

Constitutional Crisis, Security and Democratic Resilience

Edited by

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CONDITIONED STATE AND SECURITY. SOME PRELIMINARY CONSTITUTIONAL REMARKS

GIORGIO CATALDO

KEYWORDS: Security; Geopolitics; Asymmetry; Conditionality; Emergency.

SUMMARY: 1. Security and Emergency in the Conditioned State: a Conceptual Framework. – 2. A Structurally Dependent State: Italy's Energy Conditionality as a Case-Study. – 3. Asymmetric Conditionality in Practice: Constitutional Court Order No. 21/2025. – 4. The Conditioned State as an Emergency Actor: some Final Observations.

1. *Security and Emergency in the Conditioned State: a Conceptual Framework*

In the very last years, constitutional scholarship returned to emphasising the benefits to be drawn from an engagement with geopolitical analysis.¹ Among other aspects, it was argued that constitutions may “convey geopolitical imaginaries”, just as, conversely, it may be “the principles, categories and institutions of constitutional law that are instrumentalised, if not manipulated, in order to be placed at the service of geopolitical agendas”.²

From this perspective, it does not seem far-fetched to inquire into a specific angle of the issue. This one concerns the modalities of pursuit of security by the State in light of the asymmetry of the conditions characterising it – understood as the set of political, economic, and infrastructural preconditions capable of affecting and influencing, in a differentiated manner, the capacity to respond to crises. This is a domain in which geopolitical categories and constitutional categories intertwine, inviting reflection on the manner in which a State's concrete condition³ – defined by interdependence, power relations with other States or with private power actors – affects the pursuit of constitutionally significant interests.⁴

¹ See, e.g., Ibrido Renato, *Geopolitica costituzionale. Una introduzione* (Bologna: Il Mulino, 2025), Guazzarotti Andrea, edited by, “Geopolitica e Costituzione,” *Diritto costituzionale*, 1 (2025), Passaglia Paolo, *Geopolitica e diritto. Un legame trascurato* (Milan: Franco Angeli, 2026), Tondi della Mura Vincenzo, “Political Theology and Constitutionalism: The New Knots of an Unresolved Conflict. Preliminary Notes”, *in this Book*.

² Ibrido Renato, *Geopolitica costituzionale. Una introduzione*, 39-41.

³ Mangiameli Stelio, “Imperi e Stati e le nuove relazioni internazionali,” *Diritto e società*, 2 (2022): 308 ff.

⁴ Evidence of the usefulness of this plane of inquiry emerges, for example, in the constitutional approach to war and, more generally, to foreign and defence policy – domains in which the nexus between the constitutional vision and the geopolitical dimension, emblematically expressed by Article 11 of the Constitution, manifests itself in a twofold perspective: on the one hand, as an orientation of public choices towards the pursuit of peace according to a formal canon of equality between States; on the other, as an expression of the State's

It can already be intuited, therefore, that in this particular angle of the issue it is not only constitutions that convey geopolitical imaginaries, and nor merely the constitutional law categories that are instrumentalised in the service of certain geopolitical visions or projects. It seems, rather, equally possible that political actors may find themselves in a situation of having to pursue constitutionally protected functions and interests in light of the geopolitical condition in which the legal order is placed.

The question is, moreover, lent particular urgency by the current era, in which the pursuit of security is increasingly foregrounded by political agendas in light of the now chronic character⁵ of the emergency situations – armed conflicts, economic crises, energy shocks, climate disruptions, and so on – that are coming to define the entire globe and, in particular, the Western part of it.

From the mutual relationship between the constitutional and the geopolitical spheres,⁶ even on the plane of emergency and security the different levels of inquiry may reveal distinct perspectives and margins of action while at the same time presenting significant interconnections.

At the constitutional level, an emergency is understood as a functional (but temporary) crisis of institutions⁷ that legitimises the adoption of derogatory measures affecting protected interests and principles.⁸ In this scenario, constitutional law (in particular, through a rigid constitution) operates as a counterweight and guarantee, limiting the public powers potential hypertrophy through the canons of proportionality and reasonableness.⁹

At the geopolitical level, this dynamic finds a specular counterpart in the State's position on the global chessboard. It has been argued that “great power” States (even like States with an imperial dimension)¹⁰ orient their action towards hegemonic affirmation, in terms of “glory”, even at the cost of economic sacrifices; conversely, States in conditions of structural asymmetry – including “middle powers” – tend to pursue their security and survival through

concrete position on the international stage, including in light of asymmetries in power relations, within which Italy would conceive of itself as a “middle power”. See Ibrido Renato, “Perché l’articolo 11 della Costituzione è il prodotto di un attore geopolitico razionale,” *Rivista AIC*, 4 (2025): 195 ff.

