

Country Report: Italy



2018
Update



Acknowledgements & Methodology

The report was written by Caterina Bove of the Association for Legal Studies on Immigration (ASGI), and edited by ECRE.

This report draws on practice by ASGI legal representatives across the different regions of Italy, as well as available statistical information and reports, case law and other publicly available sources.

The information in this report is up-to-date as of 31 December 2018, unless otherwise stated.

The Asylum Information Database (AIDA)

The Asylum Information Database (AIDA) is coordinated by the European Council on Refugees and Exiles (ECRE). It aims to provide up-to date information on asylum practice in 23 countries. This includes 20 EU Member States (AT, BE, BG, CY, DE, ES, FR, GR, HR, HU, IE, IT, MT, NL, PL, PT, RO, SE, SI, UK) and 3 non-EU countries (Serbia, Switzerland, Turkey) which is accessible to researchers, advocates, legal practitioners and the general public through the dedicated website www.asylumineurope.org. The database also seeks to promote the implementation and transposition of EU asylum legislation reflecting the highest possible standards of protection in line with international refugee and human rights law and based on best practice.



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Glossary & List of Abbreviations

Decree Law	Regulatory act which provisionally enters into force but requires the enactment of a legislative act in order to have definitive force. This process is described as “implementation by law” (<i>conversione in legge</i>), and it is possible for the Decree Law to undergo amendments in the process of enactment of the law.
Fotosegnalamento	Taking of photographs and fingerprinting upon identification and registration of the asylum application
Nulla osta	Certification of the absence of impediments to contracting a marriage
Questore	Chief of the Immigration Office of the Police
Questura	Immigration Office of the Police
Verbalizzazione	Lodging of the asylum application through an official form entitled “C3”
AMIF	Asylum, Migration and Integration Fund
ANCI	National Association of Italian Municipalities Associazione Nazionale Comuni Italiani
ASGI	Association for Legal Studies on Immigration Associazione per gli Studi Giuridici sull’Immigrazione
ASL	Local Health Board Azienda Sanitaria Locale
CAF	Fiscal Assistance Centre Centro assistenza fiscale
CARA	Centre for the Reception of Asylum Seekers Centro di accoglienza per richiedenti asilo
CAS	Emergency Accommodation Centre Centro di accoglienza straordinaria
CDA	Accommodation Centre for Migrants Centro di accoglienza
CIE	Identification and Expulsion Centre Centro di identificazione ed espulsione
CIR	Italian Council for Refugees Consiglio Italiano per i Rifugiati
CNDA	National Commission for the Right of Asylum Commissione nazionale per il diritto di asilo
CPSA	First Aid and Reception Centre Centro di primo soccorso e accoglienza
CSM	High Judicial Council Consiglio Superiore della Magistratura
EASO	European Asylum Support Office
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ECRI	European Committee against Racism and Intolerance
EDAL	European Database of Asylum Law
INAIL	National Institute for Insurance against Accidents at Work Istituto Nazionale Assicurazione Infortuni sul Lavoro
INPS	National Institute of Social Security Istituto Nazionale di Previdenza Sociale
IOM	International Organisation for Migration
ISEE	Equivalent Economic Situation Indicator Indicatore della situazione economica equivalente
L	Law Legge
LD	Legislative Decree Decreto Legislativo
MEDU	Doctors for Human Rights Medici per I diritti umani

MRCC	Maritime Rescue Coordination Centre
MSF	Médecins Sans Frontières
PD	Presidential Decree Decreto del Presidente della Repubblica
Rel	Income support Reddito di inclusione
SIMM	Society of Migration Medicine Società Italiana di Medicina delle Migrazioni
SOPs	Standard Operating Procedures
SPRAR	System of protection for asylum seekers and refugees Sistema di protezione per richiedenti asilo e rifugiati
SIPROIMI	System of protection for beneficiaries of international protection and unaccompanied minors Sistema di protezione per titolari di protezione internazionale e minori stranieri non accompagnati
TEAM	European Health Insurance Card Tessera europea di assicurazione malattia
TUI	Consolidated Act on Immigration Testo unico sull'immigrazione
VESTANET	Registration database for asylum applications

Statistics

Overview of statistical practice

The Department of Civil Liberties and Immigration of the Ministry of Interior publishes monthly statistical reports on asylum applications and first instance decisions.¹ More detailed statistics are made available by the National Commission for the Right to Asylum (*Commissione nazionale per il diritto di asilo*, CNDA).

Applications and granting of protection status at first instance: 2018

	Applicants in 2018	Pending at end 2018	Refugee status	Subsidiary protection	Humanitarian protection	Rejection	Refugee rate	Subs. Prot. rate	Hum. Prot. rate	Rejection rate
Total	53,596	98,369	7,096	4,319	20,014	56,002	7%	5%	21%	59%

Breakdown by countries of origin of the total numbers

Pakistan	7,368	:	426	655	1,360	6,139	4%	7%	14%	64%
Nigeria	6,336	:	1,356	158	3,252	13,561	7%	1%	17%	69%
Bangladesh	5,026	:	159	60	2,622	7,233	2%	1%	25%	70%
Senegal	2,867	:	110	29	1,350	4,620	2%	0%	21%	71%
Ukraine	2,517	:	41	150	671	865	2%	8%	36%	46%
Mali	2,266	:	112	504	1,232	3,318	2%	9%	22%	59%
Gambia	2,101	:	138	26	2,159	4,305	2%	0%	31%	62%
El Salvador	1,735	:	284	75	571	50	26%	7%	53%	5%
Morocco	1,734	:	64	2	273	809	5%	0%	20%	58%
Côte d'Ivoire	1,668	:	235	34	1,083	3,046	4%	1%	20%	57%
Guinea	1,421	:	129	18	1,180	2,710	3%	0%	25%	57%
Ghana	1,171	:	61	17	906	2,772	2%	0%	23%	70%
Georgia	1,086	:	12	4	181	226	3%	1%	42%	52%

Source: CNDA: <http://bit.ly/2u3FIR5>. Pending applications as of 28 December 2018. Rejections include inadmissibility decisions.

¹ Ministry of Interior, *I numeri dell'asilo*, available in Italian at: <http://bit.ly/2pzBgnd>.

Gender/age breakdown of the total number of applicants: 2018

	Number	Percentage
Total number of applicants	53,700	-
Men	42,370	78.9%
Women	11,330	21.1%
Children	3,790	7.1%
Unaccompanied children	3,676	6.8%

Source: Eurostat; Ministry of Interior.

Comparison between first instance and appeal decision rates: 2018

Statistics on appeals are not available.

Overview of the legal framework

Main legislative acts relevant to asylum procedures, reception conditions, detention and content of protection

Title (EN)	Original Title (IT)	Abbreviation	Web Link
<p>Legislative Decree no. 286/1998 “Consolidated Act on provisions concerning the Immigration regulations and foreign national conditions norms”</p> <p><i>Amended by:</i> Decree Law no. 13/2017, implemented by Law no. 46/2017</p> <p><i>Amended by:</i> Decree Law no. 113/2018, implemented by Law no. 132/2018</p>	<p>Decreto legislativo 25 luglio 1998, n. 286 “Testo unico delle disposizioni concernenti la disciplina dell’immigrazione e norme sulla condizione dello straniero”</p> <p><i>Modificato:</i> Decreto Legge 17 febbraio 2017, n. 13, conversione in Legge di 13 aprile 2017, n. 46</p> <p><i>Modificato:</i> Decreto Legge 4 ottobre 2018, n. 113, conversione in Legge di 1 dicembre 2018, n. 132</p>	<p>TUI</p> <p>Decree Law 13/2017</p> <p>Decree Law 113/2018</p>	<p>http://bit.ly/1PYQbyL (IT)</p> <p>https://bit.ly/2ltXe3Y (IT)</p> <p>https://bit.ly/2G8Bh7W (IT)</p>
<p>Legislative Decree no. 251/2007 “Implementation of Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted”</p> <p><i>Amended by:</i> Legislative Decree no. 18/2014</p>	<p>Decreto legislativo 19 novembre 2007, n. 251 “Attuazione della direttiva 2004/83/CE recante norme minime sull’attribuzione, a cittadini di Paesi terzi o apolidi, della qualifica del rifugiato o di persona altrimenti bisognosa di protezione internazionale, nonché norme minime sul contenuto della protezione riconosciuta”</p> <p><i>Modificato:</i> Decreto Legislativo 21 febbraio 2014, n. 18</p>	<p>Qualification Decree</p> <p>LD 18/2014</p>	<p>http://bit.ly/1FOscKM (IT)</p> <p>http://bit.ly/110ioRw (IT)</p>
<p>Legislative Decree no. 25/2008 “Implementation of Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status”</p> <p><i>Amended by:</i> Legislative Decree no. 142/2015</p> <p><i>Amended by:</i> Decree Law no. 13/2017, implemented by Law no. 46/2017</p> <p><i>Amended by:</i> Decree Law no. 113/2018, implemented by Law no. 132/2018</p>	<p>Decreto legislativo 28 gennaio 2008, n.25 “Attuazione della direttiva 2005/85/CE recante norme minime per le procedure applicate negli Stati membri ai fini del riconoscimento e della revoca dello status di rifugiato”</p> <p><i>Modificato:</i> Decreto legislativo n. 142/2015</p> <p><i>Modificato:</i> Decreto Legge 17 febbraio 2017, n. 13, conversione in Legge di 13 aprile 2017, n. 46</p> <p><i>Modificato:</i> Decreto Legge 4 ottobre 2018, n. 113, conversione in Legge di 1 dicembre 2018, n. 132</p>	<p>Procedure Decree</p> <p>Reception Decree</p> <p>Decree Law 13/2017</p> <p>Decree Law 113/2018</p>	<p>http://bit.ly/1PYQjOW (IT)</p> <p>https://bit.ly/2XbAeem (IT)</p> <p>http://bit.ly/1Mn6i1M (IT)</p> <p>https://bit.ly/2ltXe3Y (IT)</p> <p>https://bit.ly/2G8Bh7W (IT)</p>
<p>Legislative Decree no. 142/2015 “Implementation of Directive 2013/33/EU on standards for the reception of asylum applicants and the Directive 2013/32/EU on common procedures for the recognition and revocation of the status of</p>	<p>Decreto legislativo 18 agosto 2015, n 142 “Attuazione della direttiva 2013/33/UE recante norme relative all’accoglienza dei richiedenti protezione internazionale, nonché della direttiva 2013/32/UE, recante procedure comuni ai fini del riconoscimento e della revoca dello <i>status</i> di protezione internazionale.”</p>	<p>Reception Decree</p>	<p>http://bit.ly/1Mn6i1M (IT)</p>

international protection.” <i>Amended by:</i> Legislative Decree 220/2017 <i>Amended by:</i> Decree Law no. 113/2018, implemented by Law no. 132/2018	<i>Modificato:</i> Decreto legislativo 22 dicembre 2017, n. 220 <i>Modificato:</i> Decreto Legge 4 ottobre 2018, n. 113, conversione in Legge di 1 dicembre 2018, n. 132	LD 220/2017 Decree Law 113/2018	http://bit.ly/2CJXJ3s (IT) https://bit.ly/2G8Bh7W (IT)
Legislative Decree no. 150/2011 “Additional provisions to the Code of Civil Procedure concerning the reduction and simplification of cognition civil proceedings, under Article 54 of the law 18 June 2009, n. 69”	Decreto legislativo 1 Settembre 2011, n. 150 “Disposizioni complementari al codice di procedura civile in materia di riduzione e semplificazione dei procedimenti civili di cognizione, ai sensi dell'articolo 54 della legge 18 Giugno 2009, n. 69”	LD 150/2011	http://bit.ly/2jXfdog (IT)
Legislative Decree no. 24/2014 “Prevention and repression of trafficking in persons and protection of the victims”, implementing Directive 2011/36/EU”	Decreto legislativo 4 marzo 2014, n. 24 “Prevenzione e repressione della tratta di esseri umani e protezione delle vittime”, in attuazione alla direttiva 2011/36/UE, relativa alla prevenzione e alla repressione della tratta di esseri umani e alla protezione delle vittime”	LD 24/2014	http://bit.ly/1FI2OsN (IT)
Law no. 47/2017 “Provisions on the protection of foreign unaccompanied minors”	Legge di 7 aprile 2017, n. 47 “Disposizioni in materia di misure di protezione dei minori stranieri non accompagnati”	L 47/2017	http://bit.ly/2sYgFd8 (IT)

Note that the Decree Law (*decreto legge*) is a regulatory act which provisionally enters into force but requires the enactment of a legislative act (*legge*) in order to have definitive force. This process is described as “implementation by law” (*conversione in legge*), and it is possible for the Decree Law to undergo amendments in the process of enactment of the law. In the consolidated version of a Decree Law in the Official Gazette, amendments introduced during the *conversione in legge* process can be seen in bold.

Main implementing decrees and administrative guidelines and regulations relevant to asylum procedures, reception conditions, detention and content of protection

Title (EN)	Original Title (IT)	Abbreviation	Web Link
Presidential Decree no. 394/1999 “Regulation on norms implementing the consolidated act on provisions concerning the immigration regulations and foreign national conditions norms”	Decreto del Presidente della Repubblica del 31 agosto 1999, n. 394 “Regolamento recante norme di attuazione del testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero”	PD 394/1999	http://bit.ly/1M33qIX (IT)
<i>Amended by:</i> Presidential Decree no. 334/2004 “on immigration”	<i>Aggiornato con le modifiche apportate dal:</i> Decreto del Presidente della Repubblica 18 ottobre 2004, n. 334 “in materia di immigrazione”	PD 334/2004	http://bit.ly/1KxDnsk (IT)
Presidential Decree no. 21/2015 on “Regulation on the procedures for the recognition and revocation	Decreto del Presidente della Repubblica del 12 gennaio 2015 “Regolamento relativo alle procedure per il riconoscimento e la	PD 21/2015	http://bit.ly/1QjHx8R (IT)

of international protection”	revoca della protezione internazionale a norma dell’articolo 38, comma 1, del decreto legislativo 28 gennaio 2008, n. 25.”		
CNDA Circular no. 6300 of 10 August 2017 on “Notifications of the acts and measures of the Territorial Commissions and of the National Commission for the right to asylum”	Circolare della Commissione Nazionale per il diritto d’asilo n. 6300 del 10 agosto 2017 “Notificazioni degli atti e dei provvedimenti delle commissioni territoriali e della Commissione Nazionale per il diritto d’asilo”	CNDA Circular 6300/2017	http://bit.ly/2FwCDZj (IT)
CNDA Circular no. 6425 of 21 August 2017, Request clarifications art. 26, (5) Legislative Decree no. 25/2008, as amended by law n. 47/2017	Circolare della Commissione nazionale per il diritto d’asilo n. 6425 del 21 agosto 2017, Richiesta chiarimenti art. 26, comma 5, d.lgs. n. 25/2008, come modificato dalla legge n. 47/2017.	CNDA Circular 6425/2017	http://bit.ly/2Fn38Um (IT)
Ministry of Interior Circular no. 83774 of 18 December 2018 “Decree Law 113/2018 implemented by Law 132/2018”	Circolare del Ministero dell’Interno del 18 dicembre 2018, n. 83774 “Decreto Legge 113/2018, convertito con modificazioni dalla legge 132/2018”	Circular 83774/2018	http://bit.ly/2XTY3Ze (IT)
Ministry of Interior Circular no. 22146 of 27 December 2018 “Decree Law 113/2018 implemented by Law 132/2018”	Circolare del Ministero dell’Interno del 27 dicembre 2018, n. 22146 “Decreto Legge 2018 convertito in L. 132/2018”	Circular 22146/2018	http://bit.ly/2T0Ws04 (IT)
Ministry of Interior Circular no. 1 of 2 January 2019 “Decree Law 113/2018 implemented by Law 132/2018, applicable profiles”	Circolare del Ministero dell’Interno del 2 gennaio 2019, n. 1 “Decreto Legge 113/2018, convertito con modificazioni dalla legge 132/2018, profili applicativi”	Circular 1/2019	https://bit.ly/2Ghrloj (IT)
Ministry of Interior Circular of 14 January 2019 “Decree Law 113/2018 implemented by Law 132/2018, applicable profiles”	Circolare del Ministero dell’Interno del 14 gennaio 2019, “Decreto Legge 113/2018, convertito con modificazioni dalla legge 132/2018, profili applicativi”		https://bit.ly/2P7G5OZ (IT)
Ministry of Interior Circular no. 10380 of 18 January 2019 “Decree Law 113/2018 implemented by Law 132/2018, applicable profiles”	Circolare del Ministero dell’Interno del 18 gennaio 2019, n. 10380 “Decreto Legge 113/2018, convertito con modificazioni dalla legge 132/2018, profili applicativi”	Circular 10380/2019	https://bit.ly/2VGH7UE (IT)
Ministry of Interior Decree of 10 August 2016 “Access of municipalities to the National Fund for Asylum (FNSA) for the accommodation of asylum seekers, beneficiaries of international and humanitarian protection; guidelines for SPRAR	Decreto del Ministero dell’Interno del 10 agosto 2016 “Modalita' di accesso da parte degli enti locali ai finanziamenti del Fondo nazionale per le politiche ed i servizi dell’asilo per la predisposizione dei servizi di accoglienza per i richiedenti e i beneficiari di protezione internazionale e per i titolari del permesso umanitario, nonche' approvazione delle linee guida per il funzionamento del Sistema di protezione per richiedenti asilo e rifugiati (SPRAR)”		http://bit.ly/2jWE7zI (IT)
Ministry of Interior Decree of 1 September 2016 “Establishment of first reception centres dedicated to unaccompanied minors”	Decreto del Ministero dell’Interno, del 1 settembre 2016 “Istituzione di centri governativi di prima accoglienza dedicati ai minori stranieri non accompagnati”		http://bit.ly/2cOzppm (IT)

<p>Ministry of Interior Circular of 11 October 2016 on “Rules for starting of a gradual and sustainable distribution system for asylum seekers and refugees on the national territory through the SPRAR”</p>	<p>Circolare del Ministero dell’Interno 11 ottobre 2016 “Regole per l’avvio di un sistema di ripartizione graduale e sostenibile dei richiedenti asilo e dei rifugiati su territorio nazionale attraverso lo SPRAR”</p>		<p>http://bit.ly/2jhhf2i (IT)</p>
<p>“Tender specifications scheme approved by Ministerial Decree of 20 November 2018 to be used for the supply of goods and services for the management and operation of the first reception centres, as per Decree Law no. 451 of 30 October 1995, implemented by Law no. 563 of 29 December 1995 for the reception centers referred to in Articles 9 and 11 of Legislative Decree 142/2015 of 18 August 2015, and for the centres referred to in Article 10-ter and 14 of Legislative Decree 286/1998 of 25 July 1998, and subsequent modifications”</p>	<p>“Schema di capitolato di gara di appalto, approvato con Decreto Ministeriale di 20 novembre 2018, riguardante la fornitura di beni e servizi per la gestione e il funzionamento dei centri di prima accoglienza, di cui al decreto legge 30 ottobre 1995, n.451, convertito dalla legge 29 dicembre 1995 n. 563, dei centri di accoglienza di cui agli articoli 9 e 11 del d.lgs. 18 agosto 2015, n. 142 e dei centri di cui all’articolo 10 – ter e 14 del d.lgs. 25 luglio 1998, n. 286 e successive modificazioni, con relativi allegati”</p>	<p>Capitolato</p>	<p>http://bit.ly/2F8vXIC (IT)</p>

Overview of the main changes since the previous report update

The previous report update was published in **March 2018**.

