

Lex-Atlas: Covid-19 Country Report: Italy

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Report Contents

I. Constitutional Framework	4
II. Applicable Legal Framework	7
A. Constitutional and international law	7
B. Statutory provisions	8
C. Executive rule-making powers	10
D. Guidance	11
III. Institutions and Oversight	12
A. The role of legislatures in supervising the executive	12
B. The functioning of the legislature where its ordinary business is disrupted	15
C. Role of and access to courts	19
D. Elections	22
E. Scientific advice	23
F. Freedom of the press and freedom of information	24
G. Ombuds and oversight bodies	24
IV. Public Health Measures, Enforcement and Compliance	25
A. Public health measures	25
1. Individual mobility restrictions on citizens (stay-at-home, curfews, etc.)	26
2. Restrictions on international and internal travel	27
3. Limitations on public and private gatherings and events	28
4. Closure of premises and facilities (eg schools, shops, services, parks, churches, sport facilities)	30
5. Physical distancing	34
6. Use of face coverings and personal protective equipment (PPE)	34
7. Isolation of infected individuals and quarantine of individuals suspected of infection	34
8. Testing, treatment, and vaccination	35
9. Contact tracing procedures	36
10. Measures in long-term care facilities or homes for the elderly, restrictions on visitors etc	37
B. Enforcement and Compliance	37
1. Enforcement	37
2. Compliance	38
V. Social and Employment Protection Measures	38
A. Social protection measures	38
1. Social assistance	39
2. Social insurance	41
3. Tax relief and other social measures	42
B. Employment protection measures	42
1. Economic support for employers	43
2. Worker protection from dismissal and other contractual protections	45
3. Other worker protections	45
4. Health and safety	45
5. Activation	46
6. Social partners	46
7. Other legal measures	46
VI. Human Rights and Vulnerable Groups	46
A. Civil liberties	46
B. Privacy	47
C. Gender	49
D. Ethnicity and race	50
E. Disability	50
F. Elderly	54
G. Children	54
H. Prisoners	54
I. Non-citizens	56

J. Indigenous peoples 58

I. Constitutional Framework

1. Italy is a unitary, parliamentary republic, with a 'rigid' constitution promulgated in 1948. The Parliament is bicameral, with two elected Houses respectively called the Chamber of Deputies and the Senate. A characteristic of the Italian model is that the two houses exert their legislative competence collectively ('perfect bicameralism') so that neither can ever prevail over the other: both houses must pass the same text of every bill for it to become law.
2. By virtue of the Constitution,¹ the President of the Republic (President) appoints the Prime Minister (PM). The exact denomination of the PM is 'President of the Council of Ministers'. By convention, the President consults the parties in Parliament to choose the person best placed to form a cabinet that can command the confidence of the Houses after either a general election or a cabinet crisis. The same President appoints the Ministers based on a proposal by the PM. The PM and ministers form the Council of Ministers (Cabinet). As the Cabinet enjoys the confidence of the Houses, the elected Government enjoys a position of dominance in both executive and legislative affairs. It must be borne in mind that, besides representative functions, the President is given the role of guaranteeing equilibrium between the legislature, executive, and judiciary. Furthermore, she is awarded other crucial powers, such as the power to dissolve the Parliament and the appointment of five Constitutional Court judges. An Act of Parliament is the highest form of statutory law, except for constitutional laws. However, statutes may be reviewed for their constitutionality before the Italian Constitutional Court (CC). Moreover, European Union (EU) legislation and international obligations may prevail over conflicting statutes. Legislative power is also vested in the regional assemblies (see paragraph 3 below).²
3. Besides Acts of Parliament, so-called 'primary sources of law' include:
 - a. statutory decrees (*decreti legge*) provided in Article 77 of the Constitution, which establishes that the Government resorts to them in cases of necessity and urgency and that they are provisional decisions having the force of statutory law.³ They have to be ratified (transposed) by the Parliament into statute within 60 days from their enactment; otherwise, they will be void from the outset (*void ab initio*). In reviewing a statutory decree, Parliament can amend it as it likes. Article 15 of the Government Discipline Act supplements the constitutional provision by establishing that the Government shall:⁴
 - b. present such decrees to the President for their promulgation;

¹ Italian Constitution 1947.

² See Constitution, art 117.2.

³ Italian Constitution 1947.

⁴ Law n. 400, of 23 August 1988.

give reason in the preamble of the decree of the extraordinary circumstances of urgency and necessity that prompted the Government to act;

- c. delegated statutory decrees (*decreti legislativi*) provided in Article 76 of the Constitution, by which the Government adopts rules having the force of statutory law on an express delegation by the Parliament. The Act of delegation sets a deadline and lays down purposes, principles, and criteria. Under Article 14 of the Government Discipline Act, the Government shall present the decree to the President for promulgation within 20 days from the deadline set up by the Parliament;
 - d. regional statutory acts. The relationship between state laws and regional laws hinges in principle on a criterion of competence and not hierarchy. However, regarding a set of subjects listed in the constitution, regional law-making is confined to developing the principles laid down by Parliamentary statutes. More on this at paragraph 6 below. The CC reviews the conflicts between the state and the regions over legislative competences.
4. 'Secondary sources' of law, mainly laid out in Article 117.6 of the Constitution and Article 17 of the Government Discipline Act, include:
- a. regulations by the Government, promulgated by the President. They may in principle govern areas not covered by statutory law unless the constitution reserves a certain area or policy to statutory law. They cannot either repeal or derogate from statutory law;
 - b. Ministerial decrees, including PM decrees, which always require an express delegation by a primary source of law and cannot derogate from Government regulations;
 - c. regional and local authority regulations. Regional regulations follow the competence criterion established for primary legislation. Hence state (Government) regulations can only operate within the remit of the exclusive legislative competence of the state (see paragraph 6 below), whilst regional regulations can cover all other areas. Local authorities, in turn, have the power to enact regulations for organizing and carrying out administrative tasks conferred to them.
5. Government regulations and ministerial decrees, which are both subject to the advice of the Council of State before adoption, as well as regional and local regulations are 'administrative acts', and therefore they are reviewed by the administrative courts and not the CC, whose remit is confined to state and regional primary legislation. A relevant difference which has come centre stage during the pandemic, between Government regulations and ministerial decrees, is that the latter are not subject to promulgation by the President. Indeed, statutory decrees, delegated statutory decrees, and Government regulations all take the form of a Presidential Decree (*Decreto del Presidente della Repubblica*). In contrast, ministerial regulations (including PM regulations) take the form of Ministerial

Decrees. As we will see in the subsequent sections, the legislative framework put forward to face the pandemic has been characterized by recourse to statutory decrees, which have delegated PM decrees to enact the emergency measures. Using PM decrees rather than Government regulations means not only avoiding a deliberation by the Cabinet but that a Presidential (albeit formal) control is not required. This practice has made some commentators raise their eyebrows. Some have seen it as a way of either circumventing the President's role⁵ or subverting the ordinary manner of legislating, which is that statutes are implemented through Government regulations.⁶ On the face of the law (Article 17.3 of the Government Discipline Act), ministerial regulations are instruments for implementing policies under the competence of one or more Ministers but not the whole Cabinet.

6. A quasi-federal state, Italy is divided into 20 regions. The regions do not have any form of representation within the national Parliament. Each region has its own legislature, executive, and electoral arrangements within the framework established by the Constitution. Five regions (Friuli Venezia Giulia, Sardinia, Sicily, Trentino-Alto Adige/Südtirol, and Valle d'Aosta/Vallee d'Aoste) have a legal status of special autonomy guaranteed by bespoke constitutional laws. All the regions have opted for a presidential regime, where the president and the legislative assembly (council) are both elected. Following a major constitutional reform in 2001, Parliament only enjoys exclusive competence over certain specified areas. Among them, Article 117 of the amended Constitution provides criminal and civil justice, private law, foreign policy, immigration, policing, social security, market competition, education, customs, protection of national borders and international disease prevention treatments, and environmental protection. For other areas, crucially healthcare and civil contingencies, the central state must limit itself to laying down the fundamental principles and establishing the essential levels of services, while the power to legislate is vested in the regions. The latter enjoy full legislative competence in any other field not listed in Article 117 of the Constitution.
7. Most public services—notably healthcare, social assistance, social housing, and public transportation—are regulated by statute, following the division of labour about rulemaking explained above, but managed, with sizeable discretion, by regional and local governments. There are three types of local authorities in addition to regional administrative apparatuses. The approximately 8,000 municipalities (*comuni*) have directly elected mayors and councils. There is another, larger, local government layer consisting of metropolitan cities (14) and provinces (107), whose role in this context is negligible. Approximately half of the revenue of local authorities arises from central government grants and the remainder from local taxation. Mayors enjoy considerable powers in dealing with public health and urban security in case of emergencies of an exclusively local nature. They can issue ordinances, even derogating from statutes, provided they are

⁵ G Guzzetta, '[L'ultimo Dpcm manda in soffitta la Costituzione e cancella il principio di legalità](#)' *Il Riformista* (Rome, 5 November 2020).

⁶ F Bilancia, 'Le conseguenze giuridico-istituzionali della pandemia sul rapporto Stato/Regioni' (2020) 2 *Diritto Pubblico* 333, 339; D Trabucco, '[Il «virus» nel sistema delle fonti: Decreti-legge e DPCM al tempo del Covid-19 tra principio di legalità formale e principio di legalità sostanziale](#)' (2020) 2 *Nomos*.

temporary and proportionate, and they abide by the general principles of administrative law. Regarding public health, the law awards such emergency powers to the President of the region and the Minister for healthcare, respectively, when the situation at hand is regional or national.

8. Healthcare services are provided by public bodies (local health authorities), funded and controlled by the regions, whose jurisdiction includes several municipalities. There are about 100 of these nationally. Even though they are differently named in each region, they are Healthcare Corporations according to the National Healthcare Service Act (NHS Act).⁷ Finally, the peripheral organization of the government must be mentioned. Following the French system, Prefects are the general representative of the national government in each province under the supervision of the Home Secretary. As such, they operate to assist local authorities and coordinate national and local policy. Prefects are also responsible for public order and safety.
9. The response to the pandemic has not changed the basic constitutional structure of the state, but it has imposed tensions in various areas explored below.

II. Applicable Legal Framework

A. Constitutional and international law

10. The Italian Constitution neither contemplates a state of emergency nor allows any authority to declare a state of exception. Emergency situations can trigger the special legislative power of the Government to issue statutory laws; yet, the latter by no means are situations describable as a 'state of exception'. Even in the case of a state of war, in Article 78 of the Constitution, which establishes that the Parliament has the authority to declare it' (a state of war), it is doubtful whether this can be viewed as permitting a state of exception. Indeed, by such an act the Parliament vests the 'necessary powers' into the Government and the standard interpretation of this clause is that the Parliament can qualify the delegation of powers to the Executive.
11. However, the onset of Covid-19 has not provoked any breach or suspension of constitutional law. The handling of the outbreak has been left mainly to the national Government, which repeatedly issued statutory decrees and PM decrees (see Parts II.B and II.C below).
12. International legal instruments, and human rights treaties in particular, played but a minor role in the overwhelming amount of legislation aimed to prevent the spread of the pandemic. Like most European countries, Italy refused to derogate from the European Convention on Human Rights (ECHR) under Article 15, even though many Convention rights were significantly limited.⁸ On the other hand, by a joint Ministerial decree adopted by the Ministers for Health, Home Affairs, Foreign

⁷ Law n. 833, of 23 December 1978.

⁸ European Convention on Human Rights (1953).

Affairs, and Transport on 7 April 2020,⁹ the Italian government decided to temporarily suspend the classification of Italian harbours as a place of safety (POS) and therefore derogated from the 1979 Hamburg Convention on Maritime Search and Rescue.¹⁰

B. Statutory provisions

13. In the absence of a constitutionally regulated state of emergency, national authorities have initially adopted exceptional measures within the framework of existing primary legislation. A statutory state of emergency was officially declared by the government on 31 January 2020.¹¹ The declaration, which relied upon the authority conferred to the Executive by Article 24 of the Civil Protection Code,¹² did not involve the Parliament.¹³ This law allows the Head of the National Service for Civil Protection (an administrative unit under the direction of the PM) to take measures aimed at preventing the spread of contagious disease and guaranteeing the continued functioning of healthcare services. She can even derogate from statutory provisions, provided general principles of public law are observed.¹⁴ The Head of Civil Protection has used these powers mainly to accelerate public procurement procedures for healthcare services.
14. An entirely new legal framework providing emergency powers was then introduced by resorting to statutory decrees.¹⁵ As discussed above, statutory decrees are provisional decisions issued by the Government under their responsibility having the ‘force’ of primary law. Immediately after entering into force, a statutory decree must be presented to one of the Houses by introducing a ‘bill of conversion’ to convert the decree into an Act of Parliament. On the interplay between the Government and the legislature regarding such decrees, see Part III below. To understand the extent to which the recourse to statutory-decreeing by the Government can be considered exceptional, one must bear in mind that legislating by statutory decrees is not at all extraordinary. The requirements of necessity and urgency are considered a matter of political discretion. Given that the government can channel into a statutory decree any policy that it deems necessary and urgent, between 2008 and 2016 four different cabinets have enacted on average two

⁹ Joint Ministerial decree of the Minister for Healthcare, Minister for Home Affairs, Minister for Foreign Affairs, and the Minister for Transport (n. 150) (7 April 2020).

¹⁰ International Convention on Maritime Search and Rescue (1979).

¹¹ Deliberation of the Council of Ministers (31 January 2020).

¹² Delegated statutory decree n. 1 (2 January 2018).

¹³ S Civitarese Matteucci, ‘[The Italian Response to Coronavirus and Constitutional Disagreement](#)’, UK Constitutional Law Blog (30 April 2020).

¹⁴ D Tega and M Massa, ‘[Fighting COVID 19 – Legal Powers and Risks: Italy](#)’, Verfassungsblog (23 March 2020).

¹⁵ M Massa, ‘[A General and Constitutional Outline of Italy’s Effort Against COVID-19 – With the Best Face On](#)’ in E Hondius et al (eds), *Coronavirus and the Law in Europe* (Online, Intersentia 2020); S Civitarese Matteucci, ‘Italy–The Italian response to coronavirus was constitutionally legitimate–Was it suitable as well?’ (2020) Public law 615.

statutory decrees per month. During the present Parliamentary mandate, 66 statutory decrees have already been enacted. The essential aim of such statutory decrees was to establish regulation to contain the virus by setting up a spectrum of measures limiting fundamental rights and basic freedoms—regarding movement, work, socializing, assembly, worship—to be implemented essentially by PM regulations (on which see Part II.C below). Another batch of regulation by statutory decrees aimed to provide support for individuals, workers, and businesses. It included a furlough scheme and a general prohibition to dismiss employees for economic or organizational reasons.

15. The first two statutory decrees are the most significant: Statutory decree n. 6/2020 entered into force on 23 February 2020 and was transposed with amendments by the Parliament on 5 March 2020;¹⁶ Statutory decree n. 19/2020 entered into force on 25 March 2020 and was transposed with amendments by the Parliament on 22 May 2020.¹⁷ The latter, which amended some disputed provisions of the former for their dubious compatibility with the rule of law, constitutes the legal basis of the complex normative machinery that was subsequently enacted. In particular, Article 2 of Statutory decree n. 6/2020 provided considerable discretion to the government and other authorities to adopt unspecified further measures to deal with the spread of Covid-19 (*‘Le autorità competenti possono adottare ulteriori misure di contenimento e gestione dell'emergenza, al fine di prevenire la diffusione dell'epidemia da COVID-19, anche fuori dai casi di cui all'articolo 1, comma 1’*). In other words, to do ‘whatever it takes’ to deal with the spread of Covid-19. Statutory decree n. 19/2020 has repealed such an open-ended clause and substituted a more precise legal basis for the lockdown measures. Moreover, the first decree did not mention any limitation to the duration of the implementing PM decrees and made no reference to the proportionality of the measures enacted. Both these issues have been solved by the second statutory decree. It subjects the implementing decrees to a potential proportionality scrutiny and sets their duration to 30 days. The latter has then been extended to 50 days by Statutory decree n. 158/2020.¹⁸ The enactment of several successive statutory decrees (‘chain of decrees’) has generated a sort of regulatory cycle in which new provisions replace those enacted even within the space of a few weeks.
16. This batch of regulation is subject to a sunset clause. In the first phase, Statutory decree n. 19/2020 established that the powers conferred to the PM would expire by 31 July 2020. Two successive statutory decrees, in July¹⁹ and October,²⁰ have delayed the expiry date first to 15 October 2020, and then to 31 January 2021.

¹⁶ Statutory decree n. 6 (23 February 2020); transposed into Law n. 13 Act, of 5 March 2020.

¹⁷ Statutory decree n. 19 (25 March 2020); transposed into Law n. 35 Act, of 22 May 2020.

¹⁸ Statutory decree n. 158 (2 December 2020).

¹⁹ Statutory decree n. 83 (30 July 2020).

²⁰ Statutory decree n. 125 (7 October 2020).

17. The process of transposing statutory decrees into Acts of Parliaments enjoys per se a fast-track regime before the Houses, given that it cannot last more than 60 days (see Part I above and Part III below).
18. Reactions by opposition parties have been twofold. On the one hand, they declared their willingness to cooperate in Parliament with the government in order to improve legislation aimed to control the effects of the pandemic. On the other hand, by calling public attention to the risks of alleged abuse of powers by the government, they significantly increased media concern and reporting on the issue. No significant reactions from human rights and civil society organizations were registered about the curb on civil and political rights.

C. Executive rule-making powers

19. As discussed, executive rulemaking powers played an overwhelming role in providing the rules for dealing with the crisis.
20. The need for a flexible regulatory response to the pandemic and its diversified geographic diffusion was generally accepted. However, both public opinion and scholars have highlighted the need to safeguard the core content of the rule of law (viz the primacy of parliamentary legislation) while preserving an adequate and effective reaction to the pandemic crisis.
21. Executive rulemaking has taken place primarily by PM decrees (*decreti del Presidente del Consiglio dei ministri*), a remarkable number of which (20) have been issued since the start of the emergency. They rely upon both the law on civil protection—regarding the exercise of ordinary powers, ie in so far as they do not affect fundamental rights—and the statutory decrees discussed in Part II.B above. PM decrees have ranged from the management of health services, to instituting and adjusting the various phases of lockdown measures.
22. The second wave of the pandemic in Autumn 2020 brought about a new round of containment measures amounting to a semi-lockdown regime. The PM decree of 13 October 2020 made face masks compulsory indoors and outdoors nationwide and three more decrees on 24 October, 3 November, and 3 December brought back regulations which, although refraining from imposing the full lockdown of the first phase, established an array of new limitations for businesses, sport, shows, education, and leisure (see Part IV.A below). Moreover, this new phase of the crisis has been characterized by a markedly more active role on behalf of regional executives. The presidents of the regions, sometimes in agreement with the Minister for Healthcare, have been introducing a variety of different measures of containment, including a curfew from 11pm to 5am in Lombardy, which has remained the most affected area throughout the pandemic. The curfew regime was eventually extended nationwide, and the role of the regions were somewhat brought under stricter direction by the government. Due to the concurrence of state and regional powers in healthcare policy, the relationship between the executive and the regions has been one of the most disputed issues of the handling of the pandemic. This was somewhat exacerbated after the onset of the autumnal outbreak, with the president of the Conference of the Regions speaking about recentralization as a risk to an efficacious response to the crisis. The PM decree of

3 November 2020 had to be repeatedly redrafted to accommodate different and often contrasting demands coming from the regions. A task force between the government, regions, and local authorities has been set up as a means of fair co-operation between different levels of government.