⁵ As noted by Galli Carlo, *Democrazia, ultimo atto?* (Turin: Einaudi, 2023), 117, “The issue is precisely time, the duration of the emergency, which is prolonged by the succession of waves of ever-new emergencies; the emergency deformation of constitutional procedures – sometimes patent, sometimes concealed – represents a continuous erosion of legal certainty”. On endemic emergencies, see, among constitutional scholars, Ruggeri Antonio, “Le trasformazioni istituzionali nel tempo dell’emergenza,” *Consulta online*, 1 (2021): 238 ff.

⁶ On the influence of the geopolitical factor, see a passage from Constitutional Court Judgment No. 192/2024, para. 4.3, in relation to Article 116 of the Constitution: “Since this constitutes a derogation from the ordinary allocation of functions, it must be justified and reasoned with specific reference to the characteristics of the function and to the context (social, administrative, geographical, economic, demographic, financial, geopolitical, and otherwise) in which the devolution occurs, so as to highlight the advantages – in terms of effectiveness and efficiency, equity and accountability – of the solution chosen”. At para. 4.4, the Court adds: “the transformations that have occurred at the geopolitical and geoeconomic level have had strong repercussions on trade policies, which are increasingly intertwined now with the security needs of global value chains, now with aspects concerning power relations between States, thereby attracting them into the sphere of foreign policy, which falls within the exclusive competence of the State”.

⁷ Pizzorusso Alessandro, “Emergenza, stato di,” in *Enciclopedia delle scienze sociali*, III (Rome: Istituto della Enciclopedia italiana, 1993), 551 ff. More recently see Piergigli Valeria, *Diritto costituzionale dell’emergenza* (Turin: Giappichelli, 2023).

⁸ Pinna Pietro, *L’emergenza nell’ordinamento costituzionale italiano* (Milan: Giuffrè, 1988).

⁹ De Minico Giovanna, *Costituzione. Emergenza e terrorismo* (Naples: Giappichelli, 2016), 85 ff.

¹⁰ Mangiameli Stelio, “Imperi e Stati e le nuove relazioni internazionali,” 314-15.

economic regulation and stability.¹¹ For the constitutional scholar, this distinction grounded in pure *Realpolitik* deserves to be considered and reread. It highlights structural constraints that, while remaining within the field of study of democratic systems alone,¹² directly condition the modalities and purposes of public intervention.

And it is no coincidence that, on the relationship between the democratic order and security – a domain around which the activation of emergency powers often revolves – the literature dwelt on the multidimensionality of the latter concept. Security assumes a position subordinate to (and limited by) constitutional provisions, no longer exhibiting, as was previously the case, the typical features of a mere defensive-repressive manifestation of public powers.¹³ Yet, as it concerns the pre-existence – *salus Rei publicae*¹⁴ – of the State, security is a preliminary condition of a legal order, and only the latter's characteristics may orient it towards a particular direction,¹⁵ for example in guaranteeing the conditions necessary for the enjoyment of rights by individuals and the community.¹⁶ In relation to the typically repressive, classical dimension, that of prevention may be grafted on and become predominant, and alongside it stands that of the protection of rights and interests. What is important to emphasise, however, is that these various dimensions continue to coexist.

2. A Structurally Dependent State: Italy's Energy Conditionality as a Case-study

The Italian context presents itself as a particularly useful field of observation for the purposes of the question, for several orders of reasons. First, because the Italian State is directly involved in the Western area in which the various crises and emergencies – economic, financial, environmental, health-related, energy-related, and military – produced or are continuing to produce their effects in a sustained manner: both directly and indirectly. Second, because Italy finds itself, for reasons that are initially natural, historical, and political, and then legal and economic, in a condition of structural dependence on other actors and dynamics, both of a public and of a private nature. Third, because, as a consequence, its approach to crises and emergencies unfolds in essentially regulatory terms, seeking to combine the guarantee of rights with economic stability: consider the 2012 constitutional reform that introduced the principle of balanced budget.¹⁷

In bringing the legal dimension (the sphere of the *ought*) into relation with the real (the sphere of the *is*), the Italian condition pertains to factors which determine a series of consequences for how the State is able to approach problems in its dealing with other States and other forms of power, and how it perceives, more generally, its own sphere of operation in guaranteeing security.

