*ordinanze di necessità e urgenza)*, and the other emergency ones – a limit which eventually has been declared mandatory for both by a subsequent legislation (legislative decree 18 August 2000, n. 267, article 50; legislative decree 2 January 2018, n. 1, article 25).

4. THE LIMIT OF THE PRINCIPLE OF PROPORTIONALITY-CONGRUITY FOLLOWING THE DEFECT OF ENFORCEABILITY

The rule establishing the ordinance power contains provisions on the issuing authority (active subject), the conditions for the exercise of power, the scope (or reasons) of public interest and in some cases also the actions to be carried out, while definitions of the type of action and – where needed – of the passive subject, which may instead be taken from other statutory rules.

Rules herein providing the ordinance power, while in derogation to division of competences of public authorities as well as within their departments, make reference to the holder of such ordinance power all powers attributed by law to any public administration and/or authority by freeing them from all specific requirements and/or procedural liens which might be incompatible with the urgency of providing such powers and replacing them with less stringent ones, as dictated by the definitions of the actions (e.g. hygene),

public interest (e.g. public health), and requirements (e.g. need and urgency, emergency) provided by the rule establishing the necessity and urgency ordinance power..

All matters causing the annulment of ordinances different from the one of misuse of power are indeed marginal: annulment due to incompetence issues is confined to the relationships among different monocratic authorities as well as the breach to the law since the ordinance can be fully enforceable only to the extent of the degree of urgency of whatever provision. However, the misuses of power in the two types of ordinance have different grounds.

For the older extraordinary and urgently implementable ordinances (*ordinannze contingibili e urgenti)* and the necessity and urgency ordinances (*ordinanze di necessità e urgenza)*,,the misuse of power has always been fully established and based on a double test on rationale: a) proportionality-congruity of such ordinances between severity of the situation and actual limitations imposed onto the recipient*s in concreto*; b) proportionality-congruity of the breaches compared to the actual public interest which the public authority wishes to achieve through the issuance of such ordinance issued. It was enough that one of the two was non-proportionated for the success of the annulment action.

With regard to civil protection ordinances, misuse of power is equally grounded in the second test of proportionality-congruity, while for the first one proportionality is tested in comparison with the general state of emergency as set forth in the binding statement concerning the whole territory.

5. BALANCED PROPORTIONALITY AND THE PRINCIPLES OF THE LEGAL ORDER

Misuse of power alone has seldom been enough in keeping such ordinances within the scope of administrative law both a substantially and formally. Historically, this issue was raised in some cases where powers caused severe limitations to Constitutional freedoms which by the republican legal order were subject to a statutory absolute reserve (freedom of religion, freedom of press, right to petition to the Parliament), rights of freedoms which the Albertine Statute already protected although as infringements to the principles of the concrete legal order prevailing in a given historical period (see below). These cases originated from the strong conflicts, between State and Church at the end of the XIX century, and later upon ratification of the NATO Treaty in the early years following the proclamation of the Republic, which respectively came to an end following the rulings by the Court of Cassation of the Kingdom of Italy[3] and the Constitutional Court (n. 8/1956; 26/1961).

The peculiar structure of the rule establishing enforceability of an ordinance does not spell out an abstract determination of the power to restrict subjective rights (the paradigm is given by art. 2 t.u.p.s.: 'enforces, in situations of need and urgency, actions which are deemed indispensible in the public interest') and therefore one could have

[3] Cass. Turin, 11-7-1877; Cass., 13-5-1877, in *Riv. adm*., 1877, 479; Cass., 30-5-1888, Manelli, *ibid.*, 1888, 557.

doubted that, established as such, the ordinance power of a public administration knows no limits except the aforementioned about proportionality-congruity, with the consequence that with the worsening of a threat to the public interest would justify a proportional and growing limitation to subjective rights. The emersion of the principles of the legal order – as a second limit – to the necessity and urgency ordinance power has prevented this outcome.