23. A further relevant form of executive rule-making powers are the ordinances adopted within the framework of Article 32 of the NHS Act. Under that provision, the Minister for Healthcare, the Presidents of the regions, and mayors are enabled to issue exceptional ordinances (*ordinanze contingibili e urgenti*) at, respectively, the national, regional, or city level, for public hygiene and health purposes. Such instruments are traditionally deemed exceptional in that they can temporarily derogate from ordinary legislation provided that they do not (or better, should not) infringe the core content of fundamental rights. All these measures contain sunset clauses that are specified on the face of each instrument: their validity—which must be reasonably limited in time (*'contingibile'*)—ranges from a few days to a couple of weeks. On many occasions, the measures enacted by the Ministry for Healthcare have been incorporated into subsequent statutory decrees.
24. Ordinances adopted by both the Head of Civil Protection and by the Commissioner for the Enactment and Coordination of the Measures to Tackle and Contain Covid-19 (Covid-19 Commissioner) (*Commissario straordinario per l'attuazione e il coordinamento delle misure occorrenti per il contenimento e contrasto dell'emergenza epidemiologica Covid-19*) have been used to manage public services and facilitate public procurement procedures. Whereas the former are derived from powers conferred by the Civil Protection Code,²¹ the latter has been established by Article 122 of Statutory decree n. 18/2020. The main aim of such regulations is to derogate from ordinary legislation in providing goods and services for public authorities, such as masks and ventilators for healthcare personnel, school furniture, and so on.
25. Given that both PM decrees and other ministerial regulations are administrative acts, several of the relevant measures have been challenged before administrative courts (see Parts III.C and IV below).

D. Guidance

26. Executive powers have been exerted in different forms. Regarding healthcare, it has been mainly left to regional and local authorities to deal with situations relevant only locally through the power of issuing ordinances established by Article 32 of the NHS Act. Against this background, the guiding role of the national government has been limited either to inter-regional or national issues, and it has mainly been exercised through mostly secondary legislation.
27. Regarding the need to adapt public services to the pandemic, it has been mainly up to the Head of Civil Protection and to the Covid-19 Commissioner to deal with targeted responses.

²¹ Delegated statutory decree n. 1 (2 January 2018).

28. At both national and regional levels, executive authorities adopted a significant range of guidance in different fields affected by Covid-19, principally in the form of guidelines (*Linee guida*). The Ministry for Healthcare addressed an array of instructions and guidelines to healthcare officials, laying down organizational measures aimed to prevent the spread of contagions within hospitals and other structures of recovery.²² It further approved organizational guidelines aimed to prevent infection among workers in the public and private sector and schools.²³ These guidelines and recommendations have been elaborated by a Technical and Scientific Committee (*Comitato tecnico-scientifico*) (TSC) acting under the supervision of the National Service for Civil Protection (see paragraph 13 above).
29. Many regions have adopted guidelines that partly overlap with national guidelines. In some circumstances, such as those related to the re-opening of shops and workplaces after lockdown, regional guidelines have been negotiated with the national government within the relevant State-Regions Conference (*Conferenza Stato-Regioni*).²⁴ No significant divergence between such guidelines and the law can be recorded, however.
30. The adoption by the scientific society SIAARTI (Italian Society of Anaesthesia Analgesia Intensive Care) of 'Recommendations of clinical ethics for admission to intensive treatments and for their suspension, in exceptional conditions'²⁵ has raised concerns among health operators and public opinion.²⁶ The alleged necessity of striking a balance, in extreme circumstances, between prioritizing scarce health care resources for patients who are extremely ill but still have an actual chance of surviving, over those who are terminally ill, has been hotly debated.²⁷ It is, nonetheless, an issue to be seriously considered in the time of a massive and unpredictably evolving pandemic crisis.

III. Institutions and Oversight

A. The role of legislatures in supervising the executive

31. This section focuses on the Italian Parliament and less on regional legislatures. Since the Italian Constitution does not regulate a state of emergency (see Part II above), the procedural tools that determined the relationship between the Parliament and the government during the global health crisis remained unaffected.

²² Ministry for Healthcare, '[Covid-19 - Healthcare officials](#)' (updated 24 December 2020).

²³ Ministry for Healthcare, '[Covid-19 - Workers and businesses](#)' (updated 4 December 2020); Ministry for Healthcare, '[Operational guidelines for the management of Covid-19 cases and outbreaks in schools and nurseries](#)' (21 August 2020).

²⁴ Conference of the Regions, '[Guidelines for the re-opening of economic and leisure activities](#)' (11 June 2020).

²⁵ SIAARTI, '[Recommendations of clinical ethics for admission to intensive treatments and for their suspension, in exceptional conditions](#)' (6 March 2020).

²⁶ R Casati, 'Quei dilemmi morali che toccano ai medici' *Il Sole 24 ore* (Milan, 19 April 2020) 9.

²⁷ G M Caletti, '[Emergenza pandemica e responsabilità penali in ambito sanitario. Riflessioni a cavaliere tra "scelte tragiche" e colpa del medico](#)' (2020) 5 *Sistema penale*.

Whereas some commentators argue that Parliament acted as a mere rubber-stamp to the executive's decisions, others claim that it has effectively overseen the Government's decree and regulation-making powers. Generally, and as will be seen below, the extent to which Parliament managed to supervise the executive must be evaluated depending on the instrument used by the latter: on the one hand, statutory decrees and, on the other, administrative acts such as PM decrees or ministerial ordinances.

32. As illustrated in Parts I and II above, it is the legislative procedure which transposes statutory decrees into ordinary legislation within 60 days that ultimately allows Parliament to oversee the legislative activity of the Government: 'the temporary quality of statutory law made by a decision of the executive is justified ... primarily by the fact that only the Parliament has the ultimate power to make that decision permanent'.²⁸
33. In general, data collected between 23 February and 17 July 2020 confirms Parliament's ability to amend and influence the decree-making powers of the government: Parliament ratified 15 statutory decrees and approved 860 amendments, with significant inflation of the content of the transposed acts compared to the original statutory decree. For example, Statutory decree n. 34/2020²⁹ was enlarged by 319 paragraphs and by 40,000 words.³⁰ This suggests Parliament's ability to engage in effective scrutiny of statutory decrees; a capability that is, however, hampered by pre-existing issues which have been accentuated by the emergency. These issues not only relate to how the executive exercises its statutory decree-making powers, but also to the general relationship between Parliament and Government.³¹ For example:
 - a. due to time constraints, legislative activity was concentrated in one House only. Amendments were only approved by the House that first started the reading of the bill and were rarely modified by the other. This reinforced the already existing inclination towards a de facto mono-cameralism;³²
 - b. the government issued statutory decrees that repealed provisions found in previous ones, introducing an almost identical version of those same provisions.³³ For example, Article 40 of Statutory decree n. 23/2020³⁴ reproduced the content found in Article 17 of Statutory decree n. 18/2020,

²⁸ S Civitarese Matteucci, 'Italy – The Italian response to coronavirus was constitutionally legitimate – Was it suitable as well?' (2020) Public Law 615, 616.

²⁹ Statutory decree n. 34 (19 May 2020); transposed into Law n. 77, of 17 July 2020.

³⁰ Observatory on Legislation of the Chamber of Deputies, *The 2019-2020 Report on Legislation between State, Regions and E.U.* (28 July 2020).

³¹ N Lupo, 'L'attività parlamentare in tempi di coronavirus' (2020) 2 Forum di Quaderni Costituzionali 122.

³² E Longo, *Le trasformazioni della funzione legislativa nell'età dell'accelerazione* (Giappichelli 2018); GT Barbieri, 'L'irrisolta problematicità del bicameralismo italiano tra intenti riformistici e lacune normative', (2019) 3 Federalismi.it 57.

³³ To understand the issues with this practice see, Decision 17 October 1996, n 360 (Constitutional Ct).

³⁴ Statutory decree n. 23 (8 April 2020).

and it ordered the abrogation of said article. This generated the following consequences: Article 17 produced its legal effects until its abrogation; Article 40 started producing its effects from that moment; but since Article 40 reproduced the same content as Article 17, it essentially extended the effects in time of the latter provision, creating tensions with the rationale of Article 77 of the Constitution;³⁵

- c. the content of the statutory decrees under examination by the Houses was often merged into the law transposing another statutory decree. For example, the content of Statutory decree n. 9/2020³⁶ (support measures for families, workers and businesses), Statutory decree n. 11/2020³⁷ (on the justice system), and Statutory decree n. 14/2020³⁸ (on the national healthcare system), were all merged into Statutory decree n. 18/2020. The latter was transposed into the Law n. 27, of 24 April 2020, Article 1.2 of which ordered the abrogation of the statutory decrees cited above.³⁹ This practice raises concerns similar to those already mentioned; furthermore, as the Committee on Legislation underlined numerous times, the merging of disparate statutory decrees may bring about an excessive heterogeneity producing negative effects on the legislative process by which the statutory decrees are transposed into statute;⁴⁰
 - d. the transposition of statutory decrees often occurred by a vote of confidence on the entire bill or on a single amendment, which entirely replaced the bill undergoing examination (so called ‘maxi-amendment’). This was the case for Statutory decree n. 104/2020, which was approved both by the Senate and the Chamber of Deputies after a vote of confidence was placed on a maxi-amendment.⁴¹
34. Non-legislative instruments—especially urgent questions, question time, and urgent interpellations—proved to be particularly useful in overseeing the Government’s regulation making powers.⁴² PM decrees neither require Presidential promulgation, as statutory decrees do, nor do they entail subsequent parliamentary scrutiny. Therefore, since such decrees were used to implement a wide range of

³⁵ P Milazzo, [‘Emergenza e ‘quasi-reiterazione’ del decreto legge. Il caso delle sperimentazioni cliniche sul Covid-19’](#), laCostituzione.info (13 April 2020).

³⁶ [Statutory decree n. 9](#) (2 March 2020).

³⁷ [Statutory decree n. 11](#) (8 March 2020).

³⁸ [Statutory decree n. 14](#) (9 March 2020).

³⁹ [Law n. 27, of 24 April 2020](#).

⁴⁰ A Vernata, [‘L’irrocervo normative. Il decreto ‘Cura Italia’ quale prototipo di una nuova legislazione emergenziale’](#) (2020) 3 Osservatorio Costituzionale 536; Committee on Legislation, [Opinion on Bill A.C. 2643](#) (15 April 2020); Committee on Legislation, [Opinion on the Conversion Bill A.C. 4158](#) (6 December 2016).

⁴¹ [Statutory decree n. 104](#) (14 August 2020).

⁴² E Griglio, [‘Parliamentary oversight under the Covid-19 emergency: striving against executive dominance’](#) (2020) 8 The Theory and Practice of Legislation 49.

restrictive measures, there was a demand for greater parliamentary accountability. This became especially evident when, at the beginning of the emergency, the Cabinet excluded Parliament from the decision-making process by declaring a state of national emergency without any meaningful form of parliamentary involvement (see Part II.B above). The Minister for Healthcare, in a statement to both Houses the day before the latter decision, failed to mention the intention to declare the state of emergency. He addressed the Houses again between 26 and 27 February on the measures adopted to limit the spread of the virus. Almost one month passed before the Cabinet formally addressed Parliament again (on 25 March 2020). Complaints were raised by opposition parties, as well as by key parliamentary figures, such as the Speaker of the Senate, who strongly encouraged the Cabinet to re-establish dialogue with the Parliament, lest they undermine the role of the Parliament during a national crisis.⁴³

35. To remedy this shortcoming, Statutory decree n. 19/2020 provides that (i) the government must communicate to the Parliament the measures adopted within one day from their publication in the Official Gazette; (ii) at least every 15 days, the PM or delegated ministers must inform the Parliament about ongoing initiatives; and (iii) the government should give the Houses *ex ante* insight into the emergency measures planned, in order for them to advance any recommendations—which, however, are not legally binding.
36. With these provisions, Parliament was able to complement the Government's decision-making process, especially by moving resolutions aimed to define the Houses' position on specific matters. For example, in both July and October 2020, the two Houses moved and approved a resolution expressing their approval for extending the legislative state of emergency.
37. With a motion moved in May 2020, and having regard to the role of the legislature in transposing statutory decrees into legislation, the Chamber of Deputies asked the Cabinet to give preference to using statutory decrees (rather than PM decrees) whenever it intends to limit fundamental rights and liberties.⁴⁴

B. The functioning of the legislature where its ordinary business is disrupted

38. Although significantly limited and disrupted, Parliament's operations were never entirely suspended. Plenary sittings were, however, reduced during the lockdown period, between the beginning of March and until mid-June 2020. In that period, both Houses met only a couple of times a week. Furthermore, whereas the lower House engaged in regular scrutiny of the executive during the weekly sessions of question time and urgent interpellations, the Senate suspended question time for a few weeks at the beginning of March.

⁴³ Senate of the Republic XVIII Legislature, [Press release](#) (22 March 2020).

⁴⁴ Chamber of deputies XVIII Legislature, '[Motion n. 1/00348](#)' (11 May 2020).

39. The business calendar was entirely modified at the beginning of March 2020 by the Houses' respective Conference of Parliamentary Group Leaders, ie a body established in each House that comprises the Speaker and the leaders of each parliamentary group, responsible for the House's schedule. Sittings have been limited to urgent non-deferrable bills only, with particular regard for those transposing statutory decrees into statute. MPs can also meet in plenary for urgent questions and interpellations, although under the following stringent arrangements:⁴⁵
- a. mandatory use of face-masks;
 - b. meetings and sessions have been held in larger rooms to ensure social distancing among MPs. For example, the plenary of the Chamber of Deputies, which usually takes place in the Aula of Montecitorio, extended its seats to the press and public galleries, as well as to the 'Transatlantico' (an adjacent room to the Aula). This arrangement is still in place and there are currently 339 seats in the main hall, 170 places in the public and press galleries, and 120 in the Transatlantico.⁴⁶ The latter is connected via live-streaming with the main hall, and to guarantee proper (electronic) voting procedures all the new seats are equipped with tablets and terminals connected with the Chambers;⁴⁷
 - c. non-electronic votes take place through staggered roll calls, dividing MPs into time-slots and in alphabetical order;
 - d. one of the most delicate issues has been how to guarantee the validity of decisions, in compliance with the requirement laid down in Article 64.3 of the Constitution: 'the decisions of each House and the Parliament are not valid if the majority of the members is not present'. Due to an increasing number of MPs unable to attend sittings, the Select Committee on Rules of Procedure of the Chamber of Deputies initially decided to consider as present those MPs who were in precautionary quarantine, whereas MPs who were positive for Covid-19 were considered as absent.⁴⁸ During the plenary that took place on 6 October 2020, however, the *quorum* was not reached, and the lower House was unable to vote on the resolution to approve the extension of the legislative state of emergency. The aforementioned Select Committee thus agreed that MPs who are unable to attend sittings, either because they are in quarantine or because they are

⁴⁵ S Curreri, '[Il Parlamento nell'emergenza](#)' (2020) 3 Osservatorio Costituzionale 214; F Biondi and P Villaschi, '[Il funzionamento delle Camere durante l'emergenza sanitaria. Riflessioni sulla difficile praticabilità di un Parlamento "telematico"](#)' (2020) 18 Federalismi.it 26.

⁴⁶ Committee on the Rules of Procedure of the Chamber of Deputies XVIII Legislature, [Transcript](#) (31 March 2020); Committee on the Rules of Procedure of the Chamber of Deputies XVIII Legislature, [Transcript](#) (7 May 2020).

⁴⁷ Plenary of the Senate of the Republic XVIII Legislature, [Transcript of sitting n. 203](#) (26 March 2020) 44.

⁴⁸ Committee on the Rules of Procedure of the Chamber of Deputies XVIII Legislature, [Transcript](#) (31 March 2020).

positive for Covid-19, are considered as present and included in the *quorum*;⁴⁹

- e. both Houses adopted a widely discussed and controversial measure reducing the number of MPs allowed to participate in the plenary. The Conference of Parliamentary Group Leaders sought to ensure suitable health and safety conditions, whilst guaranteeing the proportional representation of each parliamentary group, and the necessary *quorum* (mentioned above). Following a ‘gentlemen’s agreement’, groups decided to limit the attendance to 55% of the total members of each House (350 deputies and 161 senators). Nonetheless, despite said agreement, attendance was often much higher. For example, 412 deputies were present at the plenary that took place on 14 April 2020, and 246 senators participated at the plenary of 9 April 2020.⁵⁰
40. Commentators raised concerns about the way Parliament responded to the Covid-19 crisis. Some argued that by reducing their calendar, the Houses not only had less time for a constructive debate, but they also struggled to keep up to speed with the Government.⁵¹ Limiting the number of MPs also gave rise to specific concerns: eg the difficulty in striking a balance between representativity and proportionality while reducing the attendance of smaller parliamentary groups;⁵² the risk that political groups could exert excessive pressure on their members (it was ultimately up to each group to identify the MPs that could sit in plenary).⁵³ More generally, it was argued that curtailing the presence and participation of MPs risked limiting their right to carry out their mandate freely,⁵⁴ a concern raised in late-March 2020 by the Speaker of the Chamber of Deputies.⁵⁵
 41. Standing committees (and other bodies) were given permission to hold non-deliberative and informal proceedings online, thus including any activity that does not require casting a vote. On the contrary, virtual arrangements were not adopted for the plenary. This decision gave rise to an animated debate both within and outside the Parliament. Part of the discussion revolved around the definition of the term ‘present’ found in Article 64.3 of the Constitution. Some commentators opted

⁴⁹ Committee on the Rules of Procedure of the Chamber of Deputies XVIII Legislature, [Transcript](#) (6 October 2020).