Asylum procedure

- ❖ **Legislative reform:** Decree Law 113/2018, implemented by L 132/2018, has introduced several significant changes to the asylum procedure. Among other elements, it has codified the concept of internal protection alternative for the first time in Italian law. In addition, the humanitarian protection status, frequently granted before the 2018 law reform, has been abolished. The Territorial Commissions may only refer the applicant to the Ministry of Interior for certain national statuses.
- ❖ **Registration:** Obstacles to access to the asylum procedure continued to be reported in 2018. Different Questure prevented people from registering an application for reasons such as: limited opening days or hours; unlawful requirement of a domicile; proof of family links with children through documents or DNA tests. Several Civil Court rulings in 2018 have found such obstacles unlawful and have ordered Questure to allow the registration of applications.
- ❖ **Dublin:** The 2018 reform has foreseen the creation of up to three new local branches of the Dublin Unit, to be established by Ministry of Interior decree. A Circular of the Ministry of Interior issued on 27 December 2018 launched the experimental start-up of a local branch of the Dublin Unit in Gorizia, Friuli-Venezia Giulia, which has not yet issued transfer decisions.

With regard to incoming procedures, the Dublin Unit issued a Circular to other Member States' Dublin Units on 8 January 2019, informing them that families with minor children are no longer subject to specific reception arrangements, and are to be accommodated similar to all other asylum seekers.

- ❖ **Border procedure:** The 2018 reform has established a border procedure applicable at border areas and in transit zones, which applies to persons apprehended after evading or attempting to evade border controls and to persons coming from a safe country of origin. Several elements of the procedure appear to be incompatible with the recast Asylum Procedures Directive.
- ❖ **Immediate procedure:** The 2018 reform has also introduced an "immediate procedure" for persons under criminal investigation where grounds for detention apply, or for persons subject to a non-definitive conviction for crimes involving acts which may trigger exclusion from international protection. During appeals in the immediate procedure, suspensive effect is not granted, nor can it be requested. Therefore the procedure appears to be incompatible with the recast Asylum Procedures Directive.
- ❖ **Safe countries of origin:** The 2018 reform has introduced the concept of "safe country of origin" in the law, as a ground for applying prioritised examination, the accelerated procedure and the border procedure. No list of safe countries of origin has been adopted yet.
- ❖ **Subsequent applications:** The 2018 reform has removed the possibility to obtain suspensive effect in appeals against the rejection of subsequent applications. It has also introduced the possibility of automatically declaring inadmissible a subsequent application made "during the execution phase of a removal procedure". This has led to subsequent applications being automatically dismissed by Territorial Commissions but also directly by Questure.
- ❖ **Notification of acts:** The procedure for notification of Territorial Commission interview appointments and decisions, introduced by L 46/2017 but suspended by a CNDA Circular, is implemented in practice as of 25 October 2018. The procedure enables notification to be carried

out by managers of reception and detention centres, and alternatively by the transmission of the act to the Questura. This has created problems, with persons moved between reception centres only finding out about their interview appointment after the date of the interview.

- ❖ **Appeal:** In two judgments in 2018, the Court of Cassation clarified that, where the personal interview with the Territorial Commission is not videotaped due to technical issues, the Civil Court is required to hold a hearing with the asylum seeker. Video recording of interviews has not been implemented in practice.

There have also been developments in relation to the territorial jurisdiction of Civil Courts in Dublin cases. During 2018, the Civil Court of Rome started declaring lack of jurisdiction to decide on appeals lodged by persons accommodated in reception centres throughout the country. According to the Court, territorial jurisdiction should be exclusively determined on the basis of the place of the centres are located, and therefore fall within the specialised sections of the territorially competent Civil Courts.

Reception conditions

- ❖ **Types of accommodation:** Decree Law 113/2018, implemented by L 132/2018, deeply reformed the reception system, drastically separating the reception paths of asylum seekers from those of protection holders and preventing asylum seekers from accessing second-line reception in the former SPRAR system, now renamed SIPROIMI. Asylum seekers, including Dublin returnees, can be now accommodated only in first reception centres and in CAS.
- ❖ **Forms and levels of material reception conditions:** The services provided in these centres, already “essential” or “basic” according to previous legislation, are now almost eliminated by the tender specifications scheme adopted by the Ministry of Interior under the latest tender specifications scheme (*Capitolato*) on 21 November 2018. The 2018 *Capitolato* also considerably lowers the fee paid to managing bodies, *de facto* forcing the closure of small structures and encouraging the reception of asylum seekers in large facilities.
- ❖ **Withdrawal of reception conditions:** In 2018, different Prefectures continued to withdraw reception conditions on the basis of violations of house rules without adequate justification or proportionality, including in several cases against asylum seekers who participated in protests against the conditions in reception centres. Several appeals before the Administrative Courts have been successful. On 26 September 2018, the Administrative Court of Tuscany asked the CJEU to ascertain whether violations of general rules of the domestic legal system, not specifically laid down in the house rules of the reception centres, can constitute serious violations of the house rules for the purpose of withdrawing reception conditions.
- ❖ **Civil registration:** The 2018 reform also removed the possibility for asylum seekers to register at the registry office.

Detention of asylum seekers

- ❖ **Grounds for detention:** Decree Law 113/2018, implemented by L 132/2018, introduced a new detention ground for persons held in hotspots and first reception centres for the purposes of establishing or verifying identity or nationality, which is potentially applicable to most, if not all, asylum seekers.

Content of international protection

- ❖ **Naturalisation:** The 2018 reform has also introduced an additional requirement for obtaining nationality. Naturalisation is conditional upon proof of good knowledge of the Italian language of

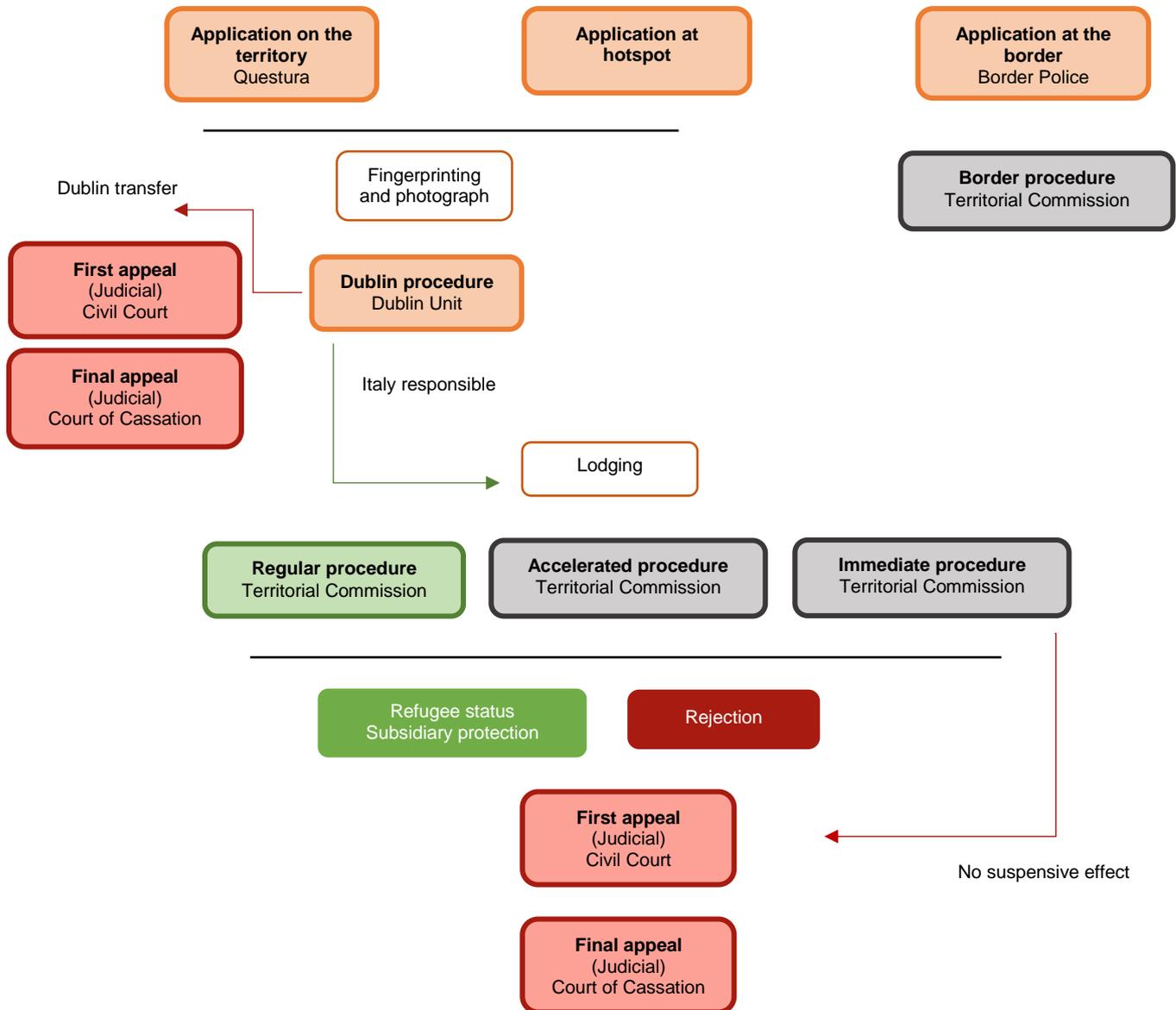
at least B1 level, attested through specific certifications or through the qualification in an educational institution recognised by the Ministry of Education. The amended Citizenship Act has also extended the non-binding deadline for completing the naturalisation procedure to 48 months.

- ❖ **Withdrawal:** The list of offences resulting in exclusion or revocation of international protection has been extended.

Asylum Procedure

A. General

1. Flow chart



2. Types of procedures

Indicators: Types of Procedures

Which types of procedures exist in your country?

❖ Regular procedure:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
▪ Prioritised examination: ²	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
▪ Fast-track processing: ³	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
❖ Dublin procedure:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
❖ Admissibility procedure:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
❖ Border procedure:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
❖ Accelerated procedure: ⁴	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
❖ Other:		

3. List of authorities intervening in each stage of the procedure

Stage of the procedure	Competent authority (EN)	Competent authority (IT)
Application		
❖ At the border	Border Police	Polizia di Frontiera
❖ On the territory	Immigration Office, Police	Questura
Dublin	Dublin Unit, Ministry of Interior	Unità Dublino, Ministero dell'Interno
Refugee status determination	Territorial Commissions for the Recognition of International Protection	Commissioni Territoriali per il Riconoscimento della Protezione Internazionale
Appeal	Civil Court	Tribunale Civile
Onward appeal	Court of Cassation	Corte di Cassazione
Subsequent application	Territorial Commissions for the Recognition of International Protection	Commissioni Territoriali per il Riconoscimento della Protezione Internazionale

4. Number of staff and nature of the first instance authority

Name in English	Number of Commissions	Ministry responsible	Is there any political interference possible by the responsible Minister with the decision making in individual cases by the first instance authority?
Territorial Commissions for International Protection	48	Ministry of Interior	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

The authorities competent to examine asylum applications and to take first instance decisions are the Territorial Commissions for the Recognition of International Protection (*Commissioni Territoriali per il Riconoscimento della Protezione Internazionale*), which are administrative bodies specialised in the field of asylum, under the Ministry of Interior. The Territorial Commissions are established under the responsibility of Prefectures.⁵ The functioning and composition of the Territorial Commissions was last reformed by LD 220/2017, entering into force on 31 January 2018.

² For applications likely to be well-founded or made by vulnerable applicants. See Article 31(7) recast Asylum Procedures Directive.

³ Accelerating the processing of specific caseloads as part of the regular procedure.

⁴ Labelled as "accelerated procedure" in national law. See Article 31(8) recast Asylum Procedures Directive.

⁵ Article 4(1) Procedure Decree, as amended by LD 220/2017.

4.1. Composition of Territorial Commissions

The law foresees the creation of 20 Territorial Commissions⁶ and up to 30 sub-Commissions across the national territory, in order to boost and improve the management of the increasing number of applications for international protection.⁷ As of December 2018, there were 20 Territorial Commissions and 28 sub-Commissions across Italy.⁸

The breakdown of asylum applications by Territorial Commission in 2018 was as follows:

Applications by Territorial Commission: 1 January – 28 December 2018			
Territorial Commission	Number	Territorial Commission	Number
Ancona	2,307	Palermo	1,967
Bari	1,493	Rome	6,754
Bologna	2,137	Rome-Latina	972
Bologna-Forli	1,067	Salerno	1,107
Brescia	812	Salerno-Campobasso	256
Brescia-Bergamo	353	Salerno-Napoli	1,983
Cagliari	1,351	Siracusa	1,919
Caserta	1,503	Turin	2,069
Catania	1,251	Turin-Genova	1,661
Crotone	2,655	Turin-Novara	736
Crotone-Reggio Calabria	502	Trapani	1,671
Florence	1,655	Trapani-Agrigento	762
Florence-Livorno	418	Trieste	1,648
Florence-Perugia	674	Trieste-Udine	914
Foggia	1,296	Verona	1,565
Lecce	952	Verona-Padova	941
Milan	4,378	Verona-Treviso	758
Milan-Monza	831	Verona-Vicenza	227
Total			53,500

Source: CNDA.

As amended by LD 220/2017, each Territorial Commission is composed by at least 6 members, in compliance with gender balance. These include:⁹

- 1 President, with prefectural experience, appointed by the Ministry of Interior;
- 1 expert in international protection and human rights, designated by UNHCR;
- 4 or more highly qualified administrative officials of the Ministry of Interior, appointed by public tender.¹⁰

The Territorial Commissions may be supplemented, upon request of the President of the National Commission for the Right to Asylum (CNDA), by an official of the Ministry of Foreign Affairs when, in relation to particular asylum seekers, it is necessary to acquire specific assessments of competence regarding the situation in the country of origin.¹¹

⁶ Article 4(2) Procedure Decree.

⁷ Article 4(2-bis) Procedure Decree.

⁸ Ministry of Interior, *Quaderno statistico per gli anni 1990-2018*, available in Italian at: <http://bit.ly/2u3FIR5>.

⁹ Article 4(3) Procedure Decree, as amended by LD 220/2017.

¹⁰ Article 4(1-bis) Procedure Decree, inserted by LD 220/2017, citing Article 13 Decree Law 13/2017, following which 250 persons were appointed by public tender.

¹¹ Article 4(3) Procedure Decree, as amended by LD 220/2017.

Before the appointment of the members of the Territorial Commissions, the absence of conflict of interests must be evaluated.¹² For the President and the UNHCR representative, one or more substitutes are appointed. The assignment is valid for 3 years, renewable.¹³

Following the 2017 reform, interviews are conducted by officials of the Ministry of Interior and no longer UNHCR. The decision-making sessions of the Commission consist of panel discussions composed by the President, the UNHCR-appointed expert and two of the administrative officers, including the one conducting the interview.¹⁴ Under the Procedure Decree, the decision on the merits of the asylum claim must be taken by at least a simple majority of the Territorial Commission, which must be at least 3 members; in the case of a tie, the President's vote prevails.¹⁵

The CNDA has adopted a Code of Conduct for the members of the Territorial Commissions, the interpreters and the personnel supporting them.¹⁶ The CNDA not only coordinates and gives guidance to the Territorial Commissions in carrying out their tasks, but is also responsible for the revocation and cessation of international protection.¹⁷

These bodies belong to the Department of Civil Liberties and Immigration of the Ministry of Interior. They are independent in taking individual decisions on asylum applications and do not follow instructions from the Ministry of Interior.

In 2018, the European Asylum Support Office (EASO) deployed 110 caseworkers for the Territorial Commissions, 7 country of origin information (COI) experts and other 7 experts supporting the CNDA and the Territorial Commissions.¹⁸ In total, EASO deployed 373 different experts in Italy in the course of 2018.

4.2. Training and quality assurance

The law requires the CNDA to ensure training and refresher courses to its members and Territorial Commissions' staff. Training is supposed to ensure that those who will consider and decide on asylum claims will take into account an asylum seeker's personal and general circumstances, including the applicant's cultural origin or vulnerability. Since 2014, the CNDA has organised training courses on the EASO modules, in particular on "Inclusion", "Country of Origin Information" and "Interview Techniques". These training courses provide both an online study session and a two-day advanced analysis conducted at central level in Rome. In addition to these permanent trainings, courses on specific topics are also organised at the local level. EASO continues to support the CNDA and Questure with design of trainings.¹⁹

By law, the National Commission should also provide training to interpreters to ensure appropriate communication between the applicant and the official who conducts the substantive interview.²⁰ However, in practice interpreters do not receive any specialised training. Some training courses on asylum issues are organised on *ad hoc* basis, but not regularly.

Since 2015, the CNDA, in collaboration with UNHCR, runs a quality monitoring project to assess the quality of decisions of the Territorial Commissions through case sampling and on-site visits to specific

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ Article 4(4) Procedure Decree.

¹⁶ Article 5(1-ter) Procedure Decree.

¹⁷ Articles 13 and 14 PD 21/2015.

¹⁸ Information provided by EASO, 13 February 2019.

¹⁹ EASO, *Operating Plan to Italy 2019*, December 2018, available at: <https://bit.ly/2GmqdW3>.

²⁰ Article 15 Procedure Decree.