A few years after the unification of the Italian State, the principles of the legal order were regarded as a general limitation to the administrative regulatory and necessity and urgency ordinance power. . 'A Major may not enforce, through his actions, measures that are not allowed by general law and legislative principles and public institutions, or which are deemed to concern or govern public interests of a higher and more general order'. The 'actions under the Major's authority shall not go beyond the scope of the administrative power'[4].

In legal order of the Italian Republic, the following need be mentioned: the procedural (statutory reserve) and substantial limits that protect subjective rights since, because they are limits for the Parliament, they are *a fortiori* so deemed to be limits for the Government. It is reaffirmed the limit of the principles of the legal order as 'living law' which judges recognize, balancing, in the concrete case, the subjective rights as granted in

[4] V. Conti, *Il sindaco nel diritto amministrativo italiano Naples*, 1875, 286-87; Carnevali, *Trattato di diritto comunale italiano*, Mantua, 1899, 1893.

the Constitution. The idea – even just as *obiter dictum* – is that in those matters entailing a statutory absolute reserve is hard to purport an ordinance based on need and urgency, while the opposite is true in the event of relative statutory reserve.

The public administration may indeed face the need of having at its own disposal movable and immovable properties or performances corresponding to different abilities that are deemed to be indispensable to deal with the emergency situations.

To comply with the requirements established by the statutory reserve on the matter of property (article 42 Constitution) for instance, combining together the rule establishing the ordinance power and article 7, l. 20 March 1865, n. 2248 All. E – or article 835 Civil Code – since both the provisions grant the public authority a general power to make use of the private property in case of need and urgency, save the compensation to the owner. In most cases, this is enough because the law establishes at the same time both the performance required (make use of a good which is property of a third party) and the evaluation about which good is of primary importance in the case, by defining each public interest as superior to the private property, insofar a compensation is ensured.

The prior determination by law of the needed performance (e.g. labor injunction) does not provide an *ex ante* exhaustive identification of subjective entitlements sacrificed in a real case, nor of the public interest protected through the ordinance each time. From the legislative provision – which makes available to the public administration any performance pursuant to the 'status, skill or craft' of the passive subject (article 258 t.u.s.) – it is impossible to identify either which subjective legal entitlements might be involved and sacrificed either which public interests they will be sacrificed for There is a difference

between requiring a six-month job of eight or sixteen hours per day: in the first case, the individual economic freedom is compromised, while in the second the very right to health or to private family life is jeopardized, with a possible violation of the maximum limits to be complied with by law (article 36, c. 2 Constitution).

The principles of the legal order have therefore reached the status of a further limit-test of the proportionality-balance. Once verified that the performance required is in compliance with the paradigm (statutory reserve: article 23 Constitution), there is still the further limit of compliance with the principles of the legal order: the primacy which the public administration assigned to certain subjective legal entitlements (right to health of the community or of some categories of citizens) and compliance with other legal entitlements which have been sacrificed (economic freedom, right to work, free circulation, right to education, etc.).

The judiciary is always entitled to evaluate the balancement between subjective rights as settled by the ordinance, according to an argumentative reasoning which, in our legal tradition, has been described as 'reasoning according to the principles of the legal order' (Constitutional Court., n. 26/1691), therefore vesting an ordinary judge or placing under exclusive jurisdiction of the administrative judge the task of interpreting the actual boundary between liberty and authority. It is indeed an actual balance on an actual case, therefore subject to different solutions, especially because of the possible different assessments of different needs of each case, from the moment a conflict between different subjective legal entitlements emerge, which has not been exhaustively regulated by the law-maker though general and abstract rules.

