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Environmental Disasters and Humanitarian Protection: A Fertile Ground for Litigating Climate Change and Human Rights in Italy?

Some Remarks on the Ordinance No. 5022/2021 of the Italian Corte Suprema di Cassazione

Note to: Corte di Cassazione (Sez. II civile), I.L. v. Ministry of the Interior and Attorney General at the Court of Appeal of Ancona, 24 February 2021, No. 5022

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Abstract

On 24 February 2021, the Italian *Corte Suprema di Cassazione* delivered a landmark ordinance unequivocally establishing that the existence of a situation of environmental degradation in the country of origin of an international protection seeker, which entails grave human rights violations, justifies the recognition of the humanitarian protection status. In ruling that the assessment of vulnerability, for the purpose of granting humanitarian protection, must also be conducted in relation to environmental and climatic conditions which are capable of seriously affecting the enjoyment of human rights, the Supreme Court potentially paves the way for a first wave of rights-based climate lawsuits before Italian civil courts.

Keywords

environmental disaster – humanitarian protection – Italian Supreme Court of Cassation – climate litigation – human rights – climate change – non-refoulement

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Abstract of the decision

The notion of "ineradicable core constituting the foundation of personal dignity" constitutes the minimum essential limit below which the right to life and the right to a dignified existence of an individual are not guaranteed. In deciding on whether to grant humanitarian protection, the trial judge must verify that such minimum limit is guaranteed in the country of origin of the applicant. Such assessment must be conducted not only in relation to armed conflict scenarios, but also with respect to situations of social, environmental or climate degradation, or when natural resources are subjected to unsustainable exploitation, and the individual is therefore exposed to a real risk to his right to life.

Key passages from the ruling

(Pp. 5–6) "[I]f […] the trial judge identifies, in a specific area, a situation which can be subsumed to an environmental disaster or otherwise a context of serious impairment of natural resources which is accompanied by the exclusion of entire sections of population from their enjoyment, the assessment of the condition of widespread danger existing in the country of origin of the applicant, for the purposes of recognition of humanitarian protection, must be conducted with specific reference to the peculiar risk for the right to life and for the right to a dignified existence resulting from environmental degradation, climate change or unsustainable development of the area".

(Pp. 8–9) "For the purpose of recognizing, or denying, humanitarian protection […], the concept of 'ineradicable core constituting the foundation of personal dignity' identified by the jurisprudence of this Court […] is the minimum essential limit below which the right to life and the right to a dignified existence of an individual are not guaranteed. That limit must be appreciated by the trial judge not only with specific reference to the existence of a situation of armed conflict, but in relation to any context that is, in practice, able to put the fundamental rights to life, liberty and self-determination of the individual at risk of zeroing or reduction below the aforementioned minimum threshold, therein specifically including – if their existence in a given geographical area is concretely established – situations of environmental disaster, […] climate change, and unsustainable exploitation of natural resources".

Comment:

1 Introduction

In recent times, litigation has played an increasing role in the fight against climate change.[1] In particular, the last four years have witnessed a sharp increase in the use of human rights arguments before judges as a tool to force governments and corporations to reduce emissions or to address the devastating effects of climate change.[2] However, this trend has not yet materialized worldwide and in Italy there is no case that deals directly and explicitly with climate change and the ensuing legal (human rights) obligations.[3] Against this background, the present note aims at providing a short analysis of a recent ordinance issued by *Corte Suprema di Cassazione* (CSC), the Italian Supreme Court of Cassation, which, in combination with other previous judgments of the same Court, could pave the way for a first wave of rights-based climate cases before Italian courts, focusing on the so-called "climate refugee litigation". This kind of litigation, which is *de facto* a component (although small) of the universe of the climate cases grounded in the human rights paradigm, has until recently figured prominently in New Zealand where various courts have been called upon to adjudicate cases involving forced repatriation of people to places in which their enjoyment

1 For a recent and comprehensive overview of the status of climate change litigation around the world see UNEP, "Global Climate Litigation Report: 2020 Status Review", 2020.

