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New Technologies
— New Justice

NEW TECHNOLOGIES = NEW LAW

National regulations

Italy





HELŚIŃSKA FUNDACJA
PRAW CZŁOWIEKA

A QUESTIONNAIRE FOR LAWYERS FROM DIFFERENT JURISDICTIONS

The Helsinki Foundation for Human Rights and the Clifford Chance Foundation are implementing the project *New technologies new law. The rules of procedure of our time or a threat to human rights?* The project aims to identify the main opportunities and threats associated with the increasing impact of new technologies and Artificial Intelligence on the justice system. This questionnaire is designed to explore the solutions existing in different countries and will provide a foundation for further research within the project.

Country	Italy
Date	18 December 2020, complemented 10 February 2021

Submitted by (name of the contact person)	Diego Ferrero and Iolanda D'anselmo
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PRE-TRIAL PHASE	
1.	<p>Is it required to use any alternative forms of dispute resolution in the country where the Office operates, before a case is brought to court? Can such alternative forms (e.g. mediation, negotiations) be conducted online?</p> <p>In relation to civil proceedings, mediation and assisted negotiation are alternative forms of dispute resolution in Italy. The alternative forms of dispute resolution mechanisms are mandatory only in disputes relating to, among others, banking contracts, insurance, real estate, payment obligation not exceeding EUR 50,000 (Article 5 para. 1 <i>bis</i> of d.lgs. March 4, 2010 no. 28 and Article 3 d.l. 12 September 2014 no. 132, converted into Law 162/2014).</p> <p>In relation to mediation proceedings, these may be conducted online using online platforms as indicated in the rules of the mediation institution chosen by the parties. In addition to that, due to the pandemic emergency, art. 83 paragraph 20-bis, Law April 24, 2020 no. 27, allowed the use of technologies such as video conferencing systems.</p> <p>In relation to negotiation, due the pandemic emergency, the Italian Bar Association (with the resolution dated April 14, 2020) asked to give lawyers the opportunity to submit the agreements reached during the negotiation via certified email.</p>
ACCESS TO COURTS AND NEW TECHNOLOGIES	
2.	<p>Is it possible to remotely participate in a court hearing in the country where the Office operates? If</p> <p>For civil proceedings, due to the Covid-19 situation, article 83 paragraph 7 lett. f) of the Law Decree. March 17, 2020 no. 18, converted into Law</p>

<p>so, please indicate in what types of cases remote participation is possible, or what requirements entities must meet to be able to do so. Please also indicate which participants in the trial (parties, witnesses, experts, etc.) have the opportunity to participate remotely in a court hearing. Please specify if remote participation is mandatory or optional (at the request of the parties).</p>	<p>April 24, 2020 no. 27, allows "<i>hearings to be held remotely via videoconference. This is possible in cases which do not require the presence of persons other than lawyers, parties and court auxiliaries</i>". Furthermore, the Law Decree specifies that virtual hearings are equivalent to physical hearings.</p> <p>In addition to the above, the Court can decide to grant the parties a deadline to file short submissions in lieu of the physical hearing. In these submissions the parties are asked to formalize the arguments and issues that would have been discussed at the physical hearing.</p> <p>For criminal proceedings, due to the Covid-19 situation, parties can remotely participate in a court hearing. Virtual hearings are allowed only for the period of state of emergency, provided that the criminal hearings only require the participation of the Public Prosecutor, private parties and their respective counsel and the judge's auxiliaries. Online participation in hearings is also ensured for detained, interned, remanded or arrested persons.¹</p> <p>Regarding how the principle of open proceedings is ensured when a hearing is held remotely it is worth noting that the principle of open proceedings applies differently to Italian civil and criminal trials.</p> <p><u>Concerning the civil proceedings:</u></p> <p>According to Article 128 of the Code of Civil Procedure hearings are public, although it is possible for the court to order that a hearing has to take place behind closed doors.</p> <p>Article 84 of the Implementing Provisions of the Code of Civil Procedure further specifies that preliminary and evidentiary hearings shall not take place publicly. As a result, civil hearings are not generally open to the public, except for the final discussion of the case before a panel of judges.</p>
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¹ Art. 23 para. 5, Legislative Decree 137/2020.