6. CONSTITUTIONALITY REVIEW BETWEEN LAW-DECREES AND PRINCIPLES OF THE LEGAL ORDER IN THE RELATIONSHIP BETWEEN LEGALITY AND EFFECTIVENESS

In this context, the novelty for Italy has been the definition by the law-decree of a catalogue of possible ordinances contents (at the beginning not exhaustive, law-decree n. 6 of 2020, cit., art. 1, c. 2) which at the legislative level indicate abstract types of civil protection decrees or ordinances, that might be issued by the Prime Minister and, secondarily, by the President of the Regional Government and also by the Majors, respectively through decrees (instead of civil protection ordinances) or extraordinary and urgent ordinances, always in compliance with all the limits from the 'principle of adequacy' (sic!) or the 'principle of proportionality', both in accordance with the effective risk on the national territory or sections of it (art. 1, c. 2, law-decree n. 19 of 2020, cit.).

In the law-decrees here examined, one might find types of ordinances which set severe limitations to freedom of circulation (article 16 Constitution)[5], right of assembly, except in the event social distancing is applicable (article 15 Constitution)[6], exercise of

[5] Artt. 42, 41, 23, 16, Cost.: C. Cost. n. 8/1956, n. 26/1961; n. 100/197.

[6] Closing to the public of public spaces (urban roads, parks, play areas, public gardens); limitation or prohibition of entry into specific territories (municipal, provincial, regional, or national); precautionary quarantine for those who have had close contact with infected patients; absolute quarantine of those who tested positive for the virus; limitations, reduction, suspension or suppression of transport services (automotive, rail, air, local public transport, maritime transport in inland waters), including non-scheduled ones.

freedom of religion (article 19 Constitution)[7], enjoyment of cultural heritage (article 9 Constitution)[8], limitation to private and family life (article 30 Constitution)[9], economic freedom (article 41 Constitution)[10], right to work (article 4 Constitution)[11], discontinuation of educational provision at all levels, inclusive of university and vocational training, except

[7] Limitation, suspension or prohibition of meetings or gatherings in public places, events or initiatives of any nature and of any form of meeting in public or private places (cultural, recreational, sporting, recreational, etc..) and of any type of meeting or event (conferences, conventions), except for the possibility of remote connection.

[8] With suspension of civil and religious ceremonies, limitation of any form of religious cerimonies in public or private places.

[9] With limitation, suspension or closure of museums or other institutes of culture.

[10] With specific prohibitions or limitations on accompanying patients to the emergency, acceptance or first aid departments; relatives and visitors to health or social healthcare facilities (hospitality and long-term care, assisted healthcare residences, hospices, rehabilitation and residential facilities for the elderly), as well as visits to penitentiaries and penitentiary institutions for minors.

[11] With limitation, suspension or closure of aggregation places (cinemas, theaters, concert halls, ballrooms, discos, game rooms, betting rooms and bingo halls, cultural and social centers) and administration activities to the public; on-site consumption of food and drink, including bars and restaurants; fairs and markets and all retail commercial activities, except for agricultural, food and basic necessities, ensuring the safety distance; with limitation or suspension of any other business or professional activities, or self-employment, without prejudice to the possibility of excluding services of public necessity and subject to the definition of security protocols and adequate individual protection tools.

for cases where social distancing is possible (article 34, 33,3 8 Constitution)[12]. Among all, prohibition to leave home except for well-ground reasons ha gained momentum.

Anyone can see the vast series of limitations to freedom which involve areas subject to statutory absolute reserve, with limitations to rights which do not have essentially a reference to assets – which nonetheless are confirmed for requisitions of use and property [13] – therein the strong interference into the economic freedom does not even indirectly express the content nor the requisition of facilities,[14] nor of special rules on temporary obligations and constrictions – as already happened in different historical contexts – in order to have the economic production fulfilling the public or private demand of certain goods indispensable to tackle the emergency (article 836 Civil Code).

