

The latest updates on the impact of the Cutro Decree on the residence permits for Special Protection and for medical treatment and natural disasters

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Introduction

This Article examines the impact of the Government's Cutro Decree on the possibility of obtaining a residence permit for special protection under Art. 19 of the Consolidated Immigration Act (TUI). The Decree significantly restricts the usability of this permit, which, at least according to the legislator's intentions, can no longer be obtained by those who, while not at risk in their country of origin, have established a significant social, family, and professional life in Italy.

Furthermore, the article illustrates the new important limitations regarding the conversion and renewability of this residence permit, marking the necessary distinctions between special protection permits issued under the previous regulatory framework and those issued under the new reform.

Lastly, it examines how the Cutro Decree has equally compressed the possibility of converting residence permits issued for medical treatment and natural disasters into work permits.





The topic of special protection has recently been at the centre of a series of legislative reforms that have substantially changed its functioning. This article provides an analysis of the main changes introduced by the Cutro Decree (D.L. 20/2023) ("*urgent provisions regarding legal entry flows of foreign workers and prevention and combating of irregular immigration*") concerning permits for special protection for medical treatment and natural disasters.

What is the special protection in Italy?

Special protection is a type of protection for foreigners who, although not entitled to international protection (refugee status or subsidiary protection), still need protection against the risk of persecution, torture, or inhumane and degrading treatment in their countries of origin.

In addition, before the Cutro Decree, valid reasons for obtaining special protection included also a risk to the private and family life of the foreigner already integrated into the Italian social and professional life.

The recognition of special protection corresponds to the issuance of a residence permit that allows regular stay in Italy to non-EU citizens who are otherwise irregular.

Changes introduced by the Cutro Decree with regard to special protection

The Cutro Decree made significant changes to special protection by modifying the provisions of Art. 19 of the Consolidated Immigration Act under the various aspects illustrated below.

Grounds for special protection



Special protection cannot be granted any longer for reasons of protection of private and social life in Italy.

The Decree formally repealed the possibility of considering private and family life as a ground for granting special protection, which is now limited to cases of risk of persecution, torture, or inhumane and degrading treatment.

However, despite the restrictions introduced with the latest reform, it is still possible to request special protection for particular cases beyond those explicitly provided.

Indeed, Art. 19 paragraph 1.1, in combination with Art. 5 co. 6 of the Consolidated Immigration Act (TUI), contains a closing rule that allows the issuance of a residence permit for special protection whenever the expulsion of the foreigner from the national territory would be in contrast with constitutional obligations or international conventions.

For example, Art. 8 of the European Convention on Human Rights protects the private and family life of a person, including the migrant foreigner. Therefore, it is still unclear to what extent the recent amendment, which eliminated the explicit reference to the protection of private and family life, has effectively cancelled the possibility of obtaining a residence permit based on the fact that the migrant is integrated into the Italian society where they have developed a social, working, and family life.

In this respect, on the one hand, it is noteworthy that the case law of the European Court of Human Rights gives a very restrictive interpretation of the right to private and family life as a valid reason to allow the regularization of a foreign person. According to the judges of this international Court, a residence permit cannot be granted to the migrant who has integrated and developed a social and working life there while knowing their precarious status in terms of regular stay in a State other than their country of origin (*Pormes v. Netherlands ECtHR*; *Maslov and others v. Austria ECtHR*; *Jeunesse v. Netherlands ECtHR*; *Butt v. Norway ECtHR*).

On the other hand, it is not excluded that the judges of the Italian Courts, giving a constitutionally oriented reading of the matter, may opt for a different and more favourable position for migrants. There will undoubtedly be pronouncements on the subject soon.

Procedures applicable for the issuance of the permit

Following the changes introduced by the Cutro Decree, the procedures for requesting a residence permit have changed.



The procedure for the obtaining of special protection has become more extended.

In the past, the applicant could directly approach the Police Commissioner to obtain a permit for special protection without first requesting international protection.

Due to the legislative reform, the permit for special protection can now only be obtained if recognized by the competent Territorial Commission during the examination of an application for [international protection](#). In particular, if the application for international protection is rejected, the Territorial Commission can still express a favourable opinion on the recognition of the special protection and send the files to the Police Commissioner for the issuance of the connected residence permit.

Since the procedure of examining an international protection procedure in Italy can take 2 or more years, the recent regulatory amendment implies that, unlike in the past, a shorter path with a direct application to the Police Commissioner aimed solely at obtaining special protection can *no longer* be pursued.



The residence permit for special protection issued based on the new legal framework is no longer convertible into a residence permit for work.

Possibility of converting the permit issued for special protection

The Cutro Decree has eliminated the possibility of converting residence permits for special protection into work permits.

On the other hand, due to a transitional regime, applications for special protection pending as of 10 March 2023, and not yet defined, as well as for special protection residence permits already issued by 10 March 2023 (the date of entry into force of the Decree), the possibility of converting the residence permit into a work permit is preserved (Art. 7 D.L. n. 20/2023).

This possibility of conversion is therefore eliminated only for permits for special protection issued upon applications submitted after 10 March 2023.

Renewal of Permits for special protection

The Cutro Decree has also significantly limited the possibility of renewing some of the residence permits for special protection granted under the previous regulation. Specifically, the possibility of renewing residence permits previously issued for reasons related to private and family life (pursuant to Art. 19 paragraph 1.1 third period, now repealed) has been limited, providing that they can be renewed only once and with an annual duration.

However, this limitation has raised interpretative issues since it is not always clear whether the recognition of special protection was granted to protect the private and family life of the foreign national or for other reasons.

Moreover, since the right to private and family life continues to be protected by constitutional and international obligations, there are doubts about the applicability of the renewal limitation to one time only.

In any case, permits for special protection that were not granted for reasons of protection of private and family life before the entry into force of the Cutro Decree remain renewable.

What is the permit for medical treatment or natural disasters in the country of origin?



Residence permits for medical treatment or natural disasters in the country of origin are no longer convertible into a residence permit for work reasons.

The residence permit issued for medical treatment or natural disasters is granted to foreign citizens who, respectively, have serious medical needs or are subjected to exceptional conditions in their country of origin that prevent a safe return.

The permit for medical treatment can be issued for three different reasons:

- to foreign citizens who entered Italy with a Medical Treatment Visa and their companions;
- to foreign citizens in Italy without a residence permit who are in particularly serious health conditions that require urgent and essential treatment to avoid compromising their health;
- to foreign women in Italy without a residence permit who are pregnant and for the six-month period after the birth of the child.

The residence permit for natural disasters is granted to foreign citizens already staying in Italy who cannot return to their country of origin due to an exceptional



and contingent natural disaster. This situation must prevent them from returning to their homeland safely.

Changes introduced by the Cutro Decree D.L. 20/2023 regarding the possibility of converting residence permits for medical treatment or natural disasters



The Cutro Decree has eliminated the possibility of converting residence permits for medical treatment and natural disasters into work permits. This means that foreign persons are no longer allowed to stabilize their resident status in Italy by obtaining a residence permit unrelated to the conditions and circumstances of their country of origin.

Nevertheless, like for the special protection, the transitional regime establishes that applications submitted before the entry into force of the new regulation will continue to be examined according to the previous rules, including the possibility of conversion.

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