



ARTICLE 15 OF THE ECHR AND THE SILENCE RULE: THE EXECUTION OF THE STATE EMERGENCY CLAUSE

The essay deals with the problem of the state of emergency, as regulated in art. 15 of the European Convention on human rights (hereinafter also “ECHR”).

In particular, it shows the development of this topic in the evolution of the main reports of the European Commission of human rights and of the main judgments of the European Court of human rights, analyzing not only several cases in which the provision has been applied, but also the main principles according to which it allows States to suspend the protection of some fundamental rights, included in the Convention, in order to face and overcome a situation of constitutional crisis.

After a brief introduction concerning the historical evolution of the topic of the state of exception, from its original dimension, exclusively linked to domestic constitutional law, to its current discipline provided by the “derogatory clauses of human rights” at an international level, the essay develops some reflections about the notion of public emergency, defined in article 15 ECHR, and the main principles governing the power of “suspension of guarantees” regulated therein, such as the principle of proportionality of the derogation, the principle of the consistency of the derogation itself with other obligations under international law, the principle of public and official proclamation of the state of emergency, the principle of non-discrimination and the principle of non-derogability of some fundamental human rights.

Then, after developing some reflections concerning reservations to article 15 ECHR and the so-called “margin of appreciation doctrine”, according to which the State enacting the derogation enjoys a double discretionary power both in the assessment of the emergency and in the selection of the consequent extraordinary measures, this essay will provide some considerations upon the relationships between art. 15 and the Italian domestic system of law.

Finally, several reflections will be provided about recent developments related to article 15, especially with reference to the proliferation of *de facto* states of emergency, enacted by States without resorting to the mechanism of suspension of guarantees defined by the international provision here under discussion.