⁵⁰ Plenary of the Chamber of Deputies XVIII Legislature, [Transcript of sitting n. 326](#) (15 April 2020) 39; Plenary of the Senate of the Republic XVIII Legislature, [Transcript of sitting n. 206](#) (9 April 2020) 64.

⁵¹ Interview of Marcello Pera and Antonio Malaschini, ‘Evitare che la democrazia si indebolisca’ *Corriere della Sera* (Milan, 31 March 2020) 30; see also Annalisa Chirico’s interview of Prof. Sabino Cassese, A Chirico, ‘[Lo stress test del virus sulla democrazia parlamentare: esiti](#)’ *Il Foglio* (Online, 13 March 2020).

⁵² N Lupo ‘[La Costituzione non impedisce il voto ‘da remoto’ dei parlamentari](#)’, *Luiss Open* (2 April 2020).

⁵³ N Lupo ‘[La Costituzione non impedisce il voto ‘da remoto’ dei parlamentari](#)’, *Luiss Open* (2 April 2020).

⁵⁴ F Biondi and P Villaschi, ‘[Il funzionamento delle Camere durante l’emergenza sanitaria. Riflessioni sulla difficile praticabilità di un Parlamento “telematico”](#)’ (2020) 18 *Federalismi.it* 26.

⁵⁵ Committee on the Rules of Procedure of the Chamber of Deputies XVIII Legislature, [Transcript](#) (31 March 2020).

for an extensive interpretation of the word, so to include remote participation.⁵⁶ Others, however, argued that a literal interpretation of the Constitution and of the Rules of Procedure suggests that ‘present’ must be understood as a physical presence only.⁵⁷

42. Much controversy revolves around the possible negative consequences of remote working on the role of Parliament. Supporters of virtual arrangements have argued that they would allow the restoration of an equilibrium between the executive and legislative bodies.⁵⁸ They would also easily let MPs directly affected by Covid-19 participate in debates and vote in proceedings. The ingrained belief that the only way to be effective is to be physically present has led others to argue that virtual participation would hamper the core functions of Parliament and adversely affect the essence of political representation.⁵⁹
43. Given the sensitive nature of any decision on such a matter,⁶⁰ both Houses, taking a cautious approach, decided to reject remote working for the plenary.⁶¹ It cannot be ruled out, however, that things may change in the future. Whereas the Speaker of the Senate seems to resist adopting any forms of remote participation for the plenary, the Speaker of the Chamber of Deputies seems more open to new solutions.⁶² Both opposition and majority parliamentary groups have further engaged with this issue. Two distinct initiatives have emerged. The first is to modify the Constitution. A private member’s bill aims to establish a select bicameral committee designated to replace the two Houses during a national emergency.⁶³ The bill also advances the possibility for said committee to adopt virtual arrangements. The second would modify the Rules of Procedure of the Chamber of

⁵⁶ S Ceccanti, [‘Verso una regolamentazione degli stati di emergenza per il Parlamento: proposte a regime e possibili anticipazioni immediate’](#) BioLaw Journal no 1S/2020, 79; F Clementi, ‘La democrazia rappresentativa si difende pure con il voto a distanza’ (2020) 2 Quaderni Costituzionali 379; N Lupo, [‘Perché non è l’art. 64 Cost. a impedire il voto ‘a distanza’ dei parlamentari. E perché ammettere tale voto richiede una ‘re-ingegnerizzazione’ dei procedimenti parlamentari’](#) (2020) 3 Osservatorio Costituzionale 23.

⁵⁷ R Calvano, [‘Brevi note su emergenza COVID e voto dei parlamentari a distanza. Rappresentanza politica, tra effettività e realtà virtuale’](#) (2020) 21 Federalismi.it 45; M Luciani, [‘Intervento al dibattito ‘Parlamento aperto: a distanza o in presenza?’](#) Radio radicale (Radio, 3 April 2020).

⁵⁸ C Fusaro, [‘Coronavirus, meglio niente Parlamento o un Parlamento smart?’](#), Libertà Eguale (15 March 2020).

⁵⁹ M Villone, ‘La rappresentanza non si pratica a distanza’ *Il Manifesto* (Rome, 31 March 2020); V Lippolis, [‘Parlamento a distanza? Meglio di no’](#) Il Dubbio (Online, 1 April 2020); R Calvano, [‘Brevi note su emergenza COVID e voto dei parlamentari a distanza. Rappresentanza politica, tra effettività e realtà virtuale’](#) (2020) 21 Federalismi.it 45.

⁶⁰ N Lupo, [‘Perché non è l’art. 64 Cost. a impedire il voto ‘a distanza’ dei parlamentari. E perché ammettere tale voto richiede una ‘re-ingegnerizzazione’ dei procedimenti parlamentari’](#) (2020) 3 Osservatorio Costituzionale 23.

⁶¹ Committee on the Rules of Procedure of the Chamber of deputies XVIII Legislature, [Transcript](#) (31 March 2020); Committee on the Rules of Procedure of the Senate of the Republic XVIII Legislature, [Transcript](#) (9 June 2020).

⁶² See Annalisa Cuzzocrea’s interview of Roberto Fico, ‘Evitiamo la scissione, io quando ero critico non ho abbandonato la nave’ *La Repubblica* (Rome, 6 October 2020).

⁶³ Chamber of Deputies XVIII Legislature, [Bill amending the Constitution n. 2452 ‘Introduction of articles 55-bis and 55-ter of the Constitution, relating to the declaration of the state of emergency and the designation of a special committee’](#) (30 March 2020).

Deputies. The proposal (presented on 1 October 2020) would empower the lower House and standing, as well as select, committees to resort to remote forms of participation and voting.⁶⁴

44. At first, the activity of standing committees was significantly affected too. It was limited to affairs dealing with emergency and non-deferrable acts, ie bills relating to items in the Order of Business of the House or bills concerning which committees were acting in a law-making capacity. Parliamentary scrutiny still made up most of their agenda. After an initial period of adjustment, and once the lockdown was over in mid-June 2020, standing committees resumed their business as usual.

C. Role of and access to courts

45. Several measures have been introduced to maintain the operation of the courts without exacerbating the risk of contagion.⁶⁵ At the outset, such measures concerned proceedings taking place in areas affected by the first outbreaks,⁶⁶ but they soon encompassed the whole nation.⁶⁷
46. Currently, the main legislative framework may be found in Articles 83–85 of Statutory decree n. 18/2020. During an initial phase (9 March–11 May 2020), hearings in civil and criminal proceedings were postponed and procedural time limits, including the statute of limitations and terms of preventive imprisonment, were suspended. Exceptions were made for proceedings involving the urgent protection of fundamental rights, precautionary measures, and to some extent, defendants in pre-trial detention. Furthermore, the presidents of the courts were empowered to take extraordinary discretionary organizational measures such as: limiting and regulating public access; conducting hearings either by excluding members of the public from attending, or via videoconference, or in written and digital form (see paragraph 51 below). Such measures were also implemented during the second phase (12 May–31 December 2020), and they were extended until 31 January 2021.⁶⁸ As for administrative courts' proceedings, at first, hearings were generally postponed until 15 April 2020. After this initial period, the presidents of the courts were empowered to take organizational measures similar to those listed above up to 31 July 2020. From 30 May 2020, parties may request that hearings are held by videoconference. Some particular types of proceedings

⁶⁴ Chamber of Deputies XVIII Legislature, [Proposal to modify the Rules of Procedure 'Article 48-ter: Telematic parliamentary business and remote voting'](#) (Doc. II, n. 15) (1 October 2020).

⁶⁵ G Parodi, C Locurto, and R Bardelle, 'Urgent Measures to Contrast the COVID-19 Epidemic in Relation to Civil and Criminal Justice' in E Hondius et al (eds), [Coronavirus and the Law in Europe](#) (Online, Intersentia 2020).

⁶⁶ [Statutory decree n. 9](#) (2 March 2020), art 10.

⁶⁷ [Statutory decree n. 11](#) (8 March 2020)

⁶⁸ [Statutory decree n. 125](#) (7 October 2020); transposed into [Law n. 159, of 27 November 2020](#); and [Statutory decree n. 137](#) (28 October 2020), art 23; transposed into [Law n. 176, of 18 December 2020](#).

have been entirely suspended by the law: eg release of property⁶⁹ and new insolvency procedures unless unrelated to the pandemic (until 30 June 2020).⁷⁰

47. Such measures have ignited a heated debate. The national bar council and the national bar association complained that ‘in such a dramatic moment for Italy, Italian justice has hit one of the most critical lows in the history of the Republic: it [was] paralyzed and almost entirely inaccessible’.⁷¹ The Ministry for Justice reported that a reduction in service took place, but that it was not as severe as one would have expected: eg by comparing the number of first-instance proceedings concluded in 2019 and 2020, from 23 February to 31 March (civil) and to 24 April (criminal), the Ministry noted a decrease of 43% and 57%, respectively.⁷²
48. No evidence is available on a digital divide between users and its impact on access to justice. It is worth noting, however, that with very few and mostly minor exceptions justice may be accessed only through licensed professionals, who are already familiar with the ongoing digitalization of proceedings. Particularly in civil ones, over the past years there has been a complete shift towards telematic procedures, requiring attorneys, for example, to file official documents exclusively online. According to the Ministry for Justice, in 2019 about 9,160,000 acts were filed by barristers in digital format.⁷³ Although emergency measures brought about new rules, guidelines, and practices, it seems reasonable to assume that most professionals had already developed the necessary skills. Additionally, the communications between barristers and clients have been simplified: eg clients can sign a power of attorney electronically and send it to a barrister, together with a copy of a valid identity document.⁷⁴
49. Notwithstanding all the pre-existing digital adjustments, the number of new proceedings filed during the pandemic did decrease compared to 2019: eg, according to the already mentioned report on ‘phase 1’, from 23 February to 31 March 2020, 148,092 and 9,372 new proceedings were initiated in civil first-instance and appellate courts, respectively, with a 32% and 25% decrease compared to the same period in 2019. Therefore, to some extent, the pandemic may have operated as a barrier to access to justice.

⁶⁹ [Statutory decree n. 18](#) (17 March 2020), art 103.6.

⁷⁰ [Statutory decree n. 123](#) (8 April 2020), art 10.

⁷¹ Consiglio nazionale forense and Organismo congressuale forense, ‘[Giustizia ferma, a rischio tenuta sociale Paese](#)’ (5 June 2020).

⁷² Ministry for Justice, Department for the Organization of the Judiciary, of HR and of Services, ‘[Justice’s numbers during the Covid-19 emergency](#)’ (23 May 2020).

⁷³ Ministry for Justice, ‘[Summary of the Ministry’s Report on the Administration of Justice in 2019, in compliance with art. 86, R.D. 30 January 1941, n.12](#)’ (31 January 2020).

⁷⁴ [Statutory decree n. 18](#) (17 March 2020), art 83.20.

50. Several special and temporary provisions have already been mentioned. Others include:⁷⁵
- a. mandatory filing of acts in digital format (for courts already equipped and organized to reach this aim);
 - b. replacement of civil hearings (where they require the participation of the parties' attorneys only) with the digital exchange of written notes, unless one of the parties requests an oral hearing and the court allows it (the hearing may, in this case, take place via videoconference);
 - c. in criminal trials, videoconferences became the standard form of participation for detained defendants, as well as trials which only require the participation of the public prosecutor, defendants, and their attorneys, court auxiliaries, police, and experts—but never for the closing argument, or direct or cross-examination of parties, experts and witnesses, unless the parties consent to videoconference. This restriction was enacted after lawyers and their firms expressed a strong critical reaction towards the risks linked with 'virtual courts';⁷⁶
 - d. extension of online and remote proceedings to civil and criminal proceedings before the Higher Court (Court of Cassation).
51. Courts have extensive review powers over emergency measures. If such measures are in the form of statutory provisions, the review may occur through an incidental question of constitutionality. The parties or the judges (*motu proprio*) raise the question before the Constitutional Court during a case where those measures are at stake and provided the question is relevant to the case itself. If those measures take the form of administrative regulations (eg PM decrees), they are subject to direct review on a challenge by interested parties. Only administrative courts, however, have the power to quash such measures with a general effect. Several questions of constitutionality have been discussed before the courts about alterations to the justice system to deal with the pandemic. This includes the lawfulness of written-only procedures, as well as the suspension of the statute of limitations and the revision of release orders concerning convicts susceptible to clinical vulnerabilities due to Covid-19. The Constitutional Court is expected to issue judgments in the coming months,⁷⁷ although it has already solved one of the challenges by finding that the suspension of the statute of limitations was not unconstitutional as it was incidental to the suspension of the trials from 9 March to 11 May 2020, which was provided for to deal with the health emergency. This suspension was not found to violate the constitutional principle prohibiting the retroactive effect of less

⁷⁵ Chamber of Deputies, Research Department, '[Measures implemented to face the Covid-19 crisis in the justice sector](#)' (7 July 2020, updated 18 December 2020).

⁷⁶ [Statutory decree n. 28](#) (30 April 2020), art 3.

⁷⁷ M Massa, 'A General and Constitutional Outline of Italy's Efforts Against COVID-19 – With the Best Face On' in E Hondius et al (eds) [Coronavirus and the Law in Europe](#) (Online Intersentia 2020); G Parodi, C Locurto, and R Bardelle, 'Urgent Measures to Contrast the COVID-19 Epidemic in Relation to Civil and Criminal Justice' in E Hondius et al (eds), [Coronavirus and the Law in Europe](#) (Online, Intersentia 2020).

favourable criminal law provisions.⁷⁸ Administrative law litigation has been extensive as well.⁷⁹ Essentially, any statutory decree or administrative act, including the declaration of a national state of emergency, may be challenged in proceedings initiated by parties, according to the general rules. In terms of results, neither the state of emergency itself, nor the ‘necessity and urgency’ requirements under Article 77 of the Constitution have been questioned. And on the whole the judicial review of specific measures has been mostly deferential; for example, the Administrative Court for Lazio denied the interim suspension of the temporary prohibition of public religious rites, as the measure was considered to be broadly discretionary, it served the purpose of protecting public health, and religious rites could still be celebrated online.⁸⁰ Greater strictness was applied only regarding local and regional measures that were not aligned with national ones; for example, the Council of State intervened to prevent the Mayor of Messina from prescribing registration as a necessary condition to cross the Strait of Messina between Sicily and Calabria. Instead, the Administrative Court for Calabria found that the President of a Region lacks the power to allow outdoor service for restaurants when national regulations only authorize delivery services.⁸¹

D. Elections

52. The referendum for the confirmation of the constitutional law aiming to reduce by one-third the members of Parliament was scheduled for 29 March 2020. On that date, citizens would have had to express their approval for the reduction of the number of elected senators from 315 to 200, and the number of deputies from 630 to 400.⁸² However, the call for the referendum—issued on 28 January 2020—was revoked by a decree of the President of the Republic on 5 March 2020,⁸³ and it was later rescheduled to take place on 20–21 September 2020. Elections for seven Regions,⁸⁴ 955 Municipalities,⁸⁵ and two parliamentary seats (by-elections) were also postponed to 20–21 September 2020.⁸⁶
53. The referendum was initially scheduled for 29 March 2020. The other elections should have taken place simultaneously in spring. In the end, all ballots were cast

⁷⁸ [Decision 18 November 2020 n. 278](#) (Constitutional Ct).

⁷⁹ Administrative Justice, Council of State and Administrative Courts, ‘[Covid-19 Emergency: A Focus on the Case-law and on Opinions](#)’ (17 September 2020).

⁸⁰ [Decree 29 April 2020 n. 3453](#) (Administrative Ct for Lazio).

⁸¹ [Opinion 7 April 2020 n. 735](#) (Council of State).; [Decision 9 May 2020 n. 841](#) (Administrative Ct for Calabria).

⁸² S. Civitarese Matteucci, ‘Italy—The Smaller the Better? Italian Parliament Decides to Shrink Itself’ (2019) Public Law 162.

⁸³ [Decree of the President of the Republic](#) (5 March 2020).

⁸⁴ Department of Home Affairs, ‘[A focus on regional elections](#)’ (accessed 5 November 2020).

⁸⁵ Department of Home Affairs, ‘[List of Municipalities undergoing administrative elections scheduled in the second semester of 2020](#)’ (accessed 5 November 2020).

⁸⁶ [Statutory decree n. 26](#) (20 April 2020); converted into [Law n. 59, of 19 June 2020](#).

between 20–21 September 2020, with a second round for 54 Municipalities between 4–5 October 2020.

54. Voting procedures were only subject to minor adaptations. For example, voters had to insert their ballot in the box personally; special polling stations were in charge of at-home voting for Covid-19 patients; these patients could also vote if quarantined in a municipality different from their usual place of residence.⁸⁷ Turnout was generally relatively high: eg 53.84% for the referendum; 55.2% in Campania, 61.15% in Veneto, 56.43% in Puglia, and 62.6% in Toscana (to be compared, respectively, with 51.93%, 57.16%, 51.16%, and 48.28% in the 2015 elections for the same Regions). It seems reasonable to assume that electoral access was not hampered significantly.

E. Scientific advice

55. During the emergency, several committees were established to support the actions of the Government, both to contain the outbreak and, at a later point, to reboot the economy. Compared with other countries, the fact that such committees had to be hastily established for this specific emergency has been considered a symptom of a lingering immaturity of the Italian system regarding the institutional channels of dialogue between science and government.⁸⁸ Most notably, at the beginning of the emergency the Head of Civil Protection established the Technical and Scientific Committee (TSC),⁸⁹ which soon acquired a central role in advising the government. Article 2.1 of Statutory decree n. 19/2020 requires the PM to consult the TSC prior to issuing decrees aimed at containing the pandemic.
56. There is no explicit requirement that such advice be published and, indeed, a specific controversy arose on this issue (see Part III.F below). Nevertheless, the minutes of TSC meetings are currently being published online within 45 days.⁹⁰ The TSC includes 13 high-ranking officials appointed from ministries and public institutions competent in the fields of healthcare and prevention, as well as a representative designated by the President of the Conference of the Regions (*Conferenza delle regioni e delle province autonome*). The body may include further experts in the field in case of specific necessity, including from the World Health Organization.⁹¹
57. The members of the TSC do not possess a *de jure* legal status of full independence: they have been selected by a government office (the Head of the Department for

⁸⁷ [Statutory decree n. 103](#) (14 August 2020).

⁸⁸ A Iannuzzi, '[Leggi 'science driven' e CoViD-19. Il rapporto fra politica e scienza nello stato di emergenza sanitaria](#)', *BioLaw Journal* no 1S/2020, 119.

⁸⁹ [Ordinance of the Head of the Department for Civil Protection \(n. 630\)](#) (3 February 2020), art 2.

⁹⁰ Department for Civil Protection, '[Minutes of the Technical and Scientific Committee](#)' (updated 23 November 2020).