In any event, the strong relationship between the legal and the real dimensions requires,

¹¹ Fabbri Dario, "La temporanea illusione dell'economicismo," *Limes*, 2 (2020): 153 ff.

¹² Ibrido Renato, *Geopolitica costituzionale. Una introduzione*, 42-43.

¹³ Giupponi Tomaso F., *Le dimensioni costituzionali della sicurezza* (Bologna: Bonomo Ed., 2010), 20 ff.

¹⁴ Luciani Massimo, "Il segreto di Stato nell'ordinamento nazionale," *Gnosis*, 2 (2011): 15.

¹⁵ Giupponi Tomaso F., *Le dimensioni costituzionali della sicurezza*, 23 ff.

¹⁶ Ruotolo Marco, "La sicurezza nel gioco del bilanciamento," *Associazione deicostituzionalisti.it*, (2009): 45.

¹⁷ Grasso Giorgio, *Il costituzionalismo della crisi. Uno studio sui limiti del potere e sulla sua legittimazione al tempo della globalizzazione* (Naples: Editoriale scientifica, 2012).

first of all, that the former seek resonance in the latter (since law must lay down rules, establish norms, and regulate situations on the basis of the needs dictated by the concreteness of social life), without however arriving at an uncritical reception of all demands.¹⁸ For this reason, in having to reckon with reality, regulation must take stock of what reality offers.

And the concrete reality of facts varies from case to case, from place to place. One recalls the observation of Giuseppe Guarino,¹⁹ according to whom the geographical and natural characteristics of a State profoundly affect its growth potential, since a territory may present highly variable morphological configurations, ranging from a complete absence of sea access to an extensive coastline with rivers and lakes, and may be endowed with natural resources of various kinds – including mineral deposits, raw or precious materials, landscape attractions, historical and cultural heritage, and specific features susceptible to economic valorisation – with the consequence that two States broadly equivalent in terms of size and gross domestic product may find themselves in radically different conditions of future development precisely by reason of their respective peculiarities.

The centrality of the data offered by reality, including the territorial dimension relating to the exercise of State power,²⁰ inevitably reflects upon the critical situations which that power is called upon to address. The approach to emergency intervention may therefore vary depending on the structural condition in which the State finds itself.

These aspects can be better grasped by developing the analysis in the energy field. Energy is a central element in geopolitical analysis, encompassing issues such as the interconnection of different countries, the unequal global distribution of deposits, the divergent structural capacity for domestic production among individual States, and the strong participation of private companies pursuing their own goals and influencing markets and prices.²¹ The recent period demonstrates how the energy problem – concerning the guarantee of supply, sustainability, self-sufficiency, and so on – represents both one of the principal preconditions and one of the most significant consequences of events, particularly armed conflicts, of a global nature.

Energy, indeed, is among the factors capable of triggering conflict, not infrequently concealed behind declared and moralistic motivations of a humanitarian nature.²² Equally, it presents itself as a problem of a consequential and systemic nature, by virtue of the typical causal chain linking apparently distinct phenomena: damage to infrastructure, obstacles to transnational transport, the imposition of tariffs and price increases – to limit oneself to the most immediately apparent effects.

Thus, energy assumes relevance in the form of “energy security”, which might be defined as the capacity to guarantee, in a stable and continuous manner, access to adequate, diversified, and affordably priced energy sources, while at the same time ensuring that potential external shocks – geopolitical, economic, or infrastructural – do not compromise the func-

¹⁸ Luciani Massimo, *Ogni cosa al suo posto* (Milan: Giuffrè, 2023).

¹⁹ Guarino Giuseppe, *Il governo del mondo globale* (Florence: Le Monnier, 2000), 70; Id., *L'uomo-istituzione* (Rome-Bari: Laterza, 2005), 53-54.