2 The so-called "rights" turn in climate litigation has recently become the subject of several studies: see among others PEEL and OSOFSKY, "A Rights Turn in Climate Change Litigation?", Transnational Environmental Law, 2018, p. 37 ff.; PRESTON, "The Evolving Role of Environmental Rights in Climate Change Litigation", Chinese Journal of Environmental Law, 2018, p. 131 ff.; SAVARESI and AUZ, "Climate Change Litigation and Human Rights: Pushing the Boundaries", Climate Law, 2019, p. 244 ff.; SAVARESI and SETZER, "Mapping the Whole of the Moon: An Analysis of the Role of Human Rights in Climate Litigation", Journal of Human Rights and the Environment, 2021, forthcoming.

3 See POZZO, "The Italian Path to Climate Change: Nothing New Under the Sun", in SINDICO and MBENGUE (eds.), *Comparative Climate Change Litigation: Beyond the Usual Suspects*, Berlin, 2021, p. 471 ff. (describing the difficulties linked with bringing a case before an Italian court against the Italian government for not complying with its international climate obligations). See also CARDUCCI, "Are Climate Change Litigations Possible in Italy?", Blog droit européen, 17 June 2020, available at: <https://blogdroiteuropeen.com/2020/06/17/featured/> (according to which, instead, the Italian legal framework and its jurisprudence include elements that facilitate a climate lawsuit). It should be noted that a group of environmental organizations is actually planning a climate lawsuit against the Italian government. For details of the case see LUPORINI, "The 'Last Judgment': Early Reflections on Upcoming Climate Litigation in Italy", Questions of International Law, 2021, p. 27 ff.

of human rights is seriously at risk due to the effects of climate change.[4] As known, these cases have not been successful due to the difficulties associated with the recognition of refugee status for those who have been forced to flee their countries of origin because of the impacts of global warming. In this context, the ordinance No. 5022 dated 24 February 2021 of the CSC has not only the potential to set the ground for a similar flow of cases before Italian courts but also for a massive extension of the *non-refoulment* principle in circumstances in which the enjoyment of human rights of individuals is seriously undermined on account of environmental disasters caused by climate change.

2 The Ordinance in Brief

On 24 February 2021, the CSC delivered its ordinance No. 5022/2021[5] in a ruling concerning the criteria which justify the recognition of humanitarian protection[6] in cases where there is a state of serious environmental degradation in the country of origin of the international protection seeker. According to the CSC, when it has been established that in a certain area there is an environmental disaster situation, in order to assess the presence of serious threats in the country of origin of the applicant and the associated vulnerability which legitimates the granting of humanitarian protection, it is necessary to verify if such a situation of environmental degradation (which can also be caused by the effects of climate change and unsustainable exploitation of natural resources) entails a risk for the right to life and for the right to a dignified existence of the international protection seeker. The CSC concluded its ordinance

4 See MCADAM, "The Emerging New Zealand Jurisprudence on Climate Change, Disasters and Displacement", Migration Studies, 2015, p. 131 ff. and more recently SCOTT, *Climate Change, Disasters and the Refugee Convention*, Cambridge, 2020, p. 32 ff.

5 *Corte di Cassazione* (*Sez. II civile*), *I.L. v. Ministry of the Interior and Attorney General at the Court of Appeal of Ancona*, 24 February 2021, No. 5022 (hereinafter *I.L.* case).

6 It is important here to briefly explain that, in the complex and articulated Italian legal framework governing asylum, humanitarian protection is the third level of international protection and has always been considered the last resort, after the refugee status and the subsidiary protection, to obtain protection in Italy. It was introduced with the so-called Turco-Napolitano Law No. 40/1998 and subsequently incorporated in Art. 5(6) of the Consolidated Immigration Act (Legislative Decree) No. 286/1998. Originally, it was a residence permit which could be granted in cases where individuals were neither eligible for refugee status nor for subsidiary protection (see *infra* note 10) but could not be removed from the recipient state due to "serious reasons in particular of humanitarian nature or resulting from constitutional or international obligations of the Italian State" (Art. 5(6)

by establishing that, apart from armed conflicts, environmental conditions may also lead to a breach of the right to life, liberty and self-determination and restrict their minimal enjoyment.

