
IMMUNITY OF THE LEGAL ORDER TO COVID-19 INFECTION: THE RESPONSE OF THE ALBANIAN LEGAL ORDER TO THE INFECTION

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ABSTRACT: *The scope of this article is the analysis of the situation created by the Coronavirus which has been a risk to the health of the humans and at the same time has affected the legal systems in a country. In addition, this article will try to highlight likewise in the whole World, the same way the Albanian legal system is caught eminently unprepared to respond and protect “the right to health” and consequently the management of the Covid-19 pandemic. The situation of the pandemic in addition of being a great test for the human immunity, seems to have done the same for the ‘immunity’ of legal systems in general and the Albanian system, on which the study will be focused mainly. Although the legal system provided for exceptional measures to respond to the situation in a subtle way in respect to fundamental rights, the Albanian government in particular and governments around the World seem to have been disoriented and have lost the thread to react in a natural way in respect to the provisions of the legal order in response to the Covid-19 and respect for individual rights of health with dignity. This disorientation of the government actions towards the response to the situation seemed to be ineffective and contagious like the virus itself. The situation of Covid-19 infection has begun to be managed through the law that regulates infections and infectious diseases, adopting various secondary regulations in accordance with this law. Thus, in Albania, the Government has made legislative interventions through the decree laws, to tighten the administrative sanctions against people who did not respect the “lockdown”. This legislation was followed by the proclamation of the state of emergency throughout the Albanian territory. The state of emergency is foreseen in the Albanian, obviously taking into account the proportionality of the reaction to the danger. In this context, the article intends to make a detailed analysis considering some comparative aspects, and as regards the proportionality of the measures adopted by the Albanian government. It will be highlighted moreover the principle of proportionality in the state of emergency, the inclusion of the non-compliance with government instruction towards prevention of the spread of Covid-19 as criminal offences in a state of emergency as a guaranty for the right to health.*

KEYWORDS: health right, law order, infection Covid-19, criminal code, democracy

INTRODUCTION

At the end of 2019, there was talk in the world of a new virus, immediately considered very risky, which was seen as a danger to people's health and life itself. This virus, like most viruses - as the scientists who study virology point out was discovered in China, and had hit hard Wuhan, the extensive capital of Hubei province in Central China. As for the dangerous viruses, which could really endanger the life of humanity, it has always been talked about recently (SARS, Ebola etc.),

but that at some point, they had lost the ability to hit humanity with the same intensity that had threatened human kind. In this context, most of the people saw the risk of being infected, and consequently the danger to their health and their lives, as a far likelihood of affecting them, including several scholars of the science of virology -, who interpreted as impossible. In any case, the history of humanity has always known dangers to health, which are treated extensively and in detail also in literature (Acocella, 2020).

This study, in fact, is not intended to analyze the virus itself - this is why scientists from all over the world have set up their feet - but to highlight how the legal system has faced this danger. The state found itself in a situation where it was impossible to protect the right to health and other rights of individuals, constitutionally guaranteed, and the interests of the entire community. For people endangered by the virus, it was thought to close state borders, even if for the coronavirus these were "invisible". In this sense, the danger more than from the virus, was seen in humans, initially from those who came from the areas with the greatest numbers of infected, then indiscriminately regardless of their origin in all states of the world.

The state legal system seemed to be "infected" by the virus and has begun to react to it in a way that is contagious, like the infectious capacity of the virus, almost all over the world. In this way, the human infection seemed to have become an "infection" for the legal systems, to the point of putting him in a situation of dictate of rights (Oliveti, 2020), which found its justification from the terror that had induced the coronavirus. This virus has created an emergency, which has put the legal system in a situation «not only to give rise to painful disturbing" balances "between the constitutionally protected goods of life but even - here is the point - to an overall" balancing "of the Constitution with ... the emergency itself, fatally destined to be resolved for the benefit of the latter and with a very heavy cost, perhaps unbearable for the first» (Ruggeri, 2020).

The danger for health and for life, locally in China was slowly becoming a global danger, and when the response to the danger of life given by the Chinese government was the hardest in the sense of the violation of human rights, the democratic states of the world almost despised such an orderly response. The spread of the virus, through the free movement of people, had managed to pass from China to other countries of the world, and equally contagious was the spread of the legal response to human rights. In China, it is risky to speak of a form of state based on the democratic principle, as in Western countries, which based on that principle have established their form of state and government. Although the Chinese response to the coronavirus has been harshly criticized, it is surprising as it has influenced the reaction of countries with the form of state of a democratic nature (Cuocolo, 2020), almost adapting in a way equally the same of the contagiousness of the coronavirus. In this way, China was able to export not only the coronavirus to the world, but also the undemocratic model for the protection of the right to health from Covid-19 infection. In short, not only the human infection from Covid-19 originated from China, but apparently also the "infection" of the legal systems to counter this danger to humanity.

