



PEOPIL 2nd Webmeeting - the Legal Situation in Italy during the Covid-19 Crisis - Presented by PEOPIL Member Umberto Oliva

Topics covered:

1. The measures restricting personal freedoms due to the health emergency
2. The impact on the judicial system. Procedural activities. The work in the law firms
3. Measures to support productive activities, employees and self-employed workers
4. COVID-19 as a new risk at work. Preventive measures to protect workers' health
5. Prospects for COVID litigation

Good afternoon everybody,

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I would like to thank Wolfgang for inviting me today to discuss with you the consequences that the corona virus pandemic are having on the legal system and on lawyers in Italy.

I would like to thank Peopil and all its members for making possible the communication and comparison among the situations of the European Countries, contributing to the mutual knowledge and building a real transnational know how.

I believe this is the real aim of our association, which should make us feel proud of ourselves and encourage us to keep together, and to extend our solidarity within our association and to spread our voice outside, especially in such hard times.

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As you know, Italy has been the first Country to be affected by the pandemic, and as of today is the European Country which is bearing the highest number of casualties and infected people.

According to the official figures, at the moment about 24.000 people died and , officially, about 110.000 people have been infected. Probably reality goes beyond these figures, especially with regard to the number of infected people, and it is reasonable to think that the real cases are around 3-4 million people, because of the huge number of infected people not showing symptoms which are not officially recorded. The pandemic did not hit the Italian territory in the same way; the most severe effects were recorded in Northern Italy, in the most industrialized areas. In central and southern Italy, as well as in the Islands, the number of infected people and victims is sensibly lower.

As you will certainly know, the whole Italian territory has been in lock-down since March 7th and, as per the current forecasts, it will be held in that condition until May 3rd.

Due to the almost complete stop of all productive activities for at least two months, a number of heavy economic and social consequences will be added to the sanitary and human tragedies of many families. The official forecasts indicate a decrease in GDP (Gross Domestic Product) of 10% for 2020.

Many families will surely be impoverished and many workers will lose their jobs.

We cannot deny that in present days in Italy many people, including average citizens and most influencing cultural figures, are asking themselves if what has been done and what is currently done to fight the pandemic is the best possible solution.

There has been scepticism both about the management of the healthcare system - that, as far as we could personally verify, has not surely been impeccable- and about the economic price of the total lock-down that citizens will have to pay, especially the self-employed persons, small enterprises and their employees; but also about the future management of children that, due to the uncertain situation of schools in near future, risks to leave families in very difficult situations.

It is indeed too early to draw conclusions, and it is sure that our country was forced to face a huge problem caused by an unknown virus: it was not easy to act.

But for sure the debate is open and the match is not over, if not just begun under many aspects.

In my speech I am going to deal, first of all, with the preventive measures and consequent restrictions adopted at a national level – considering though that being “health protection” a matter of legislation in which the central Government and Regions are competitors (according to Article 117 of the Constitution), to a certain extent, locally there have been and there might be in the future partially different solutions.

Then, in the second part, with the impact of the emergency on the Italian Judicial System and on our work of Lawyers.

Concerning the subject of Labour Law, I will shortly describe the measures adopted by the Government to support enterprises and workers and talk about the COVID-19 as a new related risk.

In the end, I will mention the opportunities related to the “COVID litigation”.

1. THE MEASURES RESTRICTING PERSONAL FREEDOMS.

On January 30th 2020 the World Health Organization declared an international public health emergency due to coronavirus.

On January 31st 2020 Italy stated a health emergency for a period of six months.

On February 23rd 2020 the Italian Government adopted counter-measures and for containing COVID - 19 virus, as the ban of mass gatherings in public premises, the closing of schools, museums and cinemas on the whole Italian territory, and declared “red zone” ten towns and cities in Lombardia and Veneto, where the first pandemic outbreaks had developed, and which were isolated from the rest of Italy.