3 Background of the Case and the Ruling of the Tribunal of First Instance

The case that lead to the ordinance at hand originates from the rejection of an applicant's request for international or humanitarian protection by the Ancona Territorial Commission for the International Protection Recognition.[7] Upon denial of the request, the applicant, a citizen of the Niger Delta region of Nigeria, brought an appeal before the *Tribunale di Ancona* which confirmed the negative decision of the Territorial Commission, dismissing the case. At this point, he decided to appeal the Tribunal's ruling before the CSC, relying on two

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of the Legislative Decree in its original formulation). In Italy, the humanitarian residence permit was a broad and residual category which was discretionary in nature and could be granted for very different reasons such as health problems, political instability, human-induced environmental threats, natural disasters and conditions of harsh poverty. Its marked flexibility, stemming primarily from the fact that the legislator had not identified the grounds falling under the generic clause "serious reasons of humanitarian nature", made it the main form of legal protection granted to foreign individuals in Italy until 2018, with the Italian civil courts that have clarified over the years the various grounds for granting it. For an in-depth analysis see ZORZELLA, "La protezione umanitaria nel sistema giuridico italiano", Diritto, Immigrazione e Cittadinanza, 2018, p. 1 ff. The residence permit on humanitarian grounds was subsequently abolished by the Decree-Law on Immigration and Security No. 113/2018 (the so-called *Salvini Decree*) implemented by Law No. 132/2018 which introduced, among others, specific resident permits concerning particular categories and situations (essentially for protecting victims of calamities, those affected by critical health conditions and those citizens who have been distinguished themselves through "acts of particular civil value"). In essence, the *Salvini Decree* reduced considerably the scope of " humanitarian reasons", limiting it to restricted "special cases". For a comparative analysis of the legal framework before and after the *Salvini Decree* see BENVENUTI, "Il dito e la luna. La protezione delle esigenze di carattere umanitario degli stranieri prima e dopo il decreto Salvini", Diritto, Immigrazione e Cittadinanza, 2019, p. 1 ff. For the sake of completeness, it should be remembered that the recent Decree-Law No. 130/2020 on "Migration and Security" implemented by Law No. 173/2020, reshaped the provisions of the *Salvini Decree*, with the aim of broadening the conditions under which humanitarian protection could be granted in an attempt to resume the "old" humanitarian protection. For an overview of the new legislation see CONTI, "La protezione umanitaria e il nuovo sistema di accoglienza e integrazione nel d.l. n. 130/2020", Federalismi.it, Focus Human Rights, 2020, p. 1 ff., pp. 4–11.

7 Territorial Commissions for the International Protection Recognition are specialised administrative bodies, under the Italian Ministry of Interior, tasked with verifying that requirements are met in order to grant international or humanitarian protection to

grounds: in its first plea, he claimed that the contested ruling was based on a failure to assess the facts since the Tribunal of first instance had not considered in its evaluations the state of environmental degradation in the Niger Delta region.[8] Accordingly, in its second plea, he alleged infringement of Article 5(6) of the Legislative Decree No. 286/1998[9] because the trial judge had not considered fulfilled the conditions for granting humanitarian protection on account of the serious environmental disruption referred to in the first ground.

The CSC in its ordinance observes that the Tribunal of first instance acknowledged the existence of a serious deterioration of the environment in the Niger Delta region due to, on the one hand, the practices of severe exploitation of the territory put in place by oil companies, and, on the other, the ethnic and political conflicts that have affected the area from the 1990s. In the first instance, it was also established that several paramilitary groups were active in the area and that, following various acts of sabotage and thefts to oil infrastructures, numerous oil spills had occurred. The CSC notes that the situation of poverty and the context of social instability connected to acts of sabotage, damages and kidnapping of public figures existing in the Niger Delta area were not considered sufficient by the trial judge for the purpose of establishing a condition of generalized violence relevant to the recognition of the subsidiary protection status pursuant to Article 14(c) of the Legislative Decree No. 251/2007.[10] According to the judge of first instance, the level of generalized violence was not such as to reach the threshold of an armed conflict or a comparable situation. Furthermore, we read in the ordinance, the trial court did not in any way

applicants on the basis of their personal account and of the reasons that forced them to leave their country of origin.