The health hazard that had created the coronavirus had been underestimated by most of the leaders of European countries and other states of the world had also minimized this danger, and in this sense the prevention measures they had implemented were almost non-existent. The right to health

is a fundamental right, and it is unequivocally necessary for its implementation often preventive measures are needed, rather than reacting when danger is eminent and takes over (Belletti, 2020). In this way, one could avoid “infecting” the same legal system, which in order to function must consider every aspect of its integrity and not just a fundamental right, namely that of health.

General considerations regarding the responses and management of legal systems to human infection with Covid-19

Each government in its sovereignty has taken measures to prevent the spread of the infection, supported by scholars of the subject within their national health institutes. Inevitably, the decisions regarding the limitation of the spread of the coronavirus required technical support, apparently insufficient in the argumentation of the actions to be implemented. Meanwhile, the data on infected people risking their lives increased every day. In this sense, it must be emphasized that it was the scientists themselves, who did not even remotely imagine that they were suggesting the measures implemented in China, which they themselves attributed to the lack of an unconsolidated, or at least particular, democracy.

One could imagine, how unthinkable they seemed to the representatives of the people, the lockdown measures which in compliance with the most important law, constitutionally protected, had to mess up the whole legal system. This happened in countries that had rooted the law itself on freedom. The situation created by the coronavirus (Sars-cov-2) was endangering democracy, as a cornerstone of the legal order of Western countries. These democracies were not immune to situations of danger, to consider in this sense the danger that terrorized democracies from terrorism of all kinds and with which these democracies seem to have found a "peaceful" coexistence, in the sense that they recognized them. These situations had influenced the conscience of the demos, which should not yield in the face of these dangers for the legal system, founded on the principle of democracy. In this case, it should be emphasized in a more specific way, that the “enemy” recognized himself and the consequences he could bring us were recognized (Groppi, 2020). In this sense it can be said that "the emergency is part of life, and therefore it is also part of the life of democratic constitutional systems" (Grosso, 2020).

The terror that had created the coronavirus, however, seemed unknown to almost all the populations of the world. By now this “enemy” to democracies terrified more than any act of a terrorist nature, since unlike other acts that could induce terror, it was difficult for the human being to identify and know the bearer of this danger. In short, the coronavirus had induced the entire community into a climate of fear and terror. In this logic, it must be pointed out that the danger threatened not only people's health, but also their consolidated and less consolidated democracies. This difficulty in identifying this danger, for Western democracies seems to have escaped the historical memory of human beings, apparently peacefully surrendered to the danger of Covid-19 infection. This fact deserves to be underlined, if we consider that the democratic principle of their forms of state and government is the result of the achievements of various historical battles that took place in different countries, but also in different periods in the history of humanity (Bocchini, 2008).

In this context, without taking into account the most important right of individuals, which gloriously sacrificed to recognize and also satisfy what belonged to man from birth, namely freedom and if to ensure the functioning of democracy, it is the state authorities, freely elected by the citizens, they seem to be charged with a certain passivity due to the fact that not what was necessary was done to counter the danger deriving from the spread of the Covid-19 infection. Indeed, it seems that most of the people were put in the situation of asking the representatives to account for the inability to impose themselves as regards the measures of social confinement. In short, China became a model to follow not only from an economic point of view as we know, but also as regards to its regulatory response to the coronavirus. All this seems to have happened in a paradoxically democratic way. China, as one of the countries with great economic development, would have been able to "effectively" manage the Covid-19 infection, through these measures called lockdowns. In this sense, it is worth reiterating that social confinement measures seem paradoxically democratic, as they find great popular support, obviously conditioned by their right to health.

Describing this period only from a legal point of view seems almost impossible, but this study wants to highlight above all the loss of the constitutionally guaranteed balance between the representatives and their representatives. Peoples were used to seeing the dangers among themselves, but not within them, in the sense of the possibility of being infected in an unconscious and invisible way to the point of being a danger even for the people they care about. Due to the Covid-19 pandemic, the Albanian legal system has reacted in all ways, within constitutional and conventional limits. Conventional is highlighted, since the European Convention on Human Rights (ECHR) deserves attention, as will follow below. Probably, the modern constitutions were prepared to challenge every threat and perhaps even infectious diseases but not so much also the infection with Covid-19, which in addition to infecting people, seems to have also "infected" their legal systems.

The infection with Covid-19 in the face of the legal system in general was such that it disoriented the entire system and society as a whole, which made some sacrifices in order to reach these guarantee systems. The responses of the legal systems or the confrontation of the legal systems to the infection with Covid-19 seems to have created another constitutional era (Tripodina, 2020). The main reaction of the legal systems had a particular regard to the protection of health, leaving out the meaning of the same. Since, for the satisfaction of this fundamental right, it seems that the other constitutional rights should not be respected or at least limited according to its full implementation. The Covid-19 infection appeared as an imminent danger to human health, and with little possibility of remedy. In respect of the fundamental right of health, government authorities should prevent, and if not, to react, and not to surrender to the non-existent immunity of the people, and equally non-existent it seems, also of the legal system. In this way, they found themselves submitting the constitutional state of law, in the face of the tyranny of security (Baldini, 2020).