With regard to the exception of social distancing – if suitably interpreted as regards the restriction imposed on the right of assembly and maybe also implicitly of

[12] Excluding the physical presence of employees in public offices, without prejudice to indifferent activities and the provision of essential services primarily through the use of agile working methods; limitation or suspension of insolvency and selective procedures aimed at hiring personnel from public and private employers, unless this is done exclusively on curricular basis or remotely, without prejudice to initiating the procedures within the terms of law and the conclusion of those with evaluation of candidates already carried out and of the carrying out of procedures for the assignment of specific roles.

[13] With suspension of educational services for children, educational activities of schools of all levels, higher education institutions, including universities; as wella as training activities (masters, professional courses, universities for the elderly) including exam tests, without prejudice to the possibility of remote learning.

[14] Art. 835 of the Italian Civil Code, art. 6, d. L. n. 18 of 2020, cit.

religion and enjoyment of cultural heritage – it is striking that this be indicated as a "possibility" and not, instead, as an incompressible exercise of the right to education or to private and family life with non-free people, to whom it shall be indeed necessary to see reaffirmed as a modality of exercise of the right coessential to the heavy limitation to the liberties in emergency situations.

One can indeed see the difference, although debatable as it happens with all classifications – between the so-called negative liberties, like the right to assemble in a public space or the exercise of the freedom of religion, compared to the so-called social rights, like education or training, to which the right to private and family life versus those whose freedoms are restricted – based on emergency situations - for health or criminal reasons (prison).

If for the right to assembly – inclusive of congresses, conferences, seminars – in public, private venues and venues open to the public, it is enough to state contextually to the potential prohibition that the option of exercising such right may be exercised at a distance, this is not so for those rights whose enjoyment need a public or private granting of services both as a main scope (e.g. education, also university level: articles 34 and 35 Constitution) and as ancillary one, coupled with to the main limitation of the right to personal liberty, regardless of it being mutually agreed upon (article 32 Constitution) or by law and justified by the judicial authority (article 25 and 27 Constitution).

The systemic impact that this definition of a list of laws having a typical and non-exclusive content of ordinances that may be issued by local and national authorities goes beyond these considerations.

Through these legislative provisions, a centralized review of the ordinances is to be dealt with by the Constitutional Court, in spite this had been dealt with – in the 150 years since the unification of Italy – based on decentralization and assignment to administrative and ordinary judges, since the legislative definition traces the boundaries of competence of the Constitutional Court on the constitutionality of the balance of subjective positions which has been directly defined by acts having the force of law.

This brings a symmetric re-definition of the principles of the legal order as a constitutional and legislative continuum both for decrees issued by the Prime Minister and the law-decrees which have provided definitions for the restrictions in terms of rights, which however cannot bring to the balance that our Constitutional Court has been offering since a long time, also and above all, with reference to cases that cannot be defined as emergencies, according to the meaning herein provided, but which in emergency situations have a specific meaning, as already occurred in other times in the history of Italy.

The cases brought before the Constitutional Court are not to be characterized by an ideological conflict as they were at the end of the XIX century or in the years after the World War II but, rather those which have lead both the Government and the Parliament to consider this institutional development as a matter of state of national emergency rather than healthcare necessity and urgency ordinances.

What is of particular significance here is not just the derogation from legislative procedural norms, which as it has been mentioned above, are subject to emergency reasons, but the need to act based on reasoning by principles to achieve a proportionality-balance between subjective rights, which certainly technology helps to re-compose, but that legal

culture must take as a century-long constitutive element, according to which the settlement of interests which – not being completely set forth by law - must be defined for each single case by resorting to the principles of the legal order. This is to remind us that, besides being based on law, legitimation is inevitably ground on the effectiveness of one's actions, and this for both the administration and the judiciary.

7. PRACTICAL INNOVATION IN THE GOVERNANCE AND EFFECTIVENESS OF THE REPUBLIC

The principle of effectiveness[15] characterizes any emergency law, inclusive of administrative law, which was once defined as *ultra* or *praeter legem*, according to which actions are held to be legal insofar as they are being procedurally lawful and also fully complied with, regardless of whether by conviction, institutional or cultural obedience, with the consequence that – here as much as in every other case where legal rights match with the effectiveness – every action foreseen must find a confirmation in a following action, no matter whether of the Parliament or the Judiciary.

