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THE COVID-19 PANDEMIC - HOW WELL ARE WE BALANCING HEALTH, FREEDOM, AND THE ECONOMY?

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Abstract: *The worsening healthcare emergency with the COVID-19 pandemic has demanded a prompt reaction from authorities to contain the damage related to the spread of the virus. Our aim is to provide a bioethical contribution, with a careful analysis about the balance of individual rights with those of the whole community. The protection of the right to health in the emergency phase, with the restriction of the right to work and other rights, can have long-term negative consequences on the economy, with fallout affecting funding for the healthcare system as well. The right to health in its community dimension can sometimes clash with the protection of the sacrosanct dignity of the individual. Choices to protect health may have social and economic repercussions that could undermine the stability of many national governments.*

Keywords: *COVID-19 pandemic, Healthcare economy, Community health.*

1. INTRODUCTION

On March 11, the World Health Organization (WHO) declared that the spread of the COVID-19 infection had the characteristics of a pandemic (Health Minister, 2020a).

As of May 21, 2020, there have been 1,328,457 laboratory confirmed cases of COVID-19 in the European Union, the European Economic Area, and the UK, with 159,172 deaths, according to the COVID-19 webpage of the European Centre for Disease Prevention and Control of the European Union (ECDC, 2020). Throughout the world, 4,960,975 cases have been reported.

According to Health Minister (Health Minister, 2020 b), in Italy, as of 21/05/2020 there have been 228,006 cases, including 32,486 deaths, among them 163 physicians. Italy has had a higher death rate than that reported by China, where the infection began.

The grave worldwide health emergency has demanded a prompt reaction from the authorities to contain the damage related to the spread of the virus. Inevitably, this reaction has limited the rights and freedoms that are the shared patrimony of all Western nations.

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The particular characteristics of this pathology and related difficulties in prevention and treatment are aggravated by the cultural, anthropological and ethical milieus of both industrialized and developing nations.

Such a high priority has been given to containment measures to face the very grave healthcare emergency and the threat to everyone's health that severe restrictions to personal freedom have been justified, even to the point of limiting the constitutionally guaranteed rights to privacy, work and education.

From the perspective of ethics, it is necessary to resolve the painful impasse constituted by the problem of how to balance the principles of benefit, gradualism and appropriateness with the principle of proportionality of the measures used. Of particular concern is the acquisition of sensitive personal data; in the light of proportionality, suitable measures must be adopted to minimize the sacrifice of the rights of the person.

Analysis of this problem leads to another significant question, which has always been discussed in bioethics (Jonas, 1997). In balancing the rights of the entire community against those of the individual, as manifestation of her personhood, when should protection of "super-individual rights" be considered a higher value than the right or rights of the individual?

In the field of bioethics this extremely delicate topic has provoked intense discussion that has yielded heterogeneous solutions for balancing interests. Some hold the individual's rights and interests to be pre-eminent, particularly regarding experimentation on human beings, in which to date protection of the rights of the individual has always superseded that of the community. Others have judged that it is right to impose a sacrifice of individual interests in order to safeguard a super-individual interest or juridical good, especially regarding cases of infectious or very contagious diseases, in which the good of the community is put ahead of the rights of the individual, which are necessarily weakened to protect the health of all. This seems to have been the case in COVID-19 pandemic.

While it is true that the measures to adopt must conform to the principle of proportionality, in terms of gradualness of the limitation of the rights of citizens but in relation to the particular nature of the current situation, it is evident that this is a pure speculation in the case of a State dealing with a little known or entirely unknown disease, as was COVID-19 in the first period of its global spread.

According to the 2005 Revision of the International Health Regulations of the World Health Assembly [the forum through which the WHO is governed by its 194 member states], (WHO, 2005) if there is proof of imminent risk, the State can add healthcare measures to avoid the disease or keep it under control, including isolation and quarantine.

On March 8, 2020 (DPCM, 2020), the Italian government prohibited people from entering or leaving high risk areas in the Lombardy region and in some provinces of other Regions, except for reasons of work, health or demonstrated situations of need, and also issued laws restricting the operations of stores and factories. Two months after these provisions were put into effect, stage II has begun with a phased re-opening of businesses, though a dramatic decrease in their productivity is expected, as well as a strongly negative GDP.

This paper aims to investigate the impact of COVID-19 in Italy, starting with legislation and its impact on the private and public life of citizens.

2. REPERCUSSIONS OF THE SPREAD OF COVID-19 ON ITALIAN LEGISLATION

In order to manage the COVID-19 epidemic, the Italian national and regional governments have produced a flood of regulations. This is an entirely new situation that has never before happened. First, the government declared a six-month state of emergency on January 31, 2020 (DCM, 2020), with the Deliberation of the Council of Ministers, which stated that Italy was in the type of very grave emergency event foreseen in the legislation on Civil Protection. It introduced extraordinary powers for the Civil Protection “in derogation from all current provisions, in the limits and with the modalities indicated in the deliberation of the state of emergency and in the respect of the general principles of the legal system and of the laws of the European Union.”