The peculiarity of the situation faced by the juridical systems, based on the principle of post-war democracy lies in the fact that enemies were acknowledged to this principle. Instead a new

“enemy”, which was the coronavirus, seems to have found the legal systems of Western democracies “disarmed”. This “enemy” seems to be claiming the crown of democracy, which in the meantime was born as a conquest against the crowns, that are the real ones. The latter had governed outside the logic of the democratic principle and according to the logic of their crowning by the will of God. By now, what had been painfully and bloodily conquered by the human being was claimed, starting with the most important revolution of the peoples, that is the French one. Obviously, the French Revolution was not the first to oppose the sovereignty of the royal crown, identifying democracy in the republican form of the state (Bocchini, 2008). It is known that the republican form of the state and consequently democracy, and therefore human rights, have been bloodily conquered through the various revolutions that have followed one another in the history of humanity. In this sense, it appears paradoxical that at least as regards democracy and human rights, the latter have spared the “blood” endangering the rights, as mentioned above, that have been bloodily conquered.

Despite the existence of the democratized royal crowns in the European continent, the crown returned to frighten and terrify again, but in this case, as mentioned, there was no reference to the royal crowns, but of an invisible enemy that more than endangering health, put the juridical order and above all its cardinal principle of democracy in danger. In regard to the state of emergency it is inevitable not to argue that it always involves a crisis of constitutional guarantees, and a restriction of the sphere of human rights, and a civil disobedience that is exercised taking into account procedures and forms of a liberal democratic system (Rawls, 2008). If there can be a contribution to democracy, from the Covid-19 infection, that can only be seen in the possibility that this threat can appropriately affect representative democracy through electronic voting (Clementi, 2020), otherwise, nothing can be added.

One wonders why the legal system “immunized” from any eventuality that endangered its principles, has surrendered and apparently democratically faced a danger, which paradoxically highlighted that the right to health does not it is so important. In this case, according to the law for the prevention of infectious diseases, reference is made to the ordinances of the Ministry of Health in Albania, (but not only in Albania) which provides for the postponement of any medical intervention planned to protect health. It is a common perception in these times that the legal system is confronted with the invisible enemy, and that the only danger to the right to health and life, is precisely the coronavirus that causes Covid-19 infection.

What is most frightening today is that if in this first phase we found ourselves in a disorientation of the legal system to protect its principles contained therein, how the same system must act in a future eventuality that the legal system does not guarantee the “immunity” be able to deal with. It seems natural in this context to question ourselves, “but if fear is in the final analysis, the founding basis of the Leviathan-State (T. Hobbes), it is still fear, today, that nourishes the broad social consensus towards a limitation of the fundamental freedoms that even in the present emergency condition, it risks circumventing any formal and substantial guarantee sanctioned by the Constitution” (Baldini, 2020).

Addressing the health crisis in Albania based on the Constitutional provisions

Article 55 of the Albanian Constitution, when it treats the concept of health as a fundamental right, refers to equal treatment by the state towards citizens. Unlike other constitutions, such as the Italian one, which makes an explicit reference to health as a fundamental right of the individual, and consequently as an interest of the entire community¹. The Albanian Constitution, on the other hand, provides for the right to health in article 59² as a social objective as it sanctions: "The state, within the sphere of constitutional competences and the means at its disposal, in addition to initiative and private responsibility, aims (...) the highest standard of health, physical and mental, possible". Although this right is provided for in the category of rights entitled as social objectives, in reading the aforementioned article 59 an attempt is also made to give a definition to health itself. In this definition we immediately realize that in the reaction of the entire legal system as in the case of the Covid-19 infection, the state has reacted in only one direction differently from the concept of the definition of health, as required by the constitution.

The concept of health has changed over time to the point of guaranteeing protection for the human person that takes into account the multiplicity of the constitutive aspects of human individuality (Bononi, 2014). The fundamental right of the individual stated in the Constitution has highlighted the individualization of the subjective right taking into account the collective interest (Minni-Morrone, 2013)³, according to the provisions of the Italian Constitution. In the case of Covid-19 infection, the Italian legal system found itself in the difficult situation of finding a "balance between health as a fundamental right of the individual and the interest of the community and other inviolable rights" (Covolo, 2020). In any case, defining the concept of health, satisfying the individual's subjective situation, is certainly not an easy situation, especially if it is an infectious disease. The concept of health is multidimensional, and thus there is a risk of non-satisfaction of the subjective situation guaranteed by the constitution, through the measures implemented by the legal systems, of almost all the states of the world. In this sense, it appears necessary to rely also on the concept of the right to life, since it is natural to take into consideration the quality of this

¹ Article 32 of the Italian Constitution "the Republic protects health as a fundamental right of the individual and in the interest of the community"

² Article 59 of the Albanian Constitution. "The State, within its constitutional competences and the means it has, as well as when it supports private initiative and responsibility, has the following objectives: a) working employment in conditions suitable for all people with working capacity; b) satisfaction of citizens' housing needs; c) the highest possible standard of health, physical and mental; d) the education and qualification of children and young people as well as the unemployed, according to their abilities; e) a healthy environment, ecologically suitable for today's and future generations; f) the rational exploitation of forests, waters, pastures and other natural resources based on the principle of sustainable development; g) the care and assistance of the elderly, orphans and invalids; h) the promotion of sport and recreational activities; i) health rehabilitation, specialized education and the integration of disabled people into society, as well as the continuous improvement of their living conditions; j) the protection of national and cultural identity and in particular of the Albanian language; 2. The realization of these social objectives cannot be requested directly in the courts. The law establishes the conditions and the ways that can be adopted for the realization of these objectives.

