Proc. 1783/20.7T8PDL.L1
Judicial Court of the Azores County - Criminal Instruction Court of Ponta Delgada
Agree in conference at the 3rd Criminal section of the Lisbon Court of Appeal

I – REPORT

1. By decision of 08/26-2020, the request for *habeas corpus* was granted, as it was illegal to detain them, being determined the immediate restitution to the freedom of Claimants A., B ..., C .. .and D ....

2. Then came the REGIONAL HEALTH AUTHORITY, represented by the Regional Health Directorate of the Autonomous Region of the Azores, to appeal against such decision, asking to validate the mandatory confinement to the claimants , as they are carriers of the SARS-CoV-2 virus (C….) and because they are under active surveillance, due to high risk exposure, decreed by health authorities (A., B ... and D ...).

4. The appeal was accepted.
5. The Public Ministry, in its reply, argues that the present appeal must be considered unfounded.

6. In this court, the Former General Deputy Attorney affixed the visa.

II - PREVIOUS POINT.

Uma vez que o recurso interposto pela recorrente deve ser rejeitado, o tribunal limitar-se-á, nos termos dos n.ºs 1, alínea a), e 2 do artigo 420.º do Código de Processo Penal, a especificar sumariamente os fundamentos da decisão.

Once the appeal filed by the appellant must be rejected, the court will limit itself, under the terms of paragraphs 1, a), and 2 of article 420 of the Code of Criminal Procedure, to briefly specify the grounds of the decision.

III - Discussion

1. The decision rendered by the court “a quo” reads as follows:
Proven facts:
1. On 08/01/2020, the claimants arrived on the island of São Miguel, coming by plane from the Federal Republic of Germany, where, in the 72 (seventy-two) hours before arrival, they had carried out a test to COVID19, with a negative result and whose copies presented and delivered to the Regional Health Authority, upon arrival at the airport in Ponta Delgada.
2. On 08/07/2020 and already during the stay on the island of São Miguel, the claimants C… and D…. performed a second test to COVID19.

3. On 10/08/2020 and also while staying on the island of São Miguel, claimants A… and B…. performed a second test to COVID19.
4. On 08/08/2020, claimant C… was informed, by telephone, that her test carried out the previous day had accused “detected”.
5. From that day 08/08/2020 the claimant C…. stopped cohabiting with the remaining three claimants , having always maintained a distance of no less than 2 (two) meters from them.
6. On 08/10/2020, claimants A…, B… and D… were informed by telephone that their tests had been “negative”.

7. On 08/10/2020, the document was sent to all claimants via email. The document attaches the sheet 25, 25verse, 26 and 26 verse, signed by the Delegate of Health of the municipality of Lagoa, in office, F…The document is called Notification of Prophylactic Isolation - Coronavirus SARS-CoV-2 / Disease COVID - 19, and two attachments (only one in English) and in which it can be read (equal content except for the identification of each of the claimants):
“Isolation (...)
Notification of Prophylactic Isolation Coronavirus SARS- CoV-2 / COVID disease - 19
Mário Viveiros Silva Lagoa Health Authority
Pursuant to Normative Circulars No. DRSCINF / 2020/22 of 2020/03/25 and DRS CNORM2020 / 39B of 2020/08/04 of the REGIONAL HEALTH AUTHORITY (attached) and of Rule no. 015/2020, of 07/24/2020 of the General Health Directorate (attached) I determine the

PROPHYLACTIC ISOLATION

OF

(...)

With the Citizen Card / PASSPORT No. (...), valid ... until ... with the

social security identification number for the period from 08/08/2020 to 08/22/2020 due to danger of infect other people and as a containment measure for COVID 19 (SARS-Cov-2)

Date 2020/08/10 (...)

8. The Claimants requested that the results were sent the referred results, and the report of the test made to Claimants C… and D… was sent via e-mail on 8/13/2020 and to Claimants A… and B… on the day of yesterday, 08/24/2020, via e-mail. The reports were written in Portuguese.

9. Between the 1st and the 14th of August the claimants were accommodated in the lodge Marina Mar II, in Vila Franca do Campo.

10. From August 14th onwards, claimants are accommodated at "THE LINCE AZORES GREAT HOTEL, CONFERENCE & SPA", in Ponta Delgada (where they are currently located), by order of the Health Delegate in the terms described in 7 as follows:

- In room 502 are claimants A… and B….
- In room 501 is claimant C….
- In room 506 is the claimant D….