Commissions. The project has also developed a Code of Conduct for Presidents of Territorial Commissions, for interpreters and for other service providers in the procedure.²¹

5. Short overview of the asylum procedure

Application

According to Italian law, there is no formal timeframe for making an asylum application. The intention to make an asylum application may be expressed also orally by the applicant in his or her language with the assistance of a linguistic-cultural mediator.²² However, asylum seekers should make their application as soon as possible. Immigration legislation prescribes, as a general rule, a deadline of 8 days from arrival in Italy for migrants to present themselves to the authorities.²³

The asylum application can be made either at the border police office or within the territory at the provincial Immigration Office of the Police (*Questura*), where fingerprinting and photographing (*fotosegnalamento*) are carried out. In case the asylum application is made at the border, the Border Police invites asylum seekers to present themselves at the Questura for formal registration. Police authorities cannot examine the merits of the asylum application. However, following the 2018 reform there are possibilities for the Questura to automatically declare a **Subsequent Application** inadmissible in certain cases.

The Questura asks the asylum seeker questions related to the Dublin Regulation during the registration stage and then contact the Dublin Unit of the Ministry of the Interior which then verifies whether Italy is the Member State responsible for the examination of the asylum application. Specifically in the region of Friuli-Venezia Giulia, the Questura does not proceed to the lodging of the application if the Dublin Regulation is applicable.

After the lodging (*verbalizzazione*) of the application, the Questura sends the formal registration form and the documents concerning the asylum application to the Territorial Commissions or sub-Commissions for International Protection located throughout the national territory, the only authorities competent for the substantive asylum interview.²⁴ The asylum seeker is then notified by the Questura of the date of the interview with the Territorial Commission.

Regular procedure

According to the Procedure Decree,²⁵ a member of the Territorial Commission interviews the applicant within 30 days after having received the application and the Commission decides in the 3 following working days. The decision is taken following a panel discussion between all members of the Commission. When the Territorial Commission is unable to take a decision in this time limit and needs to acquire new elements, the examination procedure is concluded within six months of the lodging of the application.

However, the Territorial Commission may extend the time limit for a period not exceeding a further nine months, where: (a) complex issues of fact and/or law are involved; (b) a large number of asylum applications are made simultaneously; (c) the delay can clearly be attributed to the failure of the applicant to comply with his or her obligations of cooperation. By way of exception, the Territorial

²¹ CNDA, *Codice di condotta per i presidenti e i componenti delle Commissioni Territoriali per il riconoscimento della Protezione Internazionale e della Commissione Nazionale per il Diritto d'Asilo, nonché per gli interpreti, per il personale di supporto e per tutti gli altri soggetti che prestano le proprie attività, anche a titolo gratuito o occasionale, presso le medesime Commissioni*, 15 November 2016, available in Italian at: <https://bit.ly/2KyluDD>.

²² Article 3(1) PD 21/2015.

²³ Article 3(2) PD 21/2015.

²⁴ Article 4 Procedure Decree, as amended by LD 220/2017.

²⁵ Article 27 Procedure Decree.

Commission, in duly justified circumstances, may further exceed this time limit by three months where necessary in order to ensure an adequate and complete examination of the application for international protection.²⁶ In the light of the different possibilities of extension, the asylum procedure may last for a maximum period of 18 months.

According to ASGI's experience, due to the large number of simultaneous applications, the 30-day time limit is rarely respected in practice, and the asylum seeker is never informed about the authorities' exceeding of the deadline.

Prioritised and accelerated procedures

The Procedure Decree provides for an accelerated procedure and a prioritised procedure. The President of the Territorial Commission identifies the cases under the prioritised procedure.²⁷

Border procedure

With the 2018 reform, the Procedure Decree includes border procedure applied in case the applicant makes an asylum application directly at the border or in transit areas after having been apprehended for evaded or attempting to evade controls. The border procedure will also apply to asylum seekers who come from a designated [Safe Country of Origin](#). In this case the entire procedure can be carried out directly at the border or in the transit area.²⁸

Appeal

Asylum seekers can appeal a negative decision issued by the Territorial Commission within 30 days before the competent Civil Court. Following Decree Law 13/2017, there are specialised court sections competent for examining asylum appeals.

Applicants placed in detention facilities and applicants whose application is examined under the accelerated procedure on the basis of Article 28-bis(2) of the Procedure Decree have only 15 days to lodge an appeal.²⁹

Decree Law 13/2017 has also removed the possibility of onward appeal before the Court of Appeal if the first appeal has been dismissed, within 30 days of the notification of the decision. A decision of the Civil Court can only be challenged by a final appeal before the Court of Cassation within 30 days.

²⁶ Article 27 Procedure Decree.

²⁷ Article 28(1)(c) and (1-bis) Procedure Decree.

²⁸ Article 28-bis(1-ter) Procedure Decree, as amended by Article 9(1) Decree Law 113/2018.

²⁹ Article 19(3) LD 150/2011.

B. Access to the procedure and registration

1. Access to the territory and push backs

Indicators: Access to the Territory

1. Are there any reports (NGO reports, media, testimonies, etc.) of people refused entry at the border and returned without examination of their protection needs? Yes No

In 2018, Italy refused entry to 6,942 persons at air borders and 1,242 at sea borders.³⁰

1.1. Arrivals by sea

The total number of persons disembarked in Italy dropped from 119,369 in 2017 to 23,370 in 2018. Out of the total number of persons arriving by sea, 12,977 persons departed from Libya, which is a 88%% decrease compared to 2017 and a 93% decrease compared to 2016.

The ports most affected by disembarkation were as follows:

Sea arrivals by port: 2018		
Port	Region	Sea arrivals in 2018
Pozzallo	Sicily	3,818
Lampedusa	Sicily	3,468
Catania	Sicily	2,961
Augusta	Sicily	2,478
Messina	Sicily	2,394
Trapani	Sicily	1,726
Crotone	Calabria	1,032
Reggio Calabria	Calabria	379
Cagliari	Sardinia	176
Brindisi	Apulia	174

Source: Ministry of Interior, 31 December 2018.

Among the main nationalities of the people disembarked in 2018 were Tunisia (5,181) and Sudan (1,619), although these do not appear among the main countries of origin of asylum seekers in 2018. As regards Tunisia and Algeria specifically, it is probable that the data reflect the obstacles persons from these countries face with regard to accessing the asylum procedure (see [Registration](#)). For some nationalities, the number of persons disembarked is considerably higher than the number of asylum applicants. This is, for example the case for nationals of Eritrea (3,320 persons disembarked and only 818 asylum applicants), Iraq (1,744 disembarked and 838 asylum applicants). As regards Pakistan on the other hand, the number of persons disembarked (1,589) was significantly lower than the number of those who applied for asylum (7,368). This is probably because many arrived via land from other European countries.

The “closure of ports”

On many occasions since June 2018, the Italian Government has seriously delayed the disembarkation of potential asylum seekers rescued at sea as part of operations coordinated by the Italian (Maritime Rescue Coordination Centre (MRCC) or by ships deployed as part of EU NAFVOR MED Operation

³⁰ Guarantor for the rights of detained persons, *Relazione al Parlamento 2019*, 26 March 2019, available in Italian at: <https://bit.ly/2GijVoY>, 140.

Sophia or by naval units of the Italian State, without indicating a port of disembarkation or prohibiting the disembarkation of people following the berth in port. The “closure of ports” policy has delayed the access of rescued persons to the asylum procedure, as illustrated by the following cases:

- ❖ **Aquarius:** In early June 2018, the *Aquarius* ship remained for three days on the high seas with 630 migrants on board, including 123 unaccompanied minors and 7 pregnant women, awaiting authorisation to disembark in Italy. On 11 June the Spanish government announced that the port of Valencia was available, and the ship disembarked there on 17 June.³¹
- ❖ **Sarost5:** On 18 July 2018, Info Migrants reported that the *Sarost5* ship was roving in the Mediterranean for days with 40 people on board while Tunisia, Malta and Italy refused to allow it to disembark.³² Eventually, the migrants could be disembarked in Tunisia after 16 days at sea.³³
- ❖ **Diciotti:** On the evening between 19 and 20 August 2018, the *Diciotti*, an Italian Navy vessel, arrived in Catania with 177 migrants on board but the Ministry of Interior denied authorisation to disembark. On 22 August, 27 unaccompanied minors, including one girl, were disembarked and assisted by the Red Cross, UNHCR and Save the Children.³⁴ The authorisation was given by the Minister of Interior after an inspection carried out on board by the Public Prosecutor of Agrigento and numerous requests from various stakeholders, including the Juvenile Office of the Court of Catania, which had sent an official request.³⁵ The remaining 150 adult migrants had to wait for an additional 4 days before being allowed to disembark on 26 August. They were not immediately allowed to access the asylum procedure.

The Ministry of Interior announced that they would be distributed among The Vatican, Ireland and Albania. On 27 August, almost 100 migrants were moved to Rocca di Papa reception centre. From there, they were sent to other cities e.g. two to Turin and eight to Milan. The other 39 remained at Messina, **Sicily** hotspot, allegedly waiting to be transferred to Ireland and Albania.³⁶ On 29 August, some of the migrants in the Messina hotspot were eventually allowed to leave. Among those, many absconded. As of 3 September 2018, some Eritreans were still remaining in the hotspot and it appears they had expressed their intention not to seek asylum. Eventually, nobody was transferred to Albania.

- ❖ **Sea Watch:** In January 2019, 47 people, including children, rescued at sea by the NGO ship *Sea Watch* had to remain on the boat outside Syracuse, **Sicily** for 11 days because no country responded positively to its request for disembarkation. On 24 January, 20 organisations including ASGI launched an appeal to the Italian Government and to European countries to immediately allow the people, first of all the vulnerable persons, to be disembarked.³⁷ An appeal was also made by 270 doctors of Friuli-Venezia Giulia.³⁸

³¹ Repubblica, ‘Migranti, l’arrivo della Aquarius a Valencia. La Spagna: “Nessun regalo, restano ferme le regole d’asilo”’, 17 June 2018, available in Italian at: <http://bit.ly/2XTDb4d>.

³² Repubblica, ‘Migranti, un’altra nave vaga nel Mediterraneo: a bordo 40 profughi, anche due donne incinte’, 18 July 2018, available in Italian at: <http://bit.ly/2TMpk0u>.

³³ Il Ussidiario, ‘Sarost 5, ok Tunisia allo sbarco dei migrant – Ultime notizie, Croce Rossa: piano di accoglienza per la nave’, 29 July 2018, available in Italian at: <http://bit.ly/2F8WX4j>.

³⁴ Corriere Della Sera, ‘Lo sbarco dei minori dalla Diciotti, l’operatrice: «Abbiamo accolto degli scheletrini»’, 23 August 2018, available in Italian at: <http://bit.ly/2UzEpzx>.

³⁵ Rai, ‘Nave Diciotti, Unhcr e Oim: consentire sbarco di rifugiati e migranti. Salvini: “Tutti illegali”’, 24 August 2018, available in Italian at: <https://bit.ly/2UKtTZs>.

³⁶ Lettera 43, ‘I migranti della Diciotti a Rocca di Papa tra le proteste’, 27 August 2018, available in Italian at: <http://bit.ly/2HiSdeT>.

³⁷ ASGI, ‘Migranti: appello di 20 Organizzazioni per lo sbarco della nave Sea Watch, con 47 persone a bordo’, 24 January 2019, available in Italian at: <http://bit.ly/2O3alo3>.

³⁸ TGR, ‘270 medici del Fvg chiedono di far attraccare la Sea Watch’, 28 January 2019, available in Italian at: <http://bit.ly/2F8FsBi>.

Between 25 and 28 January 2019 two requests to the European Court of Human Rights (ECtHR) were made pursuant to Rule 39 of the Rules of the Court, the first submitted by the captain of the *Sea Watch* and the second by 15 unaccompanied minors present on board.³⁹ On 29 January 2019 the ECtHR decided not to order the disembarkation of people but to grant an interim measure requesting Italian Government “to take all necessary measures, as soon as possible, to provide all the applicants with adequate medical care, food, water and basic supplies as necessary.” Regarding the 15 unaccompanied minors on board, it specifically requested the Italian Government to provide legal guardianship.⁴⁰

On 31 January 2019, the *Sea Watch* was allowed to disembark in the port of Catania, **Sicily** and the 47 people who were on board were transferred to different hotspots to trigger the procedure of relocation agreed with several European countries (France, Portugal, Germany, Malta, Luxembourg, Romania).⁴¹ Immediately after disembarkation, the ship was stopped in Catania and in the following days it was subjected to various inspections both by the Italian Coast Guard and by the Dutch authorities for alleged technical irregularities.⁴² All unaccompanied children have been accommodated in a centre in Catania. However, guardians had already been appointed in Syracuse.

On the same day, the 32 adults were sent to the hotspot in Messina, **Sicily** and were *de facto* detained for 48 hours for the purpose of identification. On 1 February 2019 a delegation, including the attorney representing these persons before the ECtHR, was not admitted to the hotspot. The lawyer and legal officers of the “*In Limine*” project run by ASGI, CILD, ActionAid and Indiewatch could enter the hotspot and speak with the people only on 2 February 2019.⁴³ Later, people who were to be relocated to other countries were not allowed to leave the centre during the days of the selection interviews carried out by different states to assess eligibility for relocation. According to information received by ASGI, EASO personnel matched the persons with the respective states and thus arranged which state would interview each person.

Not all states carried out interviews. According to information received by ASGI, France and Germany have carried out very detailed interviews with questions related not only to their social and religious habits but also to the merit of their asylum applications. Romania did not carry out interviews. For about a month, no relocations were carried out. In the following days the transfer operations started. Apparently, transfers were formally carried out according to Article 17 of the Dublin Regulation and with the written consent of the participants. ASGI has seen one of the transfer decisions to Lithuania. About 7 people were relocated to France, 6 to Portugal, 1 to Luxembourg and 4 to Lithuania.

- ❖ **Mare Jonio:** On 18 March 2019, the Italian NGO ship *Mare Jonio* rescued 49 people, including 12 children, and requested a place of safety in Italy. The Ministry of Interior issued a directive to all Italian law enforcement agencies, inviting them to prevent the irregular entry of immigrants into the national territory in order to protect order and security. The directive classified rescue at sea carried out by NGOs as an activity carried out in an improper manner, in violation of international law, and prejudicial to the order and security of the State, as it is aimed at

³⁹ Mediterranea, ‘Abbiamo chiesto alla Corte Europea dei diritti umani se il governo italiano, impedendo lo sbarco, stia violando i diritti fondamentali delle persone soccorse da Sea-Watch’, 29 January 2019, available in Italian at: <http://bit.ly/2VVbgPF>.

⁴⁰ ECtHR, ‘ECHR grants an interim measure in case concerning Sea Watch 3 vessel’, ECHR 043 (2019), 29 January 2019, available at: <http://bit.ly/2EWS8ia>; ASGI, ‘Sea-Watch: la Corte europea per i Diritti umani ordina all’Italia di tutelare i diritti dei migranti’, 30 January 2019, available in Italian at: <http://bit.ly/2UyCdlv>.

⁴¹ Internazionale, ‘I porti sono aperti, la SeaWatch attracca a Catania’, 31 January 2019, available in Italian at: <http://bit.ly/2CkHjku>.

⁴² La Sicilia, ‘La Sea Watch per ora resta a Catania «L’Olanda sta effettuando controlli»’, 13 February 2019, available in Italian at: <https://bit.ly/2G7ViMR>.

⁴³ ASGI, ‘Oltre lo sbarco. Incontro con gli adulti soccorsi da Sea-Watch nell’Hotspot di Messina’, 4 February 2019, available in Italian at: <https://bit.ly/2Upgsic>.

facilitating entry to the territory of persons violating immigration legislation.⁴⁴ The following day, on 19 March, the ship arrived in Lampedusa and people were disembarked. The ship has since been seized.⁴⁵

Refoulement to Libya

Since August 2018, the government has repeatedly threatened to return people rescued at sea to Libya. According to media reports, as of 31 July 2018, over 100 migrants rescued at sea had been returned to Libya.⁴⁶

On 30 July 2018, the Italian ship *Asso28* took migrants rescued at sea back to Libya. According to the Ministry of Interior, the operation was coordinated by the Libyan Coast Guard. However, according to some political representatives present on board the Spanish NGO *Open Arms* ship carrying out search and rescue operations, the operation was directed by the MRCC of Rome.

1.2. Arrivals at the Slovenian land border

In 2018, there have been several cases of re-admissions to Slovenia from Trieste, **Friuli-Venezia Giulia** without any formal procedure or decision.⁴⁷ As reported to ASGI in June 2018, about 21 people coming from Slovenia were held for a night in the police station in Trieste and were sent back to Slovenia the following morning. Some of them managed to come back to Italy and explained they had been sent back to Croatia, and later on to Bosnia and Herzegovina. The Prefecture of Trieste announced the implementation of the procedure to the media.

Since September 2018, the prefectural authorities and the Ministry of Interior, both currently led by members of the Lega party, agreed to the presence of police and of forest rangers on the border with Slovenia to prevent access by migrants. According to media reports, 50 law enforcement officers are involved in this task.⁴⁸ On 8 January 2019, the Director of the Eastern Border Police announced that 1,494 persons were traced on the Eastern border and, out of those, 300 were readmitted to Slovenia in 2018.⁴⁹

It has also been reported that, since Austria restored border controls with Slovenia, the number of migrants reaching Italy by car has increased significantly, as they use the Italian border to evade controls with Austria and then to continue towards other European countries.⁵⁰

⁴⁴ Ministry of Interior, Direttiva n. 14100/141(8) per il coordinamento unificato dell'attività di sorveglianza delle frontiere marittime e per il contrasto all'immigrazione illegale ex articolo 11 del d.lgs. n. 286/1998 recante il Testo Unico in materia di Immigrazione, 18 March 2019, available in Italian at: <https://bit.ly/2HHIxKm>.

⁴⁵ La Repubblica, 'Migranti, la Mare Jonio entra nel porto di Lampedusa, la gdf la sequestra e convoca il comandante', 19 March 2019, available in Italian at: <https://bit.ly/2JBSThx>; Repubblica, 'La Mare Jonio torna in mare e soccorre 49 persone nel Mediterraneo', 18 March 2019, available in Italian at: <https://bit.ly/2ljymM9>.

⁴⁶ La Stampa, 'Oltre 100 migranti soccorsi e riportati in Libia, è il primo respingimento di una nave italiana', 31 July 2018, available in Italian at: <http://bit.ly/2HgITYP>.