²⁰ Massa Pinto Ilenia, “Territorio e potere,” in *Enciclopedia del diritto, I Tematici*, V (Milan: Giuffrè, 2023), 1211 ff.

²¹ Högselius Per, *Energy and Geopolitics* (London: Routledge, 2019).

²² Schmitt Carl, “Il concetto di ‘politico’,” in *Le categorie del ‘politico’*, edited by Gianfranco Miglio and Pierangelo Schiera, translated by Pierangelo Schiera (Bologna: Il Mulino, 1972), 139.

tioning of the legal order and the continuity of economic and social life.²³

Within this framework, the sectoral (though broad) subject of energy replicates the general distinction regarding the different types of approach adopted by States based on their structure and their political, geographic, and geomorphological capability.

For great powers, energy may – even only in part – serve as a lever of legitimation, control, and domination. Consider the recent paradigm of “Energy Dominance” as the cornerstone of the United States political administration: the goal is not merely self-sufficiency – even at the expense of other interests such as climate and, more broadly, the environment and ecosystem – but also the assertion of hegemony at the global level, for example by weakening the export capacity of other competitors and tying imports to other States.²⁴

For States in conditions of asymmetry, by contrast, largely opposite features may be discerned. The Italian case is exemplary.

What changes is the modality of the pursuit of security, once again through the relationship between the factual and geopolitical dimension and the formal, legal-constitutional one. Italy finds itself in a condition of asymmetry and dependence both by nature and by choice. At the naturalistic level, pertaining, so to speak, to the *is*: if one situates the energy transition process (at least) within a medium-to-long-term perspective,²⁵ on the more immediate paths, those of fossil fuels, Italy is not in a position to guarantee self-sufficiency, primarily due to the limited presence of deposits within its territory. At the decision-making level, pertaining instead to the *ought*: a whole series of principles and regulations preclude indiscriminate territorial exploitation – the prohibition on nuclear energy; the protection and sustainability of the environment, ecosystem, and biodiversity; competition and adequate equality of chances of market access;²⁶ and the limited possibilities for State intervention in anti-competitive terms derived from European law. In other words, the environmental prescriptions limiting the activities of prospecting, extraction, and collection of energy resources are intertwined with the obligation to assign the relevant mining licences through procedures in conformity with the principles of transparency, competition, and equal market access.

These factors, both factual and legal, progressively placed Italy in a condition of dependence on imports. Dependence on imports and the binding force of the framework of principles and interests that have been assumed as objects of protection outline an interventionist framework presenting recurring features. Not power but regulation characterises the response to the continuous demands posed by political and energy crises. This determines a modality of intervention aimed at orienting energy security towards a precise direction.

Without any claim to exhaustiveness, intervention typically revolves around the definition of a balance between interests that differs from the ordinary one but within the strict and proportionate limits of necessity. Among many examples, consider the original prohibition of mining activities on the territorial seabed, expressly justified on grounds of environmental pro-

²³ See International Energy Agency, *World Energy Outlook 2022* (Paris: IEA, 2022), 2: “Energy security is not just about having uninterrupted access to energy, but also about securing energy supplies at an affordable price”.

²⁴ Vakhshouri Sara, “‘Energy dominance’ reconsidered: From domestic abundance to global strategic leverage”, in *Atlanticcouncil.org* (March 10, 2026).

²⁵ Amato Massimo, “Autonomia geopolitica è transizione energetica. E viceversa,” *Fuoricollana*, 5 (2022); Ranci Pippo, *Energia. Governare la transizione* (Florence: Passigli, 2023), 21.

²⁶ See Directive 94/22/EC and Court of Justice of the European Union, Judgment of 13 January 2022, *Regione Puglia*, Case C-110/20.

tection, which following the Russian-Ukrainian conflict has been reduced from twelve to nine miles.²⁷ Furthermore, intervention is essentially one of economic regulation, but once again with the aim of not departing too far from the general principles of the sector: among many examples, the aforementioned reduction of the prohibition on offshore extraction was not followed by a procurement programme in terms of nationalisation or monopoly, but rather by the opening of a call for expressions of interest from already active operators, aimed at intensifying and expanding existing extraction projects, with the objective of concluding long-term contracts for the purchase of mineral resources at capped prices.²⁸ Finally, intervention privileges the dimension of energy security as an instrument for guaranteeing rights.²⁹