8 In particular, the applicant claimed a violation of Art. 360(1)(5) of the Civil Procedure Code which provides that a judgement of first instance may be appealed against in the CSC for a "failure to examine a decisive fact for the judgement which was the subject of discussion between the parties".

9 It must be noted that despite the fact that the humanitarian protection regime as envisaged by the old Art. 5(6) of the Consolidated Immigration Act was abolished by the *Salvini Decree*, there is still a rich case law concerning the applicability of the old legislation; indeed, the Joint Chambers of the CSC have recently made it clear with the judgment No. 29460/2019 that the rules of the Decree should not have a retroactive effect. The case commented probably concerns an application submitted prior to the entry in force of the *Salvini Decree* since it relies on the previous legislation and because the decision of the *Tribunale di Ancona* is dated 12 June 2019.

10 The subsidiary protection draws its origins from European legislation and it is the second level of international protection which can be granted to foreign citizens or stateless persons who do not meet the requirements to obtain the recognition of the status of refugee. Such protection is assigned to those persons when there are well-founded reasons to believe that if they were returned to their country of origin, they would face an "effective risk of suffering

take into account the context of environmental degradation and widespread insecurity for the purpose of granting humanitarian protection.

4 The Reasoning of the Supreme Court: The *Teitiota* Case as the Lynchpin of the Ordinance

In delivering its ordinance, the CSC made reference to the recent, much-publicized decision of the UN Human Rights Committee in the *Teitiota* case which concerned the complaint of an individual seeking asylum from the effects of climate change.[11] On that occasion, a citizen of Kiribati claimed that the impacts of climate change would threaten his right to life if the New Zealand government had deported him back to Kiribati. Mr. Teitiota argued that the effects of climate change, including rising sea levels and salination of water resources, had caused such adverse living conditions in the island of Tarawa (where the applicant lived) as to oblige him to migrate from Kiribati to New Zealand to seek asylum. For our purposes, it is sufficient to say here – as observed by the CSC itself – that the UN Human Rights Committee, while rejecting the asylum claim due to the fact that the applicant was unable to show that he was facing serious life-threating conditions in Kiribati which were sufficiently personal to him, declared that a State's *non-refoulement* obligations are also triggered in cases where the effects of climate change created a real risk of harm to the right to life of an individual.[12] The Committee noted basically that States have an obligation to respect and ensure the right to life also with regard to reasonably foreseeable threats and life-threatening situations that may lead to a loss of life or to a significant deterioration of the living standards, including environmental degradation, climate change and unsustainable development.

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serious harm". According to the Legislative Decree No. 251/2007, serious harm includes: a) "death penalty or execution"; b) '"torture or other forms or punishment or human or degrading treatment"; c) "the serious and individual threat to civilian's life or person arising from indiscriminate violence in situations of internal or international armed conflict".

11 UN Human Rights Committee, *Ioane Teitiota v. New Zealand*, Views Adopted by the Committee Under Article 5(4) of the Optional Protocol, Concerning Communication No. 2728/2016, 7 January 2020 (hereinafter *Teitiota* case).

12 However, as noted by many scholars, that determination of the Committee cannot be considered particularly innovative since it rests on well-established principles of international human rights law: see CULLEN, "Disaster, Displacement and International Law: Legal Protections in the Context of a Changing Climate", Politics and Governance, 2020, p. 270 ff., p. 273. For a detailed analysis of the *Teitiota* case and its implications see among others MCADAM, "Protecting People Displaced by the Impacts of Climate Change: The UN Human Rights Committee and the Principle of Non-refoulement", American Journal