⁴⁷ La Stampa, 'Il caso dei migranti riportati in Slovenia. La polizia: "Agiamo seguendo le regole"', 3 November 2018, available in Italian at: <https://bit.ly/2IbYiub>.

⁴⁸ Il Piccolo, 'Fedriga: «Sgomberi immediati a Trieste e forestali Fvg al confine con la Slovenia»', 24 August 2018, available in Italian at: <https://bit.ly/2UnLJT0>; Askanews, 'Trieste e migranti, definite modalità impiego forestali', 27 August 2018, available in Italian at: <https://bit.ly/2U6jwLk>; Il Gazzettino, 'Migranti, forestali alla frontiera sulla rotta Balcani: i sindacati si spaccano', 30 August 2018, available in Italian at: <https://bit.ly/2KdKqBc>.

⁴⁹ Trieste Prima, 'Polizia di Frontiera bilancio: Migranti: 1500 irregolari rintracciati in un anno', 8 January 2019, available in Italian at: <https://bit.ly/2IltY9g>.

⁵⁰ Children's Ombudsman, *I movimenti dei minori stranieri non accompagnati alle frontiere settentrionali*, 29 March 2019, available in Italian at: <https://bit.ly/2v2oNt6>, 38.

1.3. The situation at the French, Swiss and Austrian land borders

Many migrants attempting to cross the borders with France, Austria and Switzerland have been subject to rejection at the border, often accompanied by violence. According to a February 2018 report by Médecins Sans Frontières (MSF), more than twenty people had died in the last two years in the attempt to cross these borders.⁵¹ A detailed account of the situation at the borders in previous years is available in the previous update of the AIDA report.⁵²

In response to a freedom of information request by ASGI concerning readmissions from France, the Ministry of Interior stated on 18 February 2019 that 246 persons had been readmitted at the border of Ventimiglia, **Liguria** and 138 at the border of Bardonecchia, **Piedmont** in 2018. The Ministry also stated that the number of persons subject to a refusal of entry (“*refoulement*”) decision in 2018 was 20,079 at the border of Ventimiglia and 6,925 at the border of Bardonecchia.

Transfers from border regions to the southern regions such as **Apulia** and **Calabria** have continued to take place. Following an information request by ASGI on 23 August 2018, the Questura of Imperia, **Liguria** stated that there 1,059 persons had been transferred from the border of Ventimiglia to the Crotona, **Calabria** and Taranto, **Apulia** until August 2018. According to the Questura, transfers are carried out by the transport company Riviera and are arranged by simple emails containing the date and time of transfer. Until the end of August 2018, transfers took place five times a month on average.

In addition, throughout 2018, as reported by the Children’s Ombudsman (*Garante per l’Infanzia e l’Adolescenza*) voluntary return of unaccompanied children from France, Switzerland and Austria to Italy had gradually intensified.⁵³ Most of them are voluntarily returning to Italy, the EU country of first entry, as their attempts to migrate to the Northern European countries have been unsuccessful.

2. Hotspots

Part of the European Commission’s European Agenda on Migration, the “hotspot” approach, is generally described as providing “operational solutions for emergency situations”, through a single place to swiftly process asylum applications, enforce return decisions and prosecute smuggling organisations through a platform of cooperation among the European Asylum Support Office (EASO), Frontex, Europol and Eurojust. Even though there is no precise definition of the “hotspot” approach, it is clear that it has become a fundamental feature of the relocation procedures conducted from Italy and Greece until September 2017 in the framework of Council Decisions 2015/1523 and 2015/1601 of 14 and 22 September 2015 respectively. “Hotspots” managed by the competent authority have not required new reception facilities, operating instead from already existing ones.

By the end of 2018, four hotspots were operating in **Apulia** (Taranto) and **Sicily** (Lampedusa, Pozzallo, and Messina), down from five in 2017. The hotspots of Lampedusa and Pozzallo have been reopened following temporary closure in 2018; only partial closure in the case of Lampedusa.⁵⁴ As of the end of 2018, the hotspots hosted a total of 453 persons (see [Place of Detention](#)).

In 2018, 13,777 persons entered the hotspots, mainly originating from Tunisia (5,638), Eritrea (2,472) and Sudan (759).⁵⁵

⁵¹ MSF, *Fuori campo*, February 2018, available at: <http://bit.ly/2Gagwa2>, 2.

⁵² AIDA, Country Report Italy, 2017 Update, March 2018, available at: <https://bit.ly/2Ga01zb>, 22-24.

⁵³ Children’s Ombudsman, *I movimenti dei minori stranieri non accompagnati alle frontiere settentrionali*, 29 March 2019, 20.

⁵⁴ Il Fatto Quotidiano, ‘Anac: “Anomalie negli appalti dell’hotspot migranti. Troppe proroghe e affidamenti diretti in maniera impropria”’, 15 March 2018, available in Italian at: <http://bit.ly/2GbcamP>; ASGI et al., *Scenari di frontiera: il caso Lampedusa*, October 2018.

⁵⁵ Guarantor for the rights of detained persons, *Relazione al Parlamento 2019*, 26 March 2019, available in Italian at: <https://bit.ly/2GijVoY>, 132.

Frontex helps with the identification, registration and fingerprinting of recently arrived people, enforcement of return decisions and collection of information on smuggling routes,⁵⁶ while EASO helps with the registration of asylum claims and has assisted in *ad hoc* relocation procedures following disembarkation operations. UNHCR officers present in the “hotspot”, together with the International Organisation for Migration (IOM) and Save the Children officers should monitor the situation. IOM, UNHCR, and Save the Children have contracts with the Ministry of the Interior for entire areas of competence such as legal information, identification of vulnerable persons and child care. As highlighted in a recent report by ASGI and other organisations, due to contractual terms such as the express obligation of confidentiality, these actors do not make public any information on critical issues that may arise in the implementation of the hotspot approach.⁵⁷

The Consolidated Act on Immigration (TUI), as amended by L 46/2017, provides that foreigners apprehended for irregular crossing of the internal or external border or arrived in Italy after rescue at sea are directed to appropriate “crisis points” and at first reception centres. There, they will be identified, registered and informed about the asylum procedure, the relocation programme and voluntary return.⁵⁸ Decree Law 113/2018 has subsequently introduced the possibility of detention of persons whose nationality cannot be determined, for up to 30 days in suitable facilities set up in hotspots for identification reasons (see [Grounds for Detention](#)).⁵⁹ In practice, however, people continue to be *de facto* detained without a detention order in the hotspots for the purpose of identification in **Sicily** (Lampedusa, Messina).

The Standard Operating Procedures (SOPs) adopted in February 2016 and applying at hotspots also state that “where necessary, the use of force proportionate to overcoming objection, with full respect for the physical integrity and dignity of the person, is appropriate...”⁶⁰ The law also provides that the repeated refusal to undergo fingerprinting constitutes a risk of absconding and legitimises detention in CPR (see [Grounds for Detention](#)).⁶¹

The same law also introduced a [Border Procedure](#) automatically applicable in case a person makes the application for international protection directly at the border or in transit areas – both to be identified and indicated by decree of the Ministry of Interior – after being apprehended for evading or attempting to evade controls. The border procedure will also apply to asylum seekers who come from a designated safe country of origin. In this case the entire procedure can be carried out directly at the border or in the transit area.⁶² It is therefore possible that the hotspots will be included in the areas where border procedures will be applied.

Persons arriving at hotspots are classified as asylum seekers or economic migrants depending on a summary assessment, mainly carried out either by using questionnaires (*foglio notizie*) filled in by migrants at disembarkation,⁶³ or by orally asking questions relating to the reason why they have come to Italy. People are often classified just solely on the basis of their nationality. Migrants coming from countries informally considered as safe e.g. Tunisia are classified as economic migrants, prevented from accessing the asylum procedure (see [Registration](#)) and handed removal decisions.

⁵⁶ Frontex, ‘Frontex launching new operation in Central Med’, 31 January 2018, available at: <http://bit.ly/2nxJ4md>.

⁵⁷ ASGI et al., *Scenari di frontiera: il caso Lampedusa*, October 2018, available in Italian at: <https://bit.ly/2UoWKDu>. For an overview of critiques in previous years, see AIDA, Country Report Italy, 2017 Update, March 2018, 24-26.

⁵⁸ Article 10-ter TUI, inserted by Decree Law 13/2017.

⁵⁹ Article 6(3-bis) Reception Decree, as amended by Decree Law 113/2018.

⁶⁰ Ministry of Interior, *Standard Operating Procedures applicable to Italian hotspots*, February 2016, available at: <http://bit.ly/2kt9JBX>, para B.7.2.c.

⁶¹ Article 10-ter(3) TUI, inserted by Decree Law 13/2017.

⁶² Article 28-bis(1-ter) Procedure Decree, as amended by Decree Law 113/2018.

⁶³ See the *foglio notizie* at: <http://bit.ly/1LXpUKv>.

According to the SOPs, all hotspots should guarantee *inter alia* “provision of information in a comprehensible language on current legislation on immigration and asylum”, as well as provision of accurate information on the functioning of the asylum procedure. In practice, however, concerns with regard to access to information persisted in 2018. A significant number of people did not receive information on their legal status in the hotspots. Information prior to completing the *foglio notizie* was provided through group sessions which did not allow persons to understand the relevance and consequences of the procedure.⁶⁴

3. Registration of the asylum application

Indicators: Registration

1. Are specific time limits laid down in law for asylum seekers to lodge their application?
 Yes No
2. If so, what is the time limit for lodging an application?

The Procedure Decree provides that applications for international protection are made on the territory, including at the border and in transit zones, and in the territorial waters by non-EU citizens.⁶⁵ Moreover, the Decree also provides for training for police authorities appropriate to their tasks and responsibilities.⁶⁶

3.1. Making and registering the application (*fotosegnalamento*)

Under the Procedure Decree,⁶⁷ the asylum claim can be made either at the Border Police upon arrival or at the Immigration Office of the Police (*Questura*) if the applicant is already on the territory. The intention to seek international protection may be expressed orally or in writing by the person concerned in their own language with the help of a mediator.⁶⁸

PD 21/2015 provides that asylum seekers who express their wish to apply for international protection before Border Police authorities are to be requested to approach the competent *Questura* within 8 working days. Failure to comply with the 8-working-day time limit, without justification, results in deeming the persons as illegally staying on the territory.⁶⁹ However, there is no provision for a time limit to make an asylum application before the *Questura* when the applicant is already on the territory.

The procedure for the initial registration of the asylum application is the same at the border and at the *Questura*. The first step is an identification and registration process, which entails fingerprinting and photographing that can be carried out either at the border police or at the *Questura*. This procedure is called “*fotosegnalamento*”.

The Procedure Decree provides that the registration of the application out within 3 working days from the expression of the intention to seek protection or within 6 working days in case the applicant has expressed such willingness before Border Police authorities. That time limit is extended to 10 working days in presence of a significant number of asylum applications due to consistent and tight arrivals of asylum seekers.⁷⁰

In 2017 and 2018, EASO has supported the *Questura* in the *fotosegnalamento* process. According to EASO, in the course of 2018, the Agency deployed 373 different experts in Italy, among which 139 experts from 20 different Member States and 221 so-called Interim Experts, i.e. Italian-speaking staff recruited locally. The experts deployed performed a variety of tasks, but the vast majority were

⁶⁴ ASGI et al., *Scenari di frontiera: il caso Lampedusa*, October 2018, 14.

⁶⁵ Article 1 Procedure Decree, as amended by the Reception Decree.

⁶⁶ Article 10(1-bis) Procedure Decree, as amended by the Reception Decree.

⁶⁷ Article 6 Procedure Decree.

⁶⁸ Article 3(1) PD 21/2015.

⁶⁹ Article 3(2) PD 21/2015.

⁷⁰ Article 26(2-bis) Procedure Decree, as amended by the Reception Decree.

caseworkers with the Territorial Commissions (110) as well as registration officers (78), while 31 Dublin officers were also deployed.⁷¹

Upon completion of *fotosegnalamento*, the person receives an invitation (*invito*) to reappear before the Questura with a view to lodging the asylum application.

3.2. Lodging the application (*verbalizzazione*)

Fotosegnalamento is followed by a second step, consisting in the formal registration of the asylum application, which is carried out exclusively at the Questura within the national territory. EASO has also provided support in this process in 2017 and 2018.

The formal registration of the application (*verbalizzazione*) is conducted through the “C3” form (*Modello C3*).⁷² The form is completed with the basic information regarding the applicant’s personal history, the journey he or she has undertaken to reach Italy and the reasons for fleeing from the country of origin. This form is signed by the asylum seeker and then sent to the Territorial Commission, before the interview. Asylum seekers shall receive a copy of the C3 and copies of all other documents submitted to the police authorities.

With the completion of the C3, the formal stage of applying for international protection is concluded. The “*fotosegnalamento*” and the lodging of the international protection application do not always take place at the same time, especially in big cities, due to the high number of asylum application and to the shortage of police staff. In practice, the formal registration might take place weeks after the date the asylum seeker made the asylum application. This delay created and still creates difficulties for asylum seekers who, in the meantime, might not have access to the reception system and the national health system; with the exception of emergency health care.

The Reception Decree provides for the issuance of a “residence permit for foreigners” (*permesso di soggiorno per stranieri*) valid for 6 months, renewable.⁷³

3.3. Access to the procedure in practice

Reports of denial of access to the asylum procedure recorded by ASGI continued in 2018. Where they prevent access to the procedure, Questura do not issue any document attesting the intention of the persons concerned to seek asylum. This exposes them to risks of arbitrary arrest and deportation. Obstacles to registration can take different forms, including the following:

Limited opening hours and online appointments

Campania: The Questura of Naples has introduced an online procedure since January 2018 for registration appointments. Once an appointment is made through the system, the applicant obtains a printable receipt with the appointment date when the *fotosegnalamento* and lodging of the application will take place. However, the online appointment system of the Questura is only available once a week on Thursday mornings and allows around 40-45 people to apply. This means that access to the procedure through that system is closed within a few minutes. Zero requests were received between July and August 2018. Internet access is not ensured at the Questura, meaning that asylum seekers who are not familiar with the system can only access it with the assistance of volunteers.⁷⁴ In light of the concrete obstacles to accessing the procedure posed by this system, an ASGI lawyer filed an urgent

⁷¹ Information provided by EASO, 13 February 2019.

⁷² Verbale delle dichiarazioni degli stranieri che chiedono in Italia il riconoscimento dello status di rifugiato ai sensi della Convenzione di Ginevra, available in Italian at: <https://bit.ly/2UWOLx2>.

⁷³ Article 4(1) Reception Decree.

⁷⁴ AIDA, *Access to protection in Europe: The registration of asylum applications*, October 2018, available at: <https://bit.ly/2PySydX>, 17.

appeal to the Civil Court of Naples in February 2019 concerning a citizen of El Salvador who had been trying to seek asylum since July 2018.

Lazio: In Rome, ASGI continued to document problematic access to the procedure in 2018. It occurred that people had to sleep rough in front of the Questura hoping to have access to the offices the following day.

Apulia: In Bari and Foggia, Questura allow people to seek asylum only twice a week. In early 2018, ASGI recorded specific obstacles to access vis-à-vis Iraqi nationals in Bari, who were only allowed to seek asylum if they presented a passport to certify their identity. Throughout the year people assisted by a lawyer could seek asylum only on Fridays in Bari. If not assisted they could face serious obstacles.

Sardinia: The Questura of Sassari organises videoconferences with persons seeking to apply for asylum, without allowing lawyers or cultural mediators to be present. The Questura reportedly selects those who will be given the opportunity to register their application among the group.⁷⁵

Many cases have also been reported to ASGI where asylum seekers were not allowed to enter the building of the Questura and were obliged to wait several hours outside, over a barrier, being exposed to psychological ill-treatment, such as verbal abuse and shouting. On several occasions, courts have found the refusal of Questura to take action for the lodging of asylum applications unlawful.⁷⁶

Residence and requirement of domicile

Article 5(1) of the Reception Decree clarifies that the obligation to inform the police of the domicile or residence is fulfilled by the applicant by means of a declaration, to be made at the moment of the application for international protection and that the address of the reception centres and pre-removal detention centres (CPR) are to be considered the place of residence of asylum applicants who effectively live in these centres.⁷⁷ Article 4(4) of the Reception Decree also states that access to reception conditions and the issuance of the residence permit are not subject to additional requirements to those expressly stated by the Decree itself.⁷⁸

With these two provisions,⁷⁹ the Decree has made it clear that the unavailability of a domicile shall not be a barrier to access to international protection. Nevertheless, still in 2018 Questura denied access to the procedure for lack of proof of domicile e.g. lease contract, declaration of hospitality with an identity document of the host person. This was the case for instance in **Lazio** (Rome), **Campania** (Naples), **Friuli-Venezia Giulia** (Pordenone), **Sicily** (Palermo, Syracuse), **Sardinia** (Cagliari), **Piedmont** (Novara) and **Lombardy** (Milan). In Syracuse and Novara, the Questura required the physical presence of the owner of the apartment where the asylum seeker was accommodated.

The Questura of Pordenone, **Friuli-Venezia Giulia** also denied access to the procedure from December 2017 to February 2018 to asylum seekers who could not prove a domicile in the region. Following ASGI intervention, the Questura allowed four people to seek asylum on 21 February 2018. However, after a few months it again denied access to persons who could not prove a domicile and only accepted asylum applications from persons sent by the Government (transferred from the ports of disembarkation

⁷⁵ AIDA, *Access to protection in Europe: The registration of asylum applications*, October 2018, available at: <https://bit.ly/2PySydX>, 17.

⁷⁶ See e.g. Civil Court of Rome, Order 50192/2018, 18 September 2018, available at: <https://bit.ly/2ZeuMZE>; Civil Court of Palermo, Order 9994/2018, 13 September 2018, available at: <https://bit.ly/2UxDNOS>. For a discussion, see ASGI, 'Ancora ostacoli, rimossi con provvedimento ex art. 700 cpc all'esercizio del diritto di asilo', 14 November 2018, available in Italian at: <https://bit.ly/2GdE6Vf>.

⁷⁷ Article 5(1) Reception Decree. According to Article 5(2), the address is also valid for the notification of any kind of communication of any act concerning the asylum procedure (see also [Regular Procedure: General](#)).

⁷⁸ Article 4(4) Reception Decree.