Due to the worsening of the situation, on March 8th 2020 the “red zone” was extended to include the main Northern Italian Regions; the day after, the whole Italian territory was declared “protected area”, and so isolated from the rest of the Europe.

On March 11th 2020 the Italian Government adopted more restrictive measures, imposing until April 13th the closure of all the industrial and commercial activities, except only for food shops, supermarkets and pharmacies.

The free movement of citizens was prohibited, and all people were ordered to stay at home, except only for urgency reasons such as state of need, working activities and health reasons, advertised on the media with the claim *#iorestoacasa* (*#Istayathome*)

Thereafter, given the continuing of the health crisis that showed no signs of regressing, the Italian Government stated the extension of the restrictive measures until May 3rd 2020.

As of today, it has been more than six weeks since we are not allowed to go outside, except for food shopping in the nearest supermarket or food shop, within a range of 200 metres from our homes. We cannot go to any public park or reach our holiday homes.

Although offices were closed, the working activities are carried on from home, encouraging forms of remote working; apart from the above mentioned exceptions, concerning the activities which are strictly essential to the people's survival or some other areas deemed to be of "strategic" importance for the Country, the industrial and commercial activities were stopped.

The Police is enforcing a strict control on the whole Italian territory and the citizens are respecting those rules, with only few exceptions.

In view of the deadline of May 3rd, we are now waiting for new decisions from our Government. A certain exhaustion is showing among citizens due to the extension of the quarantine as well as a serious concern for the future, from a health and, especially, from a working perspective. Today Italy is waiting for the so called "Phase two", the desired restart of our social and productive life, with a lot of enthusiasm as well as a lot of uncertainty.

From the point of view of the fundamental rights of the human person, it is clear that the Government, adopting those restrictive measure in order to protect the public health, has heavily restricted some of them, first of all the freedom of movement (Article 13 of the Italian Constitution) and freedom of assembly (Article 17 of the Italian Constitution).

In prospect, other fundamental rights may be affected: today there are serious doubts about the recent institution of a "*Task force against the fake news*" by the Government - with the aim to counteract the misinformation and the dissemination of untrue information which weaken the efforts to contain the infection inducing misbehaviours - which could represent a dangerous limitation of the right of freely express one's thoughts (Article 21 of the Italian Constitution).

On the other side, the decision of the Government to proceed with tracking the people who were registered as positive (although on a voluntary basis), to be carried out by means of special apps on the mobile phone, raises some concerns about the proper management of the acquired data and the possibility of infringement of people's privacy.

Another important legal issue concerning the adoption of such restrictive measures of the fundamental rights is represented by the legislative instrument used by the Italian Government.

A lot of these measure, in fact, especially those restrictive of the fundamental freedoms, have been adopted by means of Decree of the President of the Council of Ministers, which is an administrative act, without the involvement of or the control by the Parliament, which is the only institution of the State authorized by the Constitution to introduce legislation in those subjects.

The situation and the emergency reasons which the Government had to face with are clearly understandable to everybody; however, it is certainly appropriate that now this kind of law-making would cease, and that the Government restarts using the ordinary legislative instruments which provide for the adoption, in cases of extraordinary need and urgency, of a Decree Law, which is a legally binding provisional legislative act, to be converted into law by the Parliament, with amendments if necessary, within 60 days.

Last but not least, in our European perspective, I would like to remind you that the Decision n. 1082/2013/UE of the European Parliament and of the Council on serious cross-border threats to health is addressed to all the Member States, and it concerns the *“rules on epidemiological surveillance, monitoring, early warning of, and combating serious cross-border threats to health, including preparedness and response planning related to those activities, in order to coordinate and complement national policies”*.

The above provision – although it recognises the adoption of different national policies in response to specific situations – aims *“to support cooperation and coordination between the Member States in order to improve the prevention and control of the spread of severe human diseases across the borders of the Member States, and to combat other serious cross-border threats to health in order to contribute to a high level of public health protection in the Union”*.