11. claimants have tried at least 3 times to contact the hotline that they know (296 249 220) to be clarified in their language or, at least, in the English language, but have never had any success, since they only answer and respond in Portuguese, which the claimants do not understand.

12.In the hotel, meals are delivered to the room, by hotel services, at predetermined times and according to a choice made by a third party, except during the first 3 days at Hotel Lynce where breakfast was served and the remaining meals through room service.

13. On August 15th, while complying with the prophylactic isolation determined by the Health Delegate, claimant C… began to suffer from an inflammation in the mouth, apparently resulting from the dental device she uses.

14. She phoned to the number 296 249 220, to share this situation with the Regional Health Authority, to whom requested the necessary medical support.

15. This request was ignored by the referred helpline, which did not provide the claimant C… the necessary support.
16. Not having any kind of support, two days later, on August 17, properly protected by a mask and gloves, claimant B… left her room, went to the nearest pharmacy, where she bought an ointment to temporarily remedy the situation, having returned immediately to the hotel and to her room.
17. .On 19/08/2020 the Health Delegate, G…., sent an email to the claimants, where it can be read:
"(...) A C…. is only given as cured after having two negative tests, when this happens the health delegation will contact you (...) (*sic*).

18. On 08/21/2020 it was transmitted to the four claimants, by the Health Delegate G…., by e-mail, the following message: "When the quarantine ends, you will have to take a test and if it is negative you can leave the house" (*sic*).
19. On that same day, August 21st, claimant A…. questioned the doctor and Health Delegate, Dr. João Martins Sousa, by email and she wrote the following (translated into Portuguese)

"Dear Dr. G….,
We have already taken two COVID tests/ person, all of them were negative (A…, B…. And D….) and after that we spent 2 weeks in isolation, and none of us have any symptoms !!
We have Dr. G's documents…., please confirm.
Why nobody told us anything about the new tests after the isolation time ?!
We have already rescheduled our flights and we intend to leave the island.
Explain the reason for your statement.
Why haven't C... taken the COVID test yesterday? "
20. The claimants have not received any reply to this mail, with the exception of claimant C…. who was notified of the booking of a new screening test, specifically for the next day, 29/08/2020.
21. On 08/20/2020, claimant C…. took a third COVID19 test, having been informed on the following day (08/21/2020), only by telephone, that the result had accused "detected".
22.The claimant C…. asked a written evidence of that positive result, which was sent to her by e-mail, yesterday, 08/24/2020.

23.The claimants questioned the reception staff at the hotel where they are staying, and were told that none of the four claimants, without exception, will be able to leave the rooms.
24. The claimants do not have, nor had ever presented any symptom of the disease (fever, cough, muscle pain, sneezing, lack of smell or palate).
25. It was never explained to the claimants the content of the two documents sent to them with the writings listed in point 7.
26.The claimants reside habitually in the Federal Republic of Germany, identified in these documents.

Argument:
The question that arises here is based on the fact that the Claimants are deprived of their liberty (from the 10th of August until the present date, as follows from the proven facts) and, consequently, being able to use the present *habeas corpus* institute - as we will now explain -, the question is whether or not there is a legal basis for this deprivation of liberty.

Indeed, without even questioning the organic constitutionality of the Council of the Regional Government's Resolution No. 207/2020, of July 31, 2020, currently in force in the scope of the procedures approved by the Government of the Azores to contain the spread of the SARS-COV- virus 2 in this Autonomous Region, in the present situation, the detention / confinement of the Claimants since last 10th August is materialized by a communication made via e-mail, in Portuguese, in the terms given as proven under point 7.

Now, as it results from point 7 of the proven facts, the regional health authority, through the respective Health Delegate of the territorial area where the Claimants were staying, determined their prophylactic isolation under the Normative Circulars No. DRSCINF / 2020 / 22 of 2020/03/2025 and DRS CNORM2020 / 39B of 2020/08/04 of the REGIONAL HEALTH AUTHORITY and Norm no. 015/2020, of 07/24/2020 of the General Directorate of Health. And, it was through a communication with the aforementioned argument, in normative circulars and a norm of the General Directorate of Health, that the Regional Health Authority deprived the Claimants of their freedom, because of the proven facts it derives that these, in the precision of the concepts , were

detained from the 10th to the 14th of August 2020 in a hotel in Vila Franca do Campo and from the 14th of August 2020 until the present date were confined, and therefore detained, in a hotel room in this city of Ponta Delgada. We cannot forget even because it stands out from the list of proven facts, that the Claimants' power of movement and right of mobility - or of any other individual who is in the same situation - are so limited that the first exit from the rooms they are in was to come to this court and make statements (with the exception of the Claimant B's trip to the pharmacy…. in clear despair to help her daughter, who was in pain in the proven terms).