⁹¹ [Ordinance of the Head of the Department for civil protection \(n. 663\)](#) 18 April 2020. For an update on the current composition of the TSC see Ministry of Healthcare, '[Scientific and Technical Committee](#)' (12 November 2020).

Civil Protection, which reports directly to the PM), mostly by virtue of their pre-existing positions as officials in bodies and offices under governmental control. There is no express provision concerning the removal of members from the TSC; although arguably the removal could be brought about by a decision of the same Head of Department. In any case, the broad composition, the presence of members and experts from outside the state administration, and above all the generally high scientific and professional reputation of the TSC and its members, seem a sufficient guarantee of *de facto* independence, which indeed has never been questioned.

F. Freedom of the press and freedom of information

58. There is no indication that the government constrained or obstructed media coverage of the pandemic in Italy.
59. Laws on access to information have not been suspended, but time limits for granting access were postponed—together with time limits for most administrative proceedings—from 23 February to 15 May 2020. However, administrative authorities have been required to adopt the necessary organizational measures to ensure a reasonable duration of their proceedings and to prioritize urgent requests.⁹² A specific episode concerning the minutes of the TSC (see Part III.E above) deserves mention. The Department for Civil Protection denied some individuals access to the minutes they had requested under the national equivalent of the ‘Freedom of Information Act’. A challenge was raised to the Administrative Court for Lazio, asking whether the PM decrees, based on the advice of the TSC, were exempt from disclosure as normative acts. The issue was not, therefore, if the minutes were intrinsically subject to any secret. The Administrative court granted access,⁹³ which was then immediately appealed before the Council of State, which suspended it.⁹⁴ The President of the appellate court opined that unless the lower court decision was suspended, access would be granted and the entire appellate proceeding would become moot. Nonetheless, after public outcry, the department made the minutes available and the appeal proceedings were discontinued.

G. Ombuds and oversight bodies

60. No special ombudsperson or reviewing office has been established for the pandemic, nor is there any indication that existing ombudsperson offices (mostly at the regional and local level) played any significant role. Several complaints have been filed with public prosecution offices across the country, concerning both the general management of the pandemic and specific episodes of alleged delays and errors in containing and preventing outbreaks. The public prosecution offices are still carrying out their investigations to verify whether there may be the grounds to prosecute.⁹⁵ Until now, there is no sign of indictment. To the contrary, some

⁹² Statutory decree n. 18 (17 March 2020), art 103.1.

⁹³ [Decision 22 July 2020, n. 8615](#) (Administrative Ct for Lazio).

⁹⁴ [Presidential decree 31 July 2020, n.4574](#) (Council of State).

⁹⁵ M D’Alessandro, “[“Dossier decisivo” sulla zona rossa, la Procura dà più tempo a Crisanti](#)’ AGI-Agenzia Italia (Online, 9 October 2020).

prosecution offices—eg in Rome—suggested that there are no grounds for indicting the government.

IV. Public Health Measures, Enforcement and Compliance

A. Public health measures

61. 62. National legislation regarding healthcare and public health is ordinarily confined to establishing the fundamental principles and essential service levels. The regions, within such a framework, organize the provision of services. The public health measures discussed in this section, though, are predominantly those laid down by the government within the framework expounded in Part II above. However, it is fitting to note that under Article 3 of Statutory decree 19/2020 the regions are empowered to enact more restrictive measures in cases of increased risk.⁹⁶ Under Article 1.16 of Statutory decree 33/2020, in particular circumstances, the regions, based on a formal agreement with the Minister for Healthcare, can even enact less restrictive measures in compliance with the criteria established by the PM decrees.⁹⁷
62. As seen in Part II.B above, the legal framework within which public health measures have been enacted via PM decrees has been set up by Statutory decree n. 19/2020 as repeatedly amended.⁹⁸ One can roughly identify three phases regarding public health measures. It is fitting to note that such a categorization is not expressly adopted in legislation, but it is deducible from the succession of the measures enacted.
- a. **Phase 1 (from 8 March to 15 May 2020):** the lockdown phase, which forbade people from leaving home with some exceptions, was inaugurated by the PM decrees adopted on 8, 9, and 11 March 2020,⁹⁹ implementing Statutory decree n. 6/2020,¹⁰⁰ then replaced by the Statutory decree 19/2020.¹⁰¹
 - b. **Phase 2 (from 16 May to 12 October 2020):** inaugurated by Statutory decree 33/2020,¹⁰² marks the transition from the strict regime of phase 1 to the much milder regime set up by the PM decrees adopted on 17 and 18 May 2020.¹⁰³

⁹⁶ [Statutory decree n. 19](#) (25 March 2020).

⁹⁷ [Statutory decree n. 33](#) (16 May 2020).

⁹⁸ [Statutory decree n. 19](#) (25 March 2020).

⁹⁹ [Decree of the President of the Council of Ministers](#) (8 March 2020); [Decree of the President of the Council of Ministers](#) (9 March 2020); [Decree of the President of the Council of Ministers](#) (11 March 2020).

¹⁰⁰ [Statutory decree n. 6](#) (23 February 2020)

¹⁰¹ [Statutory decree n. 19](#) (25 March 2020)

¹⁰² [Statutory decree n. 33](#) (16 May 2020)

¹⁰³ [Decree of the President of the Council of Ministers](#) (17 May 2020); [Decree of the President of the Council of Ministers](#) (18 May 2020).

- c. **Phase 3 (from 13 October to date):** following a sharp increase in the infection rate, R-value, hospital admissions, and daily deaths, as recorded in a report by the Superior Institute for Healthcare,¹⁰⁴ a progressive return to more stringent containment measures was adopted by the PM decree 13 October 2020.¹⁰⁵ It made face masks compulsory indoors and outdoors nationwide. Three more decrees on 24 October, 3 November, and 3 December 2020 made the regulation progressively stricter.¹⁰⁶ The latter, valid until 15 January 2021, does not impose the full national ‘lockdown’ of the first phase. Nevertheless, it consistently limits both individual liberties and businesses. The novelty of this regime, based mainly on the Superior Institute for Healthcare’s recommendations in the report thereof, consists of a differentiated approach between national baseline restrictions (‘yellow’ zones), where the risk of infection is moderate, and more stringent measures for the most affected regions amounting to a three-tier regulation system. The second tier (‘orange’ zones) concerns the case that epidemiological data point to a medium-risk level scenario. The third tier (‘red’ zones) concerns a high-risk scenario. The PM decree also states that any region designated as a red zone must remain under maximum restrictions for at least 15 days before the government even considers relaxing the rules. The more stringent restrictions regarding orange and red zones, which have to be monitored on a weekly basis, are decided by the Minister for Healthcare upon consulting with the affected regions and the TSC (see Parts II.D and III.E above). This consultative process is, in turn, based on assessing epidemiological data by using 21 indicators of sanitary risk expounded in the mentioned report by the Superior Institute for Healthcare.

63. Regarding said procedure for deciding which tier a region falls into, the Abruzzo Administrative Court ruled, with an interim decision, that a region can only introduce more restrictive measures than those found in the PM decrees.¹⁰⁷ Therefore, a region cannot autonomously decide to apply the regime of a less strict tier even if the indicators point to a moderate risk scenario. Following an appeal by the Government, the court suspended a decision taken by the Abruzzo region that had moved the region from the red zone to the orange zone.

1. *Individual mobility restrictions on citizens (stay-at-home, curfews, etc.)*

64. In phase 1, people were not allowed to leave home except for work, cases of necessity, or health-related reasons. To this end, one had to fill in a self-certification of exemption. The ‘necessity’ category of exemption—which is mentioned

¹⁰⁴ Superior Institute for Healthcare, ‘[Preventing and reacting to Covid-19 - How strategies and planning evolved in the transition period from Autumn to Winter](#)’ (12 October 2020).

¹⁰⁵ [Decree of the President of the Council of Ministers](#) (13 October 2020).

¹⁰⁶ [Decree of the President of the Council of Ministers](#) (24 October 2020); [Decree of the President of the Council of Ministers](#) (3 November 2020); [Decree of the President of the Council of Ministers](#) (3 December 2020).

¹⁰⁷ [Decree 11 December 2020, n. 416](#) (Administrative Court for Abruzzo).

regarding other restrictions (see below)—is not qualified either in statutory or PM decrees. Its implementation has been left to informal guidance (such as Government FAQs), regional and local provisions, and officers' discretion. A common necessity justification was to run errands to purchase essential goods within the border of one's municipality. Individual outdoor exercise and walks not far from one's residence was another. This exemption gave rise to countless mayoral guidelines or ordinances which 'interpreted' or 'fine-tuned' its scope and were in turn followed by further guidelines by the Home Secretary.¹⁰⁸ An unconditional obligation to stay at home was established for those in quarantine or for those who tested positive to the virus.

65. As for phase 2, Article 1.1 of Statutory decree 33/2020 repealed from 18 May 2020 all the restraining mobility measures enacted during phase 1.¹⁰⁹ The same provision established that such measures had to be adopted or reiterated only regarding specific areas of each regional territory according to the severity of the epidemiological situation. Consequently, Article 1 of the PM decree 17 May 2020 only obliged those with respiratory inflammation and temperature above 37.5 degrees celsius not to leave their residence.¹¹⁰
66. In phase 3 a 'curfew' from 10pm to 5am was introduced as a national baseline restriction. It resulted from a compromise between those in the Cabinet who wanted the curfew to start at 8pm and those who didn't want a curfew at all. In the orange zones, a prohibition from entering or leaving the regional territory, save for work, necessity, or health reasons was provided. In the red zones, the restrictions are as severe as those of phase 1. A person cannot enter or leave the municipal territory, nor move within the municipal borders, except for work, necessity, or health reasons. A self-certification of exemption is required.

2. Restrictions on international and internal travel

67. During phase 1, travelling was forbidden within the national territory, except for healthcare, work, or necessity. Even if asymptomatic, health surveillance and 'fiduciary home isolation' were arranged for 14 days for all those who returned to the Italian territory.¹¹¹
68. During phase 2, precisely from 3 June 2020, and throughout phase 3, travelling was permitted again both within the national territory and to and from most European countries and some non-European countries.¹¹² In principle, Article 6 of the PM decree of 3 December 2020 forbids travelling from and to abroad unless one has reasons of work, study, healthcare, absolute urgency, or needs to go home.¹¹³ A list

¹⁰⁸ V R Spagnolo, '[Coronavirus - Uscite genitori-figli, il Viminale ri-precisa: solo vicino a casa](#)' *Avvenire.it* (Online, 1 April 2020).

¹⁰⁹ [Statutory decree n. 33](#) (16 May 2020).

¹¹⁰ [Decree of the President of the Council of Ministers](#) (17 May 2020).

¹¹¹ [Ordinance of the Ministry for Healthcare](#) (28 March 2020).

¹¹² [Decree of the President of the Council of Ministers](#) (17 May 2020).

¹¹³ [Decree of the President of the Council of Ministers](#) (3 December 2020).

of countries (see annex 3 of the decree thereof) are exempted from this ban. They are all the European countries—except for Albania, Bosnia Herzegovina, Serbia, Montenegro, North Macedonia, Kosovo, Moldova, Belarus, and the Ukraine—and some non-European countries, such as Australia, Japan, New Zealand, the Republic of Korea, Rwanda, Singapore, Thailand, and Uruguay. This list is updated every now and then by ordinances of the Minister for Healthcare. Having resided or passed through one of the non-exempted countries up to 14 days before arriving in Italy triggers an entry ban. Irrespective of the place one is travelling from, everyone is expected to hand to the travel company staff a self-certification stating relevant information for tracing and the reasons for travelling. Further regulation regards the obligation to undergo a jab test when travelling from abroad (see Part IV.A.8 below).

69. Under Article 8 of the PM decree 3 December 2020, those arriving from outside Europe or a non-exempted European country, even if asymptomatic, are subject to 14 days of sanitary surveillance and self-isolation at the place indicated in the self-certification above.¹¹⁴ As soon as they enter the Italian territory they must travel to the place where they will spend the period of self-isolation by using private means of transportation indicated in the same self-certification. Should the latter be impossible, the local health authority informs the Civil Protection authority, who must promptly arrange for a place where the person can self-isolate. The accommodation costs are charged to the traveller, who can incur a criminal charge if their self-certification is false.
70. Those arriving from Europe are obliged to show the travel company staff a certificate that states they tested negative to a jab molecular or antigenic Covid-19 test. If they fail to do so, they must undergo the process explained in the previous paragraph.

3. *Limitations on public and private gatherings and events*

71. During phase 1, nobody could meet anybody else outside their household. From 4 May 2020, however, close family members, including older people, have been allowed to meet up again provided they wear a face mask and there are no ‘gatherings’. However, a rule about what number constitutes a ‘gathering’ in the context of the Covid-19 regulation has never been set up, except for the recommendation laid out in PM decree 13 October 2020, according to which no more than six persons may meet up in private homes.¹¹⁵ Any demonstration and event, both in public and private places, were prohibited. Article 1.1(g) of Statutory decree n. 19/2020 provides a rough idea of the sectors which such events may refer to.¹¹⁶ These are culture, sport, play, religion, fairs, and exhibitions. A specific provision (Article 1.1(d)) concerns sports competitions of any kind both in private and public facilities. The latter could be used only for the training of athletes in preparation for national and international competitions. The only sports events

¹¹⁴ [Decree of the President of the Council of Ministers](#) (3 December 2020).

¹¹⁵ [Decree of the President of the Council of Ministers](#) (13 October 2020).

¹¹⁶ [Statutory decree n. 19](#) (25 March 2020).

permitted were those organized by international sports bodies, provided they took place with no public and under strict sanitary control.

72. Regarding phase 2, under Article 1.8 of Statutory decree n. 33/2020, the only general limitation regarding gatherings is that people are not allowed to crowd in public places.¹¹⁷ Any event, demonstration, congress, conference, and show with an audience was permitted from 17 May as long as the epidemiological situation remained positively assessed. The PM decree 17 May 2020, in turn, established that public demonstrations could only take place in a 'static' way, meaning that marches were prohibited. Social distancing is to be observed as well as any other measure established by the police, which is empowered to authorize such demonstrations. As for shows of any kind they were allowed to resume from 14 June 2020, save different later dates decided by the regions. Some conditions had to be satisfied. The seats had to be preassigned respecting one metre of personal distance. This distancing had to be guaranteed for workers as well. No more than 1000 spectators were admitted in open-air venues and a maximum of 200 in closed venues. Dancing activities remained banned. Sports events resumed with no public admittance from 15 June 2020.¹¹⁸ From 1 September 2020 people were eventually allowed to attend sports events, with a maximum of 1,000 spectators for outdoor stadiums, and 200 for indoor sports facilities.¹¹⁹ Under Article 1.1(n) and (o) of the PM decree 17 May 2020 religious services could resume subject to protocols agreed between the Government and religious institutions aimed to avoid crowding and respect personal distancing.¹²⁰
73. As for phase 3, the PM decree 13 October 2020,¹²¹ soon afterwards augmented by PM decree 24 October 2020, returned to more consistent restrictions.¹²² They established the prohibition of indoor and outdoor private parties, including weddings, and dancing in public halls. All shows such as cinema, stage play, concerts were newly banned, as was the public from sports events starting from 13 October 2020, following a regulation by the Minister for Sport.¹²³ By 3 November 2020, limitations were further tightened. Any sports activity was banned indoors and outdoors nationwide, except for individual workouts close to one's residence or in public parks, and so was any non-professional sports event.

¹¹⁷ [Statutory decree n. 33](#) (16 May 2020).

¹¹⁸ [Decree of the President of the Council of Ministers](#) (11 June 2020).

¹¹⁹ [Decree of the President of the Council of Ministers](#) (7 August 2020).

¹²⁰ [Decree of the President of the Council of Ministers](#) (17 May 2020).

¹²¹ [Decree of the President of the Council of Ministers](#) (13 October 2020).

¹²² [Decree of the President of the Council of Ministers](#) (24 October 2020).

¹²³ [Decree](#) (Presidency of the Council of Ministers, Department for Sport) (13 October 2020).

4. *Closure of premises and facilities (eg schools, shops, services, parks, churches, sport facilities)*

74. In phase 1, face-to-face teaching was banned in all schools and continued as distance learning until the end of the 2019–2020 academic year in mid-June 2020.
75. The reopening of schools in September (academic year 2020–2021), as instructed by Statutory decree n. 22/2020¹²⁴ and then implemented by a Ministerial decree of the Minister for Education,¹²⁵ occurred during phase 2. The latter dictated health safety measures by mandating minimum distances between the desks, hygiene rules, such as the use of face masks by staff and students, and instructions to be followed in case Covid-19 symptoms are detected.
76. Under phase 3 legislation, PM decree 24 October 2020 established that 75% of teaching was to be arranged remotely in secondary schools.¹²⁶ Additional and more stringent restrictions came into force on 3 November and were confirmed on 3 December 2020. The baseline measure is that high-schools (students from year 9 to year 13) move to remote teaching, while primary education is taught in person. As for middle-schools (year 6 to 8), they remain open in yellow and orange zones, whereas they are closed in red zones (except for year 6, which is taught in person). Despite the stricter red zone regime, this latter exception is justified by considering that year 6 marks the passage from primary to secondary education. It has been deemed exceedingly damaging for children to start a whole new education level (eg new teachers, teaching methods, subjects, and friends) remotely.
77. School entry times must be arranged to avoid crowding. Article 1.1(s) of the PM decree 3 December 2020 provides that, under the coordination of the Prefect, regional and local authorities, government officials, school managers, and providers of public transport services must devise a plan for re-engineering public transport.¹²⁷ To this end, they consider both available means and school entry/exit times. If they fail to do so by a deadline set up in the plan, the President of the region is given the power to enact the necessary measures in place of said authorities.
78. Most litigation before administrative courts revolves around the measures concerning schools. On the most general challenge to school restrictions to date, the Council of State has ruled that by imposing remote teaching, the government did not infringe either constitutionally guaranteed liberties or the right to education, given the necessity to make the right to health prevail.¹²⁸ Regarding this balancing, a crucial role is played by the precautionary principle in light of scientifically informed decisions and provided restrictions are confined to what is strictly necessary. The Court deemed that both such conditions were met. Several other complaints before administrative courts dealt with local decisions implementing or

¹²⁴ [Statutory decree n. 22](#) (8 April 2020).

¹²⁵ [Ministerial decree of the Minister for Education](#) (26 June 2020).

¹²⁶ [Decree of the President of the Council of Ministers](#) (24 October 2020).

¹²⁷ [Decree of the President of the Council of Ministers](#) (3 December 2020).