Being a deed that occurs months after being issued, it is subject to supervening events, therefore with a different attitude in terms of balancing the conflict of interest that earlier on was settled through the ordinances issued in the first few months of emergency.

[15] Subjected to art. 835 of the Italian Civil Code (except for special laws).

Therefore, it might be that the choice of sacrificing individual rights without a strong perception of a meaningful action by the government is no longer understood, since by and large a sharper set of smarter measures might have been perceived as possible: "3 T", doubling of hospital beds for intensive care, re-organization of schools and hospitals, special protection for the workers on their workplace and orders of product re-conversion on essential goods (art. 836 Civil Code).

In the first months of the 2020 Pandemic, sacrificing constitutional rights has been supported by the effective consistent behavior of the population, both at the local and national levels, legitimizing decrees and ordinances whose balance has been essentially grounded on the protection of the right to health, rights pertaining to individuals and public interest (article 32 Constitution).

This has given the Government time needed to inform citizens on restrictions and a better selection of both restrictions and liberties (article 16 and 19 Constitution) including those which may only partially be defined as being economic rights, such as the right to work (article 4 Constitution), and those which are not yet grouped among liberties, such as education (articles 33 and 34 Constitution).

In few months, a new balance must be found among the need to start again one's own economic activity, go back to school or university[16], wish to regain one's private,

[16] P. Piovani, *Il significato del principio di effettività,* Milan 1953; voce Effettività (principio di), *Enciclopedia del diritto*, vol. XIV, 1965, 420 e s.

family and interpersonal life, assemble and exercise the freedom of religion or personal belief, since the radical disavowal of many of these subjective rights was no longer supported by the initial effectiveness which had occurred upon discovering the impact of a widespread disease like the 2020 Pandemic.

This effectiveness might regain strength in the event the efforts made by hospital staff and the healthcare sector in general will be coupled with those of other public administrations, trying to issue measures which, at least partially, may bring students back to universities[17] and schools, starting with the kids of people already at work, re-opening, at least partially, courts and other services which are essential as well as entirely re-designing individual behaviors, methods, and policies at work and service facilities which have to be subject to in-depth analyses, better if through algorithms, of the flows which reveal specific peculiarities of different situations related to each institution.

Quality-based service provision is almost immediately achievable with a limited help (help desk, experts in call centers), while for others a short although very useful videoconferencing training programme is needed.

The on-line mode might well become part of a service or the exercise of the public function, since it is a technology which allows for an unprecedented growth in terms of quality and customization of a given service as well as of those improvements so much called for over the past few years and which can no longer be belayed in emergency

[17] For education see d.l. April 8, 2020, n. 22.

situations such this one affecting us all without causing great harm to the effectiveness of our constitutional system. There is no innovation without testing the impact of a different governance based on public function and service delivery. Therefore, the 2020 Pandemic, beside creating the problem, also provides the solution.

At the level of judicial technicalities, the Constitutional Court – based on their typical power of annulment (ex art. 136 Const.) – has since quite sometimes issued judgments of unconstitutionality whose decision of annulment has however been subjected to a deadline or a condition, or rejections on the issue of unconstitutionality coupled with a concurrent reservation for a new scrutiny in the event the alleged lack of actions by the administration can be inferred. These are decisions that are very familiar within our legal scholarship and have made clear situations which had been experienced in the past by administrative judges which finds precedents also in some interim untitled acts by the ordinary judges.

Both the XIX century developments on and the most recently experienced judicial techniques may currently actually help the Government action towards joining together innovation and good governance, that is the ability of re-engineering, especially in a state of crisis, the effectiveness of the institutional system pertaining to the Italian Republic which is more and more essential in the management of 'complex' problems, according to legal principles which can be defined to be general since they are common to all.