		<p>During the Covid Pandemic, no measure was taken to allow the public to take part to hearings generally opened to the public.</p> <p><u>Regarding the criminal proceedings:</u></p> <p>The principle of open proceedings is provided for by art. 471 of the Italian Code of Criminal Procedure. The principle provides that anyone over the age of 18 is allowed to attend criminal hearings, in order to ensure a transparent exercise of Criminal Justice. Further prohibitions or limitations on public participation in the hearing may be imposed only in the cases provided for by the Law, which provides for the expulsion of those who disrupt the orderly conduct of the hearing, and at the same time does not permit the presence of certain categories of persons. All decisions on admission or exclusion from the hearing are taken by oral deliberation of the judicial authority, without any requirements or formalities.</p> <p>During the Covid Pandemic, no measure was taken to allow the public to take part to hearings generally opened to the public.</p> <p>However, it is to be noted that remote participation in the court hearings has been only allowed for the period of state of emergency, where in any case the presence of a large number of people should have been avoided for public health reasons. In any case, many scholars were (and are) against the introduction of remote hearings in the criminal proceedings, also on the basis that such hearings must necessarily be public. The debate on these issues is still open.</p>
<p>3.</p>	<p>If you have answered question 2 in the affirmative, please indicate whether the location of a person remotely attending a court hearing is legally regulated. If so, please indicate specific requirements.</p>	<p>For civil proceedings, art. 221 para. 6 of d.l. May 19, 2020 no. 34, amended by Law July 17, 2020 no. 77, provides that <i>"the party may participate in the hearing only from the same location from which the counsel is connected. The conduct of the hearing must in any case take place in a manner that is appropriate to safeguard effective participation"</i>.</p> <p>For criminal proceedings, art. 23 para. 5, Legislative Decree 137/2020 provides that defendants, if free or subject to pre-trial supervision measures other than custody in prison, participate in the hearing only from the same</p>

		location from which their counsel is connected. In other cases, the arrested or detained person and the counsel may participate in the online hearing also from the nearest office of the judicial police equipped for videoconferencing.
4.	If you have answered question 2 in the affirmative, please indicate whether the remote participation takes the form of a video conference.	Remote participation can take the form of a video conference or the exchange of brief submissions as explained above in question 2.
5.	If you have answered question 4 in the affirmative, please indicate what video conferencing platform is used. Is it a commonly available platform (such as Skype, Zoom, MS Teams), or is it a platform specifically developed for the courts?	Virtual hearings are held generally via Skype for Business or Microsoft Teams.
6.	If it is possible to participate remotely in a court hearing in a form other than a video conference (e.g. via an audio link or a telephone call), please indicate the form(s) available.	In a memo dated March 13, 2020 (Prot. no. 6305 concerning "Telematic hearings"), the Secretary General of Administrative Justice provided initial indications for the conduct of the hearings by means of " <i>remote connections in such a way as to safeguard the adversarial process and the effective participation of the defendants in the hearing</i> ". The note suggests the use of Microsoft Teams or Skype for Business or other conference call programs.
7.	When remote participation is possible, please indicate if all remote participants can be watched during the entire duration of a court hearing.	The Protocol Proposal of the Italian Bar Association for Civil Hearings by Remote Connection (Art. 83 lett. f) D.L. 18/2020) is currently being approved. Art. 2 para 4 provides that " <i>the judge, the parties' attorneys and the parties, if connected by a separate place, must keep the video function activated for the duration of the hearing</i> ".
8.	When remote participation is possible, please indicate how confidential discussions between the attorneys and the parties can be carried out.	With regard to both the civil and the criminal proceedings, art. 8 of the Ministry of Justice provision May 5, 2020 states that " <i>[...] confidential consultation between lawyer and defendant is ensured through a dedicated circuit and encrypted Voip (Voice over Internet Protocol). For</i>