¹²⁸ [Interim Decision 27 November 2020 n. 8723](#) (Council of State).

complementing national measures. Among them, a recent decision by the Administrative Court for Calabria is worth mentioning for assessing the Covid-19 legal framework and the margins of interventions by regional and local authorities.¹²⁹ It states that the central state's grounds to legislate are primarily found in the area of 'international prevention of disease'. This subject is listed in Article 117.2(q) of the Constitution among the areas of exclusive state competence, but it does not exhaust the scope of the provisions laid down. Additional grounds of state legislation are both 'healthcare protection' and 'civil protection'. They are listed in Article 117.3 of the Constitution among shared competence subjects (see paragraph 6 above). However, given the necessity of articulating a unitary administrative response to the pandemic, the Court—resorting to the constitutional Court's doctrine on the necessity to use subsidiarity flexibly—argued that in circumstances such as the present one the state is allowed to legislate without observing the usual allocation of competences. It means that both the regions and local authorities must exercise their powers strictly subordinate to state regulation. In the case at stake, the Court quashed a mayoral ordinance ordering the suspension of primary in-person education without sufficient evidence of an exceptional aggravation of the local sanitary situation. It must be noted, however, that an interim decision of the Administrative Court for Puglia had disallowed a recourse against the decision of the President of the Puglia Region to move to remote teaching in all schools throughout the region.¹³⁰

79. At the onset of phase 1, all retail shops were shut down, except for food shops, pharmacies, newsstands, and tobacconists (see PM decrees 8 and 9 March 2020).¹³¹ Regarding tobacconists, it is fitting to note that they do not just sell smoking products, but also items such as salt, mail and tax stamps, bus tickets, and stationery. By 23 March all industries—except for professional services—not reckoned essential or strategic for the country were commanded to stop their activity unless they were able to shift to remote working. Annexe 1 to the PM decree 22 March 2020 lists all the industries allowed to keep functioning subject to a communication to the Prefect.¹³² Among them, besides continuous manufacturing systems, there are: healthcare, pharmaceuticals, and related industries; banks, insurance, and mail services; transport; agriculture, food production, and distribution; production of plastic, paper, and cardboards; mechanics and car manufacture; water and energy production and distribution; security and clean services; textiles and work clothes; chemical factories; hospitality; and the handyman industry. All the industries allowed to remain open had to adopt measures to ensure a safe working environment, tailored to the different types of business, pursuant to an agreement between the government, unions, and industrial associations signed on 14 March and then updated on 24 April 2020.¹³³

¹²⁹ [Decision 8 December 2020 n. 1346](#) (Administrative Ct for Calabria).

¹³⁰ [Interim decision 6 November 2020, n. 1300](#). (Administrative Court for Puglia).

¹³¹ [Decree of the President of the Council of Ministers \(8 March 2020\)](#); [Decree of the President of the Council of Ministers \(9 March 2020\)](#).

¹³² [Decree of the President of the Council of Ministers \(22 March 2020\)](#).

¹³³ Presidency of the Council of Ministers, ['Agreement on safety standards in work places'](#) (14 March 2020).

80. Remote working was made compulsory in the public sector, save for specific service categories, and encouraged whenever possible in the private sector.
81. Starting from 14 April 2020, some shops, such as stationers and bookstores, were allowed to reopen.
82. At the outset of phase 2, the PM decree 17 May 2020 established that trade and restaurants could restart, and so could hairdressers, beauticians, and similar personal services.¹³⁴ The PM decree 11 June 2020 added two conditions for such businesses to keep operating: regions had to give the green light by assessing the local epidemiological situation, and that either the regions or the Conference of the regions had to enact specific safety guidelines within the framework set out by Annexe 10 of the PM decree thereof.¹³⁵ Also, businesses that had been suspended could resume operating, but they were subject to the measures mentioned in paragraph 76 above (attached to the PM decree 17 May 2020 as Annexe 12). However, remote working was still recommended whenever feasible.
83. Museums could reopen from 17 May 2020 provided they had suitable visiting spaces to keep social distancing, and in compliance with the prescriptions implemented by the regions.
84. Particular businesses had different rules or reopening times:
 - a. mountain ski facilities, wellness, social, and cultural centres, betting, gaming, and bingo shops remained closed until the PM decree 11 June 2020 allowed for their reopening subject to assessment by the regions based on the local epidemiological situation;¹³⁶
 - b. bathing establishments could reopen from 17 May 2020 on condition that the regions assessed the epidemiological situation and either they or the Conference of the Regions adopted detailed guidelines in observance of the criteria laid down in Annexe 10 of the PM decree 17 May 2020;¹³⁷
 - c. after being shut on 9 March 2020, the latest undertakings to reopen were discos and dance halls, which were allowed to resume their activities from 15 July 2020. However, the regions could defer the reopening date. These venues were also the first to be shut again after early signs of a new outbreak;¹³⁸ they also remained closed during phase 3 and are currently still shut.
85. Phase 3 has been characterized by a partial return to the measures enacted during phase 1. The baseline restrictions (yellow areas), include:

¹³⁴ [Decree of the President of the Council of Ministers](#) (17 May 2020).

¹³⁵ [Decree of the President of the Council of Ministers](#) (11 June 2020).

¹³⁶ [Decree of the President of the Council of Ministers](#) (11 June 2020).

¹³⁷ [Decree of the President of the Council of Ministers](#) (17 May 2020).

¹³⁸ [Ordinance of the Ministry for Healthcare](#) (16 August 2020).

- a. the closure of museums and exhibitions;
 - b. the pre-holiday and holiday closure for medium and big commercial premises, save for pharmacies, food markets, tobacconists, and newsstands;
 - c. the closure of bars and restaurants at 6pm;
 - d. the suspension of any written exam to access public and private sector positions and obtain professional qualification unless they are carried out online;
 - e. the closure of any betting and games areas in bars and tobacconists.
86. Further restrictions in orange zones include:
- a. the prohibition of travel by public or private means beyond one's municipal border, save for work, proven necessity, health reasons, and education;
 - b. the closure of restaurants, bars, ice-cream shops, and similar venues. However, they are allowed to keep operating for takeaway and delivery services.
87. As for the red zones, the restrictions resemble the lockdown regime regarding retail commerce, since shops and other venues are closed, and bars and restaurants can only operate delivery services. Public servants must work from home, save for services which necessarily require otherwise.
88. Public transport has never been suspended, but they have been heavily regulated over the pandemic by PM decrees, Ministerial decrees, regional regulations, and guidelines. The essential aim of this regulation was twofold. On the one hand, to create passenger capacity caps and provide rules of conduct on the different means of transportations. Over phase 1 and most of phase 2, buses and trains could not travel at more than 50% of their passengers' capacity, which then increased to 80% with the PM decree 7 September 2020.¹³⁹ By 5 November such capacity was brought back to 50%. The other aim was to empower central and local authorities to manage transport services—even by reducing or suppressing part of them—for the purpose of supporting public health while guaranteeing a minimum service level.
89. In phase 1, gyms, swimming pools, and sport centres were shut down by Article 1.1(s) of PM decree 8 March 2020.¹⁴⁰ They could reopen by 25 May pursuant to Article 1.1(f) of PM 17 May 2020,¹⁴¹ with the precept of respecting social distancing and avoiding any crowding in observance of the Sport-Medical Federation guidelines as well as further possible directions by the regions under Article 1.14 of

¹³⁹ [Decree of the President of the Council of Ministers](#) (7 September 2020).

¹⁴⁰ [Decree of the President of the Council of Ministers](#) (8 March 2020).

¹⁴¹ [Decree of the President of the Council of Ministers](#) (17 May 2020).

Statutory decree 33/2020.¹⁴² In phase 3, they were ordered to close again as a baseline provision pursuant to Article 1.1(f) of PM decree 24 October 2020.¹⁴³

90. Public parks were shut down during phase 1 from 7 March 2020. They reopened on 17 May 2020. Since then, outdoor physical and sporting activities, as well as child access to playgrounds in public parks, has been possible while observing social distancing.

5. *Physical distancing*

91. Physical distancing of at least one metre indoors has been in force since PM decree 1 March 2020.¹⁴⁴ According to Annexe 1 of PM Decree 4 March 2020, the same distance has been recommended for all interpersonal contact, even outdoors.¹⁴⁵ The precept to keep distancing from other people on every occasion of contact with individuals who are not part of one's household was reiterated in phases 2 and 3. In particular, after the relaxation of the restrictions on trade, services, and production industries, PM Decree of 11 June 2020 confirmed the one metre distance rule as well as the daily cleaning of the rooms.¹⁴⁶ These rules are still valid at the time of writing.

92. Pursuant to Article 1(9) of Statutory decree n. 33/2020 mayors have been empowered to order the temporary closure of public areas if it is impossible to ensure compliance with the prescribed interpersonal distance.¹⁴⁷

6. *Use of face coverings and personal protective equipment (PPE)*

93. An obligation to wear a protective mask indoors and on public transport has been in place since 17 May 2020 under Article 3.2 of the PM Decree of 17 May 2020.¹⁴⁸ At home, the use of a mask is strongly recommended when people not living together meet up. At the onset of phase 3, everyone was also required to always carry a mask and wear it even outdoors whenever they were unable to maintain physical distance or were not doing physical exercise.¹⁴⁹ Children under the age of six are not obliged to wear a face mask, and neither are persons with disabilities that are incompatible with using a mask.

7. *Isolation of infected individuals and quarantine of individuals suspected of infection*

94. The so-called quarantine with active surveillance was initially codified by the ordinance of the Ministry for Healthcare (21 February 2020).¹⁵⁰ The local health authority was given the power to command those who had had contact with

¹⁴² [Statutory decree n. 33](#) (16 May 2020).

¹⁴³ [Decree of the President of the Council of Ministers](#) (24 October 2020).

¹⁴⁴ [Decree of the President of the Council of Ministers](#) (1 March 2020).

¹⁴⁵ [Decree of the President of the Council of Ministers](#) (4 March 2020).

¹⁴⁶ [Decree of the President of the Council of Ministers](#) (11 June 2020).

¹⁴⁷ [Statutory decree n. 33](#) (16 May 2020).

¹⁴⁸ [Decree of the President of the Council of Ministers](#) (17 May 2020).

¹⁴⁹ [Statutory decree n. 125](#) (7 October 2020).

¹⁵⁰ [Ordinance of the Ministry for Healthcare](#) (21 February 2020).

infected persons or had returned from China up to 14 days beforehand to stay home. They were to be actively monitored for 14 days before they could be given the green light to leave.

95. Afterwards, Article 1.1(d) and (e) of Statutory decree n. 19/2020¹⁵¹ has given statutory force to quarantine measures by providing that:
- a. those who have had close contact with subjects who have tested positive for the virus and who have returned from abroad are subject to a precautionary quarantine. Local health authorities implemented this provision by continuing to apply the Ordinance mentioned in paragraph 94;¹⁵²
 - b. mayors shall order those who have tested positive for Covid-19 not to leave home.
96. A direction by the Ministry for Healthcare of 12 October 2020 updated the criteria regarding the duration of quarantine and isolation distinguishing between four cases:¹⁵³
- a. a person who has tested positive but is asymptomatic can stop isolating after 10 days upon undergoing a molecular test with a negative result;
 - b. a person who has tested positive with symptoms can stop isolating after 10 days upon undergoing a molecular test with a negative result, provided they have had no symptoms for at least three days;
 - c. those who keep testing positive despite no longer having symptoms, can stop isolating after 21 days if symptoms have disappeared for at least a week;
 - d. those who have had close contact with individuals who have tested positive for the virus shall quarantine for 14 days, or 10 days if they test negative for the virus on the 10th day.

8. *Testing, treatment, and vaccination*

97. The only obligatory testing during the pandemic has been that relating to international travel. Ordinances of the Ministry for Healthcare have imposed molecular or antigenic tests on travellers coming from significantly affected countries during specific outbursts of the virus—even if in principle not banned from entering Italy. The latter should be done at the border if there are the necessary infrastructures at the arrival point. Otherwise, within 48 hours from entering the Italian territory, at the local healthcare authority.

¹⁵¹ [Statutory decree n. 19](#) (25 March 2020).

¹⁵² [Ordinance of the Ministry for Healthcare](#) (21 February 2020).

¹⁵³ Direction of the Ministry for Healthcare, '[Covid-19: Guideline for the duration and conclusion of the self-isolation and quarantine period](#)' (12 October 2020).

98. No testing, prophylactic treatment, and vaccination have ever been imposed on Italian citizens and residents.
99. There has not been any regulation to impose hospitalization, even though there has been at least one case of forced hospitalization under Article 34 of the NHS Act which allows for compulsory medical treatment for psychiatric patients.¹⁵⁴

9. *Contact tracing procedures*

100. Specific disease prevention units existing within each local health authority have been in charge of contact tracing by two modes: either by interviewing on the phone a person who tested positive to the virus to trace their contacts from 48 hours before the infection and up to a fortnight afterwards, or through an IT application called 'Immuni'. The first method has been by far the more used, although it has not lived up to expectations. Over the pandemic, the personnel employed in such units has more than doubled, but according to non-official sources, there are only about 9,000 tracers nationally.¹⁵⁵ After the relaxation of the restrictions of the first phase and particularly the reopening of schools in September, the system of contact tracing has been rapidly overwhelmed.¹⁵⁶ Indeed, according to a report by the Superior Institute for Healthcare, only one out of four cases of infection is detected thanks to contact tracing.¹⁵⁷ More than 32% of individuals only discover they have been infected due to symptoms.
101. The application 'Immuni' (immune),¹⁵⁸ and a connected national platform, were instituted for running and managing an automated alert system.¹⁵⁹ The entire population is recommended to install the application, but only recently, health officials have been commanded to upload data in the system.¹⁶⁰ As late as 31 October 2020, the application has been downloaded by 9,505,834 users. Due to various issues—particularly the lack of co-operation between regional authorities and the government, and concerns of the users about privacy and transparency—the performance of the alert system has been almost negligible in tracing infected persons.¹⁶¹

¹⁵⁴ [Law n. 833, of 23 December 1978](#).

¹⁵⁵ M Bartoloni and S Monaci, '[Coronavirus, 'Solo 9.000 tracciatori in trincea: così è più difficile fermare il virus'](#)' *il Sole 24 ore* (Online, 16 October 2020).

¹⁵⁶ E Zacchetti, '[Il contact tracing non funziona più](#)' *Il post* (Online, 22 October 2020).

¹⁵⁷ Superior Institute for Healthcare, '[Covid-19 Epidemic. National Update](#)' (27 October 2020).

¹⁵⁸ Immuni, '[The numbers of Immuni](#)' (updated 6 January 2021).

¹⁵⁹ [Statutory decree n. 28](#) (30 April 2020), art 6.

¹⁶⁰ [Decree of the President of the Council of Ministers](#) (18 October 2020), art 1.1(f).

¹⁶¹ R Berti, A Longo, and S Zanetti, '[Immuni, cos'è e come funziona l'app italiana coronavirus](#)' *Agenda Digitale* (Online, 28 October 2020).

102. The PM Decree of 9 March 2020¹⁶² has provided that the health and civil protection authorities dealing with the epidemic can process personal data, including health data, throughout the state of emergency.¹⁶³

10. Measures in long-term care facilities or homes for the elderly, restrictions on visitors etc

103. Since the health emergency began, Article 2.1(q) of the PM Decree of 8 March 2020 has provided that visiting long-term care facilities and homes for the elderly is limited to cases and modes established by the ‘sanitary management’ of each structure.¹⁶⁴ This provision has been re-enacted in all subsequent decrees until the PM Decree of 3 December 2020.¹⁶⁵ The vagueness of such a clause raises concerns. First, many such facilities, often privately managed, do not have a ‘sanitary management’. So, it is not clear in such cases who should decide about letting relatives see the patients. In practice, the rule’s application has led most of the time to allowing visitors only in exceptional circumstances, such as end-of-life situations. The guidelines by the Ministry for Healthcare of 30 November 2020 provide some clues about implementing the provision at stake, without solving this issue.¹⁶⁶ They recommend allowing relatives and volunteers to visit care home residents in order to alleviate the negative consequences of severe isolation. Namely, the ‘sanitary managerial offices’ are requested to devise detailed plans to make visits possible in safety. A recommended measure—following the example of regulations enacted in some regions—is the use of rapid antigenic tests *in loco*, to decide whether to admit visitors to the premises or not. Should a Covid-19 infection be present in the facility, all visits are banned, following the Guidelines released by the Superior Institute for Healthcare, unless the relevant structure can make sure isolated residents are managed in a completely autonomous way.¹⁶⁷ The Guidelines recommend testing both new residents with a molecular test before admittance, as well as healthcare personnel.

B. Enforcement and Compliance

1. Enforcement

104. Prefects, through the state police, municipal police, and even the armed forces, thanks to an exceptional provision (see paragraph 105 below), are in charge of enforcing the restrictive measures, including exacting fines for breach of the

¹⁶² [Decree of the President of the Council of Ministers](#) (9 March 2020).

¹⁶³ The Italian Data Protection Authority, ‘[Collection of the enacted provisions in relation to the Covid-19 emergency which may have effects on the protection of personal data](#)’ (updated 13 October 2020).

¹⁶⁴ [Decree of the President of the Council of Ministers](#) (8 March 2020).

¹⁶⁵ [Decree of the President of the Council of Ministers](#) (3 December 2020).

¹⁶⁶ Ministry for Healthcare, ‘[Guidelines for visiting patients in health and long-term care facilities](#)’ (30 November 2020).

¹⁶⁷ Superior Institute for Healthcare, ‘[Guidelines for the prevention and oversight of Covid-19 infections health and welfare facilities](#)’ (24 August 2020).

regulations imposed by the PM decrees.¹⁶⁸ A breach of the regulations is subject to a penalty notice fine between 400 and 1000 euros (3000 euros until 23 May 2020). For businesses that do not respect the rules imposed to avoid the spread of the virus, Article 2.1 of Statutory decree n. 22/2020 established, besides the aforementioned fine, the penalty of the closure of the activity from 5–30 days.¹⁶⁹

105. In order to patrol public spaces and streets regarding compliance with the restrictions on movements and gatherings, Article 74 of Statutory decree n. 18/2020¹⁷⁰ has both awarded extra funding to the armed forces and increased the number of soldiers who can be used for urban security functions by extending the scope of the ‘Safe Roads’ plan set out initially for anti-crime purposes.¹⁷¹
106. As discussed, mayors must order infected people who do not need hospitalization not to leave home. Under Article 4.6 of the Statutory decree n. 19/2020, the violation of this obligation is a crime punishable on indictment with imprisonment of up to 18 months as well as the payment of a penalty notice fine between 500 and 5,000 euros.¹⁷²

2. Compliance

107. Regarding people’s reaction to the restrictions set out, preliminary findings of research conducted soon after phase 1 regulations ended shows a remarkable level of confidence about both knowledge of the rules and the self-reported extent of their compliance.¹⁷³

V. Social and Employment Protection Measures

A. Social protection measures

108. Considering that the country is still dealing with the effects of the 2008 economic crisis, the social consequences of the Covid-19 pandemic have been particularly burdensome in Italy. It is sufficient to note that, compared to 2007, in 2019 the number of people living in poverty in Italy has doubled. The incidence of poverty has grown primarily in the southern regions.¹⁷⁴

¹⁶⁸ Statutory decree n. 19 (25 March 2020), art 4.