³ The study makes a more articulated panorama of the subjective right to health and the interest of the community as argued by the jurisprudence of the Italian Constitutional Court.

right, as an integral part of the concept of human dignity as a fundamental principle of the rights taken into consideration.

Returning now to the provisions of the Albanian Constitution, it is necessary to take into account the other fundamental rights to analyze the satisfaction of the right to health, since the latter has prevailed over all other rights, including those that primarily serve to satisfy it. Albania is certainly not the only country to deal with this situation, apparently confusing for the legal system, indeed it is one of the many countries in the world, not to mention almost all the states in the world, given its size of the pandemic spread of the coronavirus. In Albania, Article 17 of its Constitution, when dealing with the limitation of constitutionally protected fundamental rights, recalls the European Convention on Human Rights (ECHR). The (ECHR) serves as a border line to the limitations of fundamental rights provided for by the Albanian Constitution. This limit must pass through the reservation of law as the only means to implement limitations to fundamental rights, as they must follow an assessment based on the principle of proportionality and temporariness of the situation that caused the limitation of certain rights. Furthermore, it is specified in the second coma of Article 17 that the limitations cannot affect the essence of the constitutionally provided rights.

The Albanian Constitution, in its sixteenth part, deals specifically and in detail with exceptional measures, to be considered precisely in the exceptional situations of the state of exception. Pursuant to Article 170 of the Constitution, these measures are divided into three types, unlike who or which has endangered the legal system, and in this sense the system acts but as mentioned above, within the limits of the article 17 of the Constitution. The three categories of states of emergency are: the state of war, the state of general disorder and the state of natural disaster, and therefore the exceptional measures adopted must comply with the limits, established only by law and must react to one of the exceptional situations. Article 174⁴ of the constitution deals exclusively with the state of natural disaster in which the possibility of the Government to adopt the state of magnet for a period not exceeding 30 days is foreseen and already, the period not exceeding 30 days, undoubtedly it would treat an exceptional situation, the extension as well, but taking into account the time necessary as originally planned, that is 30 days.

The duration of this exceptional measure was decided by the Albanian government for the maximum length provided by the Constitution of 30 days. We want to underline this fact, because for the extension of this period the consent of the Parliament is necessary. In this sense, the Albanian Parliament has decided to support the government's action to prolong the state of natural disaster for another 60 days (Decision, 18/2020). In short, the Government has decided to extend the state of natural disaster by doubling its natural terms provided for by the Constitution. In fact, the Albanian Constitution does not explicitly provide for a maximum limit to its extension, but it is implicit that the extension cannot be greater than that provided by the Constitution itself for this state of exception. Strong doubts about the constitutionality of this government decision are

⁴ Article 174 of the Albanian Constitution "To prevent or avoid the consequences of a natural disaster or a technological accident, the Council of Ministers may decide, for a period not exceeding thirty days, the state of natural disaster on part or all of the territory of the State. 2. The extension of the state of natural disaster is allowed only with the consent of Parliament. "

evident, but to increase the unconstitutionality of this decision and the parliament's decision to give consent to this. Since, the continuous extensions would risk making an exceptional situation foreseen by the legal system as such become normal. In addition, in the fourth coma of article 170, the obligation of exceptional measures is foreseen for the minimum period necessary, with the aim of getting everything back to normal as soon as possible.

Pursuant to article 174, the Albanian government declared a state of natural disaster on 24 March 2020 for 30 days (Decision, 243/2020) due to the epidemic caused by Covid-19. Point 2 of the article 175 specifies that during the state of natural disaster, the rights and freedoms provided for by articles 37, 38, 41, paragraph 4, 49, 51 may be limited⁵. Instead, in the third point of the same article it obliges the body that must adopt the exceptional measure to specify which of the rights may be expressly limited in the act adopted. Unlike the other exceptional measures that can be adopted by the President of the Republic and the Parliament on the government's proposal, the state of natural disaster is adopted by the government, and prolonged with the approval of the Parliament.

The paradox, in the management of the situation within the limits of the constitutional provisions, in Albania applied no limits, but as mentioned above to "threw fuel to the fire of terror" that the infection had already succeeded very well, without the need for help from any authority of the state. In this sense, and here, Albania cannot be considered as an exception but being the exception, the Albanian government has decided to use the army to break through the constitutional freedoms that the virus had succeeded quite well with the induction of the terror to both individuals and the whole community. The Albanian government's decision to mobilize the army deserves consideration, since the *demos* in its majority if not all of its entirety was in full agreement with the *kratos* and was convinced that the only way to counter the "devil" it was social confinement, that is, the famous and unforgettable lockdown.