Relying on the *Teitiota* case, the CSC ruled in its ordinance that there was no doubt that the case at hand concerned a situation of environmental degradation mainly caused by an over-exploitation of natural resources and therefore, in order to assess whether the requirements for granting humanitarian protection were satisfied, it was necessary to verify how such a situation could entail a risk for the right to life and for the right to a dignified existence of the applicant. According to the CSC, the right to life may be at risk not only in the case of an armed conflict but also when there are socio-environmental conditions, in any case referable to human actions, which seriously jeopardize the survival of an individual and his family. The CSC, while acknowledging that armed conflicts are "the most striking manifestations of man's self-destructive action"[13] stated that "they do not exhaust the range of behaviours which might impair decent living standards".[14] In this context, the Court stressed that environmental degradation can equally affect human life when it leads to a standard of life incapable of guaranteeing minimum dignified living conditions. As a result, the CSC ruled that, for the purposes of recognising entitlement to humanitarian protection, the trial judge must verify whether the existence in the applicant's country of origin of a context of environmental and climate degradation could pose a serious threat to the right to life of the individual and undermine the minimum ineradicable threshold for an effective enjoyment of core human rights. The CSC concluded that the assessment carried out by the trial judge with regard to the "*ineradicable core constituting the foundation of personal dignity*" (the concept on which the judge must rely on in order to evaluate the human rights risks associated with a possible repatriation and the resulting individual vulnerability that legitimizes the granting of a residence permit on humanitarian protection grounds) did not consider all the situations – including contexts of environmental disaster, climate change and unsustainable exploitation of natural resources – that are capable of putting at risk the minimum threshold of enjoyment of the fundamental rights to life, freedom and self-determination of an individual. The CSC found that the judge of first instance, after having examined the applicant's situation, had correctly ascertained a state of environmental degradation in the Niger Delta region but erroneously had not considered it as a valid reason for granting humanitarian protection status. In light of that, the CSC upheld the appeal submitted

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of International Law, 2020, p. 708 ff. and SOMMARIO, "When Climate Change and Human Rights Meet: A Brief Comment on the UN Human Rights Committee's Teitiota Decision", Questions of International Law, 2021, p. 51 ff.

13 See *I.L.* case, *cit. supra* note 5, p. 6.

14 *Ibid.*

by the applicant and quashed the contested decision, referring the case to the *Tribunale di Ancona* in a different composition for a new determination.

5 Environmental Disasters and Humanitarian Protection in the Jurisprudence of the Italian Court of Cassation: What is new in the Ordinance No. 5022/2021?

The ordinance in question might be considered the culmination of a well-established case-law of the CSC according to which the assessment of vulnerability, for the purpose of granting humanitarian protection, must also be conducted in relation to environmental and climatic conditions – existing in the country of the origin of the international protection seeker – which are capable of seriously affecting the enjoyment of his fundamental rights.[15] In particular, natural calamities such as floods, tidal waves, droughts, famines and earthquakes have occasionally been considered by Italian civil courts as a valid ground for granting humanitarian protection[16] and in some cases environmental disasters were specifically attributed to climate change and deforestation.[17] However, the ordinance at hand, when compared to the previous case law of the CSC seems to go a bit further in at least two respects: on the one hand, in examining whether the necessary conditions for granting humanitarian conditions had been fulfilled, the Court did not make any explicit reference to the need to proceed with a comparative evaluation of the applicant's *subjective* situation in the country of origin in view of his current situation of integration in the host country, nor did it impose a heavy burden of proof upon

15 Recent and prominent examples include: *Corte di Cassazione* (*Sez. I civile*), *Howlader Badol v. Ministry of the Interior*, 4 February 2020, No. 2563; *Corte di Cassazione* (*Sez. III civile*), *Md Said v. Ministry of the Interior*, 10 November 2020, No. 25143; *Corte di Cassazione* (*Sez. II civile*) *Md. Shoag v. Ministry of the Interior*, 8 January 2021, No. 121.

16 See also *Tribunale di Napoli* (*Sez. I-bis civile*), *X v. Ministry of the Interior*, 5 June 2017, RG No. 7523/2016 and *Corte di Cassazione* (*Sez. I civile*), *Ministry of the Interior v. Yarbo Musa*, 23 February 2018, No. 4455 (in which the CSC referred to drought and famine as factors that can contribute to a radical impoverishment and lack of basic necessities capable of exposing individuals to situations endangering their personal safety within their country of origin). A careful analysis of the development of the relevant case law before the entry into force of the *Salvini Decree*, reveals that humanitarian protection has been granted not only in cases of vulnerabilities linked to sudden onset natural disasters (such as inundations and floods) but also in cases involving potential human rights violations associated with slow onset natural hazards (such as those resulting from droughts, desertification and salinization of land). See however *infra* Section 5.2.