It would therefore be desirable that the Member States want to continue in the fight against the pandemic bearing these principles of cooperation and coordination in mind, remembering that we are, first of all, European citizens.

2. THE IMPACT OF THE EMERGENCY ON THE JUDICIAL SYSTEM.

Suspension of the court hearings and the procedural times.

Due to the worsening of the COVID-19 epidemiologic emergency, all the court hearings of the civil and criminal proceedings scheduled between March 9th and March 22nd were postponed, except only for the issues absolutely “urgent” (as the protection of the minors, sustenance of the families, proceedings concerning the detention of those arrested and the application of security and preventive measures). All the procedural times running in the same period were suspended.

Afterwards, the above measures were confirmed and described in more details in the Decree Law of 17 March 2020, which extended the suspension of the prosecution and proceedings until April 15th 2020. Given, unfortunately, the increasing of the number of the infected people, the above time has been further postponed until May 11th 2020.

Measures for the management of the proceedings in the first period of resumption of activities.

Following the period of suspension and until June 30th 2020, the Decree Law allows the Presidents of each Court to issue measures - with the agreement or upon receipt of the opinion of a lot of State and Regional Authorities - aimed to deal with the judicial matters and proceedings in conformity with the directive received for the containing of the emergency.

I am referring to the following measures, for example:

- to restrict as much as possible the access of the public to Courts;
- to manage the access by computerized reservation systems, scheduling the visits of the users at fixed times;
- the adoption of binding guidelines for the civil and criminal court hearings;
- the postponement of all the court hearings, which are not urgent, after June 30th.

One of the most common way for the conduct of the hearings, adopted by many Courts including the Court of Turin, is the exchange of written briefs via telematic means. Such method shall be preferred for all the proceedings which do not require the physical presence of persons other than lawyers and for those formal court hearings that do involve the real hearing of the case. The parties, however, may file a reasoned application to the judge for the live hearing of the case, or to be held by remote connection.

Court hearings held by remote connection.

The conduct of the court hearings by remote connection is provided by the telematic platform "Microsoft Teams".

As for any other court hearing, during the ones held by remote connection the judge may declare - after checking the regularity of the summoning - the default of appearance or the failure to appear of the party that does not make the remote connection.

The setting of court hearings to be held by remote connection is envisaged to be gradual, taking into account the time needed by judges and lawyers to learn how to use the telematic system and to set up a suitable technical support.

Personally, I attended a court hearing by remote connection last April 17th , held by the Labour Court of Mantova, which assumed (among the few in Italy) that the claims for dismissal had to be considered as “urgent” claims and, therefore, that they deserved a hearing despite the suspension of the proceedings.

I can state that the hearing was held regularly and it was sufficiently effective; I consider that it is surely a useful instrument in this period, deserving to be used extensively as it is certainly preferable to the total paralysis of the activities.

Anyway, I reckon it reasonable that the court hearing will be held normally only after September 2020, COVID allowing.

Limitation and forfeiture

A brief reference to limitation and forfeiture.

Without prejudice to the suspension of the procedural times, of which I spoke about before, with regard to forfeiture it can be assumed that, being prevented to undertake the action aimed to avoid the forfeiture itself, the running of the related time shall be subject to suspension.

With regard to limitation, on the contrary, different arguments may apply.

If, in a general perspective, the choice of considering all limitation periods suspended in the period between March 9th and May 11th /June 30th would seem to be the most consistent with regard to the general context of the measures taken and to the protection of rights, on the other hand it can be assumed the opposite, being left untouched the possibility of interrupting the running of limitation period by sending a letter of claim via registered certified email and registered letter with acknowledgment of receipt (the postal service has been reduced, but not stopped).

The Decree “Cura Italia” includes a specific provision (Article 83, paragraph 8), whose drafting and reference to some of the previous paragraphs (5 and 6), does not allow to state with absolute certainty the suspensive effect.