In sum, the Italian approach, marked by structural constraints and systemic dependencies that are difficult to circumvent,³⁰ must be read through the lens of a commitment to social cohesion³¹ calling upon those actors most easily able to withstand the effects of the crisis – notably operators in the energy sector³² – to fulfil the duty of solidarity, for the benefit of households and small and medium-sized enterprises which, conversely, are most severely affected. Through the operationalisation of the principles enshrined in Articles 2 (solidarity) and 3(2) (substantive equality) of the Constitution within the domain of economic regulation – specifically by means of Article 41(2) and (3) of the Constitution – measures such as price controls, bill discounts, and incentives contribute to guaranteeing security of supply, with particular regard to the energy needs of the most vulnerable segments of the population.³³

3. *Asymmetric Conditionality in Practice: Constitutional Court Order No. 21/2025*

The implications of the (asymmetric) condition of dependence are particularly apparent, among various examples, in one specific act of the Constitutional Court: Order No. 21 of 2025. This act provides an occasion for reflecting on the contours and characteristics of a potentially persistent autonomous space for State emergency intervention in the field of security.

In this Order, by which the Constitutional Court initiated a preliminary reference before

²⁷ See Art. 6(17) of the Consolidated Environmental Act, Legislative Decree of 3 April 2006, No. 152 (Environment Act): “For the purposes of protecting the environment and the ecosystem, within the perimeter of marine and coastal areas protected on any basis for purposes of environmental protection [...] the activities of exploration, prospecting and extraction of liquid and gaseous hydrocarbons at sea are prohibited [...]. The prohibition is likewise established in the sea zones situated within nine miles from the coastal baseline along the entire national coastline and from the external perimeter of the aforementioned protected marine and coastal areas” (version as amended by Art. 2(4) of Decree-Law of 17 October 2024, No. 153).

²⁸ See Art. 16 of Decree-Law of 1 March 2022, No. 17, so-called ‘Energy Decree’.

²⁹ *Ex multis*, see Nacci Maria Grazia, “Un primo bilancio del gasdotto Trans-Adriatic Pipeline (TAP) e il governo dell’energia tra Stato e Regioni,” *Le Regioni*, 4 (2023): 887-88.

³⁰ Giorgini Pignatiello Giacomo, “Emergenza energetica, principio di solidarietà e comunità energetiche rinnovabili: dalla disciplina euro-unitaria agli ordinamenti italiano e Spagnolo,” *DPCE online*, 4 (2025): 2138.

³¹ Tondi della Mura Vincenzo, “Se l’Italia diventa un Paese solo per ricchi: “l’orrendo e occulto veleno” dell’errore da scongiurare,” *Astrid Rassegna*, 13 (2025): 15-16.

³² Among others, see, e.g., Constitutional Court Judgements No. 10/2015, para. 6.4 and No. 111/2024, para. 7.1.3.

³³ Cataldo Giorgio, “La tutela sociale dei bisogni energetici nel tracciato costituzionale sul contrasto alla povertà,” *Rivista AIC*, 4 (2025): 539 ff.

the EU Court of Justice,³⁴ the subject matter was the provision on a solidarity contribution on windfall profits introduced, for the year 2023, by the Italian Legislator (Article 1, paragraphs 115 to 119, Law of 29 December 2022, No. 197) in respect of various companies operating in the energy sector, with a view to counteracting the effects of the Russian-Ukrainian conflict on energy prices.

The question arose in relation to the EU regulatory framework from which the National provision had drawn its inspiration. The reference is to Regulation 2022/1854/EU, “on an emergency intervention to address high energy prices”, adopted on the basis of Article 122(1) TFEU and identified as a “rapid and coordinated response [...] at Union level” (Whereas 6) to the events of that period. The Regulation, among the various measures introduced, provided in Article 14 for this form of contribution, directing it at a limited circle of subjects operating in the initial phase of the production process and engaged in ‘activities in the field of the extraction, mining, refining’ (Article 2, Nos. 17 and 19), the so-called ‘upstream sector’. By contrast, the Italian Legislator broadened the class of addressees, including those in the so-called ‘downstream sector’, involved in the final and retail phase of the supply chain.