17 See *Tribunale di L'Aquila* (*Sez. civile*), *X v. Ministry of the Interior and Ancona Territorial Commission for Recognition of International Protection*, 16 February 2018, RG No. 1522/2017

the applicant, since the latter was not required to provide evidence of being personally affected by the state of environmental degradation existing in the Niger Delta region. On the other hand, in delivering its ordinance, the CSC, in order to assess the vulnerability of the international protection seeker, did not take into account the new Article 20 *bis* of the Legislative Decree No. 286/1998 as added by the *Salvini Decree* and amended with the recent Decree-Law No. 130/2020 which, as briefly mentioned,[18] regulates a "special" residence permit for victims of calamities. The following paragraphs are meant to discuss very briefly these two prominent features, stressing how the relevance of the ordinance lies primarily in its all-embracing character.

5.1 *Lightening the Burden of Proof: The Salience of the "General" Environmental Conditions in the Country of Origin and the Lack of a "Real" Subjective Assessment*

The ordinance commented seems entirely to revolve around the *objective* situation existing in the country of origin of the applicant and the possible consequences in terms of human rights violations resulting from a repatriation. By recalling its landmark ruling No. 4455, the CSC merely stated that it was necessary to verify whether repatriation could result in the deprivation of the ability to exercise core human rights below a minimum threshold necessary to guarantee personal dignity and, in this perspective, it held that the assessment was to be conducted also in relation to situations of environmental or climatic degradation that might put at risk the enjoyment of that minimum threshold. However, it must be noted here that the reference made to the judgment No. 4455 is somehow incomplete since in the *I.L.* case there is not a real focus on the applicant's personal and individual condition that specifically determined the reason for departure,[19] the ordinance being entirely based on an objective situation of environmental degradation in the country of origin (though capable of concretely putting at risk the exercise of fundamental rights). By contrast, with its ruling No. 4455, the CSC clarified that for the purpose of granting humanitarian protection, it was necessary to carry out an individual, case-by-case assessment of the applicant's private and family life in Italy compared with his personal situation experienced before departure and to which he would be exposed in case of repatriation.[20] The relevance of

and *Corte di Cassazione* (*Sez. I civile*), *Hussain Babu v. Ministry of the Interior*, 20 March 2019, No. 7832 (in which the applicant calls himself "a climate victim").

18 See *supra* at note 6.

19 See *Ministry of the Interior v. Yarbo Musa*, *cit. supra* note 16, para. 5.

20 *Ibid*, para. 6. In the same way see also *Howlader Badol v. Ministry of the Interior*, *cit. supra* note 15, para. 5.4 and *Md Said v. Ministry of the Interior*, *cit. supra* note 15, para. 7.

such a comparative individual evaluation is not recalled in the ordinance and this seems to have implications for the burden of proof applicable in the case since there appears to be an attenuation of the latter: in fact, on the one hand, the CSC, contrary to its previous rulings,[21] did not give importance to the need of an accurate allegation of the facts (connected to the situation of environmental degradation in the Niger Delta region) which forced the applicant to flee from his country of origin. Therefore, on the other hand, the applicant was not required to provide adequate evidence of being personally and individually affected in his exercise of core human rights due to a specific act or event attributable to an environmental disaster. In this respect, the irrelevance of the existence of a risk of individualized harm seems to distinguish the case at hand from the abovementioned *Teitiota* case where the UN Committee instead "indicated that the risk must be personal, that it cannot derive merely from the general conditions in the receiving State, […] and that there is a high threshold for providing substantial grounds to establish that a real risk of […] harm exists".[22] Conversely, the ordinance at hand is based on the fact that a state of general environmental degradation accompanied by a situation of widespread danger is per se sufficient for granting humanitarian protection. It is noteworthy to emphasize this point because it hints at the possibility of a significant extension of the principle of *non-refoulement* in all cases in which an environmental disaster situation poses a concrete (but in any case general) risk to the enjoyment of the applicant's human rights.