¹⁶⁹ [Statutory decree n. 22](#) (8 April 2020).

¹⁷⁰ [Statutory decree n. 18](#) (17 March 2020).

¹⁷¹ Ministry of Defence, [‘Safe Roads Plan’](#) (updated March 2021).

¹⁷² [Statutory decree n. 19](#) (25 March 2020).

¹⁷³ S Civitarese Matteucci, L Fontanella, and M Maretti, [‘Attitudine al rispetto delle norme durante l’emergenza sanitaria in Italia’](#), *Orizzonti del diritto pubblico* (4 December 2020).

¹⁷⁴ F De Lauso and N De Capite (eds), *‘Gli Anticorpi della Solidarietà – Rapporto 2020 su Povertà ed esclusione sociale in Italia’* (Caritas Italiana 2020); see also National Institute of Statistics, [‘Poverty in Italy’](#) (updated 1 July 2021).

109. The existing law already provided measures to support individuals and families with low or no income. With the outbreak of the pandemic, some of these measures have been extended while the number of beneficiaries increased due to falling revenues. New measures have been introduced by a series of statutory decrees made over the past year (see Part II.B and C above).¹⁷⁵ All these measures have been established by state legislation, social security being an exclusive competence of the national Parliament.
110. However, the main criticism of the measures adopted in response to the pandemic crisis concerned the economic support for employers (see Part V.B.1 below). Aid to businesses was considered by many to be insufficient compared to the losses incurred in 2020.
111. In early 2021, a political crisis resulted in the appointment of a new Government led by the former European Central Bank President, Mario Draghi. Its first decision on economic and social matters was to enact Statutory Decree No 41 (22 March 2021), which largely carried on the former Government's policies.¹⁷⁶

1. Social assistance

112. The most crucial measure of cash-based social assistance that was introduced to tackle the pandemic was the Emergency Income (REM), established by Statutory Decree No 34 (19 May 2020).¹⁷⁷ The REM is a special benefit scheme aimed at supporting households in dire need due to the Covid-19 emergency that do not have access to other forms of income support.
113. The law does not require proof that the pandemic caused the situation of poverty. The entitlement to the benefit is based on the Equivalent Economic Situation Indicator (ISEE), which uses several variables to calculate household economic wealth. To benefit from the REM, the ISEE cannot exceed EUR 15,000.
114. The REM was paid in two instalments, each ranging between EUR 400–800, depending on the number of household members and the presence of disabled or non-self-sufficient members (in the latter case, the tranche increases to EUR 840).
115. Three further instalments of the same amount were later disbursed to households meeting said requirements.¹⁷⁸ According to data released by the National Institute of Social Security (INPS),¹⁷⁹ as of 4 December 2020, there were approximately 290,000 families who had received the REM under Statutory Decree No 34/2020.

¹⁷⁵ [Statutory Decree No 18](#) (17 March 2020); [Statutory Decree No 23](#) (8 April 2020); [Statutory Decree No 34](#) (19 May 2020); [Statutory Decree No 104](#) (14 August 2020); [Statutory Decree No 137](#) (28 October 2020); [Law No 178](#) (30 December 2020); [Statutory Decree No 41](#) (22 March 2021).

¹⁷⁶ [Statutory Decree No 41](#) (22 March 2021).

¹⁷⁷ [Statutory Decree No 34](#) (19 May 2020).

¹⁷⁸ See [Statutory Decree No 104](#) (14 August 2020), art 23; [Statutory Decree No 137](#) (28 October 2020), art 14.

¹⁷⁹ National Institute of Social Security, '[Observatory on the Guaranteed Minimum Income Programme and the Citizenship Pension](#)' (updated 5 March 2021).

116. Another cash-based social policy measure operating throughout the pandemic is the Guaranteed Minimum Income Programme (*Reddito di Cittadinanza*) (RdC), which takes the label of Citizenship Pension (*Pensione di Cittadinanza*) for households composed of members over the age of 67. Statutory Decree No 4 (28 January 2019) introduced the RdC and represents the most relevant innovation in recent years regarding welfare benefits.¹⁸⁰ The RdC is designed to ‘combat poverty, inequality and social exclusion and aims to find a job for the unemployed through activation policies.’¹⁸¹
117. The RdC consists of an income integration of up to EUR 6,000 per year. However, if the household comprises several people, the threshold can be raised beyond the maximum monthly contribution of EUR 780. The RdC predated the pandemic, and the financial requirements for accessing it have not been modified over the last year. Nonetheless, the conditions for receiving the income, namely readiness to accept a job offer and mandatory training, were suspended until July 2020. What has changed significantly due to the pandemic is the number of recipients. In 2019, about 976,000 households were receiving the RdC; this number increased to about 1.4 million in 2020 and 1.2 million in 2021.¹⁸²
118. The Italian social security system also provides a form of social pension (ie non-contributory) called *Assegno Sociale*, which is aimed at citizens over the age of 67 and who are in economic need. The amount for 2021 is EUR 460 per month.¹⁸³ There was no increase in the number of recipients due to the pandemic: in both 2019 and 2020, about 800,000 people received the *Assegno Sociale*.¹⁸⁴
119. While the measures examined so far aim to fight poverty, other cash transfers have been appositely introduced to compensate self-employed workers for the losses caused by the pandemic (see Part V.B.1 below). In particular, self-employed workers could request a bonus that compensated for the reduction or suspension of their work (EUR 600 for March and April 2020, and EUR 1,000 for May 2020), as long as they were neither pension holders nor under other employment contracts. Other professionals, such as lawyers and architects, benefitted from similar treatments through their social security institutions. The bonus was applicable to self-employed workers with an income of up to EUR 35,000 or to those who earned between EUR 35,000–50,000 but who suffered a reduction in turnover of at least 33% compared to the previous year.
120. Finally, similar bonuses have been provided for workers particularly affected by the pandemic, such as seasonal workers in the tourism industry, agricultural workers on fixed-term contracts, workers in the entertainment industry, domestic workers, and workers in the sports industry.

¹⁸⁰ [Statutory Decree No 4](#) (28 June 2019).

¹⁸¹ [Statutory Decree No 4](#) (28 June 2019), art 1.

¹⁸² National Institute of Social Security, ‘[Observatory on the Guaranteed Minimum Income Programme and the Citizenship Pension](#)’ (updated 5 March 2021).

¹⁸³ [Pension System Reform Act No 335](#) (8 August 1995), art 3[6].

¹⁸⁴ National Institute of Social Security, ‘[XX Annual Report](#)’ (July 2021).

121. The total number of claims for these bonuses (including self-employed workers, professionals, and workers particularly affected by the pandemic) was more than five million.¹⁸⁵
122. Regarding in-kind assistance for employed workers, Statutory Decree No 34/2020 established that parents with children no older than 12 years old could take 30 days of leave (between March and August 2020).¹⁸⁶ The State pays the leave (50% of the salary). As an alternative to the leave, parents may request a bonus to make use of babysitting services up to an overall maximum of EUR 1,200.
123. In addition, with Ordinance No 658 (29 March 2020), the Head of the Civil Protection Department allocated EUR 400 million to municipalities to distribute food vouchers and groceries to families in need.¹⁸⁷
124. Parliament has not provided legislation to reduce or suspend rent payment on properties (including those for non-housing use). However, measures have been introduced to mitigate the effects of the pandemic on tenants. On the one hand, eviction procedures for arrears were suspended (until 31 December 2021).¹⁸⁸ On the other hand, a bonus has been provided for property owners who grant tenants a rent reduction.
125. Finally, the Italian Regulatory Authority for Energy, Networks and Environment (ARERA) ordered the suspension of interruption of supply of services to household users due to arrears until 17 May 2020.¹⁸⁹

2. Social insurance

126. In addition to measures designed to protect workers, several pre-existing measures aimed at sustaining those who had recently lost their jobs were strengthened. In particular, Statutory Decrees No 34/2020 (Article 92) and No 104/2020 (Article 5) extended unemployment benefits that expired between 1 March and 30 April 2020 by four months. In contrast, those that expired between 1 May and 30 June 2020 were extended by two months (NASpI and DIS-COLL).
127. NASpI is an unemployment benefit for employees.¹⁹⁰ The number of beneficiaries did not increase after the pandemic,¹⁹¹ probably due to the ban on dismissals (see Part V.B below).

¹⁸⁵ National Institute of Social Security, '[Paper 600 – 1000 € bonus](#)' (31 March 2021).

¹⁸⁶ [Statutory Decree No 34](#) (19 May 2020), arts 23, 25.

¹⁸⁷ [Ordinance of the Head of the Department for Civil Protection No 658](#) (29 March 2020).

¹⁸⁸ [Statutory Decree No 41](#) (22 March 2021), art 40*quater*.

¹⁸⁹ ARERA, '[Deliberation of ARERA](#)' (2 April 2020); ARERA, '[Deliberation of ARERA](#)' (30 April 2020).

¹⁹⁰ [Statutory Decree No 22](#) (4 March 2015), art 1 et seq.

¹⁹¹ National Institute of Social Security, '[Observatory of Employment and Labour Policies](#)' (2 October 2021).

128. DIS-COLL is an unemployment benefit for the self-employed.¹⁹² After the pandemic, the number of beneficiaries increased from 15,454 in 2019 to 19,549 in 2020.¹⁹³
129. Until 31 December 2021, the period spent in quarantine or fiduciary isolation is considered a period of illness, for which the State pays an allowance.¹⁹⁴
130. Legislation enacted after Covid-19 has provided employers with the possibility to obtain certain exemptions from the payment of social security contributions at their expense (as an alternative to wage subsidy measures, see Part V.B.1).
131. Statutory Decree No 104/2020 provides employers in the private sector with a partial exemption from the payment of social security contributions for a maximum period of four months, which could be used by 31 December 2020.¹⁹⁵ The exemption from the payment of contributions was then extended for three more months.
132. Article 6 of Statutory Decree No 104 provides the exemption from the payment of social security contributions for a maximum period of six months—and within the maximum limit of EUR 8,060 per year—for employers who hired permanent workers by 31 December 2020.
133. The situation is different for self-employed workers and freelancers. In this case, the 2021 Budget Law has established a fund of EUR 1 billion to recognise a partial exemption from social security contributions owed by self-employed workers and professionals.¹⁹⁶ The exemption regards those who earned in 2019 no more than EUR 50,000 and suffered in 2020 a decrease in turnover of at least 33% compared to 2019.

3. Tax relief and other social measures

134. There are no other relevant social measures related to the pandemic to report. This is also the case for tax relief.

B. Employment protection measures

135. Since the beginning of the Covid-19 pandemic, the response to workers' and businesses' problems has been entrusted to a series of statutory decrees (see Part II above) that have followed one another throughout 2020 and, finally, the Budget Law for 2021 as well as Statutory Decree No 41/2021.¹⁹⁷

¹⁹² [Statutory Decree No 22](#) (4 March 2015), art 15.

¹⁹³ National Institute of Social Security, '[Observatory of Employment and Labour Policies](#)' (accessed 28 April 2022).

¹⁹⁴ [Statutory Decree No 18](#) (17 March 2020), art 26.

¹⁹⁵ [Statutory Decree No 104](#) (14 August 2020), art 3.

¹⁹⁶ [Law No 178](#) (30 December 2020), art 1[20].

¹⁹⁷ [Statutory Decree No 18](#) (17 March 2020); [Statutory Decree No 23](#) (8 April 2020); [Statutory Decree No 34](#) (19 May 2020); [Statutory Decree No 104](#) (14 August 2020); [Statutory Decree No 137](#) (28 October 2020); [Law No 178](#) (30 December 2020); [Statutory Decree No 41](#) (22 March 2021).

136. The primary legislative measure regards the ban on dismissals as long as the pandemic lasts (see Part V.B.2 below). In a press conference on 11 March 2020, the Minister for Economy declared that ‘no one will lose their job’.¹⁹⁸ However, the extension of the ban on dismissal for more than a year has raised the question of its compatibility with the freedom of economic initiative enshrined in Article 41 of the Constitution.¹⁹⁹ Some legal scholars have argued that this temporary measure is justified by the emergency and is constitutionally legitimate, as long as it is accompanied by the provision of social safety nets paid by the State.²⁰⁰

1. Economic support for employers

137. There have been two types of measures for employers’ economic support: loans with guarantees from public bodies and outright grants. As far as the first type of intervention is concerned, the public limited company SACE SA has been authorised to guarantee loans until June 2021. The owner of SACE SA is the *Cassa Depositi e Prestiti Group*, the major Italian promotional institution for economic development. This public limited company is under the control of the Ministry for Economy and Finance. Banks and other financial institutions can grant loans to companies based in Italy and affected by the pandemic.²⁰¹ The guaranteed loan amount cannot exceed 25% of the annual turnover for 2019 or twice the personnel costs for the year 2019, and the guarantee does not cover the entire loan, but rather a percentage ranging from 70–90%. In any case, SACE commitments cannot exceed the total sum of EUR 200 billion. Such State-guaranteed loans can only be used for specific purposes, for example, investment or personnel costs. They cannot be issued to companies already in crisis before the pandemic.

138. For small and medium-sized businesses, a moratorium on previous loan instalments payments was also established until 31 December 2021.²⁰²

139. The second type of intervention concerns non-repayable contributions. These interventions were first introduced by Statutory Decree No 34/2020. For companies with revenues of up to EUR 5 million, a benefit equal to a percentage (10–20%) of the difference between the turnover of April 2019 and April 2020 is recognised.²⁰³ Then, Statutory Decree No 137/2020 provided further non-repayable contributions for the businesses most affected by the mandatory shutdown, such as tourism and transport industries, regardless of the drop in turnover compared to the previous year.²⁰⁴ The amount of the contribution varies according to the activity carried out by the companies but cannot, in any case, exceed EUR 150,000. The categories of companies benefiting from this contribution have been extended over time by subsequent legislative interventions. Businesses

¹⁹⁸ ‘Coronavirus, Gualtieri: “No one will lose their job”’ Adnkronos (Online, 11 March 2020).

¹⁹⁹ [Italian Constitution 1947](#).

²⁰⁰ R Del Punta, ‘Note sugli ammortizzatori sociali ai tempi del Covid-19’ (2020) 39 *Rivista Italiana di Diritto del Lavoro* 251.

²⁰¹ [Statutory Decree No 23](#) (8 April 2020), art 1.

²⁰² [Statutory Decree No 73](#) (25 May 2021), art 16.

²⁰³ [Statutory Decree No 34](#) (19 May 2020), art 25.

²⁰⁴ [Statutory Decree No 137](#) (28 October 2020), art 1.

with revenues between EUR 5–50 million, which suffered a decrease in turnover of at least 33% compared to 2019, could obtain tax credits for investments made or losses incurred in 2020. Companies with revenues above EUR 50 million were helped by creating a Fund (*Patrimonio Destinato*) at *Cassa Depositi e Prestiti* group to purchase shares or bonds to implement measures to boost the economic system.²⁰⁵

140. Lastly, Statutory Decree No 41/2021 established a new non-refundable aid calculated as a percentage (20–60%) of the difference in the average monthly turnover between 2019 and 2020.²⁰⁶
141. In addition to the measures outlined above, to balance the ban on dismissals (see Part V.B.2 below), firms can use State-financed furlough schemes already present in the Italian labour law but adapted to the current crisis. The relevant measures, which were initially established by Statutory Decree No 18/2020 for the pandemic's first months,²⁰⁷ were subsequently extended until June 2021.
142. The Ordinary Salary Integration scheme (*Cassa Integrazione Guadagni Ordinaria*) (CIGO) is the default measure. It is a wage subsidy that integrates or replaces workers' wages on furlough due to company problems caused by temporary events and not attributable to the company or employers. Workers are paid 80% of the salary for the hours they did not work. The CIGO, motivated by the Covid-19 emergency, was initially granted for 18 weeks,²⁰⁸ and then extended until 30 June 2021.²⁰⁹ The measure includes both part-time working and full cessation of work
143. A similar regulation has been provided for by the Ordinary Allowance (*Assegno Ordinario*), a form of salary integration for smaller companies (5–15 employees) that do not access the CIGO.
144. The second measure of salary integration that was expanded in response to the Covid-19 emergency was the Extraordinary Salary Integration (*Cassa Integrazione Guadagni in Deroga*) (CIGD). It is a measure reserved for the support of businesses that cannot access the CIGO because they were either initially excluded or had already exhausted the period of the ordinary furlough scheme. Employees are granted a benefit equal to 80% of the salary for the hours they did not work. Like CIGO, the measure was initially provided temporarily for the first months of the pandemic, but subsequent statutory decrees then extended it. The measure includes both part-time working and full cessation of work.
145. Finally, Statutory Decree No 41/2021 further extended the possibility of using the CIGO until June 2021 (for a maximum of 13 weeks) and the Ordinary Allowance and the CIGD until December 2021 (for a maximum of 120 days).

²⁰⁵ [Statutory Decree No 34](#) (19 May 2020), art 27.

²⁰⁶ [Statutory Decree No 41](#) (22 March 2021), art 1.

²⁰⁷ [Statutory Decree No 18](#) (17 March 2020).

²⁰⁸ [Statutory Decree No 18](#) (17 March 2020), art 19.

²⁰⁹ [Statutory Decree No 41](#) (22 March 2021), art 8.

2. *Worker protection from dismissal and other contractual protections*

146. The essential measure introduced to protect employees was the ban of dismissals. Since the early days of the pandemic, Italian law has provided that the employer cannot start procedures to reduce the workforce or terminate employment contracts for a justified objective reason, ie the ban covers collective and individual dismissals for economic and organisational reasons.²¹⁰ The ban was initially established for 60 days (until 17 May 2020) and then extended until 17 August 2020.²¹¹ Statutory Decree No 104/2020 then relaxed the ban by providing that, until 31 December 2020, employers who had exhausted either the furlough scheme or the exemptions from the payment of social security contributions could make workers redundant.²¹² Afterwards, the law extended the ban on dismissals, first until 31 January 2021,²¹³ then until 31 March 2021,²¹⁴ and, lastly, until 30 June 2021.²¹⁵ Dismissals are permitted exclusively in three cases: business termination, ie the business activity has definitively ceased, bankruptcy, or an agreement between the company and trade unions.