In summary, after analysing the factuality found, it is inexorable to conclude that we are facing a true deprivation of the personal and physical freedom of the applicants, not allowed by them, which prevents them not only from going out, but also from being in family, living for about 16 days separated (claimants A… and B… and her daughter, C…) and, in the case of Claimant D…. totally alone, without any physical contact with anyone. Saying that there is no deprivation of liberty because at any time they may leave their respective rooms is a fallacy, just look at the communications made to them after the 10th of August, none of them in the German language, and the conditions in which they have lived (not forgetting that they are foreign citizens with the inherent linguistic barrier) or requesting their return to their place of origin is a fallacy, and for this conclusion, just look at the latest communications made in Portuguese, underlining the one given as proven under point 8 stands out, in particular “Namely, when the quarantine is over, you have to do a test and if this is negative you can leave the house, in this case the hotel, where you are confined in 3 rooms. .

Therefore, being the Claimants deprived of their liberty, in the face of the proven circumstances, it is necessary to trace the path in which we move, beginning the journey through the guiding light of the Portuguese legislative system: the Constitution of the Portuguese Republic.

Thus, at the level of the hierarchy of norms, it is necessary to remember that, according to article 1 of the CPR, “Portugal is a sovereign Republic, based on the dignity of the human person and on the popular will and committed to the construction of a free society, fair and supportive”. Hence, it is clear that the unity of meaning in which our system of fundamental rights is based is anchored on human dignity - the principle of the dignity of the human person is the axial reference of the entire system of fundamental rights.

One of the most relevant is concerned to its structuring nature of the democratic state itself, is the principle of equality, provided for in article 13 of the CPR, which states, in its paragraph 1, that “All citizens have the same social dignity and are equal before the law.”, adding paragraph 2, that “No one can be privileged, benefited, harmed, deprived of any right or exempt from any duty due to ancestry, gender, race, language, territory of origin, religion, political or ideological beliefs, education, economic situation, social status or sexual orientation. ”

And, in what matters here, under the heading “right to freedom and security”, can be read in the article 27, no. 1 of the CPR, “Everyone has the right to freedom and security”, referring José Lobo Moutinho, in an annotation to that article, that “Freedom is a moment absolutely decisive and essential - not to say, the very constitutive way of being - of the human person (Ac. n ° 607/03: “ontic demand”), which lends him that dignity in which the Portuguese legal order (and, above all, legal-constitutional) finds its granitic foundation (Article 1 of the Constitution). In this sense, one can say the cornerstone of the social building ”(Ac. N ° 1166/96)” (aut.cit., In op. Cit., P. 637).

Since human freedom is not single-dimensional, and can take on multiple dimensions, as exemplified in articles 37 and 41 of the CPR, the freedom in question in article 27, is physical freedom, understood as freedom of bodily movement, of coming and going, freedom of movement, being stipulated in paragraph 2 of this last article that “**No one may be totally or partially deprived of liberty, unless as a result of a condemnatory legal sentence for the practice** of an act punishable by law with imprisonment or legal application of a security measure. ” - **underlined by us**.

The exceptions to this principle are typified in paragraph 3, which provides that: “It constitutes an exemption to this principle the deprivation of liberty, for the time and under the conditions determined by law, in the following cases:

a) Caught in the act arrest;
b) Detention or preventive detention for strong indications of a wilful crime that corresponds to a prison sentence with a maximum limit of more than three years;
c) Arrest, detention or other coercive measure subject to legal control, of a person who has entered or remains illegally in national territory or against whom extradition or expulsion proceedings are underway;

d) Disciplinary imprisonment imposed on the military, with guarantee of appeal to the competent court;
e) Subjecting a minor to protection, assistance or education measures in an appropriate establishment, decreed by the competent legal court;
f) Detention by legal decision due to disobedience to the decision taken by a court or to ensure appearance before the competent legal authority;
g) Detention of suspects, for the purpose of identification, in the cases and for the time strictly necessary;
h) Internment of a patient with a psychic anomaly in an appropriate therapeutic establishment, decreed or confirmed by the competent legal authority. ”

Finally, it should be remembered that, in case of deprivation of liberty against the provisions of the Constitution and the Law, the State is constituted with the duty to indemnify the injured party under the terms established by the law, as follows from paragraph 5 of article 27, noting that , in line with article 3 of the CPR:
(...) 2. The State is subordinated to the Constitution and is based on democratic legality.