Activities of the Law Firms.

Concerning our daily working routine, in Italy the lawyers carried on working but with remarkable restraints, which were different from region to region.

In the most severely hit Regions, such as Lombardia and Piemonte, according to the Decree, the Professional Offices have been closed since March until May 4th, with the possibility for the lawyers to reach the office only for specific needs connected to the court proceedings which were not suspended (the “urgent” claims) or for collecting the working materials to take back home.

In all other Regions, the closure period was shorter; in any case, the use of smart working has been strongly encouraged for all the collaborators and employee of the Law Firms.

Meetings with clients and with colleagues ceased, save in exceptional circumstances; the meetings can be held on line.

With regard to the examinations of the files, it must be said that the possibility to have access to the documents of the Public Administration (such as police reports, medical records, court papers) is not forbidden but, considering the unforeseen situation, undoubtedly the time required by the completion of the applications has been considerably increased.

Likewise, medical practices are closed and, therefore, it is not possible to perform any medico-legal examination.

With regard to the insurance companies, they carry on working and it is possible to deal with the claim handlers who, however, encounter considerable difficulties in providing an actual impulse to the files due to the smart working mode. Also in this case, the increase of lead time is unavoidable.

Generally, it can be assessed that the out of court activity carries on without any specific restriction, differently from the judicial activity, even though the general containment measures make the actual performance complicated and very slow.

3. MEASURES TO SUPPORT PRODUCTIVE ACTIVITIES, EMPLOYEES AND SELF-EMPLOYED WORKERS.

Firstly in March (Decree Law n. 18/2020) and then again in April (Decree Law n. 23/2020), the Italian Government adopted several measures aiming to support companies in this period, such as suspension of fiscal/social/insurance premium payments, support for the access to subsidized loans for enterprises, and other actions for immediate help to face the crisis. Other measure will be surely taken in the next days.

With specific regard to the labour cost support, it has been provided the possibility of the utilization of extraordinary social support mechanisms, with *ad hoc* loans for this emergency.

Starting from March 16th and for a period of maximum 9 weeks, extendable to 13 weeks in the Regions badly hit by the epidemic, any enterprise shall enrol the forcibly unnecessary personnel in the “Cassa integrazione” (wages guarantee fund), with the fulfilment of the obligations regarding payments of salaries and social security contributions borne by the State.

While in “Cassa integrazione”, the employees will receive from the State (with payment in advance borne by the bank system) the 80% of their salary, up to a maximum of about 1.000,00 Euros.

Those who carried on working in the enterprises received a reward of 100,00 Euros in March; moreover, some supporting measures have been provided in order to manage some particular family needs that have arisen with the closing of schools of any level and order. It has been provided the possibility of applying for a period of 15 days of extraordinary family leave, with the payment of the 50% of the remuneration borne by the State; or alternatively for a 600,00 Euros bonus for baby-sitting services.

In addition, the possibility to dismiss the employees, due to justified financial reasons of the company, has been temporarily suspended.

As far as self-employees are concerned, for the time being, they may benefit from a 600,00 Euros monthly bonus as income support, from the suspension of the fiscal and social payments, from having access without any formality to an immediate bank loan granted by the State, up to a maximum of 25.000,00 Euros to be refunded in 6 years with symbolic interests.

These measures apply to lawyers too, but the payment of the 600,00 Euros as income support shall be limited to those colleagues whose income for the year 2019 was lower than 35.000,00 Euros or, under certain further conditions, 50.000,00 Euros.

Our Pension Fund provided for financial contributions, under certain conditions, for the payment of Law Firms' rents.