		<i>international letters rogatory [...] the telephone is used on PSTN lines (Public Switched Telephone Network) to the numer indicated by the foreign authority".</i>
9.	Please indicate how it is possible to submit documents while remotely attending a court hearing.	Pursuant to Article 2 lett. f) of the above mentioned Italian Bar Association's proposal, documents can be submitted during the hearing through dedicated functions of the online platform used, e.g. sharing of the screen, sending the document via chat. The submission of the documents must always be authorized expressly by the judge.
10.	Is it possible to submit pleadings electronically in the country where the Office operates? If so, please indicate in what types of cases pleadings can be submitted electronically.	<p>The d.l. June 24, 2014 no. 90 introduced the so-called telematic civil proceeding, allowing (i) the parties to file electronically submissions/petitions and (ii) the court to issue orders/decisions and upload them and share them electronically with the parties.</p> <p>The telematic deposit is mandatory for most civil proceedings.</p> <p>In criminal proceedings, exclusively in light of the Covid-19 situation, it is possible to submit pleading electronically until January 2021.</p>
11.	If you have answered question 10 in the affirmative, please indicate how the pleadings are submitted (e.g. by e-mail or via a special platform), what additional formal requirements are imposed on the pleadings and how the identity of the person submitting a pleading is verified to prevent impersonation of a party to the proceedings.	<p>With regard to civil proceedings, the pleadings are submitted via a dedicated platform. Counsel are identified through a digital signature assigned to each lawyer.</p> <p>In addition, certified email can be used as official mean of communication since 2014. The messages sent have the same value as a registered mail with acknowledgement of receipt. By law, the certified email message is intended to be known and known to the recipient as soon as it is delivered in his/her certified email address, even if it remains unread.</p> <p>In criminal proceedings, exclusively in light of the Covid-19 situation, it is possible to submit pleadings electronically via a telematic portal for the filing of pleadings, documents, requests and petitions indicated in article 415-bis paragraph 3 of the Italian Criminal Code and further acts that will be indicated by the Ministry of Justice by subsequent Decrees, and via</p>

		certified e-mail address, for all other acts other than those mentioned above.
12.	Please indicate if the parties (or their attorneys) have remote access to the case file in the country where the Office operates? If so, please indicate the type of remote access.	<p>For civil proceedings, parties and attorneys have remote access to the case file through the dedicated platform discussed above in question 11.</p> <p>For criminal proceedings, parties can access the case file through a dedicated website. This website offers services of consultation and electronic transmission of documents, allowing the upload of documents. To access the services it is necessary to have a certificate of authentication that establishes the identity of the user.</p>
ARTIFICIAL INTELLIGENCE AND COURTS		
13.	Do the courts in the country where the Office operates use any tools that incorporate Artificial Intelligence? If so, please indicate whether such tools are used exclusively for back-office purposes or (also) in external contacts (e.g. chatbots)?	Artificial intelligence tools are not used in the context of proceedings before Italian courts.
14.	Does the justice system in the country where the Office operates use Artificial Intelligence tools to identify groups of individuals who are more likely to commit a given type of crime (e.g. tax offences)?	<p>As a general rule, the justice system does not use AI tools.</p> <p>We are however starting to see a few AI implementations for example in relation to white collar crimes. The Italian Stock Exchange uses algorithms to identify abnormal movements on shares, triggering the Italian National Commission for Listed Companies and the Stock Exchange (CONSOB) and then criminal investigations for insider trading.</p>
15.	Please indicate if in the country where the Office operates the parties have general access to tools facilitating the submission of a pleading in simple	<p>As a general rule, there are no such tools.</p> <p>However, some lower courts implemented the SIGP@Internet National service. This service allows citizens and lawyers to fill out online an appeal in opposition to an administrative penalty or an appeal for an injunction.</p>