3. The validity of laws and other acts of the State, autonomous regions, local authorities and any other public entities depends on their compliance with the Constitution.
Having drawn up the legal territory, let us look closely at the condition in which the Regional Health Authority moved in the situation under analysis.
Claimants A., B ... and D ... performed a screening test for the SARS-CoV-2 virus, the result of which was negative for all, having Claimant C... tested positive, which led to the aforementioned order of prophylactic isolation and consequent permanence of these in the terms exposed and proven.

Therefore, before the content of the notification made to the Claimants, this court cannot fail to express, ab initio, its perplexity at the determination of prophylactic isolation to the four Claimants.

As follows from the definition given by the Directorate-General for Health, “Quarantine and isolation are essential measures in public health. They are especially used in response to an epidemic and are intended to protect the population from transmission between

people. The difference between quarantine and isolation stems from the state of illness of the person in question. That is:
“Quarantine is used in people who are assumed to be healthy but may have been in contact with an infected patient;
isolation is the measure used in sick people, so that through social distance they do not infect other citizens. ” (at https://www.sns24.gov.pt/tema/doencas-infecciosas/covid-19 / isolation /? Fbclid = IwAR34hD77oLCpxUVYJ9Ol4ttgwo4tsTOvPfIa3Uyoh0EJEbCs3jEihkaEPAY # sec-0).

Turning to the present case, the Regional Health Authority decided to make a blank slate of essential concepts, because they delimit differentiated treatment (because it’s different, pass the pleonasm), the situations of infected people and those who were in contact with them, in the face of the order of prophylactic isolation to all claimants, although only one of them has positive results to the aforementioned screening test. And, more decided, to ignore the Resolution of the Government Council no. 207/2020 of 31 of July, meddling in the mandatory submission, the legal validation of the competent court decreed as mandatory quarantine, when it derives to the satiety of the facts that Claimants A., B ... and D ..., at most, are subject to mandatory quarantine.

It did not do so within the 24 hours mentioned in point 6 of the aforementioned Resolution, not even within a broader period - as in the 48 hours fixed in article 254, paragraph 1, point a), of the Criminal Procedure Code, or in article 26, no. 2, of the LSM - continuing to make any communication and, therefore, the evident restriction of the freedom of Claimants A., B ... and D ... will always be illegal.

In this step, the aforementioned Government Council Resolution no. 207/2020, of July 31, 2020, provides in point 4 that in cases where the SARS-CoV-2 virus test result is positive, the local health, within the scope of its competences, will determine the procedures to be followed. The Claimant C ..., who tested positive in the screening test for the virus in question, was notified, in the same terms as the other Claimants, of the order of prophylactic isolation between 08/10/2020 to 08/22/2020.

At this point, it is necessary to make it clear that the notification made as proven under point 7, is brought from what appears in the Standard of DGS015 / 2020, a rule to which

it alludes in addition to the normative circulars (available for consultation at https: //www.dgs.pt/directrizes-da-dgs/normas-e-circulares-normativas/norma-n-0152020-de-24072020-pdf.aspx), and tell us, in what matters here: (...) Contacts with High Risk Exposure

15. A contact classified as having high risk exposure, in accordance with Annex 1 is subject to:
a. Active surveillance for 14 days, since the date of the last exposure;
b. Determination of prophylactic isolation, at home or another place defined at the local level, by the Health Authority, until the end of the period of active surveillance, according to the model of Dispatch no. 2836-A / 2020 and / or n 310º-A / 20202 (model available at http://www.segsocial.pt/documents/10152/16819997/GIT_70.docx/e6940795-8bd0-4fad-b850-ce9e05d80283)

Following this rule from the General Health Directorate, one can read, among others, in the normative circular No. DRSCNORM / 2020 / 39B, from 2020-08-04 (available for consultation at http://www.azores.gov. pt / NR / rdonlyres / 25F80DC1-51E6-4447-8A38-
19529975760/1125135 / CN39B_signed1.pdf),
(...)
a. Close contacts of high risk
Close contacts of high risk are treated as suspect cases until the laboratory result of the suspected case is known. These close contacts should be screened for SARS-CoV-2. High risk contacts are considered: i. Cohabitation with confirmed case of COVID-19; (...) ii. Surveillance and Control of Close Contacts
3. Close contacts of high risk, given that, at the present moment, it is estimated that the incubation period of the disease (time elapsed from exposure to the virus to the appearance of symptoms) is between 1 and 14 days, they must comply with 14 prophylactic isolation days, even if they have negative screening tests during that period, and a test should be performed on the 14th day. If the 14th day test result is negative, they are discharged. If close contacts of high risk cohabit with the positive case, they should only be discharged when determining the cure of the positive case, and, therefore, the respective prophylactic isolation should be extended.
(...)