4. COVID-19 AS A NEW RISK AT WORK. PREVENTIVE MEASURES TO PROTECT WORKERS' HEALTH.

COVID-19 entered obviously also the working places. The risk of infection among workers caused the onset of a new, occupational, health risk, which the employer must prevent according to the general principle of the “highest technologically possible safety”

In the immediacy of the pandemic events, with regard to companies that carried on working, on the 14th of March 2020 the Government and the representatives of the Unions signed a Protocol of Agreement on the COVID risk management measures at work places, establishing minimum safeguard rules. Pursuant to the Protocol, the employer must, *inter alia*:

- draw up a specific regulation for the staff, containing the rules of conduct to be respected in order to protect their own and others' health, involving the doctor of the company in drafting of the documentation and in processing the appropriate means of prevention of the spread of the infection;
- ensure the staggered entry of the staff or anyway organized in such way to avoid mass gatherings and assuring the minimum safety distance among people;
- allow the detection of temperature at the entrance of the company, in accordance with the right of individual privacy;
- provide the employees with personal protective equipment, such as masks and gloves mainly (the Government allocated extraordinary funds to support companies in the purchase of personal protective equipment and in the sanitisation of the working environments);
- organize the working activity so as to ensure a minimum safety distance, not lower than 1 metre, between staff;
- organize the entrance to the company canteens, to the dressing rooms, and the staggered use of the catering facilities as well as smoking areas, in order to avoid mass gatherings and to ensure the safety distance among employees;
- sanitize the working environments and tools, providing the easily accessible common areas with disinfectants, available to the personnel for use during worktime, for personal hygiene and for the sanitation of the working places.

5. PROSPECTS FOR “COVID LITIGATION”

Beyond any possible matter of medical malpractice, that it is not possible to judge at present time due to the state of particular emergency and the difficulty that the health workers are facing, three prospects for litigations become evident for the personal injury lawyers:

- the first prospect concerns the liability of healthcare establishments due to the lack of protections of their workers, first of all doctors and nurses, but also personnel management, technicians, cleaning and sanitation workers.

As of today, more than 120 doctors passed away and a huge number of them have been infected with variable consequences, more or less serious.

It is a well-known fact that in many hospitals the medical staff had to face the emergency without being provided with the essential protections required, such as personal protective equipment (especially masks), and without any swabs being performed in order to ascertain whether they had been infected or not; with the real risk of contributing to the infection outside the work places, first of all in their families.

For these reasons a lot of doctors and nurses got infected at work places, and a lot of them died. All Italians thank them all sincerely.

Given the circumstances in which the above infections happened, those cases can be considered as fatal accident at work: these situations, indeed, do not differ from any other case of work place fatality due to the employer's failure to protect the employees.

On this point, trade unions have already lodged complaints and promised fights in courts.

- The second prospect concerns the liability of the owners and managers of retirement homes for elderly persons.

The spread of the virus caused a huge number of casualties in those establishments, where the patients were hospitalized according to standard contracts of provision of services, defined as health care contract.

Despite the advanced age of the guests of these establishments, which required a special attention because of their vulnerability to the virus, in many of these structures the safety standards - that the situation required - have not been followed minimally.

The staff was not provided with the suitable personal protective equipment either, thus contributing to the spread of the infection.

For this reason, the Public Prosecutor Office of the Court of Milan has already commenced investigations, assuming in some cases the crime of negligent massacre.

- The third prospect, less tragic but not for this reason insignificant, concerns the liability of tour operators.

When the epidemic had already started, and the statement of national emergency had been already declared, many of these companies organized trips and cruises that, according to prudential rules of conduct, should have been cancelled.

This implied that a lot of Italians found themselves abroad without the possibility to come back to Italy because of the closure of borders and the stop to the flights, with conceivable consequences. In the same way, a lot of foreign tour operators continued to send tourists to Italy although the situation appeared to be precarious, with consequent easily conceivable difficulties in coming back, worsened by the fact of finding themselves in a territory heavily affected by the epidemic.

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I wish you all to keep safe and all the best for the future.

Torino, April the 21th 2020

Umberto Oliva