



Roundtable on “Asylum and migration in times of crisis: from Covid-19 pandemic to threats to national security”

The situation in Italy

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First Instance Court of Naples, Italy

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- **Access to the Court was highly limited** not only to citizens but also for judges and lawyers at the beginning of the pandemic
 - **Smart working** for civil judges thanks to the already existing remote platform “Processo Civile Telematico” (PCT)
 - **Videoconferencing system** quickly implemented by the Ministry of Justice to allow remote hearings (not useful in practice for asylum cases because the reception centres are not equipped with IT system)
 - **Residence permits** that expired between 31 January and 15 April, were postponed to 15 June 2020, because Questor offices were closed to public at the outbreak of the pandemic and reception measures were prolonged as a consequence also for those who received a denial of international protection confirmed in the appeal proceeding (circolare 1 april 2020 of Ministry of Internal Affairs)



Main legislation adopted at the time of pandemic outbreak

- 8 March 2020 n. 11 : suspension of legal deadlines
- 17 March 2020 n. 18: suspension of judicial activities, except for urgent matters, until the 11th May
- 8 April 2020 n. 23: regulation of remote hearings.

Urgent cases and judicial reviews of detention through PCT and videoconferences

- 30 April 2020 n.28: possibility to organize the meeting of judges in the counselling chamber by videoconference



Since 12 th May 2020 in civil matters

- **possibility to organize “remote hearings” in ordinary cases (with parties consent after 31st July)**
- **General rule: written hearings through the exchange of files in the PCT, unless one of the parties requires face to face hearing, which is the general rule in ordinary time (no face to face hearings until 31st July)**
- **In case of request of face to face hearing, possibility to postpone the personal interview to another hearing, to avoid the presence of too may appellants in the court on the same day (in any case the number of cases per hearing is higher than the number of cases that can be decided by the panel)**



Decree of 7 april 2020 n. 150 of Internal Affairs, Foreign Affairs, Health and Transports Ministeries

- ▶ Italian ports cannot be considered Place of Safety under Amburg Convention when migrants were rescued outside the Italian SAR area by foreign ships during the Covid 19 emergency
- ▶ The Administrative Tribunal of Lazio, by decree N. 03066/2020 of 23.4.2020, requested by ARCI association to suspend the interministerial decree as precautionary measure, denied the suspension effect. It concluded that the emergency situation due to covid 19 pandemic and the consequent impossibility to offer a place of safety without sensibly reducing the State activity of contrast to the spreading of the coronavirus in the country, justified such a measure adopted by the Ministries concerned. Notwithstanding this, the Tribunal considered that in any case assistance to migrants should be offered in terms of granting primary needs and transportation



Residence permit on humanitarian grounds due to COVID-19 situation in country of origin

- ▶ The Court of Naples recognized (by Decree of 25 June 2020 No. 23602) an individual's right to a residence permit on humanitarian protection grounds due to the health emergency situation and management of COVID-19 in the applicant's country of origin (available at <https://mailchi.mp/ecre/elena-weekly-legal-update-31-july-2020#9>).
- ▶ The fact: a Pakistani citizen, originating from a small village in Punjab, fled to Italy seeking for international protection. The application was rejected, considering the applicant's account of the risk of persecution on religious grounds or serious harm to be unreliable, and because it considered that there was not a situation of indiscriminate violence resulting from armed conflict. He filed an appeal against the administrative decision and requested the judge also a residence permit based on humanitarian reasons, claiming to be well integrated in Italy as he learnt Italian and had several regular employment contracts.



The Tribunal assessed of its own motion the security situation in Pakistan concerning the pandemic. The Court made a specific reference to the [Alheto](#) judgment, in which the CJEU specified that Article 46 APD required the judge to carry out an assessment 'ex nunc', taking into account, where appropriate, new elements or findings which have arisen since the adoption of the decision under review. The Court of Naples observed that, according to reliable country of origin information reports, the Pakistani health system became increasingly commercial, resulting in the scarce availability of health services for the poor. In particular, public primary care services are poor, especially in rural areas, with only six COVID hospitals in the whole Punjab region, where the applicant came from. It also noted, *inter alia*, that official data showed a significant number of positive tests and a large concentration of cases in the Punjab region.



The Court of First Instance concluded that the return to his country of origin would place the applicant's right to health at serious risk and that he would face a situation of extreme vulnerability. In particular, judges made clear that the risk to the applicant's state of health would not by itself justify the granting of a residence permit on humanitarian grounds. It should be assessed also if there was the possibility for the applicant to have access to appropriate care or if he would be excluded from care on the basis of social and economic reasons. From COI it resulted that public primary care services are extremely poor, especially in rural areas. As a result, the Court concluded that the applicant's fundamental right to health would be seriously compromised in the event of his return and added that the applicant's lack of ties with his country of origin and well-documented integration in Italy, justified granting a residence permit on humanitarian grounds.

INFORM COVID-19 Risk

- ▶ The Tribunal of Milan (by decree of 28 October 2020), in order to evaluate the risk to applicant's state of health due to Covid 19, took in consideration the INFORM COVID-19 Risk Index. This is an experimental adaptation of the INFORM Epidemic Risk Index and aims to identify: "countries at risk from health and humanitarian impacts of COVID-19 that could overwhelm current national response capacity, and therefore lead to a need for additional international assistance".
- ▶ It can be used to support prioritization of preparedness and early response actions for the primary impacts of the pandemic, and identify countries where secondary impacts are likely to have the most critical humanitarian consequences.
- ▶ The main scope of the INFORM COVID-19 Risk Index is global and regional risk-informed resource allocation, i.e. where comparable understanding of countries' risk is important. It cannot predict the impacts of the pandemic in individual countries.(see Poljansek, K., Vernaccini, L. and Marin Ferrer, M., INFORM Covid-19 Risk Index, EUR 30240 EN, Publications Office of the European Union, Luxembourg, 2020, ISBN 978-92-76-19203-9, doi:10.2760/596184, JRC120799, https://drmkc.jrc.ec.europa.eu/inform-index/portals/0/InfoRM/Covid19/JRC120799_pdf.pdf)