13. Compliance with prophylactic isolation

All people identified as suspected cases, until the negative results are known, comply with prophylactic isolation;

All people who tested positive for Covid-19 and who are discharged after a cure test (internment or home), do not need to undergo a new isolation period of 14 days or repeat a new test on the 14th day.

All passengers disembarking at airports in the Region from airports located in areas considered to be zones of active community transmission or with transmission chains for the SARS-CoV-2 virus must comply with the procedures in force in the Region at the time.

At this point we need to analyse the legal value of norms / guidelines from the General Health Directorate and normative circular 39B, from 04/08/2020, from the Regional Health Directorate, and there is no doubt that we have entered the sphere of administrative guidance.

In this regard, with the specificity of reporting to the Tax Authority - which has the same administrative legal position as the National Health Authority in the *ius imperium* of the State-, CASALTA NABAIS (Tax Law, 6th ed., Almedina, p. 197), "the so-called administrative guidelines, traditionally presented in the most diverse forms such as instructions, circulars, circular-letters, normative orders, regulations, opinions, etc.", which are very frequent in tax law, constitute "internal regulations that, having just the tax administration as their recipient, only the latter owes them obedience, being, therefore, mandatory only for the bodies located hierarchically below the agency that originated them.

That is why they are not binding for individuals nor for courts. And this is whether they are organizational regulations, which define rules applicable to the internal functioning of the tax administration, creating working methods or modes of action, or whether they are interpretative regulations, which proceed to the interpretation of legal (or regulatory) precepts.

It is certain that they densify, make explicit or develop the legal precepts, previously defining the content of the acts to be practiced by the administration when they are applied. But that does not make them the standard of validity for the acts they support. In fact, the assessment of legality of the acts of the tax administration must be carried out

through direct confrontation with the corresponding legal norm and not with the internal regulation, which interposed between the norm and the act ".

Now, the problem of the normative relevance of Administration Circulars (Tax) was already raised and considered in the Constitutional Court Judgments No. 583/2009 and 42/14, of 18.11.2009 and 09.012.2014, respectively, having that Court decided, with which we agree, that the prescriptions contained in the Circulars for Tax Administration, regardless of their persuasive irradiation in the practice of citizens, do not constitute norms for the purposes of the constitutionality control system committed to the Constitutional Court

As highlighted in that note (Judgment 583/2009) "(...) These acts, in which the" circulars "are prominent, emanate from the power of self-organization and the hierarchical power of the Administration. They contain generic service orders and it is for this reason and only within the respective subjective scope (of the hierarchical relationship) that they are guaranteed compliance. They incorporate guidelines for future action, transmitted in writing to all subordinates of the administrative authority that issued them. These are standardized decision-making modes, assumed to rationalize and simplify the operation of services. This is worth to say that, although they can indirectly protect legal certainty and ensure equal treatment through uniform application of the law, they do not regulate the matter they deal with in relation to private individuals, nor do they constitute a decision rule for the courts. "

Consequently, lacking a heteronomous binding force for individuals and not being imposed to the judge in any way other than the doctrinal value they may have, the prescriptions contained in the "circulars" do not constitute rules for the purposes of the constitutionality control system within the jurisdiction of the Constitutional Court.
What is said, allows us to conclude that the administrative guidelines conveyed in the form of normative circulars, as in the present case, do not constitute provisions of legislative value that can be the subject of a declaration of formal unconstitutionality - see Judgment of the Supreme Administrative Court, of 06/21/2017, available for consultation at www.dgsi.pt.