⁷⁹ Articles 4(4) and 5(1) Reception Decree.

or, according to agreements between prefectures, transferred from places where the numbers were too high).

Several court rulings have found the obstacles posed by Questure unlawful.⁸⁰ For example, an asylum seeker from Pakistan whose brother was already accommodated in Pordenone, **Friuli-Venezia Giulia** was not registered as an asylum seeker because the Questura claimed he should have registered his with the Border Police upon arrival. According to the Questura, he could seek asylum in Pordenone only if Pordenone was his place of residence, to be demonstrated with official statements. The Civil Court of Trieste recognised on 22 June 2018 his right to lodge an asylum application in the place where he was staying and his right to be accommodated there.⁸¹ The appeal by the Government against this ruling was dismissed on 3 October 2018.⁸²

A similar appeal was filed against the Questura of Milan, **Lombardy**. On 25 July 2018, the Civil Court of Milan accepted the appeal lodged by a Salvadoran citizen who had been denied access to the procedure since May 2018 on the basis that he had no declaration of hospitality.⁸³

Also in Rome, **Lazio** people have had to present an urgent appeal before the Civil Court to obtain access to the asylum procedure. On 21 November 2018, the Civil Court of Rome ordered the Questura of Rome to register within 6 days an asylum application. The Court found that the refusal of registration by the Questura for reasons of insufficient proof of address – the applicant was in fact accommodated at the Baobab camp – was unlawful.⁸⁴

In December 2018, the Civil Court of Rome also ordered the Questura of Rome to allow a foreign citizen to lodge a subsequent application for asylum, disregarding the lack of residence as irrelevant to access to the procedure.⁸⁵ In February 2019, it also accepted the appeal filed by an Egyptian citizen who had been living on the streets of Rome for months because he was unable to apply for asylum. The Court also relied on the testimony of a person accompanying the applicant who stated that the Questura had not allowed him to apply because he did not show signs of such vulnerability so as to take precedence over others.⁸⁶

Proof of family ties

During 2018, several Questure such as Rome, **Lazio** and Bologna, **Emilia Romagna** have requested persons with minor children seeking to apply for asylum to demonstrate their family links through suitable documents or through a DNA test at their own expenses. As was often the case, where they were not in possession of such documents or they could not afford a DNA test, which is relatively expensive, they were not allowed to apply for asylum. In its aforementioned decision of 21 November 2018, the Civil Court of Rome also found that the requirement on the applicant to undergo a DNA test to prove links with the child was unlawful.⁸⁷

Although the Italian law states that up to the appointment of the guardian the request for international protection by unaccompanied minors are made by the manager of the reception facility, in some police stations unaccompanied minors were not allowed to submit the application for asylum until the guardian has been appointed, which often happens with months of delay.

⁸⁰ For a discussion, see ASGI, 'Ancora ostacoli, rimossi con provvedimento ex art. 700 cpc all'esercizio del diritto di asilo', 14 November 2018, available in Italian at: <https://bit.ly/2GdE6Vf>.

⁸¹ Civil Court of Trieste, Order 1929/2018, 22 June 2018, EDAL, available at: <https://bit.ly/2Gcl4gz>.

⁸² Civil Court of Trieste, Order 1929/2018, 3 October 2018, available at: <https://bit.ly/2P8V6Qs>.

⁸³ Civil Court of Milan, Order 32311/2017, 25 July 2018, available at: <https://bit.ly/2UtPJbc>.

⁸⁴ Civil Court of Rome, Decree 18015/2018, 21 November 2018, available at: <https://bit.ly/2KzfBXU>.

⁸⁵ Civil Court of Rome, Order 18387/2018, 29 November 2018, available at: <https://bit.ly/2U9iXjW>.

⁸⁶ Civil Court of Rome, Order 29724/2018-1, 27 February 2019, available at: <https://bit.ly/2G8lJQe>.

⁸⁷ Civil Court of Rome, Decree 18015/2018, 21 November 2018.

The law does not foresee any financial support for taking public transport to the competent Questura. In practice, the NGOs working at the border points can provide the train ticket for that journey on the basis of a specific agreement with the competent Prefecture. However, this support is not always guaranteed.

Nationality or presumed merit of applications

ASGI has continued to document nationality-based barriers to access to the procedure, specifically as regards people from Morocco, Tunisia, Albania, Serbia, Colombia, El Salvador, and in some cases Pakistan and Nigeria.

Lombardy: At the Questura of Milan, as denounced by the NGOs ASGI, Naga and Avvocati per Niente in a letter sent to the Ministry of Interior in April 2016, the Police submits a questionnaire to asylum seekers pretending to assess, from the answers compiled, whether they are refugees or economic migrants, basically applying the same procedure as that applied at [Hotspots](#). Those considered economic migrants are denied to access the asylum procedure and notified of an expulsion order.⁸⁸ The same Questura is also reported to deny access to the applicants' lawyers. Replying to the report, the Questura rejected all accusations, explaining, that lawyers are allowed to intervene on the basis of a specific mandate of their clients and for specific disputes with the immigration offices.⁸⁹

This practice has persisted in 2017.⁹⁰ For persons who spontaneously appear before the Questura of Milan to seek asylum, there is a very high frequency of expulsion measures. This is also the case for people accommodated in temporary reception centres (CAS), whom the Questura considers as shipwreck survivors and not necessarily asylum seekers; it distinguishes the two categories based on the aforementioned questionnaire. Throughout 2017, at least 23 people accommodated in CAS were issued expulsion orders after appearing before the Questura, and were notified of the [Withdrawal of Reception Conditions](#) at the same time.

Basilicata: The Questura of Potenza has started in November 2017 a pre-selection process for asylum seekers, whereby it interviews foreigners seeking protection and sets C3 appointments only to those it believes are in need of international protection.

Friuli-Venezia Giulia: Since 2018, Questure in the region have started to refuse lodging of asylum applications for asylum seekers falling under the [Dublin](#) procedure. When a Eurodac 'hit' is recorded, Questure move the C3 appointment to a later date and notify a Dublin transfer decision to the persons concerned before that date. Applicants are therefore subject to a transfer before having lodged their application and had an interview.

Obstacles to nationals of specific countries continued to be witnessed in the [Hotspots](#) in 2018. In Lampedusa, **Sicily**, nationals of countries informally considered as safe such as Tunisia have been issued removal orders and have been returned despite having expressly requested international protection.

Then, even though the Questura is not entitled to know in detail the applicant's personal history, it happens that some Questure, before filling in the C3, ask the applicant to provide a written statement concerning his or her personal reasons for fleeing from the country of origin. If the person concerned is not able to write, the interpreter writes for him or her. This results in several contradictions that the person is not really able to explain at the time of the interview with the Territorial Commission. This has been reported to ASGI to happen for example in Gorizia, **Friuli-Venezia Giulia**.

⁸⁸ For more information and the letter, see: <http://bit.ly/2kB5kli>.

⁸⁹ The response appeared on the newspaper Avvenire on 30 April 2016.

⁹⁰ ASGI et al., 'Protezione internazionale: la Questura deve ricevere la richiesta di asilo, non valutarla', 14 June 2017, available in Italian at: <http://bit.ly/2HN8J3V>.

Waiting times

The time limits for registration of asylum applications set by the Procedure Decree are generally not respected. During 2017 as recorded by ASGI, only in a few cases – such as the Questure of Udine and Gorizia, **Friuli-Venezia Giulia** for women and families – could asylum seekers complete the C3 the same day or immediately after expressing the will to seek protection.

Conversely, in Naples, **Campania**, the average waiting period for the completion of C3 was 6 months. Following the introduction of the online procedure in January 2018, however, the C3 has been completed after 10 days on average.

Differential treatment has been reported depending on whether asylum seekers were accommodated in a centre or lived alone. In Caserta, **Campania**, according to the reports, asylum seekers not living in a reception centre can wait up to one year, while those accommodated just one month. The same difference, albeit less sizeable, has been reported for example in Como and Milan, **Lombardy**, Florence, **Tuscany** and Rome, **Lazio**.

C. Procedures

1. Regular procedure

1.1. General (scope, time limits)

Indicators: Regular Procedure: General

- | | |
|--|---|
| 1. Time limit set in law for the determining authority to make a decision on the asylum application at first instance: ⁹¹ | 33 days |
| 2. Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 3. Backlog of pending cases at first instance as of 28 December 2018: | 98,369 |

Time limits

According to the Procedure Decree, the Territorial Commission interviews the applicant within 30 days after having received the application and decides in the 3 following working days. When the Territorial Commission is unable to take a decision in this time limit and needs to acquire new elements, the examination procedure is concluded within six months of the lodging of the application. The Territorial Commission may extend the time limit for a period not exceeding a further nine months, where:

- Complex issues of fact and/or law are involved;
- A large number of asylum applications are made simultaneously; or
- The delay can clearly be attributed to the failure of the applicant to comply with his or her obligations of cooperation.

By way of exception, the Territorial Commission, in duly justified circumstances, may further exceed this time limit by three months where necessary in order to ensure an adequate and complete examination of the application for international protection.⁹² In light of the different possibilities of extension, the asylum procedure may last for a maximum period of 18 months.

In practice, however, the time limits for completing the regular procedure are not complied with. The procedure usually takes much longer, considering on one hand that the competent determining

⁹¹ The personal interview must be conducted within 30 days of the registration of the application, and a decision must be taken within 3 working days of the interview.

⁹² Article 27(2)(3) Procedure Decree.

authorities receive the asylum application only after the formal registration and the forwarding of the C3 form through VESTANET has taken place. On the other hand, the first instance procedure usually lasts several months, while the delays for different determining authorities in issuing a decision vary between Territorial Commissions. In cities such as Rome, **Lazio** the entire procedure is generally longer and takes from 6 up to 12 months.

Statistics on the average duration of the procedure in 2018 are not available. The number of asylum applications pending at first instance dropped from 145,906 at the end of 2017 to 98,369 as of 28 December 2018. Of those, in 52,420 (53.3%) cases asylum seekers were waiting for an appointment date for the personal interview.

Termination and notification

The Procedure Decree states that when the applicant, without having been interviewed, leaves the reception centre without any justification or absconds from CPR or from hotspots, the Territorial Commission suspends the examination of the application on the basis that the applicant is not reachable (*irreperibile*).⁹³

The applicant may request the reopening of the suspended procedure within 12 months from the suspension decision, only once. After this deadline, the Territorial Commission declares the termination of the procedure. In this case, applications made after the declaration of termination of the procedure are considered [Subsequent Applications](#).⁹⁴

However, not all subsequent applications submitted after the termination are subject to a preliminary admissibility examination.⁹⁵ During the preliminary examination, the grounds supporting the admissibility of the application and the reasons of the moving away from the centres are examined.⁹⁶ In 2017, ASGI received several reports of suspension of procedures for people whose accommodation had been revoked e.g. in Pordenone, **Friuli-Venezia Giulia**. This has also occurred due to lack of communication between reception centres and Questure in the case of transfers to different facilities, as was the case for people moved out of Cona, **Veneto** due to overcrowding.

Decree Law 13/2017 introduced a new procedure to notify interview appointments and decisions taken by the Territorial Commissions.⁹⁷ The CNDA issued a Circular a few days before the entry into force of the law which suspended the implementation of this procedure and required Questure to continue to carry out notifications.⁹⁸ However, as of 25 October 2018 the new notification procedure was implemented.

The Procedure Decree, as amended in 2017, provides for three different procedures depending on whether the recipients of the notification are: (i) accommodated or detained; (ii) in private accommodation; or (iii) not reachable (*irreperibili*):

- a. **Accommodated or detailed applicants:** Interviews and decisions can be notified by the managers of reception or detention centres, who then transmit the act to the asylum seeker for signature. The notification is considered to be carried out when the manager of the reception centre facility communicates it to the Territorial Commission through a certified

⁹³ Article 23-bis Procedure Decree, inserted by Article 25 Reception Decree.

⁹⁴ Article 2(1)(b-bis) Procedure Decree, inserted by Article 9 Decree Law 113/2018 as amended by L 132/2018.

⁹⁵ This is a preliminary examination governed by Article 29(1-bis) Procedure Decree, to which Article 23-bis expressly refers.

⁹⁶ Article 23-bis Procedure Decree, inserted by Article 25(r) Reception Decree.

⁹⁷ Article 11(3) Procedure Decree et seq, as amended by Article 6 Decree Law 13/2017 as amended by L 46/2017.

⁹⁸ CNDA Circular No 6300 of 10 August 2017; Circular No 8124 of 19 October 2018.

email message indicating the date and time of notification. The law specifies that such communication must be immediate.⁹⁹

- b. **Applicants in private accommodation:** The notification must be made to the last address communicated to the competent Questura. In this case, notifications are sent by postal service.¹⁰⁰
- c. **Not reachable applicants:** The interview summons or decision is sent by certified email from the Territorial Commission to the competent Questura, which keeps it at the disposal of the persons concerned for 20 days. After 20 days, the notification is considered to be completed and a copy of the notified deed act is made available to the applicant at the Territorial Commission.¹⁰¹

Questura often place onerous conditions on the registration of address e.g. by requesting declarations of consent from the owners of the apartments where people are privately staying. Given those conditions, the law risks creating a presumption of legal knowledge of the act to be notified where there is none. The same risk exists for the Dublin returnees who had left Italy before receiving notification of the decision or of the interview appointment.

In practice, the new notification procedure has created different problems as Territorial Commissions. Asylum seekers often could not rely on functioning IT systems and were not promptly informed about accommodation transfers. Often, people moved from one reception centre to another only found out about their interview after the date scheduled by the Territorial Commission.

From 1 January to 28 December 2018, the Territorial Commissions issued 7,743 suspension decisions on the ground that the applicant was not reachable.

Outcomes of the procedure

There are six possible outcomes to the regular procedure, following additions and substantial changes by Decree Law 113/2018. Under the amended Article 32 of the Procedure Decree, the Territorial Commission may decide to:

1. Grant refugee status;
2. Grant subsidiary protection;
3. Recommend to the Questura to issue a one-year “special protection” residence permit;

Decree Law 113/2018 has abolished the status of humanitarian protection by repealing the provision of the TUI concerning the issuance of a residence permit on serious grounds, in particular of a humanitarian nature or resulting from constitutional or international obligations of the Italian State.¹⁰²

Special protection permits are granted to persons who, according to the law, cannot be expelled or refouled.¹⁰³ This covers cases where a persons risks being persecuted for reasons of race, sex, language, citizenship, religion, political opinions, personal or social conditions, or may risk being sent back to another country where he or she is not protected from persecution, or to a

⁹⁹ Article 11(3) Procedure Decree, as amended by Article 6 Decree Law 13/2017 and L 46/2017.

¹⁰⁰ Article 11(3-bis) Procedure Decree, as amended by Article 6 Decree Law 13/2017 and L 46/2017.

¹⁰¹ Article 11(3-ter) and (3-quater) Procedure Decree, as amended by Article 6 Decree Law 13/2017 and L 46/2017.

¹⁰² Article 5(6) TUI, as amended by Article 1(1)(b)(2) Decree Law 113/2018.

¹⁰³ Article 32(3) Procedure Decree, as amended by Article 1(2)(a) Decree Law 113/2018.

country where there are reasonable grounds to believe that he or she risks being subjected to torture.¹⁰⁴ These permits are granted for a duration of one year (see [Residence Permit](#)). Special protection is not granted when it is possible to transfer the applicant to a country which could offer equivalent protection (*protezione analoga*) to Italy.¹⁰⁵

Decree Law 113/2018 does not regulate the situation of of asylum seekers who applied for international protection before its entry into force on 5 October 2018 and who are still waiting for a first instance decision. As of that date, the Territorial Commissions have already stopped examining the possibility to grant humanitarian protection, pursuant to instructions from the Ministry of Interior.¹⁰⁶

However, the Civil Courts and Courts of Appeal have so far agreed on the non-retroactivity of the reform and have continued to grant humanitarian protection to asylum seekers after 5 October 2018, at least for appeals that were submitted prior to the entry into force of the law. According to ASGI, the principle of non-retroactivity should apply to all asylum applications lodged prior to the entry into force of the reform.¹⁰⁷

In February 2019, the Court of Cassation held that Decree Law 113/2018 should be considered non-retroactive for all asylum procedures already initiated at the time of its entry into force.¹⁰⁸ At the moment, however, Territorial Commissions are unequivocally applying the new regime to all ongoing procedures, therefore not granting humanitarian protection, given that, as reported to Asgi, the CNDA has received instructions from the Ministry of Interior to disregard the Court of Cassation judgment.

4. Reject the asylum application as unfounded;
5. Reject the application as manifestly unfounded;¹⁰⁹

According to the new Article 28-ter of the Procedure Decree, an application is deemed to be “manifestly unfounded” where the applicant:

- a. Has only raised issues unrelated to international protection;
- b. Comes from a [Safe Country of Origin](#);
- c. Has made issued clearly inconsistent and contradictory or clearly false declarations, which contradict verified information on the country of origin;
- d. Has misled the authorities by presenting false information or documents or by withholding relevant information or documents with respect to his or her identity and/or nationality that could have had a negative impact on the decision, or in bad faith has destroyed or disposed of an identity or travel document that would have helped establish his or her identity or nationality;
- e. Irregularly entered the territory, or irregularly prolonged his or her stay, and without justified reason did not make an asylum application promptly;
- f. Refuses to comply with the obligation of being fingerprinted under the Eurodac Regulation;
- g. Is detained in a CPR for reasons of exclusion under Article 1F of the 1951 Convention, public order or security grounds, or reasonable grounds to believe that the application is lodged solely to delay or frustrate the execution of a removal order (see [Grounds for Detention](#)).¹¹⁰

¹⁰⁴ Articles 19(1) and 19(1.1) TUI.

¹⁰⁵ Article 32(3) Procedure Decree, as amended by Article 1(2)(a) Decree Law 113/2018.

¹⁰⁶ See e.g. Ministry of Interior, Circular No 83774 of 18 December 2018.

¹⁰⁷ ASGI, *Il regime intertemporale ai tempi del d.l. 113/2018*, October 2018, available in Italian at: <http://bit.ly/2TJaFTI>.

¹⁰⁸ Court of Cassation, Decision 4890/2019, 23 January 2019, EDAL, available at: <https://bit.ly/2X00wQy>.

¹⁰⁹ Article 32(1)(b-bis) Procedure Decree, as amended by Decree Law 113/2018 and L 132/2018.