In Article 174 second paragraph of the Albanian Constitution when it refers to the intervention of the army, obviously in the exceptional situation with the approval of Parliament, the impossibility of law enforcement is taken into consideration to guarantee public order. Instead, the Albanian government, to tackle the virus without it being considered necessary, has decided that on 11 March to make the heavily armed army available to the "fight" against the coronavirus, forced to

⁵ In detail the articles of the Albanian Constitution which provide for constitutional rights that can be limited during the state of natural disaster: Art. 37 "1. The inviolability of the home is guaranteed. 2. House searches, as well as similar places, can be carried out only in the cases and in the ways provided for by law. 3. No one can undergo a personal search that is outside the criminal trial, except in cases of entry into the territory of the State, and exit from it or to avoid a danger to public safety. " Art. 38 "1. Everyone has the right to choose his home and to move freely in any part of the state territory. 2. No one can be prevented from leaving the country freely. " Art. 41. Coma 4, "Expropriations or those limitations of the right of property that are equivalent to expropriation, are allowed only upon fair compensation. Art. 49 "1. Everyone has the right to procure the means of their livelihood through legal work of their choice or acceptance. He is free to choose his profession, place of work, as well as his professional qualification. 2. Workers have the right to social protection at work. " Art. 51 "1. The right of the worker to strike motivated by employment relationships is guaranteed. 2. Restrictions for specific job categories may be established by law to ensure essential services to the company. "

leave its barracks (Decision, 211/2020). In this regard, it is worth highlighting that "The issue of safety, the safety of citizens and subjects is a topic of fundamental importance, because power has always used fear and terror as a weapon to justify itself" (Bin, 2013).

Obviously, the initial trend of the Covid-19 epidemic in Albania was based on various contradictions regarding the number of infected people, the basic number of tests, etc. If we consider the number of infected people, at first sight, it seems that sense of the principle of proportionality that constitutionally legitimized government interventions was lost. In any case, while the government was applying the exceptional measures provided for by the constitution, a much debated event took place in Tirana between the government and the opposition and the community of artists on the other side on the building of the national theater⁶. The history of these contradictions, for the national theater is quite long, and given the sensitivity of the fact, it would have conditioned the government to postpone this operation, which concerns the demolition of the theater building. The Albanian government should have limited its actions in this sense, to be in line with the restrictive measures it had adopted to counter the spread of the virus that had caused the Covid-19 infection (Madhi, 2020). Obviously, it is not here that this question needs to be clarified, but it is an example, which makes clear the paradox of the restrictive measures adopted by the Albanian government, while it did the opposite to avoid situations that would conflict with these measures.

The Albanian Constitution as regards to the state of natural disaster, has provided that the action of the government must pass through the control of the Parliament, that is of the direct representatives of the sovereign. In the logic of the argument, it seems that the direct representatives of the sovereign have for some time been subject to the government. The crucial point is not this, but the loss of a balance between the legislative and the executive with a clear prevalence of the latter over the former. Despite the Constitution of Albania provides for a state of emergency, the initial measures regarding the fight against the epidemic were taken under the law for the prevention and fight against infections and infectious diseases (Law 15/2016).

⁶ With a decision of the Municipality of Tirana, the building for which it had manifested itself was demolished every time the authorities had taken the initiative to tear it down, obviously in times when the Covid-19 danger did not exist. If we take into consideration the sensitivity of the artists on this building, it seems that the state reacted in contradiction with the decisions taken previously and still in force against the gatherings and in the middle of the period of the state of natural disaster. Since the fact, despite having happened in a period of the state of natural disaster, when the Albanian government had slowed down some measures of social confinement, the gatherings against the government's actions were, in this sense, inevitable.

The initial response of the Albanian legal system to the Covid-19 danger based on the law against infections and the spread of infectious diseases and the emergency decree of the government

In Albania, after the first cases highlighted as infected by the new and "very unknown"⁷ Coronavirus in the countries of the European Union, media reports began immediately, as if the government was hiding the data of the infected people. Since the virus had managed to cross the continental border it was not difficult to cross the borders of European countries, geographically very close to each other. If we add to this logic the argument of the first cases infected with the coronavirus in Italy, then the doubts of the arrival of the coronavirus in Albania - given the proximity between the two countries and not only geographic - vanished and almost became certainties. In this context, the Albanian government was even accused of hiding cases infected with Covid-19 infection. On the other hand, the Prime Minister, almost plenipotentiary guaranteed that this threat had no chance of endangering the health and life of citizens in Albanian territory.

Meanwhile, the power closest to the citizens that is the mass media, and not only the national ones, conveyed the opinions of scientists that the danger to life from this coronavirus had been amplified and that it was not, if only a slight influence more aggressive. Even if the Albanian Constitution has provided for interventions, which must be implemented with the proportional balance of the rights recognized and protected by it, no one could imagine interventions, such as the imposition of being closed in the house, and feeling free to go out, through a preventive permission from the authorities, to provide food. In this sense, on 9 March under the aforementioned law for infectious diseases, and precisely in article 7 paragraph 4, the minister responsible for health gave the first order for the closure of schools. The situation from 9 March until the last order in Albania there was a total disorientation of the authorities provided for by the legal system, to counter the epidemic from Covid-19 (Cukani, 2020). The first paragraph of the article 117 of the Albanian Constitution provides that: "Laws, regulatory acts of the Council of Ministers, of Ministers (...) come into force only after being published in the Official Journal"⁸.