Hence the doubts as to the legitimacy of the National Legislation, raised in relation to Articles 11 and 117(1) (in relation to EU law) and to Articles 3 and 53 of the Constitution (in relation to the principles of equality, proportionality, reasonableness, and fiscal capacity).

The pivotal point of the Constitutional Court’s reasoning, from which the appropriateness of referring the matter to the Luxembourg judges was derived, concerns to a large extent the possibility for Member States – as permitted by Article 14 of the Regulation itself – of substituting the solidarity contribution provision with equivalent measures, provided they are directed towards analogous and consistent objectives. About this possibility, the Judges of the *Consulta* hinted at an extensive interpretation, under which equivalence need not necessarily pertain to the addressee subjects but may also generally relate to the impact on higher profits.

The Italian Court thus considered two (alternative) hypotheses for resolving the problem: a formal one and a substantive one.

The first hypothesis, the formal one, adheres strictly to the European prescription, such that the State’s departure from the limits it provides could give rise to a distortion of the internal market and therefore an incompatibility of the National rule.³⁵

The second hypothesis, the substantive one, identifies in the concrete situation in which the Italian State found itself a decisive element for a different interpretation of the relationship between the European provision and the National one. This is, without any shadow of doubt, the hypothesis most strongly supported by the Court, since – to quote its own words – there are “various and significant indications that might speak, on the contrary, in favour of the referability of the challenged national provisions to those of Union law”.³⁶

It is precisely in this second perspective that the Court placed emphasis on the concrete “peculiarities of the National energy context”, given that “Italy is among the Member States most dependent on natural gas in the National energy mix [...] and, consequently, in that same year, the increase in the price of gas itself [...] and of electricity for end consumers was

³⁴ Buzzacchi Camilla, “Sovranità fiscale dello Stato e contribuzione di solidarietà a traino dell’Europa: il rinvio pregiudiziale della Corte costituzionale, ordinanza n. 21 del 2025,” *Osservatorio, AIC* 4 (2025): 210 ff.

³⁵ Constitutional Court, Order No. 21/2025, para. 10.1.

³⁶ *Ibid.*, para. 10.2.

among the highest recorded in Europe, notwithstanding the National interventions in support of businesses and households”.³⁷ To the problem of energy prices, the Court then associated the inevitable inadequacy of Italian territory to provide supply guarantees, by reason of the scarcity of resources “to finance the measures for the protection of businesses and households considered necessary by the Union itself to address the exceptional crisis situation”.³⁸ And it is by no means secondary to note the emphasis placed on the fact that, prior to the sanctions, Italy’s principal importer of hydrocarbons had been precisely the Russian Federation, to a greater extent than other Member States.³⁹

Following this line of reasoning, another passage of the Order proves useful, in which the Constitutional Court, in outlining a possible argumentative path aimed at interpreting the notion of equivalent measure broadly, highlighted two further profiles.

The first concerns the legal basis of the Regulation, the already cited Article 122(1) TFEU. On a careful reading, this provision states that, “Without prejudice to any other procedures provided for in the Treaties, the Council, on a proposal from the Commission, may decide, in a spirit of solidarity between Member States, upon the measures appropriate to the economic situation, in particular if severe difficulties arise in the supply of certain products, notably in the area of energy”. Under this provision, according to the Court, the EU intervention, being of an emergency nature, could not call for strict harmonisation measures but would, on the contrary, leave intact the power of States to adopt further measures with the sole constraint of not obstructing the single market.⁴⁰

This profile makes it possible to establish a logical nexus with the centrality held by the condition in which each individual Member State finds itself. Among other aspects, it would be this condition that might render necessary the recourse to measures that are more stringent (and of wider scope) than the European framework, while fully respecting the *ratio* informing it. This steers the Court – while deferring to the European judge every definitive assessment – towards the following conclusions: first, “that the choice to impose the equivalent measure on further subjects who also benefited from windfall profits during the energy crisis is linked to the peculiarities of the National energy context and responds to the regulation’s ultimate aim of financing National measures aimed at contributing to the affordability of energy”; second, that “the broadening of the class of addressees carried out by the National Legislator in order to capture windfall profits could be deemed, in the National economic and energy context, an equivalent measure or, in any case, a manifestation of the general competence of Member States in the field of direct taxation exercised in compliance with the

