

Against Pandemic

An Ethical and Legal Analysis of the Italian Law

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Law against Pandemic in Italy

- a. Italian Pandemic Plan 2021-2023**

- b. Decree n. 77/2022 – Ministry of Health**

Italian Pandemic Plan 2021-2023

- 130 pages, outlined the strategies to be implemented to prevent, manage and contain the impact of a pandemic, present or future (so-called **preparedness**).
- https://www.salute.gov.it/imgs/C_17_publicazioni_3005_allegato.pdf
 - which bioethical criteria have been proposed?
 - are they consistent with the Italian legal system?
 - are there problems, inconsistencies, criticalities?

Italian Pandemic Plan 2021-2023

4 main phases:

1. inter-pandemic phase
2. alert phase
3. pandemic phase
4. transition phase

But no :

Emergency triage

Anti-Sars-CoV-2 vaccination plan

An ambitious profile of the document emerges, but.....

- The text is very articulated, but it is too general;
- We have no redefined criteria of biomedical ethics;
- The text should have prescribed not only organisational criteria, but also normative ones;
- We have lack of clear allocation choices, with precise tasks at central levels (macro allocations) and decentralised territorial levels (micro allocations).

Danger of *slippery slope*?

- The *health* of the pandemic plan must **not** be guaranteed **only by** acting against Sars CoV-2:
- Oncological care, surgical care, nephrological treatments, interventions for chronic diseases and so on.... must also be guaranteed;
- If it wasn't, we'd have this *paradoxical pattern*:
- the right to health as an interest of the community must be preserved, even to the detriment of the individual's right to health. If subjects have health problems that occur at a time of a pandemic, but that do not relate to situations directly connected to the pandemic, be patience!
It will be a bad situation, but not an unfair one!
- This conclusion is unacceptable.

So, what could we have found in the Plan, which is still missing? And what could be improved?

- In the Italian legal system, in fact, **health** is a complex right:
- it is a **fundamental right** of the individual and also an **interest of the community**, as laid down in Article 32 of the Constitution.
- Therefore, we should have expected appropriate references not only to the Constitution, but also to other important rules.....
- for establishment and implementation of palliative care, at any time, emergency or regular.
- And we have precise rules **for informed consent and advanced directives, without distinguishing between pandemic or emergency periods and normal periods.**
- Regarding these last two points, there is **no reference in the document**

So, is everything lost?

Still no changes into the Italian Pandemic Plan

A possible answer: Decree n. 77/2022

<https://www.gazzettaufficiale.it/eli/id/2022/06/22/22G00085/sg>

Decree n. 77/2022

This document is simple and clear: it consists of only 4 articles (and 3 annexes).

Decree is part of the PNRR: National Recovery and Resilience Plan, to be implemented with European funds.

It prescribes the reform of the organization of health services at regional level, in a precise and articulated way.

During the Covid-19: rethinking the places (and, therefore, the rules and procedures) for health care closer to the citizen....

Light of Italian Law (Decree n. 77/2022)

Decree considers health care as a whole, without distinguishing between **moments of pandemic emergency** and “normal” moments.

The premise is simple and agreeable: whether there is a pandemic going on or there are “ordinary” health problems, the response must **be given as close as possible to the citizen.**

Why?

Because this is the way in which citizens' right to health becomes a reality (Article 32 of the Constitution), which promotes the autonomy of individuals and guarantees better professional performance for nurses etc. (principle of autonomy), and also for health institutions (principle of justice, principle of beneficence and principle of non-maleficence).

Light of Italian Law (Decree n. 77/2022)

Another positive aspect is the **person-centred model of care**.

The model that brings people to health centres has been reversed (if I'm sick, I go to the emergency department in a hospital): Decree 77/2022 wants to bring care to people's homes.

Implementing the national and international regulatory framework.

Standards and Rules

- The Decree n.77 specifies the standards for a quality local health service.
- These include: the creation of clinics in city districts and small towns; a “Community House” with doctors with **different skills available**; and a **home nursing service**.
- Another important point is that this decree **enhances** the competences of **palliative care**. Both during the Covid-19 pandemic and at other times, it is essential to have professionals who know how to manage refractory symptoms, and who know how to manage **pain, dyspnoea, delirium** etc.
- All these symptoms, unfortunately, we have seen them not only in cancer patients, in the terminally ill, **but also in cases** of chronic diseases, and also in acute cases **of Covid**. If people have no other treatment options, it is a bioethical and legal imperative that they be treated anyway and not die badly.

Conclusion....

- A new “Golden Age” for Italian healthcare?
- We must monitor the situation, we must understand the time it will take for this health revolution of the territory and, above all, we must be aware that there will be many differences between the regulatory model of the Ministry and the actual realities.
- However, Decree 77/2022 is an example of normative, bioethical, organizational and clinical progress, which at least in its theoretical design, has many qualities and has many potential.
- It is then up to us lawyers, scholars, bioethicists, philosophers, politicians, etc. to pay attention to bridging the gap between the abstraction of rights and the reality of health needs.

Conclusion.....

- Thomas Hobbes said: “Understanding is nothing else than conception caused by speech.”
- We need to be vigilant, and we’re only at the beginning.
- However, the prerequisites for (good) health management in normal times, such as in times of pandemic, are there.

Thanks for attention!