3. *Other worker protections*

147. There is no relevant information to report.

4. *Health and safety*

148. The primary measure adopted to protect workers' health consisted of the Protocol for the Regulation of Measures to Contain the Spread of the Covid-19 Virus in Workplaces,²¹⁶ adopted by business associations and trade unions on 14 March 2020, in agreement with the Government. The Protocol establishes a series of recommendations, including hygiene rules in the business premises as well as guidelines to deal with symptomatic personnel.

149. Due to their pre-existing pathologies, there are special provisions to safeguard vulnerable workers: so-called 'exceptional health surveillance'.²¹⁷ It comprises a medical examination that ascertains their suitability to carry out work and identifies any protective measures that ought to be taken. In the event of ascertained unfitness, the employer cannot dismiss the employee.

150. Italian law has generally attempted to facilitate remote work, both in the public²¹⁸ and private sectors.²¹⁹ For workers with disabilities, immunocompromised, or pre-

²¹⁰ [Statutory Decree No 18](#) (17 March 2020), art 46.

²¹¹ [Statutory Decree No 34](#) (19 May 2020).

²¹² [Statutory Decree No 104](#) (14 August 2020), art 14.

²¹³ [Statutory Decree No 137](#) (28 October 2020), art 12[9-10].

²¹⁴ [Law No 178](#) (30 December 2020), art 1[309-310].

²¹⁵ [Statutory Decree No 41](#) (22 March 2021), art 8[9].

²¹⁶ Ministry for Employment and for Social Policies, '[Protocol for the Regulation of Measures to Contain the Spread of the Covid-19 Virus in Workplaces](#)' (updated 6 April 2021).

²¹⁷ [Statutory Decree No 34](#) (19 May 2020), art 83.

²¹⁸ [Statutory Decree No 18](#) (17 March 2020), art 87.

²¹⁹ [Statutory Decree No 183](#) (31 December 2020), art 19[1].

existing conditions, a ‘right to remote work’ was also established until 30 June 2021.²²⁰

5. *Activation*

151. There is no relevant information to report.

6. *Social partners*

152. The main result of the social partners’ involvement is the Protocol for the Regulation of Measures to Contain the Spread of the Covid-19 Virus in Workplaces (described in Part V.B.4 above).

7. *Other legal measures*

153. Since 15 October 2021, the Covid Certificate—the so-called ‘Green pass’—has been required for access to workplaces.²²¹ To obtain the Green pass, it is necessary to be vaccinated or to have recovered from Covid-19, or to have tested negative within no more than 48 hours. Lastly, Statutory Decree No 1 (7 January 2022) established that from 15 February 2022 workers over the age of 50 must hold the so called ‘Super Green pass’ (*Green pass rafforzato*) to access workplaces.²²² The Super Green pass can only be obtained after vaccination or recovery.

VI. Human Rights and Vulnerable Groups

A. Civil liberties

154. As outlined in Parts I–IV above, Italy gradually ‘adapted’ its approach as the Covid-19 emergency evolved in the national territory and worldwide. The containment measures that were enacted straight after the state of emergency was declared (see Part II.B above) entailed substantial limitations to civil liberties nationwide. After the Summer of 2020, the Government started to gradually remove the limitations to civil liberties across the country. Then, when the new Cabinet headed by Mario Draghi took over, an approach centred on balancing fundamental rights and public health replaced the approach centred on the principle of ‘precaution’.²²³

155. Regarding freedom of association, Article 73(4) of Statutory Decree No 18/2020 provided that videoconference was the only possible means for meetings.²²⁴ Transparency was identified as the general principle governing remote meetings, requiring organisers to track and identify with certainty participants to meetings.

²²⁰ [Statutory Decree No 18](#) (17 March 2020), art 26[2bis].

²²¹ [Statutory Decree No 127](#) (21 September 2021), arts 1–3.

²²² [Statutory Decree No 1](#) (7 January 2022), art 1.

²²³ This issue was specifically targeted by the new Italian Prime Minister (Mario Draghi) in ‘[PM Draghi’s press conference with Health Minister Roberto Speranza](#)’ (16 April 2021).

²²⁴ [Statutory Decree No 18](#) (17 March 2020); transposed into [Law No 27](#) (24 April 2020).

156. Concerning personal liberty/*habeas corpus*, a series of statutory decrees provided for a general suspension of administrative procedures and all civil, criminal, and administrative proceedings (see Part III.C above). The only exceptions to this suspension during Phase 1 were those concerning minors, the execution of migrants' deportation orders, and vulnerable persons, ie in the case of protection from violence and compulsory health treatments implying a limitation of the patient's liberty.²²⁵
157. Regarding the right to defence (see Part III.C above), the Constitutional Court quashed the provision that suspended the eviction of any debtor from their home with no further qualification as disproportionate.²²⁶ The Court ruled that, after the first phase of the emergency, allowing that home owners should forbear the consequences of the pandemic with no consideration of the parties' objective situation was unjustified.²²⁷ Afterwards, the Government provided temporary and 'adequate selective criteria' for residents' eviction that passed the Constitutional Court scrutiny under both the Constitution and Article 1 Additional Protocol to the European Convention on Human Rights.²²⁸ The Court ruled that property rights can be limited where the law sets up a fair balance between the requirements of the community's general interest and the protection of the person's fundamental rights. Moreover, the claims of a violation of the right to defence (Article 24 of the Constitution) were dismissed by considering the pandemic a situation of 'exceptional and unforeseeable nature' and as such a 'justifiable' reason.²²⁹
158. There were no significant legal measures concerning the suppression of dissent.
159. The right to generalised public access to data and documents held by the Public Administration has been gradually widened in its field of application during the Covid-19 emergency.²³⁰ However, a contentious issue concerned the access to the minutes of the Technical and Scientific Committees' meetings (see Part III.E and F above).

B. Privacy

160. Issues about privacy were initially raised regarding the alert mechanism based on the app 'IMMUNI' (see Part IV.A.9 above). The PM Decree of 9 March 2020²³¹ provided that the health and civil protection authorities dealing with the epidemic could process personal data, including health data, throughout the state of

²²⁵ [Statutory Decree No 9](#) (2 March 2020), arts 9–10; [Statutory Decree No 11](#) (8 March 2020), arts 1–4; [Statutory Decree No 18](#) (17 March 2020), arts 83–85.

²²⁶ [Statutory Decree No 183](#) (31 December 2020), **art 13**[13].

²²⁷ [Judgment No 128/2021](#) (**9 June 2021**) (Constitutional Court).

²²⁸ [Judgment No 213/2021](#) (**19 October 2021**) (Constitutional Court).

²²⁹ [Judgment No 213/2021](#) (**19 October 2021**) (Constitutional Court).

²³⁰ [Decision No 10](#) (2 April 2020) (Council of State Plenary Session).

²³¹ [PM Decree](#) (9 March 2020).

emergency.²³² By a Memorandum of Understanding between the Government, unions, and industrial associations,²³³ employers have been empowered with checking employee's body temperature and that of whoever enters their premises such as users, visitors, customers, and suppliers. The Italian Data Protection Authority has clarified that recording data concerning body temperature is prohibited, as measuring body temperature in real time, when associated with the data subject's identity, is an instance of processing personal data (Article 4(1)(2) of Regulation (EU) 2016/679).²³⁴ The employer must limit themselves to recording that an employee's body temperature exceeds the threshold set out in the law. Recording is also permitted whenever it is necessary to document the reasons for refusing access to the workplace, in compliance with the principle of 'data minimisation' (Article 5(1)(c) of Regulation (EU) 2016/679). When customers' body temperature is checked in large department stores, for example, it is not necessary to record the reason why access is denied.²³⁵ However, no specific legislative measures concerning health data were enacted (see Part IV.B.1) until the EU Digital Covid-19 Certificate was introduced (see Part IV.A.8 above).

161. The introduction of the EU Digital Covid-19 Certificate gave rise to specific concerns about proportionality and data protection.²³⁶ Initially, the Italian Data Protection Authority was not satisfied with the justification provided in the law which considered the policy's purpose to be balanced with processing personal data.²³⁷ However, subsequent legislation resolved this issue.²³⁸

²³² Italian Data Protection Authority, '[Order permitting the processing of personal data through the Alert mechanism Covid-19-App Immuni](#)' (1 June 2020); for further information concerning Covid-19 and privacy issues, please consult Italian Data Protection Authority, '[Home](#)' (accessed 15 October 2021).

²³³ Presidency of the Council of Ministers, 'Agreement on safety standards in work places' (14 March 2020).

²³⁴ [Regulation \(EU\) 2016/679](#) (27 April 2016).

²³⁵ Data Protection Authority, '[FAQs – Data processing in health care in the context of the health emergency](#)' (accessed 15 October 2021).

²³⁶ See [Senate of the Republic, XVIII Leg. sitting No 377](#) (10 November 2021).

²³⁷ Italian Data Protection Authority, '[Provvedimento di avvertimento in merito ai trattamenti effettuati relativamente alla certificazione verde per Covid-19 prevista dal d.l. 22 aprile 2021, n. 52 - 23 aprile 2021](#)' (23 April 2021).

²³⁸ Italian Data Protection Authority, '[Parere sul DPCM di attuazione della piattaforma nazionale DGC per l'emissione, il rilascio e la verifica del Green Pass - 9 giugno 2021](#)' (9 June 2021); Italian Data Protection Authority, '[Parere sullo schema di decreto concernente Misure recanti modifiche ed integrazioni alle disposizioni attuative dell'articolo 9, comma 10, del decreto-legge 22 aprile 2021, n. 52, recante "Misure urgenti per la graduale ripresa delle attività economiche e sociali nel rispetto delle esigenze di contenimento della diffusione dell'epidemia da COVID-19" - 31 agosto 2021](#)' (31 August 2021); Italian Data Protection Authority, '[Parere sullo schema di decreto concernente "Modifiche al decreto del Presidente del Consiglio dei ministri del 17 giugno 2021, recante «Disposizioni attuative dell'articolo 9, comma 10, del decreto-legge 22 aprile 2021, n. 52, "Misure urgenti per la graduale ripresa delle attività economiche e sociali nel rispetto delle esigenze di contenimento della diffusione dell'epidemia da COVID-19"» - 11 ottobre 2021](#)' (11 October 2021); on the EU Digital Covid Certificate and compulsory vaccination see Italian Data Protection Authority, '[Provvedimento del 13 dicembre 2021](#)' (13 December 2021).

C. Gender

162. The pandemic accentuated the gendered imbalance that was already present in the country; for example, 84% of female workers between the age of 15 and 64 were employed in the sectors that were hit the hardest in 2020.²³⁹ Despite the ‘gendered imbalance’ caused by Covid-19, no specific gender-protection measures were adopted in the first four months of the state of emergency.
163. Nevertheless, the worry that the pandemic and, particularly, lockdown measures could augment gender-related violence, prompted the Legislator to enact measures aimed at managing the issue. Indeed, in February 2020 the Senate prorogued the Committee of Inquiry which was at the time investigating femicide and gender-related violence. The Committee approved two distinct reports concerning gender-related violence during the lockdown period.²⁴⁰ Data shows that the percentage of homicides committed within the home environment increased from 45% in 2019 to 58% in 2020, and that female victims increased from 57% in 2019 to 75% in 2020. Data also shows that in March 2020 there was a decrease in domestic violence being reported; this may be related to the difficulties that victims had during that period in reporting the abuse.²⁴¹ However, in the first nine months of 2020, reports on violence generally increased (3,583 calls to anti-violence centres were registered in 2020 versus 2,663 calls in 2019), and then decreased once restriction measures were gradually lifted in 2021 (2,457 calls in 2021).²⁴² Statutory Decree No 34/2020 allocated EUR 4 million yearly to finance policies to prevent and tackle sexual and gender-related violence and to protect victims.²⁴³ Article 105*quater* of Statutory Decree No 34/2020 establishes that the PM must implement a programme for instituting care and support centres throughout the country for victims and persons vulnerable to sexual and gender discrimination or violence due to their social or familial context. Such assistance is provided for legal, health, psychological counselling, social mediation, food, and shelter. Another strand of measures supports workers with young children during the suspension of schools, preschools, and nurseries. Namely, the law provides specific parental leave of up to fifteen days for parents with children under 12 or a cash benefit for babysitting.²⁴⁴

²³⁹ European Parliament, ‘[The impact of the Covid-19 pandemic on women \(infographic\)](#)’ (1 March 2021); Policy Department for Citizens’ Rights and Constitutional Affairs (European Parliament), ‘[The gendered impact of the COVID-19 crisis and post-crisis period](#)’ (September 2020); European Parliamentary Research Service, ‘[The coronavirus crisis: An emerging gender divide?](#)’ (March 2021).

²⁴⁰ Committee of Inquiry on Femicide and on Gender-related violence, Senate of the Republic XVIII Legislature, [Report on the data concerning gender-related and domestic violence during the Covid-19 lockdown](#) (1 July 2020); Committee of Inquiry on Femicide and on Gender-related violence, [Measures aimed at helping women who are victim of violence and to assist women’s refuge during the Covid-19 crisis](#) (26 March 2020).

²⁴¹ Committee of Inquiry on Femicide and on Gender-related violence, Senate of the Republic XVIII Legislature, [Report on the data concerning gender-related and domestic violence during the Covid-19 lockdown](#) (1 July 2020).

²⁴² Institute for National Statistics (ISTAT), ‘[The pandemic’s effects on gender-related violence](#)’ (24 November 2021); for further data see ISTAT, ‘[Emergency Covid-19 Special](#)’ (accessed 15 October 2021).

²⁴³ [Statutory Decree No 34](#) (19 May 2020); as amended and transposed into [Law No 77](#) (17 July 2020).

²⁴⁴ [Statutory Decree No 18](#) (17 March 2020), art 23, 25.

Parents working in areas qualified as red zones or where access to school is suspended had the possibility to obtain a cash benefit for babysitting also on the ground of Statutory Decree No 149/2020.²⁴⁵ This bonus was accessible also to workers in health services and to professionals (medical doctors) of the National Health Service. In May 2020, the Government extended the cash benefit for babysitting to include accessing summer camps or other services for young children during the summer holidays (until 31 August 2020).²⁴⁶

164. Measures such as babysitting bonuses and parental leaves are examined in Part V.A above.

D. Ethnicity and race

165. There is no relevant information to be reported.

E. Disability

166. At the beginning of the state of emergency, the Italian Legislator enacted very harsh containment measures, including remote teaching for all students (Article 1c(2)(d) Statutory Decree No 6/2020) with no specific provision for disabled persons.²⁴⁷
167. Guidance by the Department for Home Affairs was initially addressed to law enforcement officers. Afterwards, a series of PM decrees were enacted to temper limits on freedom of movement and to eliminate social distancing for disabled persons and their caregivers.²⁴⁸ Persons with disabilities were allowed to walk in urban areas close to their home, and caregivers could have close physical contact with them during walks.
168. As for education, although it is a field of shared responsibility between the State and regions, the former is competent for setting up the general rules, including those concerning the inclusion of disabled persons. Moreover, under Article 34 of the Constitution, schools are autonomous state institutions, and their funding is directly established in the annual Budget approved by the national Parliament. The Government's decision to adopt distance learning throughout the country, over the pandemic and until April 2021, had a considerable negative impact on the inclusion of pupils with special educational needs and disabilities.²⁴⁹
169. Consequently, derogations to distance learning (even in red zones, see Part IV.A above) were gradually introduced by a series of PM decrees, followed by guidelines set by the Department for Education for schools so that they could meet these students' special needs.

²⁴⁵ [Statutory Decree No 149](#) (9 November 2020).

²⁴⁶ [Statutory Decree No 34](#) (19 May 2020), art 72; those measures are funded using EU Structural funds.

²⁴⁷ [Statutory Decree No 6](#) (23 February 2020); transposed into [Law No 13](#) (5 March 2020).

²⁴⁸ The latter of which is [PM Decree](#) (2 March 2021), art 3[2].

²⁴⁹ Italian National Institute of Statistics (ISTAT), '[Inclusion at schools during School Year 2019-2020](#)' (9 December 2020).

170. The PM enacted the most relevant measures with the decrees of 4 March 2020 and 3 November 2020.²⁵⁰ The former aimed to draw a balance between all the relevant principles concerning the right to education and public health protection, stressing the need to adopt measures implementing the principles of inclusion, autonomy, and continuity of public services. The latter excluded infants' and primary schools from remote teaching and prescribed Individual Protection Devices (IPDs) for students and teachers.
171. Meanwhile, legal actions were lodged against the regulation concerning IPDs for students with health problems. In many cases, administrative courts ruled that the use of IPDs could not be considered compulsory if a doctor considered it a danger to a pupil's health. After these cases, Article 1(9) of the PM decree of 3 November 2020 exempted children under the age of six, and people with health problems and disabilities incompatible with wearing masks, from using the latter in schools. The Department for Education soon specified that the exception concerning IPDs covered only students with 'certified disabilities' and 'certified pathologies'.²⁵¹ It also added that in-person teaching had to be guaranteed to students falling under this category inside hospitals.
172. From September 2020 until now, some decrees and guidelines by the Department for Education on the inclusion of disabled persons and, subsequently, specific provisions in several statutory decrees granted access to schools to those specific vulnerable categories of persons.²⁵² Subsequent regulations dealt with the inclusion of students with disabilities or special educational needs at school.²⁵³
173. In sum, the most severe limitations to the right to education of disabled persons have been slowly but gradually reduced with the reopening of infant and primary schools since September 2020, except for red zones. From 2021, access to schools was granted to pupils with special educational needs and disabilities in red zones too.²⁵⁴
174. A series of judicial actions were lodged against regional measures, possibly *ultra vires*, enforcing legislation that imposed remote teaching on a wide group of students, particularly after the 2020 Christmas break. A series of interim decisions by administrative courts in various regions (Campania, Puglia, Calabria, Basilicata, Emilia Romagna, Lombardia) depicts a fuzzy approach to the substantive issue of how to balance the right to education, jeopardised by remote teaching, with protecting public health. The regions had founded their decisions on public health grounds rather than their competence in regulating education. Few courts upheld the cautious approach taken by the regions. Most of the others, stressing the

²⁵⁰ [PM Decree](#) (4 March 2020); and [PM Decree](#) (3 November 2020).

²⁵¹ Ministry for Education - Department for Education, University, and Research, '[Ministerial Note](#)' (5 November 2020).

²⁵² The last one is [Statutory Decree No 44 \(1 April 2021\)](#), art 2.

²⁵³ See [Ministerial Decree of the Ministry for Education No 89 \(7 August 2020\)](#); [Order of the Ministry for Education No 134 \(9 October 2020\)](#); Ministry for Education, '[Guidelines implementing Article 2 of Statutory Decree n 44/2021](#)' (1 April 2021).