5.2 *What about Article 20 bis?*

Unlike previous decisions,[23] the CSC, in its reasoning, did not rely on the new Article 20 *bis* of the Legislative Decree No. 286/1998 as a possible tool for an evolutionary interpretation of the elastic provision enshrined in the old Article 5(6) of the Legislative Decree No. 286/1998. The new residence permit for calamity was inserted by Article 1(1)(h) of the *Salvini Decree* and in its original wording provided that: "[…] [w]hen the country a foreigner is supposed to be returning to is experiencing a contingent, exceptional calamity that precludes his or her re-entry and stay in conditions of safety, the police commissioner issues a residence permit on grounds of calamity". This formulation was

21 See for example *Hussain Babu v. Ministry of the Interior*, *cit. supra* note 17, para. 2.4.

22 See *Teitiota* case, *cit. supra* note 11, para. 9.3.

23 See among others *Howlader Badol v. Ministry of the Interior*, *cit. supra* note 15, paras. 5.5–5.6.

much criticized by scholars who stressed from the outset its deficiency and the concerns it could raise.[24] For our purposes, it is sufficient to say here that the absence of a definition of calamity and the reference to a "contingent and exceptional" situation seemed to make this provision completely inappropriate to offer protection to people forced to leave their country of origin due to slow onset natural hazards (such as desertification, rising sea levels and ice melting) – the latter having a bigger impact on migratory flows.[25] It must be noted, however, that Article 1(1)(f) of the Decree-Law No. 130/2020 has recently amended the original formulation of Article 20 *bis* by replacing the terms "contingent and exceptional" with the term "serious". The new wording undoubtedly allows a broader interpretation of the notion of "calamity" because it relies on the degree of severity of the disaster and not on its sudden/slow onset or progression over time.[26] In the present case, while it is too early to draw any definitive conclusions, the fact that the CSC did not make any reference to Article 20 *bis* is something that must be welcomed because it opens up the possibility for a significant extension of the level of protection offered against environmental harms; indeed, the CSC, by citing natural disasters, climate change and unsustainable exploitation of natural resources refers generally to a variety of different situations of environmental and climate degradation, widening considerably the scope of protection if compared with the one provided by Article 20 *bis*.

24 See for example MORANDI, "Protezione internazionale, protezione speciale e nuove tipologie di soggiorno introdotte dal d.l. n. 113/2018", in BIONDI DAL MONTE and ROSSI (eds.), *Diritti oltre la frontiera. Migrazioni, politiche di accoglienza e integrazione*, Pisa, 2020, p. 189 ff., pp. 211–212.

25 *Ibid.* The scope of the rule was inevitably restricted to sudden onset natural disasters such as cyclones, floods and earthquakes.

26 SCISSA, "La protezione per calamità: una breve ricostruzione dal 1996 ad oggi", Forum di Quaderni Costituzionali, 2021, p. 137 ff., p. 145.

6 Concluding Remarks

The ordinance commented has really the potential to set the ground for a first "human rights path" in climate litigation in Italy,[27] This time, while confirming its previous case law by ruling that a situation of environmental deterioration entailing serious human rights violations is relevant for the purpose of granting humanitarian permits, the CSC greatly extends the scope of protection for the so-called "environmental refugees". Building on the *Teitiota* case, the ruling unequivocally established that reasonably foreseeable threats caused by a state of environmental/climate degradation resulting in the loss of life or decent living conditions could trigger Italy's *non-refoulement* obligations under domestic and international law.

27 See CARDUCCI, "Il cambiamento climatico nella giurisprudenza italiana", Diritti Comparati, 8 March 2021, available at: <https://www.dirittocomparati.it/il-cambiamento-climatico-nella-giurisprudenza-italiana/> (indicating the case law developed by the CSC on humanitarian protection as a possible pathway to rights-based climate litigation in Italy).