¹¹⁰ Article 28-ter(g) Procedure Decree, citing Article 6(2)-(3) Reception Decree.

6. Reject the application on the basis that and internal protection alternative is available.¹¹¹

For the internal protection alternative to apply, it must be established that in a part of the country of origin the applicant has no well-founded fear of being persecuted or is not at real risk of suffering serious harm or has access to protection against persecution or serious harm, he or she can safely and legally travel to and gain admittance to that part of the country and can reasonably be expected to settle there.

1.2. Prioritised examination and fast-track processing

Article 28 of the Procedure Decree, last amended in 2018, provides that the President of the Territorial Commission identifies the cases to be processed under the prioritised procedure, which applies where:

- a. The application is likely to be well-founded;
- b. The applicant is vulnerable, in particular an unaccompanied child or a person in need of special procedural guarantees;
- c. The application is made by an applicant detained in a CPR or a hotspot;¹¹²
- c-bis The applicant comes from one of the countries identified by the CNDA that allow the omission of the personal interview when considering that there are sufficient grounds available to grant subsidiary protection. The competent Territorial Commission, before adopting such a decision, informs the applicant of the opportunity, within 3 days from the communication, to request a personal interview. In absence of such request, the Territorial Commission takes the decision.¹¹³
- c-ter The applicant comes from a designated [Safe Country of Origin](#).¹¹⁴

In practice, the prioritised procedure is applied to those held in CPR and rarely to the other categories. Nevertheless, practice shows that vulnerable applicants have more chances to benefit from the prioritised procedure, even though this possibility is more effective in case they are assisted by NGOs or they are identified as such at an early stage. With regard to victims of torture and extreme violence, the prioritised procedure is rarely applied, since these asylum seekers are not identified at an early stage by police authorities. In fact, torture survivors are usually only recognised as such in a later phase, thanks to NGOs providing them with legal and social assistance or during the personal interview by the determining authorities.

Regarding unaccompanied children, L 47/2017 has allowed a faster start of the procedure as it allows the manager of the reception centre to represent the child until the appointment of a guardian.¹¹⁵ That said, according to ASGI's experience, the prioritised procedure was not widely applied to unaccompanied children in 2018.

1.3. Personal interview

Indicators: Regular Procedure: Personal Interview

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the regular procedure? Yes No
 - ❖ If so, are interpreters available in practice, for interviews? Yes No
2. In the regular procedure, is the interview conducted by the authority responsible for taking the decision? Yes No
3. Are interviews conducted through video conferencing? Frequently Rarely Never

¹¹¹ Article 32(1)(b-ter) Procedure Decree, inserted by Decree Law 113/2018 and L 132/2018.

¹¹² Article 28(1)(c) Procedure Decree, as amended by Article 3(2)(b) Decree Law 113/2018.

¹¹³ Article 28(1)(c-bis) Procedure Decree, inserted by the Reception Decree.

¹¹⁴ Article 28(1)(c-ter) Procedure Decree, inserted by Article 7-bis(1)(d) Decree Law 113/2018 and L 132/2018.

¹¹⁵ Article 6(3) L 47/2017.

The Procedure Decree provides for a personal interview of each applicant, which is not public.¹¹⁶ During the personal interview the applicant can disclose exhaustively all elements supporting his or her asylum application.¹¹⁷

In practice, asylum seekers are systematically interviewed by the determining authorities. However, Article 12(2) of the Procedure Decree foresees the possibility to omit the personal interview where:

- (a) Determining authorities have enough elements to grant refugee status under the 1951 Refugee Convention without hearing the applicant; or
- (b) The applicant is recognised as unable or unfit to be interviewed, as certified by a public health unit or by a doctor working with the national health system. In this regard, the law provides that the personal interview can be postponed due to the health conditions of the applicant duly certified by a public health unit or by a doctor working with the national health system or for very serious reasons.¹¹⁸ The applicant recognised as such is allowed to ask for the postponement of the personal interview through a specific request with the medical certificates.¹¹⁹
- (c) For applicants coming from those countries identified by the CNDA, when considering that there are sufficient grounds to grant them subsidiary protection.¹²⁰ The competent Territorial Commission, before adopting such a decision, informs the applicant that he or she has the opportunity, within 3 days from the communication, to be admitted to the personal interview. In absence of such request, the Territorial Commission takes the decision to omit the interview. This provision is particularly worrying, considering that it derogates from the general rule on the basis of which the personal interview is also aimed to verify first whether the applicant is a refugee, and if not, the conditions to grant subsidiary protection.

According to the amended Article 12(1-bis) of the Procedure Decree, the personal interview of the applicant takes place before the administrative officer assigned to the Territorial Commission, who then submits the case file to the other panel members in order for a decision to be jointly taken (see [First Instance Authority](#)). Upon request of the applicant, the President may decide to hold the interview him or herself or before the Commission. In practice, the interview is conducted by the officials appointed by the Ministry of Interior.

Interpretation

In the phases concerning the presentation and the examination of the asylum claim, including the personal interview, applicants must receive, where necessary, the services of an interpreter in their language or in a language they understand. Where necessary, the documents produced by the applicant shall be translated.¹²¹

At border points, however, these services may not be always available depending on the language spoken by asylum seekers and the interpreters available locally. Given that the disembarkation of asylum seekers does not always take place at the official border crossing points, where interpretation services are available, there may therefore be significant difficulties in promptly providing an adequate number of qualified interpreters also able to cover different idioms.

In practice, there are not enough interpreters available and qualified in working with asylum seekers during the asylum procedure. However, specific attention is given to interpreters ensuring translation services during the substantive interview by determining authorities. The Consortium of Interpreters and Translators (ITC), which provides this service, has drafted a Code of Conduct for interpreters.

¹¹⁶ Article 12(1) Procedure Decree; Article 13(1) Procedure Decree.

¹¹⁷ Article 13(1-bis) Procedure Decree, inserted by the Reception Decree.

¹¹⁸ Article 12(3) Procedure Decree, as amended by the Reception Decree.

¹¹⁹ Article 5(4) PD 21/2015.

¹²⁰ Article 12(2-bis) Procedure Decree, read in conjunction with Article 5(1-bis).

¹²¹ Article 10(4) Procedure Decree, as amended by the Reception Decree.

Recording and transcript

The personal interview may be recorded. The recording is admissible as evidence in judicial appeals against the Territorial Commission's decision. Where the recording is transcribed, the signature of the transcript is not required by the applicant.¹²² Following Decree Law 13/2017, implemented by L 46/2017, the law states that the interview has to be taped by audiovisual means and transcribed in Italian with the aid of automatic voice recognition systems.¹²³ The transcript of the interview is read out to the applicant by the interpreter and, following the reading, the necessary corrections are made by the interviewer together with the applicant.

All of the observations of the applicant which have not been directly implemented to correct the text of the transcript are included at the bottom of the transcript and signed by him or her. The transcript itself is signed only by the interviewer – or the President of the Commission – and by the interpreter.¹²⁴ The applicant does not sign the transcript and does not receive any copy of the videotape, but merely a copy of the transcript in Italian. A copy of the videotape and the transcript shall be saved for at least 3 years in an archive of the Ministry of Interior and made available to the court in case of appeal. The applicant can only access the tape during the appeal,¹²⁵ meaning that it is not available at the time of drafting the appeal.

The applicant can formulate a reasoned request before the interview not to have the interview recorded. The Commission makes a final decision on this request.¹²⁶ When the interview cannot be videotaped for technical reasons or due to refusal of the applicant, the interview is transcribed in a report signed by the applicant.¹²⁷

During 2017 and 2018, interviews were still never audio- or video-recorded due to a lack of necessary equipment and technical specifications, for example on how to save the copies and transmit them to the courts. This means that in all interviews in practice a transcript is given to the applicant at the end of the interview, with the opportunity for applicants to make further comments and corrections before receiving the final report. The quality of this report varies depending on the interviewer and the Territorial Commission which conducts the interview. Complaints on the quality of the transcripts are frequent.

1.4. Appeal

Indicators: Regular Procedure: Appeal

1. Does the law provide for an appeal against the first instance decision in the regular procedure?

❖ If yes, is it	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
❖ If yes, is it suspensive	<input checked="" type="checkbox"/> Judicial	<input type="checkbox"/> Administrative
	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
2. Average processing time for the appeal body to make a decision: 4.9 months

1.4.1. Appeal before the Civil Court

The Procedure Decree provides for the possibility for the asylum seeker to appeal before the competent Civil Court (*Tribunale Civile*) against a decision issued by the Territorial Commissions rejecting the application, granting subsidiary protection instead of refugee status or requesting the issuance of a residence permit for special protection instead of granting international protection.¹²⁸

¹²² Article 14(2-bis) Procedure Decree, inserted by the Reception Decree.

¹²³ Article 14(1) Procedure Decree, as amended by Article 6 Decree Law 13/2017 and L 46/2017.

¹²⁴ Article 14(2) Procedure Decree, as amended by Article 6 Decree Law 13/2017.

¹²⁵ Article 14(5) Procedure Decree, as amended by Article 6 Decree Law 13/2017.

¹²⁶ Article 14(6-bis) Procedure Decree, as amended by Article 6 Decree Law 13/2017 and L 46/2017.

¹²⁷ Article 14(7) Procedure Decree, as amended by Article 6 Decree Law 13/2017 and L 46/2017.

¹²⁸ Articles 35(1) and 35-bis(1) Procedure Decree.

Specialised court sections

Decree Law 13/2017, implemented by L 46/2017, has established specialised sections in the Civil Courts, responsible for immigration, asylum and free movement of EU citizens cases.¹²⁹ Judges to be included in the specialised sections should be appointed on the basis of specific skills acquired through professional experience and training. EASO and UNHCR are entrusted with training of judges, to be held at least annually during the first three years.¹³⁰

By the end of September 2018, 13 Civil Courts had established specialised sections following the 2017 reform, counting a total of 75 ordinary judges and 82 honorary judges. The breakdown by court is as follows:

Judges in specialised Civil Court sections: September 2018			
Court Section	Ordinary judges	Honorary judges	Total
Ancona	4	6	10
Bari	7	8	15
Bologna	11	11	22
Brescia	6	7	13
Caltanissetta	4	3	7
Florence	7	6	13
Genova	4	4	8
Palermo	7	5	12
Reggio Calabria	3	3	6
Rome	5	11	16
Salerno	2	2	4
Trieste	9	6	15
Venice	6	10	16
Total	75	82	157

Source: CSM, Monitoraggio sezioni specializzate: <https://bit.ly/2lfn1xu>, 4.

The Civil Courts of **Milan** and **Messina** had pre-existing specialised sections dealing with immigration and asylum cases.¹³¹ Other courts (Cagliari, Campobasso, Catania, Catanzaro, L'Aquila, Lecce, Napoli, Perugia, Potenza, Turin, Trento) have not yet set up such sections.¹³²

Not all of the specialised sections of the Civil Courts deal with the backlog of appeals pending before the entry into force of Decree Law 13/2017.¹³³

Moreover, new criteria to establish the competence of the Court have been established. In addition to the competence determined on the basis of the place of the competent Territorial Commission, now the competence is established also on the basis of the place where the applicant is placed (governmental reception centres, CAS, SIPROIMI and CPR).¹³⁴

¹²⁹ Article 1 Decree Law 13/2017, as amended by L 46/2017.

¹³⁰ Article 2(1) Decree Law 13/2017, as amended by L 46/2017.

¹³¹ CSM, *Monitoraggio sezioni specializzate*, October 2018, available in Italian at: <https://bit.ly/2lfn1xu>, 7.

¹³² *Ibid*, 6.

¹³³ *Ibid*, 11.

¹³⁴ Article 4(3) Decree Law 13/2017, as amended by L 46/2017.

Rules for the lodging of appeals

The appeal must be lodged within 30 calendar days from the notification of the first instance decision and must be submitted by a lawyer.¹³⁵

However, the time limit for lodging an appeal is 15 days for persons placed in CPR and negative decisions taken under the [Accelerated Procedure](#).¹³⁶

The appeal has automatic suspensive effect, except where:¹³⁷

- a. The applicant is detained in CPR or a hotspot;
- b. The application is inadmissible;
- c. The application is manifestly unfounded;
- d. The application is rejected on some of the grounds for applying the [Accelerated Procedure](#).

However, in those cases, the applicant can individually request a suspension of the return order from the competent judge. The court must issue a decision within 5 days and notify the parties, who have the possibility to submit observations within 5 days. The court takes a non-appealable decision granting or refusing suspensive effect within 5 days of the submission and/or reply to any observations.¹³⁸

In practice, asylum seekers who file an appeal, in particular those who are held in CPR and those under in the [Accelerated Procedure](#), have to face several obstacles. The time limit of 15 days for lodging an appeal in those cases concretely jeopardises the effectiveness of the right to appeal since it is too short for finding a lawyer or requesting free legal assistance, and for preparing the hearing in an adequate manner. This short time limit for filing an appeal does not take due consideration of other factors that might come into play, such as the linguistic barriers between asylum seekers and lawyers, and the lack of knowledge of the legal system.

Despite the aforementioned provisions on automatic suspensive effect of appeals, the Questura of Naples continued to make an incorrect interpretation of the law in 2018, claiming that, for all appeals submitted after the entry into force of L 46/2017, suspensive effect had to be requested and obtained. The Questura deemed that all applicants automatically fell within the [Accelerated Procedure](#) on the ground that they had applied for asylum after being apprehended for avoiding or attempting to avoid border controls or found irregularly on the territory with the sole aim of avoiding removal or refusal of entry. Following a ruling of the Court of Appeal of Naples which clarified the nature of the accelerated procedure, ASGI requested the Questura to immediately stop this unlawful practice.¹³⁹

After the appeal is notified to the Ministry of Interior at the competent Territorial Commission, the Ministry may present submissions (defensive notes) within the next 20 days. The applicant can also present submissions within 20 days.¹⁴⁰ The law also states that the competent Commission must submit within 20 days from the notification of the appeal the video recording and transcript of the personal interview and the entire documentation obtained and used during the examination procedure, including country of origin information relating to the applicant.¹⁴¹ In 2018, a substantial part of EASO caseworkers deployed to Territorial Commissions have assisted in the drafting of submissions in appeal proceedings.

¹³⁵ Article 35-bis(2) Procedure Decree, as amended by Article 6 Decree Law 13/2017.

¹³⁶ *Ibid.*

¹³⁷ Article 35-bis(3) Procedure Decree, inserted by Article 6 Decree Law 13/2017, as amended by Article 3 Decree Law 113/2018.

¹³⁸ Article 35-bis (4) Procedure Decree.

¹³⁹ Court of Appeal of Naples, Decision 17/2018, 3 January 2018, available at: <http://bit.ly/2mxJHvD>.

¹⁴⁰ Article 35-bis(7) and (12) Procedure Decree.

¹⁴¹ Article 35-bis(8) Procedure Decree.

Hearing

According to the appeal procedure following Decree Law 13/2017, implemented by L 46/2017, oral hearings before the court sections are a residual option. The law states that, as a rule, judges shall decide the cases only by consulting the videotaped interview before the Territorial Commission. They shall invite the parties for the hearing only if they consider it essential to listen to the applicant, or they need to clarify some aspects or if they provide technical advice or the intake of evidence.¹⁴² A hearing is also to be provided when the videotaping is not available or the appeal is based on elements not relied on during the administrative procedure of first instance.¹⁴³

Since the adoption of Decree Law 13/2017, ASGI has claimed that the use of video recorded interviews, potentially replacing asylum seekers' hearings by the court, does not comply with the right to an effective remedy provided by Article 46 of the recast Asylum Procedures Directive, as an applicant's statements are often the only elements on which the application is based. Therefore, there is no certainty that judges will watch the videos of the interviews, and in any case they will not watch them with the assistance of interpreters so as to understand the actual extent of applicants' statements.

Throughout 2017 and 2018, insofar as Territorial Commissions were still not video-recording interviews, most of the court sections have always held oral hearings with asylum seekers, as set out in the law in case the interview is not video-recorded.¹⁴⁴ Although Civil Courts such as **Naples** interpreted the law as leaving discretion to the court to omit a hearing even if the videotape is not available, the Cassation Court clarified in 2018 that in such cases the oral hearing is mandatory and cannot be omitted.¹⁴⁵

On 6 March 2018, the Civil Court of **Venice** adopted a Protocol for its Immigration Section,¹⁴⁶ which immediately alarmed part of the judiciary and ASGI. The most critical aspect of the Protocol concerns the hearing of the asylum seeker without the presence of the lawyer and the duty of the lawyer to inform the judge, before the hearing, about the possible existence of infectious diseases of the applicant with the obligation to produce medical certification attesting the absence of risks of contagion.¹⁴⁷

Decision

The Civil Court can either reject the appeal or grant international protection to the asylum seeker within 4 months.¹⁴⁸ Since the entry into force of Decree Law 13/2017, the appeal procedure has sped up considerably to an average of 4.9 months, although it can vary considerably from one court to another e.g. from 5 days in **Messina** to 12.8 months in **Florence**. The average duration of the appeal procedure for appeals examined after the entry into force of the 2017 reform was as follows:

Average duration of the appeal procedure in days: 2018			
Civil Court	From lodging of appeal to hearing date	From decision to publication	Total average
Ancona	60	3	63
Bari	25	7	32
Bologna	229	3	232

¹⁴² Article 35-bis Procedure Decree, introduced by Article 6(10) Decree Law 13/2017 and L 46/2017.

¹⁴³ Article 6(11) Decree Law 13/2017.

¹⁴⁴ CSM, *Monitoraggio sezioni specializzate*, October 2018, 27-28.

¹⁴⁵ Court of Cassation, 1st Section, Decision 28424/2018, 27 June 2018, available at: <https://bit.ly/2G6XwuS>; Decision 17717/2018, 5 July 2018, available at: <https://bit.ly/2GfMYeb>.

¹⁴⁶ Civil Court of Venezia, Immigration Section Protocol, 6 March 2018, available in Italian at: <http://bit.ly/2prcXpq>.

¹⁴⁷ Magistratura Democratica, 'Il diritto di difesa non è uguale per tutti', 18 March 2018, available in Italian at: <http://bit.ly/2pskqEH>. See also ASGI, Letter to the Civil Court of Venice, 19 March 2018, available in Italian at: <http://bit.ly/2u3NZ51>.

¹⁴⁸ Article 35-bis(13) Procedure Decree.

