

Extraordinary Measures Concerning Civil Justice Adopted by the Italian Government in Connection with the Emergency Caused by Coronavirus

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As a consequence of the rapid and uncontrolled spread of the Coronavirus infection, the Italian Government has adopted a series of statutory instruments aimed at enforcing the recommendations that the World Health Organization has issued with a view to containing the tragic effects of the pandemic. The statutory instruments address a variety of subjects, but a few rules affect specifically the administration of justice, whether civil, criminal or administrative.

Browsing through the most recent and comprehensive statutory instrument (law decree no. 18 of March 17, 2020), one can find a number of provisions concerning civil justice. The statutory instrument lays down different rules for two different timeframes. The first one runs from March 9 through April 15. During this timeframe:

- all hearings are postponed *ex officio* to a date later than April 15;
- all deadlines provided for by the laws in force as regards the performance of any activities concerning adjudication are suspended. If a deadline is set to begin to run during the suspension period, the deadline will instead begin to run only at the end of the suspension period;
- similarly, all deadlines concerning out of court mediation and assisted negotiation (when they are mandatory and supposed to take place within specific deadlines) are suspended.

A few exceptions to these rules are contemplated. They concern urgent matters such as alimony and child support cases, as well as the adoption of interim measures for the protection of fundamental rights, just to mention a few examples specifically listed. There is also a general clause according to which no suspension affects the proceedings in which delay could cause 'serious harm' to the parties to the case, according to an evaluation of the circumstances of the dispute at hand made by the judge who is presiding over the court before which the case is pending.

The second timeframe is scheduled to run from April 16 through June 30. During this timeframe other steps can be taken: in particular, the heads of the judicial offices will be able to implement the measures that appear necessary with a view to guaranteeing that all the health requirements laid down by the Ministry of Health are complied with. For instance, access to the courthouses could be limited, and new guidelines for the management of proceedings could be announced.

As far as virtual hearings are concerned, from the reading of the statutory instrument one might infer that they could be authorized only after April 10, that is to say during the second

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timeframe. As a matter of fact, though, it seems that they are already taking place, at least for urgent matters and when interim measures are requested. According to the relevant rules, virtual hearings can take place only provided that the equality of arms of the parties is guaranteed and insofar as the personal presence of the parties themselves is not required. According to the technical provisions issued by the Ministry of Justice, the programs to be used for virtual hearings are Skype for Business and Teams, keeping in mind that both programs must employ infrastructures and areas of data centers that are restricted to the Ministry of Justice.

A more recent statutory instrument (issued on April 8, 2020) provides that all deadlines concerning civil, criminal, and administrative procedures are extended to May 11, 2020. The entering into force of several statutes governing bankruptcy and insolvency procedures is postponed to September 1, 2021.

As far as hearings in civil cases are concerned, if the case falls within the list of matters that are deemed urgent and not delayable, the hearing can take place via remote connection, provided that the attendance of only the attorneys for the parties is required (meaning that the personal attendance of the parties is dispensed with). In any other case (and always provided that the attendance only of the attorneys for the parties is required), the hearing will be replaced by an online exchange of written briefs whose contents will be limited to the petitions and conclusions of law advanced by the parties. The order will be issued by the judge in charge of the case later on, meaning outside the hearing.

The High Council for the Judiciary has prepared a number of protocols that courts and local bar councils can sign laying down the rules applicable to hearings conducted via remote connection and to hearings replaced by an online exchange of written briefs. More protocols have been drafted by judges presiding over courts of first instance for the management of cases. The basic idea is that, at least in these times of emergency and mandatory social distancing, adjudication will have to rely more and more on written briefs and motions exchanged via the web, since orality will be confined to the appearance of lawyers and judges thanks to the application software that makes it possible to conduct hearings via remote connection. Of course, a more extensive use of the rules governing online civil cases (in Italian, PCT or *Processo Civile Telematico*) presupposes that lawyers, bailiffs, court clerks, and judges master these very rules, which is not always the case. Furthermore, the state of cabling throughout the country and, in particular, the fiber optic wiring, is not optimal in a few areas, most of all in the South. When the emergency is finally over, it will be necessary to reconsider the entire national policy in the field of IT innovation, for the strengthening of the technological devices and systems designed to allow online adjudication and mediation, smart working, teleworking, distance education and the like, so as to be properly prepared should future situations arise like the emergency brought about by the coronavirus pandemic.