And, this to make it clear that the norms invoked by the Regional Health Authority that supported the deprivation of liberty imposed on Claimants through notification of prophylactic isolation are non-binding administrative guidelines for Claimants. Actually, one just need to just look at whom they are addressed to respectively:
Normative Circular No. DRSCNORM / 2020 / 39B: "For: Health Units of the Regional Health Service, Municipal Health Delegates (C / c Regional Service for Civil Protection and Azores Firefighters, Azores Health Line) Subject: Screening for SARS-CoV-2 and addressing suspected or confirmed cases of SARS-CoV-2 infection Source: Regional Health Directorate (...)
Norm 015/2020, of 7/24/2020: "SUBJECT: COVID-19: Contact Screening KEYWORDS: Coronavirus, SARS-CoV-2, COVID-19, Contact Screening (Contact Tracing), Epidemiological Investigation

FOR: Health System (...).
In this sequence, and, in summary, this court needs to underline that the present case, we must say aberrant, of deprivation of liberty of individuals, absolutely lacks any legal basis, and do not come up with the argument that the defence of public health is at stake because the court always acts in the same way, that is, in accordance with the law, moreover, hence the need for judicial confirmation enshrined in the Mental Health Law in the case of compulsory internment, so, from the facts found and exposed results:

- The Claimants have been confined to the space of a room for about 16 days, based on a notification of "prophylactic isolation" until 08/22/2020, a period that has already been exceeded and the notification operated, which in any case it is illegal as a mean of detaining people for the reasons already explained (just look at the constitutional rules set out above), it has lapsed;

- To the Claimants have never been given any proper information, communication, notification in their native language, nor have they been provided with an interpreter, which constitutes a flagrant violation of the European Convention on Human Rights (art. 5, no. 2 and 6, paragraph 3, al. A) and the criminal procedural rules (see article 92 of the Criminal Procedure Code), that is, in our legal system when a foreign person is detained and doesn't speak the Portuguese language is immediately provided with an interpreter, and, in the case of the Claimants who travel to this island and enjoyed its beauty, they were never granted such a possibility;

- Claimants after 08/22/2020 are confined to the space of a room based on the following communications:
- On 19/08/2020 it was sent by the Health Delegate, Dr. G…, to the Claimants an e-mail, where it can be read:
"(...) C… is only given as cured after having a negative test and a 2nd negative cure test, when this happens, the health delegation will contact you (...) (*sic*).

- On 08/21/2020, the following message was transmitted to the four claimants, by the Health Delegate Dr. G…, by e-mail: "When the quarantine is over, you have to do a test and if it is negative you can leave the house "(*sic*);
- The Claimants' deprivation of liberty was not subject to any judicial scrutiny.
As we said initially, we could still consider the organic constitutionality of the Resolution of the Government Council No. 1207/2020, of June 31st, however, we believe it is an unimportant question for the object of the decision to be made, which needs to be swift, because even in the light of such resolution the decision cannot be different, based on the decision of the Constitutional Court, of 07/31/2020, in the scope of the process no. 424/2020, and, because the position of the Regional Health Authority in the present circumstances leads to the application of normative circulars, with the value explained above.

Finally, and because this court has been ruling successively and recently within the scope of this institute of "habeas corpus" in the face of orders issued by the Regional Health Authority, we allow ourselves to subscribe and underline the following excerpt from the first decision of this Criminal Investigation Court:
"The issue of compulsory confinement in the case of contagious diseases, and the terms under which it must occur, is an important issue, and which is not supported by article 27, paragraph 3, of the CPR, namely in its paragraph h), where it is only foreseen the admission of a patient with a psychic anomaly in an appropriate therapeutic establishment, decreed or confirmed by the competent legal authority. It is urgent to legislate on this matter, establishing, in a clear way, the fundamental principles to which it must obey, leaving the detailed aspects to the derived law - and only these.

For, as Professor Gian Luigi Gatta says, which we quote here in a free translation, "right now, the country's energies are focused on emergency. But the need to protect

fundamental rights also and above all in an emergency situation, being demanded to the Courts to do their share. Because, beyond medicine and science, law - and human rights law in the first place - must be at the forefront: not to prohibit and sanction - as it is being emphasised these days - but to protect everyone. Today the emergency is called a coronavirus. We don't know tomorrow. And what we do or don't do today, to maintain compliance with the fundamental principles of the system, can condition our future." (in "I diritti fondamentali alla evidence of the coronavirus. Perché a legge sulla quarantena is necessary",) ".

It will not be difficult to admit and accept that the legislative turmoil generated around the containment of the spread of COVID-19 had - and will continue to have - in its *raison d'être* the protection of public health, but this turmoil can never harm the right to freedom and security and, ultimately, the absolute right to human dignity.
It remains to decide accordingly.
(...)

Therefore, in light of the above, as the detention of Claimants A., B ..., C ... and D ... is illegal, I decide to uphold the present *habeas corpus* request and, consequently, determine their immediate restitution to freedom.

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2.