

THE ITALIAN STATE OF EMERGENCY: PLANNING APPROPRIATE RESPONSES AND ITS CONSEQUENCE FOR OUR FUNDAMENTAL FREEDOMS

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For us, Italian residents, the coronavirus crisis came as a tsunami. We heard the earthquake from afar, we witnessed the sea slowly retract, but it was only when the waves struck that we realized it was here. For the Italian government, the coronavirus crisis has been more like a flood. They knew it was coming, and they were prepared to watch the water rise and rise and rise. Eventually, the feeling is the same: a bit of despair – tsunami or flood, the water is still washing over the land, and some incomprehension – couldn't they have been better prepared?

Legally speaking, I would argue that the government was ready. How so? Because they declared the national state of emergency on 31 January 2020, almost a month before adopting the first measures. Let us see how this declaration shaped the nature of the measures adopted since then, and how it constitutes a **gradual** and proportionate limitation on our fundamental rights.

First step: Italy declares a state of emergency in anticipation of the crisis

In Italy, declaring of state of emergency is much more common than in other countries. The reason is linked to the legal basis for the declaration. According to the [legislative decree of 2 January 2018](#) a state of emergency is declared: 1/ in the advent of or in anticipation of a “calamitous event of natural origin or arising from human activities” and 2/ if the administrative authorities normally competent cannot provide for the adequate measures. There have been many national states of emergency recently: after the collapse of a major bridge, after floods, prison riots, and earthquakes.

The main purpose of a declaration of state of emergency is to give the central government the possibility to intervene directly in the affairs of the sub-state administrations (regions, provinces, metropolitan cities and communes). The necessity of a coordinated response to the crisis bypasses the principles of subsidiarity and division of competences applicable in normal times.

Looking at the previous declarations, the 31 January declaration was exceptional in two ways. It was exceptional in its scope of application: for the first time a state of emergency was applicable at the scale of the whole territory. It was exceptional in its activation: the government was not reacting to an immediate crisis, it anticipated the advent of the crisis. The 31 January declaration was a nation-wide state of emergency in anticipation of the sanitary crisis.

On which grounds did the Italian government anticipate the state of emergency?

One can put the declaration in the perspective of the WHO declaration of 30 January. One day before the Italian declaration, the WHO announced that the coronavirus was [a public health emergency of](#)

[international scale](#) and asked all its members to monitor the situation in their respective territory. To do so, Italy might have evaluated the situation according to [the WHO's test](#):

- Are the repercussions of the event on public health serious?
- Is the event unusual or unexpected?
- Is there a significant risk of international spread?
- Is there a significant risk of restrictions on travel or international trade?

On 31 January 2020, although the number of people infected in Italy was almost zero, the economic, sociological and demographic characteristics of the country justified an anticipation of the risk. The Italian economy is mainly based on export and tourism, two activities that significantly increase the spread of the coronavirus. It's a country with large internal population movements from South to North but also on the axis Roma-Firenze-Bologna-Milano. There were sufficient reasons to anticipate the advent of the crisis and to proclaim the national state of emergency. Sadly, the evolution of the crisis has proved correct the government's foresight.

Second step: the adoption of a programmatic law and a progressive implementation of the measures

After the declaration of state of emergency, the government became competent to take any relevant measure to solve the crisis. On 23 February, after the epidemic surged (30 new cases in Lombardia and in Veneto), the government adopted a [decree-law](#) providing for urgent measures relating to the containment and management of the Covid-19 emergency.

The decree-law provided for a non-exhaustive list of measures to be taken depending on the spread of the coronavirus on the national territory: prohibitions on entering or leaving an area, the suspension of public events, the suspension of educational and cultural services, the application of quarantine measures, the suspension of all non-essential commercial and public activities, etc. The decree-law provides for a penal sanction based on article 650 of the penal code of 3 months imprisonment accompanied by a fine of 206 euros in the event of non-compliance with the measures.

The decree-law was programmatic, it could not be otherwise. At this stage, it was impossible to foresee the evolution of the situation and, therefore, to anticipate the exact measures to apply at an exact time. Their implementation was [progressive](#): 4 March (closure of schools and universities), 9 March (closure of public spaces nation-wide), 11 March (closure of non-essential businesses), 22 March (suspension of non-essential economic activities).

The justification of the measures

So far, we have seen that the measures were planned and had a specific legal ground. But that is not enough, in law, to justify an infringement of our fundamental freedoms. In our case, freedom of movement is drastically limited. Is it justified?

First of all, we must bear in mind that despite being fundamental, almost every right can be limited, even the right to life, if the limitation follows strict rules. The limitation of the right must be foreseen in a law, i.e. the government cannot create a legal basis out of the blue. The limitation must serve a specific objective. And finally, the limitation must be proportionate to the objective followed, that is to say adequate and limited in time. If all these measures are respected, we can speak of a legitimate infringement.

Despite their severity, the Italian measures pass the test of a legitimate infringement. The limitation of freedom of movement is specifically foreseen in the [article 16 of the Italian constitution](#). The measures serve a specific objective identified in the declaration of the state of emergency. Finally, the measures are proportionate. Confinement is, up to now, the most efficient measure to fight the spread of the coronavirus; the measures have a limited life-span: as of [the last decree of 22 March, 3 April](#).

Giving a legal perspective on last weeks' events is not just a fancy move, it is also essential for fighting misinformation. One example. On 9 March, after the adoption of the first measures of confinement, rumours of a national curfew began to spread. The impact on the population was real: supermarket rushes, stress and anxiety at the idea of being locked in, and worry about police controls on city streets. [A closer look at the text](#) reveals that it was just an extension of the restriction of leaving a specific area. The government never foresaw, at that time at least, the imposition of a nation-wide curfew. Such a move would have certainly been an illegitimate infringement of a freedom which is more strongly protected than freedom of movement: [our personal liberty](#).