Brescia	330	1	331
Cagliari	120	1	121
Caltanissetta	105	5	110
Campobasso	180	180	360
Catania	180	30	210
Catanzaro	180	6	186
Florence	385	0	385
Genova	135	1	136
L'Aquila	175	7	182
Lecce	50	3	53
Messina	5	0	5
Milan	144	4	148
Naples	240	8	248
Palermo	45	0	45
Perugia	150	0	150
Potenza	120	0	120
Reggio Calabria	0	0	0
Rome	203	0	203
Salerno	93	2	95
Turin	120	5	125
Trento	90	3	93
Trieste	132	2	134
Venice	60	2	62
Total	137	10	147

Source: CSM, Monitoraggio sezioni specializzate: <https://bit.ly/2lfn1xu>, 41-42.

From 1 January to 4 October 2018, 35,341 appeals were lodged before the Civil Courts. As of 4 October 2018, the number of pending appeals was 57,368.¹⁴⁹

New and pending appeals: 1 January – 4 October 2018			
Civil Court	Pending at 1 Jan 2018	Received 1 Jan – 4 Oct 2018	Pending at 4 Oct 2018
Ancona	865	1,321	931
Bari	2,741	1,882	2,405
Bologna	3,184	2,341	3,521
Brescia	1,875	1,622	2,186
Cagliari	1,937	1,387	2,160
Caltanissetta	1,222	516	791
Campobasso	721	364	443
Catania	3,503	1,596	4,515
Catanzaro	1,954	1,409	2,336
Florence	5,420	1,872	5,565
Genova	763	906	916
L'Aquila	752	897	869
Lecce	1,546	1,367	1,099
Messina	5	110	90

¹⁴⁹ CSM, *Monitoraggio sezioni specializzate*, October 2018, 46.

Milan	2,662	2,581	3,069
Naples	3,477	2,542	3,681
Palermo	3,063	1,080	2,352
Perugia	1,429	583	1,390
Potenza	1,039	18	828
Reggio Calabria	618	503	967
Rome	5,990	4,143	6,669
Salerno	1,127	356	1,063
Turin	2,145	1,602	2,093
Trento	851	444	1,086
Trieste	943	1,340	1,468
Venice	4,585	2,559	2,984
Total	54,417	35,341	57,368

Source: CSM, Monitoraggio sezioni specializzate: <https://bit.ly/2lfn1xu>, 46-47.

1.4.2. Onward appeal

Decree Law 13/2017, implemented by L 46/2017, abolished the possibility to appeal a negative Civil Court decision before the Court of Appeal (*Corte d'Appello*). This provision applies to appeals lodged after 17 August 2017.

In case of a negative decision, the asylum seeker can only lodge an appeal before the Court of Cassation within 30 days, compared to 60 before the reform.¹⁵⁰

The onward appeal is not automatically suspensive. Nevertheless, the Court of Justice of the European Union (CJEU) found in its *F.R.* judgment of 27 September 2018 that this provision complies with EU law as the recast Asylum Procedures Directive does not contain any provisions requiring a second level of jurisdiction against negative asylum decisions and therefore does not require any automatic suspensive effect for onward appeals.¹⁵¹

The request for suspensive effect is examined by the judge who rejected the appeal at Civil Court level and has to be submitted within 5 days from the notification of the appeal.¹⁵²

The 2017 reform has sparked strong reactions from NGOs,¹⁵³ and even from some magistrates. Cancelling the possibility to appeal the Civil Court decisions at Court of Appeal, making the hearing of the applicant a mere residual option, further complicating access to free legal aid, reducing the time for appeal to the Court of Cassation, and entrusting the assessment of the request for suspensive effect of onward appeals to the same Civil Court judge who delivered the negative first appeal ruling, drastically reduces the judicial protection of asylum seekers. The Cassation Section of the Magistrates' National Association (*Associazione Nazionale Magistrati*) also highlighted the unreasonableness of the choice to abolish the second level of appeal, which is still provided for civil disputes of much lower value if compared to international protection cases, bearing in mind that the procedure before the Court of Cassation is essentially a written procedure.

¹⁵⁰ Article 35-bis(13) Procedure Decree.

¹⁵¹ CJEU, Case C-422/2018 *F.R. v Ministero dell'interno – Commissione Territoriale per il riconoscimento della Protezione Internazionale presso la Prefettura U.T.G. di Milano*, Judgment of 27 September 2018, EDAL, available at: <https://bit.ly/2D1oGCE>.

¹⁵² Article 35-bis(13) Procedure Decree.

¹⁵³ See ASGI and Magistratura Democratica, 'D.L. 13/2017, sempre più distanza tra giudici e cittadini stranieri', February 2017, available in Italian at: <http://bit.ly/2moJoWs>; Antigone, 'Il pacchetto Minniti calpesta i diritti', 12 February 2017, available in Italian at: <http://bit.ly/2l7pjUo>.

The reform has had a visible impact on the caseload before the Court of Cassation, which rose from 749 appeals in 2017 to 2,583 from 1 January to 4 October 2018.¹⁵⁴ The average duration of the appeal process was 9.1 months during from January to July 2018.¹⁵⁵

As regards appeals lodged before the entry into force of L 46/2017, a second appeal can still be brought before the Court of Appeal. The Court of Cassation has clarified that these second-instance appeals follow the same procedure as before the entry into force of the Reception Decree.¹⁵⁶ Between 1 January and 4 October 2018, a total of 9,354 new onward appeals were lodged before the Court of Appeal, while 18,810 cases were pending on 4 October 2018.¹⁵⁷

1.5. Legal assistance

Indicators: Regular Procedure: Legal Assistance

1. Do asylum seekers have access to free legal assistance at first instance in practice?

<input type="checkbox"/> Yes	<input type="checkbox"/> With difficulty	<input checked="" type="checkbox"/> No
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 - ❖ Does free legal assistance cover:

<input type="checkbox"/> Representation in interview
<input type="checkbox"/> Legal advice

2. Do asylum seekers have access to free legal assistance on appeal against a negative decision in practice?

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> With difficulty	<input type="checkbox"/> No
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 - ❖ Does free legal assistance cover

<input checked="" type="checkbox"/> Representation in courts
<input checked="" type="checkbox"/> Legal advice

1.5.1. Legal assistance at first instance

According to Article 16 of the Procedure Decree, asylum seekers may benefit from legal assistance and representation during the first instance of the regular and prioritised procedure at their own expenses.

In practice, asylum applicants are usually supported before and sometimes during the personal interview by legal advisors or lawyers financed by NGOs or specialised assisting bodies where they work. Legal assistance provided by NGOs depends mainly on the availability of funds deriving from projects and public or private funding.

A distinction should be made between national public funds and those which are allocated by private foundations and associations. In particular, the main source of funds provided by the State is the National Fund for Asylum Policies and Services, financed by the Ministry of Interior. The Procedure Decree provides that the Ministry of Interior can establish specific agreements with UNHCR or other organisations with experience in assisting asylum seekers, with the aim to provide free information services on the asylum procedure as well on the revocation one and on the possibility to make a judicial appeal. These services are provided in addition to those ensured by the manager of the accommodation centres.¹⁵⁸ However, following the reform of the reception system brought about by Decree Law 113/2018, implemented by L 132/2018, the new tender specifications scheme (*capitolato d'appalto*) adopted by way of Ministry of Interior Decree on 20 December 2018 has ceased funding for legal support in different reception hotspots, first reception centres, CAS and CPR, and replaced it with "legal information" services (see [Forms and Levels of Material Reception Conditions](#)).

National funds are also allocated for providing information and legal counselling at official land, air, sea border points and where migrants arrive by boat.¹⁵⁹ In addition, some funds for financing legal

¹⁵⁴ CSM, *Monitoraggio sezioni specializzate*, October 2018, 52.

¹⁵⁵ *Ibid*, 53.

¹⁵⁶ Court of Cassation, Decision 669/2018, 12 January 2018.

¹⁵⁷ CSM, *Monitoraggio sezioni specializzate*, October 2018, 48.

¹⁵⁸ Article 10(2-bis) Procedure Decree.

¹⁵⁹ Article 11(6) TUI.

counselling may also be provided from European projects / programmes or private foundations. However, it should be highlighted that these funds are not sufficient.

The lawyer or the legal advisor from specialised NGOs prepares asylum seekers for the personal interview before the determining authority, providing them all necessary information about the procedure to follow, pointing out the main questions that may be asked by the Territorial Commission members and underlining the relevant information concerning their personal account. Moreover, the lawyer or the legal advisor has a key role in gathering the information concerning the personal history of the applicant and the country of origin information, and in drafting a report that, when necessary, is sent to the Territorial Commission, in particular with regard to vulnerable persons such as torture survivors. In this regard, the lawyer or the legal advisor may also inform the determining authorities of the fact that the asylum seeker is unfit or unable to undertake the personal interview so that the Commission may decide to omit or postpone it.

Lawyers may be present during the personal interview but they do not play the same role as in a judicial hearing. The applicant has to respond to the questions and the lawyer may intervene to clarify some aspects of the statements made by the applicant.

Nevertheless, the vast majority of asylum applicants go through the personal interview without the assistance of a lawyer since they cannot afford a lawyer and specialised NGOs have limited capacity due to lack of funds.

1.5.2. Legal assistance in appeals

With regard to the appeal phase, free state-funded legal aid (*gratuito patrocinio*), is provided by law to asylum seekers who declare an annual taxable income below €11,493.82 (up from €11,369.24) and whose case is not deemed manifestly unfounded.¹⁶⁰ Legal aid is therefore subject to a “means” and “merits” test.

Means test

The law specifies that in case of income acquired abroad, the foreigner needs a certification issued by the consular authorities of their country of origin.¹⁶¹ However, the law prescribes that if the person is unable to obtain this documentation, he or she may alternatively provide a self-declaration of income.¹⁶² Regarding asylum seekers, Article 8 PD 21/2015 clarifies that, in order to be admitted to free legal assistance, the applicant can present a self-declaration instead of the documents prescribed by Article 79 PD 115/2002.

A worrying practice on the part of some Bar Associations (*Consigli dell'ordine degli avvocati*) such as **Florence**, **Genova** and **Rome**, which refused legal aid to applicants who could not provide consular certificates attesting their income abroad, seems to have ceased as of 2017.

Merits test

In addition, access to free legal assistance is also subject to a merits test by the competent Bar Association which assesses whether the asylum seeker's motivations for appealing are not manifestly unfounded.¹⁶³ During 2017 and 2018, some Bar Associations such as **Milan** and **Trieste** rejected almost all requests to access to free legal assistance, generally deeming the claims that the petitioners intended to rely on as manifestly unfounded.

¹⁶⁰ Article 16(2) Procedure Decree.

¹⁶¹ Article 79(2) PD 115/2002.

¹⁶² Article 94(2) PD 115/2002.

¹⁶³ Article 126 PD 115/2002.

Moreover, it may occur that the applicant is initially granted free legal aid by a Bar Council but, as prescribed by law, the Court revokes the decision if it considers that the admission requirements assessed by the Bar Association are not fulfilled.¹⁶⁴ The Court of Cassation has ruled that the withdrawal of legal aid may only be ordered after a concrete assessment of the circumstances of the case, fulfilling both criteria of manifest unfoundedness and gross negligence.¹⁶⁵

L 46/2017 has substantially curtailed access to legal aid, as it reverses the rule applicable to all other proceedings. It establishes that, when fully rejecting the appeal, a judge who wishes to grant legal aid has to indicate the reasons why he or she does not consider the applicant's claims as manifestly unfounded.¹⁶⁶

Applicants who live in large cities have more chances to be assisted by specialised NGOs or legal advisors compared to those living in remote areas, where it is more difficult to find qualified lawyers specialised in asylum law. As discussed in the section on [Regular Procedure: Appeal](#), in the Italian legal system, the assistance of a lawyer is essential in the appeal phase. Concretely the uncertainty of obtaining free legal aid by the State, as well as the delay in receiving State reimbursement discourages lawyers from taking on the cases. In some cases, lawyers evaluate the individual case on the merits before deciding whether to appeal the case or not.

As denounced by some NGOs and by lawyers, it may also happen that lawyers paid by the Italian State may unlawfully request funds from the applicants.

In relation to the presence of the lawyer during the hearing, the Civil Court of **Venice** adopted a Protocol for its Immigration Section, which provided that the hearing of the asylum seeker is to take place without the presence of the lawyer (see [Regular Procedure: Appeal](#)).¹⁶⁷ After the letter sent to the President of the Court of Venice by ASGI and Giuristi Democratici,¹⁶⁸ the Court partially corrected the rule, arguing that it was not intended to exclude the assistance of the lawyer but only to limit his intervention during the hearing, to be held between judge and appellant.

2. Dublin

2.1. General

Dublin statistics: 1 January – 30 November 2018

Outgoing procedure			Incoming procedure		
	Requests	Transfers		Requests	Transfers
Total	3,424	135	Total	31,000	5,919
Germany	1,423	48	Germany	13,000	2,150
Austria	288	:	France	11,000	1,570
France	295	:	Switzerland	1,634	594
Sweden	2,014	:	Austria	1,480	863

Source: Ministry of Interior, Hearing in Parliament, 5 December 2018: <https://bit.ly/2U6dVVk>.

¹⁶⁴ Article 136 PD 115/2002.

¹⁶⁵ Court of Cassation, Decision 26661/2017, 10 November 2017.

¹⁶⁶ Article 35-bis(17) Procedure Decree.

¹⁶⁷ Civil Court of Venice, Immigration Section Protocol, 6 March 2018, available in Italian at: <http://bit.ly/2prcXpq>.

¹⁶⁸ ASGI, 'ASGI e Giuristi Democratici sul Protocollo Immigrazione del Tribunale di Venezia : gravissima violazione del diritto di difesa', 19 March 2018, available in Italian at: <http://bit.ly/2TA5LJr>.

The Dublin Unit has not provided statistics on the operation of the Dublin system in 2018 upon request. However, some data were made public by the Ministry of Interior at a parliamentary hearing on 5 December 2018, covering the first eleven months of the year.¹⁶⁹

The number of outgoing Dublin procedures initiated by the Italian Dublin Unit rose from 2,481 in 2017,6 to 3,424 in the first eleven months of 2018. Italy remained the main recipient of Dublin requests from other Member States, mainly Germany and France.

Application of the Dublin criteria

The Dublin Unit tends to use circumstantial evidence for the purpose of establishing family unity such as photos, reports issued by the caseworkers, UNHCR’s opinion on application of the Dublin Implementing Regulation 118/2014, and any relevant information and declarations provided by the concerned persons and family members.

As reported by the Ministry of Labour in a recent report, the Dublin Unit submitted 482 requests for transfers of unaccompanied children based on Articles 8 and 17(2) of the Regulation.

In most cases of family reunification for unaccompanied children in 2018 the child was without documents. Therefore the request was supported by a copy of the identity document of the relative, by genealogical trees and further interviews on the personal history of the child and by family photos.¹⁷⁰ However, the Children’s Ombudsman has noted a general absence of defined and homogeneous procedures for the family reunification procedure and a general lack of information to minors, causing distress, disorientation and distrust, and significantly increasing the risk of absconding from reception centres.¹⁷¹

Of the 482 unaccompanied children for whom the Dublin Unit submitted “take charge” requests in 2018, 141 have been transferred and 143 are awaiting transfer, while 159 have absconded from the procedure and in 39 cases the requests have been rejected. The breakdown of outgoing transfers of unaccompanied children in 2018 was as follows:

Outgoing transfers of children under the Dublin Regulation: 2018	
Country	Number of transfers
Sweden	40
Switzerland	21
United Kingdom	22
Germany	14
Finland	1
France	1
Norway	19
Netherlands	20
Spain	1
Denmark	1
Malta	1
Total	141

Source: Ministry of Labour: <http://bit.ly/2UB1D8p>.

¹⁶⁹ Ministry of Interior, *Hearing in Parliament*, 5 December 2018, available in Italian at: <https://bit.ly/2U6dVVk>.

¹⁷⁰ Ministry of Labour, *I minori stranieri non accompagnati*, 31 December 2018, available in Italian at: <https://bit.ly/2VCcdMZ>, 18.

¹⁷¹ Children’s Ombudsman and UNHCR, *Minori stranieri non accompagnati: una valutazione partecipata dei bisogni - Relazione sulle visite nei centri*, May 2018, available in Italian at: <http://bit.ly/2TExUPE>, 14-15.

Family reunification was carried out with siblings in 104 cases, uncles in 26 cases, mothers in 3 cases, father in 6 cases and cousins in 2 cases.¹⁷²

The discretionary clauses

The Dublin Unit has not provided data on the application of the discretionary clauses under Article 17 of the Dublin Regulation. However, according to ASGI's experience, it seems that the "sovereignty clause" is more frequently applied than the "humanitarian clause", in particular on vulnerability and health grounds.

In some cases in 2018, courts held that the "sovereignty clause" may only be applied as long as a decision on the asylum application has not been issued by any Member State concerning the individual applicant,¹⁷³ and that in "take back" cases the court is not required to assess risks of *refoulement* upon potential return to the country of origin.¹⁷⁴ Nevertheless, the Civil Court of Rome ordered the application of Article 17(1) and annulled the transfer to Norway where the applicant had already received a negative decision on his asylum application. The Court took into account the risk situation for personal safety and respect for fundamental rights in the applicant's country of origin, Afghanistan, in addition to the applicant's young age and the absence of a support network in the country of origin.¹⁷⁵

2.2. Procedure

Indicators: Dublin: Procedure

1. On average, how long does a transfer take after the responsible Member State has accepted responsibility? Not available

The staff of the Italian Dublin Unit has significantly increased in 2018 and benefitted from the support of EASO personnel, mainly in relation to outgoing requests, family reunification and children. In 2018, EASO deployed 31 officers and 7 interim staff to support the Italian Dublin Unit.¹⁷⁶ As a result, outgoing requests were issued within the deadlines set by the Dublin Regulation in 2018.

Decree Law 113/2018 envisages the creation of up to three new territorial peripheral units of the Dublin Unit, to be established by Decree of the Ministry of Interior in identified Prefectures.¹⁷⁷ A Circular of the Ministry of Interior issued on 27 December 2018 launched the experimental start-up of a local branch of the Dublin Unit in Gorizia, **Friuli-Venezia Giulia**, for the time being only commissioned to treat peripherally the cases falling under the Dublin Regulation. No transfer decisions had been issued directly by this unit at the time of writing.

