

ABSTRACT

This contribution aims to analyze the evolution, nature and limits of the power of emergency ordinance, starting from a historical reconstruction of the power in question and retracing the main steps that led to its affirmation in the current system. Constitutional. This is a path characterized by the tension with the principles of a modern rule of law, such as those of legality, typicality and mandatory administrative action.

The subject of the investigation will be that power that in the Italian legal system is attributed to the public administration by primary rules, in order to prohibit or impose a certain behavior, in the event of unforeseeable and exceptional events to be faced, in view of the pursuit of a public interest. In particular, we will analyze how this power of exception has been used in our legal system to deal with health emergencies.

A research, therefore, aimed at examining that power of ordinance which, following exceptional and unforeseeable events, regulates the emergency.

This is a power justified by the urgency to provide, implemented through provisions whose content is not established by law, but only authorized by the same and left to the discretion of the acting body. The primary legislation is limited to invoking indeterminate legal concepts (*unbestimmte Rechtsbegriffe*), without indicating the measures that the ordinance must contain. These are the terms of "public interest", "public security", "public order" and "morality", which are used by the legislator in order to embrace a plurality of phenomena, suitable to assume different meanings. This indeterminacy has posed the problem of the conformity of the primary rule, conferring power, to the principles of typicality and mandatory nature of administrative powers and of compatibility with the subjective legal situations of the private individual of higher rank than the same administrative power.

To this end, we will start from the doctrinal analysis on the subject, which has undertaken to reconstruct the respective limits to bring said power back to compliance with constitutional parameters.

The work will continue with the analysis of the constitutional principles that legitimize this power and the rulings of the Supreme Court which have repeatedly affirmed its compliance with the cardinal principles of our system.

This will allow for the identification of the distinctive features of the emergency ordinances, as well as the identification of the respective limits and conditions, also

in reference to administrative jurisprudence, as well as the analysis of the relationship with the principle of legality.

These premises will be necessary to understand how this power was used in health emergency situations and, more specifically, how it was used during the recent epidemiological emergency from COVID - 19.

In this context, not only the characteristics of the administrative measures adopted will be analyzed but also the various regulatory provisions that regulate them.

The study will focus, more specifically, on the power of ordinance attributed to the Presidents of the Region in the context of the epidemiological emergency from COVID - 19 and on the interpretative contrasts, both doctrinal and jurisprudential, that it generated, especially when it affected the fundamental freedoms of individuals.

Finally, the work will end with the identification of the fundamental characteristics of the ordinances issued by the administrative authorities at the time of Covid - 19, in order to distinguish the aforementioned instrument (as identified in the Legislative Decree nos. 6, 19 and 33 of 2020) from the other cases. contingent and urgent ordinance provided for by the law. Considerations will also be made on the constitutional legitimacy profiles of this administrative power.