What happened in Albania in this sense has very little to do with the legality and legitimacy of the actions taken. In fact, although the legislation in question saw in the minister responsible for health, the authority of the implementation, of all the regulatory activity under the law for the fight against infectious diseases to communicate all the measures implemented was the Prime Minister. The Prime Minister, now omnipotent towards the governed, but not so much towards the coronavirus published on his Facebook page every act on the subject of the so-called lockdown, as the only tool to combat the Covid-19 infection. The "sovereign" to know, by "Constitution" what would be the rule of tomorrow in the sense of permits to move, obviously for vital needs, had to take a look

⁷ Thus, several scholars of the subject have dubbed the coronavirus of which the World Health Organization itself took me long enough to give it a name.

⁸ Article 117 of the Albanian Constitution "1. Laws, regulatory acts of the Council of Ministers, Ministers, other central institutions, come into force only after being published in the Official Journal Gazette and are carried out in accordance with the provisions of the law. 2. International agreements ratified by law are promulgated and published in the manner prescribed by law. The promulgation and publication of other international agreements are carried out in accordance with the provisions of the law ".

at the Prime Minister's facebook page. In this sense, to counter the Covid-19 epidemic, the acts of the minister responsible for health have acted vigorously, although they are not published in the official journal, and therefore, as mentioned, have not entered into force. The force of these acts was conditioned by the publication on the facebook page, also accompanied by comments from the Prime Minister, who could do anything except ensure the health of the sovereign as provided for by the law itself. Indeed, they served to increase the dose of fear and terror. The freedom of the executive power to govern through terror in this case paradoxically even democratic as it found strong support in the population, in Albania as indeed, was like a dream that became reality for the government authorities. This terror increased the daily dose when the Prime Minister occasionally changed the rules regarding the time of freedom to go out. This freedom, as far as leaving the house is concerned, was provided only for proven vital needs, and therefore to ensure at least survival, because the government seems to take care of health. The freedom to go out was based on a request for a permit via the telephone or the e-Albania⁹ platform, initially for a maximum of one hour from one family member. Then, with the passage of time the duration of the permission to leave the house had "generously" increased to 90 minutes, always one member of the family.

In practice these measures, certainly outside the principle of proportionality had nothing to do with the important social confinement measures as the only tool that could counter the pandemic. Indeed, at first glance they seemed like an amusement of the Albanian Prime Minister, who had to be decisive towards the citizens. Since if you add the time limit to ensure the purchase needs before 13.00, there was nothing but overcrowding in the food stores of the day. If to this argument, we add that the weekends were of a complete lockdown, made in this case by long weekends starting from Friday at noon and ending on Monday morning, then everything can only be called a paradox. The "sovereign" had to comply with the often senseless and often sudden legislation, and instead of fearing the infection the citizens were afraid of the sanctions provided by the law of infectious diseases which were disproportionate. In fact, the law for the prevention and fight against infectious diseases already provided for hefty penalties, almost disproportionate to the Albanian economic reality. As if this were not enough, on March 15 the Albanian government adopted the first legislative act which provides for exorbitant administrative penalties for transgressors of the lockdown (Decree Law, no. 3, 15.3.2020). This is now the well-known concept of lockdown, as the only option to counter the spread of the virus, but which cannot be said the same as an option to protect the right to health. Indeed, only one conclusion can be reached, with regard to these distancing measures, that is, a lockdown that has put the legal system in "knockdown".

In any case, in this analysis it is necessary to highlight the decree law of the Albanian government, as regards the amnesty of all sanctions issued for administrative fines inflicted on citizens who had not strictly respected the lockdown (Decree Law, no. 16 , 17.4.2020). Once again, this generosity

⁹ The e-Albania platform is a modernization of some services for citizens in Albania, which concern the request for some documents to the online public administration which in the case of applying it also for exit permits at the time of lockdown has also had technical problems. If we add the fact that the majority of elderly people have difficulty using these platforms (let's say this great opportunity), the Albanian government has almost endangered the right to health from hunger of the population were it not for people to surviving in these cases would go out without permission, risking a very high fine.

of the Prime Minister did not come alone, but was accompanied by the threat of criminal measures for which there was a void in the Albanian legal system. The threat for possible intervention in the Albanian Criminal Code was not the only one, since the health threat caused by the covid-19 epidemic was still present, and not only in the Albanian reality. Instead, the Albanian government, apparently "tired" of managing the covid-19 infection with administrative sanctions, has proposed the provision of two new crimes to be included in the Albanian Criminal Code as a more effective tool to counter the spread of the coronavirus.