²⁵⁴ [PM Decree](#) (2 March 2021), art 43; see also [Ministerial Note](#) (12 March 2021).

fundamental importance of education as a national interest, found unsubstantial the regional measures.

175. Schools were unprepared to contain Covid-19 because of a lack of investment over the past decades in school infrastructures and staffing. Italian classes are overcrowded, and there is no effective guarantee of didactic continuity and efficacious assistance to students in state schools.²⁵⁵ This severely affected the right to education of students with disabilities. The Government tried to cover those structural gaps,²⁵⁶ at the same time ensuring physical distancing of at least one metre between students, by investing financial resources to help school managers find appropriate spaces to resume school in person safely.
176. The need to shift to remote teaching, together with the guarantee of in-person teaching for disabled students,²⁵⁷ induced the Government and Parliament to find financial resources to ameliorate infrastructures for distance learning.
177. In high-risk regions and towns (red zones), schools were again closed by the end of 2020 by the National Government,²⁵⁸ and parents of disabled students were granted special leave from work or babysitting bonuses (see Part V.A.1 above on this specific issue).²⁵⁹
178. Since March 2021, the Government provided schools with new financial resources dedicated to reopening in safely.²⁶⁰ Funds were provided for:
 - a. school sanitising and free availability of IDPs to all students;
 - b. psychological and pedagogical assistance to students, teachers, and school staff in general to prevent and treat discomfort and problems related to the health emergency;
 - c. health services to help schools to contain Covid-19, with optional administration of diagnostic tests to students, teachers, and school staff and contact tracing;
 - d. empowering schools to perform inclusive activities for students with disabilities and students with special educational needs;
 - e. supporting schools in handling the emergency and developing activities to enrich extra-curricular educational activities;

²⁵⁵ Chamber of Deputies, XVIII Legislature, VII Committee, Culture, Science, and Education, *Inquiry on the status of School Buildings and Infrastructures* (2 August 2017).

²⁵⁶ [Statutory Decree No 104](#) (14 August 2020); transposed into [Law No 126](#) (13 October 2020).

²⁵⁷ [Statutory Decree No 137](#) (28 October 2020); amended and transposed into [Law No 176](#) (18 December 2020).

²⁵⁸ [PM Decree](#) (24 October 2020); and [PM Decree](#) (3 November 2020).

²⁵⁹ [Statutory Decree No 149](#) (9 November 2020), arts 13, 14; repealed with the conservation of its effects by [Law No 176](#) (18 December 2020).

²⁶⁰ [Statutory Decree No 41](#) (22 March 2021), see especially art 31; see also [Law No 234](#) (30 December 2021); and Ministry for Education, '[Press Note](#)' (30 December 2021).

- f. recovering from the loss of essential skills and regaining sociability among students in school.
179. Moreover, Article 32 of Statutory Decree No 41/2020 diverted funds from a programme of development and cohesion for the purchase and gratuitous distribution of digital devices, and for unlimited internet access to students in the southern, poorer regions of Italy.²⁶¹ The provision establishes that less affluent and disabled students must be prioritised in receiving such benefits. Within the same programme, other funds were allocated to schools for setting up suitable learning spaces for ‘digitally integrated learning’.
180. As for the second strand of legislation, in late May 2020 the Government decided, on the one hand, to concede financial help to disability care structures, and on the other hand, to allocate some financial resources to directly enhance benefits for persons with disabilities.²⁶²
181. Moreover, to avoid further barriers to social inclusion during the pandemic, the regions were expected to enact specific territorial plans and protocols to guarantee the prevention of the spread of Covid-19 within centres in charge of activities concerning the socialisation, health protection, education, and training of disabled persons. At the same time, persons with motor, intellectual, sensory disabilities, autism spectrum disorders, non-self-sufficient persons, and persons with behavioural and psychiatric issues were exempted from complying with social distancing measures.²⁶³
182. To consolidate financial investments for the inclusion, accessibility, and support of disabled persons, Article 33 of Statutory Decree No 41/2020 set up a fund of EUR 100 million available to the PM.²⁶⁴
183. Persons with disabilities were not a ‘targeted’ category in the vaccination campaign launched in January 2021. In March 2021, however, severe disabilities were recognised as conditions giving priority to vaccination.²⁶⁵ A specific provision (Article 5 of Statutory Decree No 1/2021) was approved for incapacitated persons and power of attorney in relation to vaccination.²⁶⁶

²⁶¹ [Statutory Decree No 41](#) (22 March 2021).

²⁶² [Statutory Decree No 34](#) (19 May 2020), art 104.

²⁶³ [PM Decree](#) (2 March 2021), art 3; [Statutory Decree No 19](#) (25 March 2020); [Statutory Decree No 33](#) (16 May 2020); [Statutory Decree No 1](#) (5 January 2021); [Statutory Decree No 15](#) (23 February 2021) gave specific protection to disabled persons.

²⁶⁴ [Statutory Decree No 41](#) (22 March 2021).

²⁶⁵ Department for Health, [‘Recommendation *ad interim* on Target groups in anti-SARS-CoV-2/COVID-19 vaccination’](#) (10 March 2021).

²⁶⁶ [Statutory Decree No 1](#) (5 January 2021).

F. Elderly

184. In 2020, priority was given to people over 80 and to elderly residents in care homes to be vaccinated first.²⁶⁷ According to the National Plan on Covid-19 Vaccination, there were about 5 million people falling in these categories. After the rise in infections during the Christmas holiday of 2021, Statutory Decree No 1/2022 introduced compulsory vaccination for people above the age of 50, providing a sanction for non-compliance with fees and suspension from work.²⁶⁸

G. Children

185. In late May 2021, the Italian Medicines Agency approved vaccination for children between 12 and 15 years old.²⁶⁹ In early December 2021, vaccination was also approved for children between 5 and 12 years old.²⁷⁰

186. In January 2022, the Government introduced a set of rules to combat a new rise of contagion in secondary schools: where a maximum of two students test positive for Covid-19, students who have completed the vaccination cycle are required to wear FFP2 face masks. Students who have not completed the vaccination cycle yet or who recovered from Covid-19 at least 3 months before will be subject to compulsory digital schooling.²⁷¹ Students are exempted from having a Green Covid-19 Certificates, but free screening programmes for students and workers have been put in place.²⁷² See Part IV.A.6 above for information on the exemption of children from wearing a face mask.

H. Prisoners

187. In areas of high epidemiological risk, prisoners' contact with relatives was limited to phone and online calls.²⁷³ Moreover, supervisory judges were enabled to suspend inmates' special (prize) permits.²⁷⁴ Such provisions caused prisoner riots throughout the country, which led to six deaths among prisoners, the breakout of dozens of prisoners, and heavy damage to several Italian prisons.²⁷⁵ Article 86 of

²⁶⁷ See Ministry of Health, '[National Strategic Plan on Vaccination to prevent the contagion of SARS-CoV-2](#)' (2 January 2021); [Ministry of Health Order No 6/2021](#) (9 April 2021).

²⁶⁸ [Statutory Decree No 44](#) (1 April 2021); transposed into [Law No 76](#) (28 May 2021), art 4*quinquies*; as amended by [Statutory Decree No 1](#) (7 January 2022), **art 1**; and [Statutory Decree No 52](#) (22 April 2021); **transposed into** [Law No 87](#) (17 June 2021), **art 9septies**; **on sanctions see** [Statutory Decree No 1](#) (7 January 2022), **art 1**.

²⁶⁹ Italian Medicines Agency (AIFA) referred to European Medicines Agency, '[First anti-COVID-19 vaccine approved in the EU for children between the ages of 12 and 15](#)' (18 May 2021).

²⁷⁰ Italian Medicines Agency (AIFA), '[AIFA approva il vaccino Comirnaty per la fascia di età 5-11 anni, Comunicato n. 674](#)' (accessed 1 December 2021); Italian Medicines Agency (AIFA), '[Parere CTS – 1/12/2021](#)' (accessed 1 December 2021).

²⁷¹ [Statutory Decree No 1](#) (7 January 2022), **art 4**.

²⁷² [Statutory Decree No 1](#) (7 January 2022), **art 5**.

²⁷³ [Statutory Decree No 9](#) (2 March 2020); [Statutory Decree No 11](#) (8 March 2020).

²⁷⁴ [Statutory Decree No 11](#) (8 March 2020), art 2.

²⁷⁵ '[The revolt of the detainees in Italian prisons breaks out](#)' AGI (Online, 9 March 2020).

Statutory Decree No 18/2020 allocated EUR 20,000,000 to restore the damaged penitentiary facilities.²⁷⁶

188. The Government and Parliament did not repeal said measures. However, Statutory Decree No 86/2020 granted house detention to people sentenced to up to 18 months until 30 June 2020, and it introduced a more favourable regime for the so-called quasi-liberty permit.²⁷⁷
189. Article 4 of Statutory Decree No 29/2020 provided that, in underage penitentiaries, contact with relatives could happen mainly by conference calls, but in-person conversations were permitted subject to several conditions.²⁷⁸ Every inmate had the right to at least one in-person conversation per month. After introducing compulsory vaccination, the possibility of conversations in person with inmates (including minors) was accessible only to persons with Covid-19 Digital certificates.²⁷⁹
190. Statutory Decree No 29/2020 also provided a strict control regime in cases of house detention or suspension of the punishment's execution of prisoners infected with Covid-19 and sentenced for serious crimes, such as mafia and terrorism. The surveillance judge had to review the relevant measure after 15 days, and then at least every month. In any event, the measure would be repealed as soon as an adequate penitentiary healthcare structure became available. This statutory decree was in force from 11 May to 29 June 2020.²⁸⁰ The Government was prompted to introduce this more severe regime by public outrage following the release of several Covid-19 infected mafia bosses.
191. It is worth recalling that Italy was condemned by the ECtHR in the *Viola* case, as it found the especially severe detention regime under Article 4*bis* of Law No 345 of 26 July 1975 ran counter to Article 3 ECHR (inhuman and degrading treatment towards prisoners).²⁸¹ After this ruling, the Italian Constitutional Court declared said provision unconstitutional, insofar as it precludes inmates convicted for mafia-related crimes and serving a life sentence from eligibility for periods of short release unless they cooperate with judges. The Constitutional Court found this provision incompatible with Articles 3 (equality) and 27 ('humanity' of punishment) of the Constitution.²⁸²

²⁷⁶ [Statutory Decree No 18](#) (17 March 2020) as amended, art 86; repealed with the confirmation of the effects already produced by [Law No 27](#) (24 April 2020).

²⁷⁷ [Statutory Decree No 18](#) (17 March 2020) as amended, arts 123–124 amended; repealed with the confirmation of the effects already produced by [Law No 27](#) (24 April 2020); such provisions were reiterated by [Statutory Decree No 137](#) (28 October 2020) as amended, arts 28–30; and transposed into law by [Law No 176](#) (18 December 2020); [Statutory Decree No 7](#) (30 January 2021) extended the duration of those exceptional measures.

²⁷⁸ [Statutory Decree No 29](#) (10 May 2020).

²⁷⁹ [Statutory Decree No 1](#) (7 January 2022), art 3.

²⁸⁰ [Statutory Decree No 29](#) (10 May 2020); it was later repealed with confirmation of the effects already produced by [Law No 70](#) (25 June 2020).

²⁸¹ *Marcello Viola v Italy* (n 2) [Requête No 77633/16](#) (European Court of Human Rights).

²⁸² [Decision No 253](#) (4 December 2019) (Constitutional Court).

192. Various questions of constitutionality were lodged with the Constitutional Court, claiming that said strict regime provided by Articles 2 and 5 of Statutory Decree No 29/2020 violated the inmates' rights to defence and health. The Court declared the question ill-founded, arguing that in the present case neither the right to health nor the right to defence were prejudiced by the new Covid-19-related regulation.²⁸³
193. Guidance by the Department of Education (5 November 2020) implementing the PM decree of 3 November 2020 stressed the necessity to assure prisoners' right to education, with specific consideration for minors. It urged prison managers to adapt teaching facilities to Covid-19 containment measures.²⁸⁴

I. Non-citizens

194. No relevant legal measures were adopted for lawfully admitted migrants entitled to the same protection as national citizens. For what concerns permanent residents entitled to the same social protection as nationals, there was a robust case law concerning legislation discriminating access to social housing and social services on residency grounds. The Italian Constitutional Court struck down legislation for unreasonably differentiating access to social housing on the grounds of residency under Article 3(2) of the Constitution.²⁸⁵
195. Although no specific legislative measures concerned illegal migrants and their access to social protection, a decision by the Department for Home Affairs instructed prefects to provide shelter to migrants with irregular status in reception and repatriation structures.²⁸⁶
196. The Department for Home Affairs issued a series of guidelines to prefects concerning the prevention of Covid-19 during disembarkation after search and rescue (SAR) operations and during transfer to reception centres or repatriation facilities.²⁸⁷
197. The Department for Transport and Infrastructures, together with the Ministry for Foreign Affairs and International Cooperation and the Ministry for Home Affairs, issued a Joint Ministerial Decree concerning the classification of harbours as 'places

²⁸³ [Decision No 245](#) (4 November 2020) (Constitutional Court).

²⁸⁴ Ministry for Education, Department for the Educational System of Education and Training, '[Note on PM Decree \(3 November 2020\)](#)' (5 November 2020).

²⁸⁵ [Decision No 44](#) (9 March 2020) (Constitutional Court) and [Decision No 3](#) (13 January 2021) (Constitutional Court).

²⁸⁶ Ministry of Home Affairs, Department on Civil Freedoms and Immigration, '[Note on Preventive measures to contain COVID-19 Virus within the Reception System and Facilities for Repatriation. Further indications](#)' (18 March 2020).

²⁸⁷ Ministry of Home Affairs, Department on Civil Freedoms and Immigration, '[Note No 2614 on Health Screening at Disembarkation of Migrants](#)' (3 February 2020); '[Note No 3634 on Further provisions implementing Statutory Decree n 6 \(23 February 2020\), giving urgent measures on containment and governance of COVID-19 epidemiologic emergency, regarding the whole National Territory](#)' (12 March 2020); '[Note No 5587 on Measures concerning prevention of COVID-19 virus' spread within the reception of asylum seekers](#)' (5 March 2020); '[Note No 5897 on Measures concerning prevention of COVID-19 virus' spread within Centers for Repatriation](#)' (10 March 2020).

of safety' under the International Convention on Maritime Search and Rescue (1979).²⁸⁸ This Joint Ministerial Decree identified Italian harbours as unable to ensure the necessary facilities for places of safety for any rescue operations carried out by foreign vessels outside the Italian SAR area 'for the entire duration of the national health emergency caused by the spread of Covid-19'.

198. After the latter Joint Ministerial Decree, the Head of Civil Protection (see Part II.B above) issued a decree concerning a new administrative practice on disembarkation after SAR operations.²⁸⁹ This decree imposed quarantine measures to reduce the spread of Covid-19 among persons rescued at sea or disembarked.
199. Furthermore, this decree placed the Head of the Office for Civil freedoms and Migration (a body within the Department for Home Affairs) in charge of giving shelter and enforcing public health surveillance measures by using vessels. These vessels could host migrants during quarantine and fiduciary isolation ('quarantine vessels'). As for this new method, it must be noted that a communication by the EU Commission provides some leeway to derogate from the 'normal' reception conditions during the Covid-19 emergency.²⁹⁰
200. The Department for Home Affairs extended the containment measures to refugees and asylum-seekers entering and staying in the Italian territory.²⁹¹ The Department deemed it necessary to clarify that the measures limiting personal freedom, freedom of movement, IPDs, social distancing, and limitations to holding reunions applied to non-citizens.
201. During the summer of 2020, a conflict of competencies surfaced between the State and the Sicilian region about the power to issue public health measures concerning reception camps for migrants and access to harbours and State territory by sea. By issuing an exceptional ordinance (see Part II.C above), the Sicilian region ordered the immediate evacuation of hotspots and reception centres for migrants located within the Sicilian territory and the relocation of migrants in 'other structures' outside the region.²⁹² The latter also prevented access, transit, and sojourn of any migrant that landed on the Sicilian coast with big and small boats, including those of NGOs.
202. The Government challenged the regional ordinance before the Administrative Court on competence grounds. The Administrative Court held that the regional powers on public health, even in such exceptional circumstances, cannot interfere with State

²⁸⁸ [Joint Ministerial Decree No 150](#) (7 April 2020).

²⁸⁹ [Decree of the Head of Department No 1287](#) (12 April 2020); see also Ministry for Transport, '[Notice for the organization of a list of naval crafts to assist migrants rescued at sea](#)' (5 September 2020).

²⁹⁰ European Commission, '[Communication from the Commission on COVID-19: Guidance on the implementation of relevant EU provisions in the area of asylum and return procedures and on resettlement](#)' ([2020] OJ C126/02) (17 April 2020), [1].

²⁹¹ Ministry of Home Affairs, Department on Civil Freedoms and Immigration, '[Note on Preventive measures to contain COVID-19 Virus within the Reception System and Facilities for Repatriation. Further indications](#)' (18 March 2020).

²⁹² [Exceptional Ordinance of the President of the Region of Sicily No 33](#) (22 August 2020).

powers on border control and access to the harbour and national territory, neither with State powers concerning the control of human migration flows.²⁹³ Furthermore, it found there was ‘a lack of evidence’ that the ‘migratory phenomenon’ could determine a ‘real increase in health risk’. The Administrative Tribunal also stated that the order did not appear to have shown that there was a spread of the contagion within hotspots and reception camps.²⁹⁴

203. Statutory Decree No 130/2020²⁹⁵ eased the measures on migration and asylum that were introduced by Statutory Decree No 113/2018²⁹⁶ concerning residence permits and exceptions to the principle of *non-refoulement*. Statutory Decree No 7/2021,²⁹⁷ in turn, prolonged the validity of the reformed residence permit.

J. Indigenous peoples

204. There is no relevant information to be reported.

²⁹³ [Presidential Decree No 842](#) (27 August 2020) (Administrative Tribunal for Sicily – III Section, Palermo); regarding State powers concerning relocation, localization, and health protection within reception centres for migrants, see [Decision No 1952](#) (18 September 2020) (Administrative Tribunal for Sicily – III Section, Palermo).

²⁹⁴ [Presidential Decree No 842](#) (27 August 2020) (Administrative Tribunal for Sicily – III Section, Palermo).

²⁹⁵ [Statutory Decree No 130](#) (21 October 2020).

²⁹⁶ [Statutory Decree No 113](#) (4 October 2018).

²⁹⁷ [Statutory Decree No 7](#) (30 January 2021).