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ As the Court observed, “That crisis, as emerges from the same recitals, was triggered not only by the increase in consumption resulting from the end of the pandemic and the exceptionally high temperatures recorded during the summer of 2022, which led to a growth in demand for electricity for cooling, but also and above all by the reduction in gas supply on the part of Russia following the invasion of Ukraine, and this in a well-known situation of Union dependence on supplies from Russian sources” (Constitutional Court, Order No. 21/2025, para. 8.1). Among various reports, see Panzeri Davide *et al.*, “Il panorama energetico italiano dopo l’invasione russa dell’Ucraina”, in *Eccoclimate.org* (September 21, 2023): 5 ff. See also, among the studies, Nicotra Ida Angela, “Guerra e crisi energetica. Per l’Unione europea gli esami non finiscono mai,” *Istituzioni del Federalismo*, 1-2 (2022): 37-38.

⁴⁰ Constitutional Court, Order No. 21/2025, para. 10.2.

principle of solidarity and the objectives of the regulation”.⁴¹ Hence the question: whether the regulation precludes the adoption of an equivalent National measure that encompasses an extension of the class of the solidarity contribution addressees.

The Order assumes relevance in the part in which it implies – quite clearly, even if not stated outright – the weight of the condition of structural asymmetry that characterises the Italian legal order, whose peculiarities therefore constitute an indispensable interpretive criterion in the case under examination.

Following the Court’s reasoning, the EU intervention, although displaying an emergency character in the same manner as the National one, tends inevitably to present itself as a second-level source. Indeed, while aimed at alleviating the energy and economic needs of households and businesses, it revolves, under the Treaty provision, at least in the first instance, around a spirit of solidarity between States. This is the same solidarity evoked by Article 194 TFEU, equally in the context of the principles governing energy matters.⁴² The Regulation may thus be understood in its function of coordinating the subsequent implementing interventions of the Member States, providing a framework and reinforcing their legitimation to adopt measures that are provisionally derogatory and divergent from the ordinary balancing of interests, rights, and freedoms pursued for security purposes.

Further supporting this argument, one cannot overlook the classification of the solidarity contribution as a fiscal measure – pertaining, that is, to one of the typical manifestations of State power and, as such, to an exclusive competence of the Member States.⁴³ The absence of powers of direct tax imposition on the part of the Union serves to confirm the mediated nature of European intervention.

It is precisely the logical path aimed at identifying in the European source a mediated and coordinative function that leads to corroborating the rejection – as contemplated by the Constitutional Court – of the more incisive (both conceptually and materially) function of harmonisation, which as such would instead be directed at making uniform and rendering homogeneous the norms of the individual Member States.

Notwithstanding its highly technical character, the subject matter of the proceedings and even the extensive interpretive hypothesis surrounding the notion of equivalent measure open up considerations of general significance, in which the factor of the Italian State’s structural asymmetry plays an important role.

Following the overall reconstruction advanced here, the needs dictated by the peculiar National context provide the premises for identifying not an overlap between the National rule and the EU one – from which the incompatibility of the former would follow – but rather an articulated relationship. In particular, two interpretive keys might be proposed.

The first one, horizontal, would see the National rule as substantially decomposable into two parts: one adhesive to the European rule and therefore receptive of it (insofar as it imposes the contribution on upstream operators); one purely internal (insofar as it extends the contribution to downstream operators). The second interpretive key, multi-level, would see in the National rule a typical expression of emergency intervention that is grafted onto

⁴¹ *Ibid.*

⁴² Villani Susanna, “Considerazioni sul principio di solidarietà energetica nel quadro giuridico dell’UE,” *Federalismi.it*, 5 (2023): 118 ff.

⁴³ See Buzzacchi Camilla, “Sovranità fiscale dello Stato e contribuzione di solidarietà a traino dell’Europa,” 216, 222-23.

the sphere of operation of the European measure, which in turn responds to a particular aim of solidarity, without thereby being exhausted by it and without being disproportionate in relation to it.

The two interpretive keys do not appear to be alternative but rather complementary. They disclose the possibility of safeguarding an entirely internal component of the National rule, which, following the Court's reasoning, is justified by the peculiarities of the State's conditions and is grafted onto – but is not to be confused with – the EU regulation.