The "need" to tackle covid-19 infection in Albania by predicting the crimes to be included in the Albanian Criminal Code

The Albanian Criminal Code has been amended several times since its entry into force in 1995 after the fall of the Communist system in Albania in the early 1990s. This time the Criminal Code was faced with changes that more than anything else went in parallel with the panic that covid-19 had induced to the population. In fact, penal measures tend to enforce the legal norm more than other norms, through the fear of the sanction contained therein. In this case, it is natural to question whether it is consistent with the basic principles of the Constitution to undertake legal reforms to tighten up, and even more so, in the concrete case, in the introduction of two new types of crime within the Albanian Criminal Code (Anastasi, 2020). Since, before their introduction to the Criminal Code, the government through a regulatory act with the force of law in stark contrast to the logic of social confinement for people and criminal legislation had granted permits to certain categories of convicts. This category of prisoners according to the emergency decree had to have been sentenced with a final judgment (Decree Law, no. 7, 23.3.2020). The regulatory act in question provided for the transfer to the home of the condemned to remove them from the danger of Covid-19 infection, and so they had to leave the prison to protect their health even if the legal system had decided that they represented a danger to the society. In this way, on 23 March the Government, through the legislation justified by necessity and urgency pursuant to article 101 of the Albanian Constitution applied permits of up to three months for a certain category of prisoners as the same regulatory act foresaw.

Article 4 of this regulatory act provides that the prisoner can receive a special temporary residence permit at home, for a period of 3 months, in case the date of entry into force of this regulatory act he fulfills certain criteria at the same time to protect the health of people deprived of freedom. The deprivation of liberty to this category of people had occurred according to the legal system for having committed crimes, proven by a judicial sentence that has become final.

The situation that deserves more attention in this logic is whether the modification of the Criminal Code during the period of the state of natural disaster falls within the constitutional legitimacy. Moreover, it can be analyzed whether it was necessarily important to intervene in an important legal rule, such as the Criminal Code in a situation undoubtedly terrifying created by the unknown and invisible enemy, as the coronavirus was considered. In this way so many leaders identified him that history has given him the possibility of being in the loaves of a "dictator" and moreover, democratically. The delicate balance between the rulers and the governed in ensuring governability

based on the principles of democracy and the rule of law was challenged by the so-called health emergency.

The government's motivation in undertaking the amendment of the Albanian Criminal Code was because, the latter had not foreseen any crime regarding the management of the Covid-19 pandemic. These changes took place in a time logically outside the constitutional dictates, because the virus had proved to be more threatening than the legal rules themselves, albeit of a criminal nature. In this context, it is worth considering a comparison with the Italian Criminal Code, from which the Albanian Criminal Code was inspired if it cannot be said that it imported its provisions, after the fall of the communist system in Albania. As mentioned above, the adoption of the new Albanian Criminal Code in 1995 was consistent with the new form of collaboration between the governed and their rulers. In this sense, it was a necessity to reform criminal law in accordance with the new governmental ideology of a pluralist democracy.

The Italian Criminal Code provides as a crime that of epidemic foreseen in Article 438 of its provisions. In this way, this situation must be defined when it is capable of constituting a crime. The offense must result in an event which must take place according to a precise method of implementation, that is, through the voluntary or guilty propagation of pathogenic germs of which the agent is in possession (Cavaliere 2020, p. 3). At this point, it is necessary to consider the fact that, as a norm provided for by the Criminal Code, it can respond better to the situation criminally. Undoubtedly, it could be said in this case that Article 452 of the Italian Criminal Code, in which it would respond to the criminal action. Article 452 refers to Article 438 in which the subjective element of the epidemic crime consists of a culpable crime. In this sense, it is necessary to take into consideration article 452 of the Criminal Code, which is entitled, culpable crimes against public health and which does not refer only to article 438, and more than anything else only serves to determine the editable penalty of the culpable commission of the crime of epidemic, which in this case is a common crime (Cavaliere, 2020).

In this epidemic situation caused by the Covid-19 infection, it would be the only incriminating rule provided for by the Italian Criminal Code to deal with the situation were it not for the other articles of the Criminal Code which, although finding marginal application, deals with the phenomenon mentioned. In any case, in the face of this situation the Italian legal system, both the state and the regional one has a regulatory reaction to the phenomenon with an intensity equal to if not greater than the spread of the virus. In this sense, it can be said that in addition to the number and origin of the legislation contrasting the coronavirus, the content of the same rules deserves an analysis to achieve the goals set in the intentions of the regulatory measures (Di Majo, 2020). In fact, the one that most highlighted the health emergency from Covid-19 infection is apparently some trends that the legal system has been showing for some time and that in this sense are highlighted even more and that is for it concerns the strengthening of the executive and the parallel marginalization of parliament (Tresca, 2020; Dell'Atti-Naglieri, 2020). Indeed, to counter similar situations, the emergency caused by the Covid-19 infection was discussed directly mentioning in the Constitution the measures to be adopted in such situations, but these discussions recalled the twenty years of fascism, which like a breath, in such a situation could risk wiping out the hard-won democracy after its fall at the end of the Second World War (Ruggeri, 2020).