	cases (e.g. by completing an online form available on the court's website)?	Once the appeal is filled in, it is necessary to send it by registered mail (only for opposition to an administrative penalty) or present it personally to the competent Justice of the Peace office together with the other attachments. Some bankruptcy courts implemented the possibility to submit proof of claims through a dedicated website as an alternative to the use of certified email.
16.	Has the justice system in the country where the Office operates automated a certain range of its functions (e.g. certain administrative activities)? If so, please indicate what technologies are used for automation purposes?	Italy has not implemented any automated operations or functions in the context of civil or administrative proceedings.
ONLINE COURTS		
17.	Are there any court proceedings in the country where the Office operates that are entirely conducted online? If so, please indicate which types of proceedings are conducted online (e.g. small claims cases, family cases, etc.) and specify if the online mode of such proceedings is mandatory or optional (at the request of the parties).	At the moment there are no court proceedings that can be held entirely online.
18.	Are there any online courts (courts accessible only via the Internet, whose proceedings are conducted exclusively and entirely online) in the country where the Office operates? If so, please indicate the scope of jurisdiction of such courts.	In Italy this has been implemented for extrajudicial proceedings (e.g. if the dispute concerns an online purchase, the Online Dispute Resolution Platform (ODR) allows the claimant to submit an online complaint to an ADR entity in any language and in any EU country. The procedure usually

		takes place entirely online, lasts about 90 days from the choice of the ADR entity and is free of charge or it has a symbolic cost).
19.	If you have answered question 17 or 18 in the affirmative, please indicate if appellate proceedings are also conducted online.	Not applicable.
PROCEDURAL GUARANTEES AND NEW TECHNOLOGIES		
20.	If you have answered question 17 or 18 in the affirmative, please indicate whether the country where the Office operates has implemented any mechanisms aimed to grant legally required levels of the access to court to digitally excluded persons. Please indicate specified mechanisms (e.g. possibility of conducting the proceedings, otherwise held online, in traditional form due to justified request of the party).	No specific mechanism aimed to grant legally required levels of the access to court to digitally excluded persons has been implemented. However, as a general rule, in civil proceedings, parties are always represented by a lawyer that has to ensure the possibility of attending a virtual hearing or submitting pleadings via the online platform. For minor cases (value below EUR 5,000) pending before the Justice of Peace, parties do not need external counsel. In these cases, proceedings can be held in traditional form.
21.	If you have answered question 17 or 18 in the affirmative, please indicate how the principle of open proceedings is ensured.	Not applicable
22.	If you have answered question 17 or 18 in the affirmative, please indicate how is the sensitive data from those proceedings being archived.	The Italian data protection authority confirmed the possibility of holding virtual hearings through Skype for Business (specifically Microsoft Skype for Business 2015 (Enterprise Edition)). With regards to the data processing carried out during remote hearings, both messaging and audio/video traffic are encrypted. In addition, as a general procedural rule, the party which must disclose sensitive and / or confidential data may apply for a Court order detailing how to ensure the sensitivity / confidentiality based on the factual circumstances of the case.

23.	Has the Court of the highest instance in the country where the Office operates produced any rulings on the standards of procedural fairness of the online proceedings?	Neither the Supreme Court of Cassation nor the Council of State have produced any rulings on the standards of procedural fairness of the online proceeding.
24.	Are there any legal regulations in the country where the Office operates in place concerning the participation of persons deprived of liberty in online proceedings? In particular, are there any legal requirements concerning the surroundings and the conditions of the participation of the accused in online proceedings in order to avoid indirect infringements on the presumption of innocence rule?	<p>The defendants in custody have the obligation to participate in remote hearings when proceedings with the offences referred to art. 51, para. 3 bis, as well as pursuant to art. 407, para. 2, letter a) no. 4 of the Italian Code of Criminal Procedure (for example, this refers to offences of criminal association, mafia-type associations, including foreign ones, offences with terrorist aims, or subversive associations). The judge may order the remote participation even when there are security reasons, when the hearing is particularly complex and it is necessary to avoid delays in its course.</p> <p>In addition to that, art. 83 paragraph 12 d.l. 18/2020 states that "<i>during the pandemic emergency] the participation in any hearing of persons under custody are ensured, where possible, via videoconferences</i>".</p>
25.	Is there any particular category of cases in country where the Office operates, that requires party to be physically present in the courtroom during the proceedings (e.g. pre-trial detention proceedings), despite basic admissibility of the online proceedings and online participation of the parties in those proceedings?	Since remote access to proceedings has been introduced mainly to face the health emergency and according to the decrees issued, only in the circumstances explained above it is possible to proceed by means of remote hearing. For all the other cases, the need for a procedure to be carried out in presence remains in force.
26.	Is the AI based software being used during the evidence proceedings in the country where the Office operates?	There are no AI based software being used during the evidence proceedings in Italy.
27.	Has the country where the Office operates implemented any specific legislation concerning the access to assigned counsel (legal aid counsel/public defender) in online proceedings?	Italy has not implemented any specific legislation concerning the access to assigned counsel in online proceedings.