Thus it is evident that the COVID-19 epidemic has had significant repercussions on constitutionally guaranteed principles; increasingly stringent limitations have been placed on freedoms and other rights enshrined in the Italian Constitution, in some cases extending to “militarization” of some municipalities and forced isolation of people affected by the infection and those who have come in contact with them. Some constitutionalists have spoken of an “eclipse of constitutional freedoms” (Ainis, 2020).

In Italy, the Constitutional Court, in sentences 16 and 17 of 13 February 2013, affirmed the principle of the need for reasonable balance between fundamental rights protected by the Constitution (specifically articles 4 and 32), as they are part and parcel of each other and no one of them has absolute precedence over the others or over constitutionally recognized and protected juridical situations (Gualtieri, 2020).

Nevertheless, the repercussions on the life of individuals of COVID-19-motivated legislation have impacted personal freedom (art. 13), freedom of circulation (art. 16), the right to education (art. 34) and freedom of private economic initiative (art. 41).

This Italian legislation is part of an international context in which other countries have also issued regulations that often vary widely from nation to nation, but not rarely impose strong restrictions on social and economic rights, as well as the rights to freedom and to association (Comazzetto, 2020), with very restrictive measures that prohibit circulation of citizens at home and abroad.

3. THE ROLE OF COMMUNITY HEALTH

While not explicitly legislated, in a range of emergencies, the protection of the health and life of citizens, a super-individual good, tends to prevail over any other right.

An example is the limitation on the freedom of circulation “for health or safety reasons” (Constitution art. 16, first section). Even so, in the face of such a vast and long-lasting crisis (De Stefano, 2020), we should examine the modalities and limits of the emergency measures, always in search of proportionality and balance among the various interests involved (Cuocolo, 2020). The balance of Constitutional values and interests should have oriented legislators toward a choice able to “weigh” rather than totally compress all rights.

The juridical value of the right to health, and its individual and community importance as guaranteed in the Constitution, has prevailed over all other constitutional values and principles, as

it is certainly connected to the right to life, the logical and ontological basis of all rights. While we may agree with this choice because of the importance of the right to health and the duty of solidarity, as articulated in art. 2 of the Constitution, nonetheless, the methods for implementing the containment are open to questioning.

It is clear that the methods for containing the risk of the pandemic should have been centered on the principle of “the balancing of Constitutional values and principles” with a choice to implement graduated measures, also based on the “principle of differentiation,” which led to the adoption of different measures in the various Regions where the impact of the COVID-19 infection had different quantitative and quantitative impacts on the health of citizens.

Differentiation of implementation measures calibrated to the contingent situation and based on the balance of values and principles should have led to a choice more in line with the principle of equality in art. 3 of the Constitution, which calls for treating equal situations in an equal way, and different situations in a different way.

The emergency of the COVID-19 pandemic demands innovative and important reflection on the community dimension of the right to health, and on the related aspect of solidarity.

The right to health is one of the most important manifestations of freedom for the human person and one’s body. However, the spread of the COVID-19 pandemic has led to a new emphasis to the community dimension of this dual-faced right, which previously received less attention. The good of the community certainly is of greater value, and justifies strong limitations on the freedom of people. In fact, the emergence of COVID-19 has re-defined the contents of the right to health, revealing a further aspect, perhaps in some ways new in such a radical form. It has concretely and dramatically raised the question of the difficult balance between the right to health and the other rights safeguarded by the Italian Constitution and internationally (Directive 2004/38/EC). Personal choices about one’s health encounter a fundamental limit in the principle of solidarity, the other face of the right to health, as the interest of the community which cannot allow an individual’s healthcare decision, right or wrong as it may be, to endanger those who are more vulnerable and, in the hypothesis of a healthcare emergency like COVID-19, endanger even the functioning of the National Healthcare Service through increased need for hospitalization in Intensive Care Units.

Certainly, one fact is crucial: the right to health is a “financially conditioned right” and this aspect, which has already emerged in various situations, certainly comes to the fore in the context of the COVID-19 pandemic. This has motivated many governments to adopt measures of “total containment” not only because of the virulence of the virus and its “unknown” nature, but also because of the inefficiency of healthcare structures. In Italy, choices in past years to cut budgets for hospital emergency care facilities led to a dearth of intensive care units, and with the onset of the pandemic drastic containment measures were thus required, with very grave negative economic repercussions that will significantly reduce the Italian gross domestic product (GDP) in coming years.

This aspect clearly demonstrates the contradictions in Italian management of the right to health, and calls for deep reflection and re-evaluation of the importance of this right in a dimension well beyond that of “emergency.”

4. CONCLUSION

The battle against COVID-19 is raging not only on the healthcare front, but also on that of juridical civilization, leading to the reaffirmation of the right to health in its community dimension. It demands a new examination of the principles of solidarity and equality, intrinsically connected with the intangible protection of the dignity of the human person.

Fundamental rights need to be protected, irrespective of the emergency, in order to ensure global safeguarding of the person.

Choices on how to assign economic resources in the organization of the healthcare service have clear effects on protection of health that in some situations, such as the COVID-19 pandemic, can transcend the healthcare sphere and provoke dramatic social and economic repercussions that can even endanger the social and economic stability of some nations.

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