We must now return to the so-called regulatory gaps of the Albanian Criminal Code, and the need to intervene to foresee crimes that deal with the situation of Covid-19 infection in a criminal way. If the administrative sanctions fueled by people's panic have perfectly realized the only response of the system to counter the coronavirus, that is the lockdown. The regulatory act that canceled all administrative sanctions inflicted on people for failing to comply with the unclear and confused measures to execute a perfect lockdown cannot be considered otherwise than a political move. If on the one hand, the omnipotent government in carrying out the sanctions but not equally to counter the coronavirus, forgave all administrative sanctions and was preparing to establish two new crimes in the Albanian Criminal Code (Law no. 35/2020).

Article 2 of the law that reformed the Albanian Criminal Code intervened in its eighth chapter which concerns crimes against the authority of the state. In this way, after Article 242 of the Albanian Criminal Code, Article 242/a is added, with a very broad wording, entitled "Failure to implement measures by state authorities during a state of emergency or during a state of epidemic". In short, in accordance with this criminal law, a person who is not a carrier of an infectious disease is also punishable, as long as an order from a state authority is issued against him. As we can see, this is a crime of danger and not an event crime, therefore for its punishment damage to health must not necessarily be caused.

Instead, Article 3 of the law intervenes in section 3 of the second chapter of the Albanian Criminal Code, entitled willful crimes against health. In this sense, after article 89/a, article 89/b entitled "The spread of infectious diseases" is added. In this case it is not just a crime of danger but also a crime of events, and consequently the maximum penalty can reach eight years in prison. The paradox in this sense lies in the fact of the difficulty in implementing these two new types of crimes, included in the Albanian Criminal Code.

Among other things, these amendments to the Criminal Code have also received the favorable opinion of the President of the Republic, not only in decreeing the changes but expressly praising the government majority for this modification initiative, which among other things was carried out by "haste and fury" (Cukani, 2020). Despite these changes are supported by most of the political spectrum there have been contrary opinions from civil society in Albania. Indeed, the OSFA foundation itself criticized, at least as regards the initial proposal for amendments to the Albanian Criminal Code. Greater criticality was above all the lack of non-compliance with the principle of the proportionality of the sentence with the criminal action. Furthermore, the lack of proportionality of the punishment of these crimes compared with the other crimes of the same Albanian Criminal Code was mentioned (Fondacioni Shoqëria e Hapur për Shqipërinë, 2020).

CONCLUDING NOTES

In this study we wanted to highlight how much the legal systems of democratic principle have democratically renounced this principle. This fact has not only happened in democracies in the

process of consolidation such as the one specifically taken into consideration as well known in all Western democracies, which for years have been considered consolidated democracies. Indeed, the measures to combat Covid-19 infection, as far as the West is concerned began in Italy, which is a country with a consolidated democracy. In this sense, what has happened in this country with regard to the measures of social confinement, that is the lockdown has served to internationalize this word to the Western world, and in the meantime it seems to have served as a legitimizing source for other countries that in a way contagious like the coronavirus, they followed it.

The legal system in general seems to have been itself a "victim of infection" by Covid-19, and if it did not have a "bad end" it was very close. In this sense, to cope with such a situation, which was not the first in the history of humanity, and obviously following the scientific logic it will not be the last, it must expect to face a situation more similar to normality, than to the exception. The right to health is a fundamental right of the individual and protected by the legal system it has had as its only remedy the measures of social confinement, that is the famous lockdown. This fact has also influenced in this way the modality of social conception of the right to health, and in this sense the legal system must act more in the prevention of such situations, than try to make these situations normal. The achievements with regard to natural rights, which humans have had in history and now ordered by legislation risk disrupting the entire society and the same legal order in which they are enshrined.

In conclusion, it could be said that as regards the activities of the government to fight the invisible enemy, it seems that the enemy has become visible in every person regardless of a medical analysis that ascertains the true carrier of the virus. In this way it appears that the fight against the danger, rather than against the virus, has shifted to the unconscious carriers of this danger, namely to human beings. This fact risked in this way to trample on their rights contrary to the provisions of the legal system for their protection, by the government authorities themselves.

The article particularly dealt with the management of Covid-19 infection by the authorities, to which the legal system has provided the power in this sense. Particular attention was given to the management of the infection of the Covid-19 epidemic, by the Albanian government, taking all possible measures, except those concerning the protection of the right to health. In short, the danger to health was represented only by the coronavirus. In this way, it was natural to believe that the other diseases that threatened the right to health were gone, leaving aside in this sense that the definition of health, which, moreover does not even fall within the provision of Article 59 other than the Albanian Constitution itself. The Albanian government, as quickly as the ability to spread the virus, has made several interventions in the legal system both from an administrative and a criminal point of view. Precisely with regard to the latter, the paradox lies in the fact that new crimes are included in the Albanian Criminal Code. People who would be charged with one of the new crimes of the Albanian Criminal Code, obviously through a judicial process would be sentenced. These citizens therefore, would find themselves in prison, obviously after a judicial trial and sentence without precedents, considering that the Albanian government has opened the doors of the prison to different categories of prisoners.

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