28.	Are there any trainings dedicated to technical aspects of the participation in online proceedings being organized for judges, prosecutors and other legal professionals in the country where the Office operates?	Several trainings have been organized, both on the telematic civil process and on the transition to remote hearings in this emergency period. Some examples among many: a course for judges, chancellors and lawyers on " <i>The telematic civil process in the interaction between chancellor, lawyer and magistrate</i> " in 2017; or the " <i>Basic course on virtual hearings. The use of the Microsoft teams platform</i> " proposed by the Court of Appeal of Milan in 2020.
29.	Are new technologies used to alleviate the stress associated with participating in court proceedings that may potentially be experienced by vulnerable persons (e.g. victims of violent crimes, children) in the country where the Office operates? If so, please indicate how such technologies are used.	There are no technologies used for these purposes.
30.	Please indicate if any solutions are used in the country where the Office operates to adjust the digital tools for accessing courts to the needs of persons with disabilities, the elderly or those with difficulties in operating a computer. If yes, please specify these solutions.	There are no solutions used in Italy to adjust the digital tools for accessing courts to the needs of persons with disabilities, the elderly or those with difficulties in operating a computer.
31.	Please indicate if in the country where the Office operates the parties have general access to guidebooks covering the technical and legal aspects of the participation in online proceedings.	The parties have access to guidebooks for the participation in online proceedings. For example, Milan Court of Appeal has published the " <i>Guidelines on remote hearing</i> ".
32.	Has the country where the Office operates implemented any separate legal procedures concerning the proceedings in case of the computer or the Internet malfunction on either the parties or the Court behalf?	The proposal of the Italian Bar Association for the " <i>Protocol for civil hearings by remote connection</i> " states that " <i>in the event of malfunction, the judge will have to postpone the hearing, communicating to the parties the minutes of the hearing containing the deferral order</i> ".

		In cases of technical difficulties, the above-mentioned Italian Bar Association 's proposal states that " <i>the counsel will communicate in advance of the hearing a telephone number and an email address through which they can be contacted by the court's clerk in case of malfunction of the application used</i> ".
33.	If you have answered question 32 in the affirmative, please indicate what are the actions taken to limit the possibility of parties deliberately obstructing the court proceedings (e.g. by intentionally disconnecting the Internet) without infringing on the parties rights in the case of genuine technical difficulties.	There are no specific actions taken to limit the possibility of parties deliberately obstructing the court proceedings adopted at national level.
ADDITIONAL INFORMATION		
34.	If in the country in which the Office operates, the judiciary uses new technologies in a form that has not yet been included in any of the above questions or answers, please indicate it.	The judiciary does not use new technologies in a form that has not yet been included in any of the above questions or answers.

New Technologies — New Justice is a joint project of the Helsinki Foundation for Human Rights and Clifford Chance.

In today's world, new technologies are present in virtually all spheres of life – and they are also becoming increasingly important for the modern justice system. The project seeks to examine the actual presence of new technologies in the justice system of Poland and around the world, as well as to identify the main risks associated with modern legal technologies and the most promising solutions to these risks. The advancing digitalisation of the justice system and the digital modernisation of the legal system is an inevitable consequence of the need to ensure that the legal system keeps up with the times. That is why the Helsinki Foundation for Human Rights and Clifford Chance work to identify solutions for improving the justice system to ensure that the rights and freedoms of individuals are not only respected but also exercised more easily.

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