4. *The Conditioned State as an Emergency Actor: some Final Observations*

Regardless of the outcome of the preliminary reference, the Order – also in relation to the hypothesis advanced by the Constitutional Court – is of interest because it discloses a number of considerations to be traced regarding the possible role of the conditioned State in the management of emergencies.

Almost paradoxically, one might venture, in general terms, the provocation that the condition of dependence, of middle power status, or however one chooses to define it, functions as a built-in *bridle* against the possibility of aggressive manifestations of power, disposing instead – however peculiar – of regulatory instruments aimed at the guarantee of security.

At the particular level, then, the Order renders visible an inescapable datum to emerge: the homogeneity and horizontality that characterised the EU sanctions produced differentiated and asymmetric repercussions on individual Member States, linked to their respective original degree of dependence on supplies. Correspondingly, this reading reveals the constitutional relevance that, in the regulation of emergencies, is assumed by the condition of structural asymmetry in which a State may find itself *vis-à-vis* the dynamics of global interdependence.

The hypothesis of an entirely National component within the EU implementing Legislation – also by virtue of the peculiar argumentative approach offered by the Court – allows the inference that the State retains and maintains a capacity for derogatory-emergency normative intervention.

The reservation of a sphere of operation for the State on account of its specific needs and beyond the European normative framework confirms emergency as a domain still typically belonging to the State, as the power-duty to restore order and neutralise danger – albeit within the system of guarantees and controls founded on constitutional rigidity.

All of this leads to a twofold observation.

On the one hand, it has been possible to observe how the condition of asymmetry influences the concrete modality (and the concrete possibilities) of intervention for emergency purposes. At the level of presuppositions, dependence on factors and dynamics that escape the State's unilateral control may itself constitute the source of emergency risk, as an expression of a systemic vulnerability that is activated by external events – armed conflicts, economic crises, infrastructural disruptions – to which the State finds itself in a position of substantial exposure. At the level of the modalities of response, the same condition orients and favours the morphology of intervention: the absence of a capacity for unilateral projection – both in fact and with respect to internal and external legal constraints – consolidates emergency action around the instruments proper to the rule of law dynamic, such as market regulation, proportionate balancing of interests and rights, and the redistribution of the fiscal

burden. It follows that security, in this context, tends to be articulated primarily in its social and rights-guaranteeing dimension: not the solely vertical affirmation of power, but also the protection of the minimum conditions of access to essential goods for the most exposed segments of the National community.

On the other hand, the condition of asymmetry does not entail the abandonment of the State's power-duty to intervene, for it is confirmed as a structural element of the State's very existence, imposing itself by reason of the peculiarity and centrality of the needs of the National context. Though conditioned, this intervention constitutes a peculiar way of pursuing an objective inherent in the State's function: security of supply, which even in such mediated forms is configured as an expression of the *salus Rei publicae*.

For this reason, from the peculiarities of each individual National context follows the enduring appropriateness of this domain as a political space in which, within the democratic circuit, it is possible to proceed to the composition (through selection and balancing) of the needs of the community affected by the crisis, giving concrete effect to the duty of solidarity that involves all components of the social, political, and economic fabric.

In conclusion, it is indeed true that, among the effects of contemporary constitutionalism, the idea of an emergency governed exclusively (and univocally) by the State sometimes may represent an abstract and anachronistic concept. The very integration of the Italian State within a broader normative framework such as that of the European Union entails that the latter is called upon to activate instruments of an emergency nature capable of affecting the social and economic arrangements of Member States. These instruments, however, are consistent with the still non-State nature of the Union and are correlated to its limited – though broad – functions and competences, which do not substitute for the subjectivity of Member States but are placed in a subsidiary relationship thereto.

The openness of the State legal order does not seem, therefore, to entail the complete disappearance of any possibility of emergency intervention. The specific and peculiar territorial and infrastructural characteristics that distinguish individual States confirm the enduring need for a diversification of individual regulatory frameworks, proportionate to specific needs, and recognise a residual space for the adaptation and modulation of emergency measures. This, even when those emergency measures are functional to guaranteeing the effectiveness of the objectives pursued at the supranational level.

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