All asylum seekers are photographed and fingerprinted (*fotosegnalamento*) by police authorities who systematically store their fingerprints in Eurodac. When there is a Eurodac hit, the police contacts the Italian Dublin Unit within the Ministry of Interior. In the general procedure, after the lodging of the asylum application, on the basis of the information gathered and if it considers that the Dublin Regulation should be applied, the Questura transmits the pertinent documents to the Dublin Unit which examines the criteria set out in the Dublin Regulation to identify the Member State responsible.

Since December 2017, a specific procedure is implemented in Questura in the **Friuli-Venezia Giulia** region, on the basis that most of asylum seekers arriving in this region from Nordic countries or the Balkan route fall under the Dublin Regulation. ASGI has witnessed cases where the Questura

¹⁷² Ministry of Labour, *I minori stranieri non accompagnati*, 31 December 2018, 18.

¹⁷³ See e.g. Civil Court of Bologna, Decision 1796/2018.

¹⁷⁴ See e.g. Civil Court of Milan, Decision 29819/2018; Civil Court of Caltanissetta, Decision 482/2018; Civil Court of Caltanissetta, Decision 1398/2018.

¹⁷⁵ Civil Court of Rome, Decision 7899/2018, 5 June 2018, EDAL, available at: <https://bit.ly/2DbUCEq>.

¹⁷⁶ Information provided by EASO, 13 February 2019.

¹⁷⁷ Article 3(3) Procedure Decree, as amended by Article 11 Decree Law 113/2018.

fingerprint persons seeking asylum in the region as persons in “irregular stay” (“Category 3”) in the Eurodac database,¹⁷⁸ instead of “applicants for international protection” (“Category 1”).¹⁷⁹ The Dublin Unit therefore justifies the implementation of the Dublin transfer prior to the lodging of the application on the basis that no asylum application has been made; it should also be noted that “Category 3” fingerprints are not stored in the Eurodac database.¹⁸⁰

ASGI has witnessed a unique acceleration of the procedure in the Questure of Trieste and Gorizia in 2018, where people are notified of a transfer decision within one or two months of arrival and fingerprinting in Italy. In most cases the Questure notify the transfer decision without even proceeding with the lodging (*verbalizzazione*) of the asylum application, as they set the *verbalizzazione* appointment at a distant date to be able to obtain replies from the Dublin State concerned beforehand. Subsequently, they cancel the lodging appointments, and notify the transfers decisions.

Asylum seekers are not properly informed about the procedure or given the possibility to highlight any family links or vulnerabilities. On 25 March 2019, the Civil Court of Rome annulled the transfer of an Afghan citizen to Norway on the basis that the Dublin Unit had not complied with the information obligations set out in Article 4 of the Dublin Regulation which resulted in the Questura of Gorizia only informing the applicant about the asylum procedure.¹⁸¹

According to information available to ASGI, despite the acceleration of the procedure, not many transfers have been made as most of the asylum seekers concerned have submitted appeals, leading to transfers being suspended by the courts, while others have become untraceable.

Individualised guarantees

There are no reports of cases where the Dublin Unit has requested individual guarantees before proceeding with a transfer, even in the case of vulnerable persons. In at least two cases in February 2018, the Dublin Unit decided to transfer vulnerable people without having received any information or guarantees on reception conditions in the country of destination: one was a Pakistani national suffering from diabetes to be transferred to Croatia, and the other was an Iraqi pregnant woman to be transferred to Bulgaria. Both have appealed the transfer decisions. The first is still waiting for the court decision, the second obtained from the Civil Court of Rome a decision annulling the transfer.¹⁸²

In November 2018, an urgent suspension was requested before the transfer to Belgium of an Afghan citizen whose health therapy and rehabilitation had not been completed and where no guarantees were asked to the Belgian authorities. Upon expiration of the six-month time period for carrying out the transfer, the Italian authorities assumed responsibility for examining his asylum application.

Transfers

In case another Member State is considered responsible under the Dublin Regulation, the asylum procedure is terminated.¹⁸³ The Dublin Unit issues a decision that is transmitted to the applicant through the Questura, mentioning the country where the asylum seeker will be returned and the modalities for appealing against the Dublin decision.¹⁸⁴ Afterwards, the Questura arranges the transfer.

¹⁷⁸ Article 17 Eurodac Regulation.

¹⁷⁹ Article 9 Eurodac Regulation.

¹⁸⁰ Article 17(3) Eurodac Regulation.

¹⁸¹ Civil Court of Rome, Decision 6256/2019, 25 March 2019.

¹⁸² Civil Court of Rome, Decision 982/2019, 9 January 2019.

¹⁸³ Article 30(1) Procedure Decree.

¹⁸⁴ Presently, even though L 46/2017 has recognised the jurisdiction of the Civil Court of Rome and stated that the appeal has to be lodged within 30 days, many decisions still direct people to appeal before the Administrative Court of Lazio within 60 days.

The applicants must then present themselves at the place and date indicated by the Questura. Applicants held in CPR are brought by the police authorities to the border from which they will be transferred to the responsible Member State.

Where an appeal is lodged against the transfer decision, the six-month time limit for a transfer starts running from the rejection of the request for suspensive effect, otherwise from the decision on the appeal itself.¹⁸⁵ Since the practical organisation of the transfer is up to the Questura, it is difficult to indicate the average time before a transfer is carried out. The length of the Dublin procedure depends on many factors, including the availability of means of transport, the personal condition of the person, whether or not the police needs to accompany the person concerned etc. However, as the majority of applicants abscond and do not present themselves for the transfer, the Italian authorities often ask the responsible Member State for an extension of the deadline up to 18 months, as envisaged under Article 29(2) of the Dublin Regulation.

While waiting for the result of their Dublin procedure, asylum seekers are not detained, however.

The applicant usually waits for months without knowing if the Dublin procedure has started, to which country a request has been addressed and the criteria on which it has been laid down. In the majority of cases, it is only thanks to the help of NGOs providing Dublin cases with adequate information that asylum seekers are able to go through the whole procedure. When necessary, the NGOs contact the authorities to get the required information.

According to the data published by the Ministry of Labour in 2017, the time period between a “take charge” request for unaccompanied children and its acceptance by the destination country was 35 days on average, while it was on average 46 days between the acceptance of the request and the actual transfer of unaccompanied children.¹⁸⁶ No data have been provided for 2018. However, according to ASGI’s experience, in 2017 and also in 2018 the duration of the procedure is much longer.

Without prejudice to the procedure currently applied in **Friuli-Venezia Giulia**, the procedure may currently last over one year and no official measures have been adopted so far. Generally speaking, the Italian authorities tend to assume responsibility for the examination of the asylum application when the duration of the procedure lasts over 12 months, where applicants have not absconded and remain at the disposal of the authorities.

2.3. Personal interview

Indicators: Dublin: Personal Interview

Same as regular procedure

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the Dublin procedure? Yes No
❖ If so, are interpreters available in practice, for interviews? Yes No
2. Are interviews conducted through video conferencing? Frequently Rarely Never

With the exception of the lodging of the asylum application by the competent Questura, no personal interview of asylum seekers is envisaged during the Dublin procedure.

In **Friuli-Venezia Giulia**, the Dublin procedure is mostly conducted before the application is lodged. In this case, applicants are interviewed by the Questura according to Article 5 of the Dublin Regulation but

¹⁸⁵ Article 3(3-octies) Procedure Decree, as amended by L 46/2017.

¹⁸⁶ Ministry of Labour, *I minori stranieri non accompagnati in Italia*, 31 December 2017, available in Italian at: <http://bit.ly/2FvU6Aj>, 14.

in most cases information is collected only in a superficial manner not taking into consideration health problems, family links and other relevant or vulnerability elements.

2.4. Appeal

Indicators: Dublin: Appeal

Same as regular procedure

1. Does the law provide for an appeal against the decision in the Dublin procedure?

❖ If yes, is it

❖ If yes, is it suspensive

Yes

No

Judicial

Administrative

Yes

No

Asylum seekers are informed of the determination of the Dublin Unit concerning their “take charge” / “take back” by another Member State at the end of the procedure when they are notified through the Questura of the transfer decision. Asylum seekers may be informed on the possibility to lodge an appeal against this decision generally by specialised NGOs.

An applicant may appeal the transfer decision before the Civil Court of Rome within 30 days of the notification of the transfer.¹⁸⁷ The assistance of a lawyer is necessary for the lodging of an appeal, but the applicant can apply for legal aid.

Competent court

Until the end of 2015, the transfer decisions issued by the Dublin Unit were challenged before the administrative courts: at first instance within 60 days from the notification before the Administrative Court of Lazio and, at the second appeal instance before the Council of State (*Consiglio di Stato*). During 2016, however, the administrative courts expressed with several decisions the position that the Dublin procedure should be understood as a phase of the asylum procedure and, consequently, “Dubliner” asylum seekers as holders of an individual right and not a mere legitimate interest. The administrative courts have therefore stated that the judgment should be entrusted to the jurisdiction of ordinary courts, meaning the “natural judge” of individual rights. In this context, the first significant decision was taken on 18 December 2015 by the Council of State,¹⁸⁸ and subsequently by the Administrative Court of Lazio.¹⁸⁹ Reiterating this interpretation, Decree Law 13/2017, implemented by L 46/2017, has designated the specialised section of the Civil Courts as competent to decide on appeals against transfer decisions.¹⁹⁰

During 2018, the Civil Court of Rome started declaring lack of jurisdiction to decide on appeals lodged by persons accommodated in reception centres throughout the country. According to the Court, territorial jurisdiction should be exclusively determined on the basis of the place of the centres are located, and therefore fall within the specialised sections of the territorially competent Civil Courts and not the location of the Dublin Unit, i.e. Rome.¹⁹¹ This is echoed by the prospective establishment of local branches of the Dublin Units in specific Prefectures following the 2018 reform.

Suspensive effect

Article 3 of the Procedure Decree does not unequivocally provide that the transfer is suspended until the time limit for lodging an appeal expires. It states that the lodging of the appeal automatically suspends

¹⁸⁷ Article 3(3-ter) Procedure Decree, as amended by Article 6 Decree Law 13/2017 and L 46/2017.

¹⁸⁸ Council of State, Decision 5738/2015, 18 December 2015, available at: <http://bit.ly/2lbkoyN>.

¹⁸⁹ Administrative Court of Lazio, Decision 9909/2016, 22 September 2016; Decision 11911/2016, 28 November 2016, available at: <http://bit.ly/2IOS7AX>.

¹⁹⁰ Article 3(3-bis) Procedure Decree, as amended by Article 6 Decree Law 13/2017 and L 46/2017.

¹⁹¹ According to the rule provided in Article 4(3) Decree Law 13/2017, as amended by L 46/2017, this also applies to asylum appeals as it generally refers to “accommodated applicants”.

the transfer if an application for suspension is inserted in the appeal.¹⁹² According to ASGI, this should be interpreted as meaning that transfers may be carried out only once the time limit for an appeal has elapsed without an appeal being filed or with an appeal not indicating a request for suspension.

To the knowledge of ASGI, in 2018, ASGI the Questure waited for the 30-day deadline for lodging the appeal to expire before proceeding with the organisation of the transfer.

In **Friuli-Venezia Giulia**, Questure did not proceed with the transfer for those who provide proof of filing the appeal. In Trieste, together with the proof of filing the appeal, the Questura issued a new residence permit to the applicant, while in Gorizia the Questura did not issue a residence permit until a decision of suspension was taken by the Court, which in many cases was only notified after many months.

According to the law, the Court should decide on the application for suspensive effect within 5 days and notify a decision to the parties, who have 5 days to present submissions and 5 days to reply thereto. In this case, the Court must issue a new, final decision confirming, modifying or revoking its previous decision.¹⁹³ In ASGI's experience, these timeframes were never complied with by the Civil Court of Rome in 2018.

The appeal procedure is mainly written. Within 10 days of the notification of the appeal, the Dublin Unit must file the documentation on which the transfer decision is based and, within the same time limit, may file its own submissions. In the following 10 days, the applicant can in turn make submissions.¹⁹⁴ The court will set a hearing only if it considers it useful for the purposes of the decision.¹⁹⁵

The decision must be taken within 60 days from the submission of the appeal and can only be appealed before the Court of Cassation within 30 days. The Court of Cassation should decide on the appeal within 2 months from the lodging of the onward appeal.

2.5. Legal assistance

The same law and practices described under the section on [Regular Procedure: Legal Assistance](#) apply to the Dublin procedure with regard to legal assistance, including the merits and means tests.

2.6. Suspension of transfers

Indicators: Dublin: Suspension of Transfers

1. Are Dublin transfers systematically suspended as a matter of policy or jurisprudence to one or more countries? Yes No
❖ If yes, to which country or countries?

There is no official policy on systematic suspension of Dublin transfers to other countries.

Greece: In practice, following the European Court on Human Rights (ECtHR)' *M.S.S. v. Belgium and Greece* judgment, the Dublin Unit tends not to perform transfers to Greece. This was confirmed by the Head of the Dublin Unit, Simona Spinelli, in a hearing of 5 July 2016 before the Parliament. Moreover, in most of the appeals filed before the Civil Court of Rome, the suspension was granted.

Hungary: In late September 2016 the Council of State annulled a transfer to Hungary, defining it as an unsafe country for Dublin returns. The Council of State expressed concerns on the situation in Hungary,

¹⁹² Article 3(3-quater) and (3-octies) Procedure Decree, as amended by Article 6 Decree Law 13/2017 and L 46/2017.

¹⁹³ Article 3(3-quater) Procedure Decree, as amended by Article 6 Decree Law 13/2017 and L 46/2017.

¹⁹⁴ Article 3(3-quinquies) and (3-sexies) Procedure Decree, as amended by Article 6 Decree Law 13/2017 and L 46/2017.

¹⁹⁵ Article 3(3-septies) Procedure Decree, as amended by Article 6 Decree Law 13/2017 and L 46/2017.

deduced from measures such as the the planned construction of an “anti-immigrant wall” that represents the cultural and political climate of aversion to immigration and to the protection of refugees, the option of discontinuing an asylum application if the applicants leave their residence designated for more than 48 hours without permission and the extension of the detention period of asylum seekers.¹⁹⁶

Bulgaria: In September 2016 the Council of State also suspended several transfers to Bulgaria on the basis that the country is unsafe.¹⁹⁷ The Council of State expressed concerns about the asylum system in Bulgaria due to the critical condition of shelters, some of which appear as detention centres, and more generally of the cultural climate of intolerance and discrimination that reigns in public opinion and among the leaders in the government towards refugees.¹⁹⁸ In a ruling of November 2017, the Council of State reaffirmed its position and suspended the transfer of an Afghan asylum seeker to Bulgaria.¹⁹⁹

Nevertheless, the Italian Dublin Unit has continued to issue transfer decisions to Bulgaria, which have been annulled by Civil Courts on various occasions. The Civil Court of Rome annulled the transfer of an Iraqi applicant in October 2018.²⁰⁰ In January 2019, the Civil Court of Rome annulled transfer to Bulgaria of a pregnant woman from Iraq considering, pursuant to the rulings of the Council of State, that the transfer would have been a violation of Article 3(2) of the Dublin Regulation and Article 4 of the Charter of Fundamental Rights of the European Union, as respect for the fundamental rights of asylum seekers is not guaranteed in Bulgaria.²⁰¹ In February 2019, the Court also annulled the transfer of the woman’s husband.²⁰²

In addition, the courts have annulled transfers of Afghan asylum seekers whose applications have been rejected in the Member State concerned, on the basis of risks of chain *refoulement* upon return to the country of origin due to the security situation in Afghanistan. The Civil Court of Rome annulled the transfer of an Afghan applicant to Norway,²⁰³ and more recently the Civil Court of Trieste annulled the transfer of an Afghan applicant to Belgium on that basis.²⁰⁴

2.7. The situation of Dublin returnees

According to Eurostat, Italy received 5,678 incoming transfers in 2017. In the first eleven months of 2018, it received 5,919 transfers, most of which from Germany and France.²⁰⁵

Reception guarantees and practice

The Ministry of Interior Circular of 14 January 2019 specifies that Dublin returnees who had already applied for asylum prior to leaving Italy should be transferred by the competent Prefecture from the airport of arrival to the province where their application was lodged. If no prior asylum application had been lodged, they should be accommodated in the province of the airport of arrival. Family unity should always be maintained.²⁰⁶

¹⁹⁶ Council of State, Decision 4004/2016, 27 September 2016, available at: <http://bit.ly/2kWI01d>.

¹⁹⁷ Council of State, Decisions 3998/2016, 3999/2016, 4000/2016 and 4002/2016, 27 September 2016, available at: <http://bit.ly/2IIJzAR>.

¹⁹⁸ *Ibid.* The Council of State referred in particular to the fifth report on Bulgaria of the European Commission against Racism and Intolerance (ECRI), 16 September 2014.

¹⁹⁹ Council of State, Decision 5085/2017, 3 November 2017, available at: <http://bit.ly/2GKtcVA>.

²⁰⁰ Civil Court of Rome, Decision 15692/2018, 31 October 2018.

²⁰¹ Civil Court of Rome, Decision 982/2019, 9 January 2019.

²⁰² Civil Court of Rome, Decision 3289/2019, 7 February 2019.

²⁰³ Civil Court of Rome, Decision 7899/2018, 5 June 2018, EDAL, available at: <https://bit.ly/2DbUCEq>.

²⁰⁴ Civil Court of Trieste, Decision 605/2019, 15 March 2019.

²⁰⁵ Ministry of Interior, *Hearing in Parliament*, 5 December 2018, available in Italian at: <https://bit.ly/2U6dVVk>.

²⁰⁶ Ministry of Interior Circular of 14 January 2019, available in Italian at: <https://bit.ly/2P7G5OZ>.

Following the *Tarakhel v. Switzerland* ruling,²⁰⁷ in practice the guarantees requested were ensured mainly to families and vulnerable cases through a list of dedicated places in the SPRAR system (see [Types of Accommodation](#)), communicated since June 2015 to other countries' Dublin Units.²⁰⁸ However, following the 2018 reform of the reception system, Dublin returnees who are asylum seekers no longer have access to second-line reception; SPRAR now renamed SIPROIMI. Accordingly, places in second-line reception for vulnerable Dublin returnees are no longer reserved as asylum seekers do not have access to this type of accommodation.

In a Circular sent to other countries' Dublin Units in the form of an email on 8 January 2019, the Italian Dublin Unit expressly confirmed this new regime and stated the following:

“Consequently, all applicants under the Dublin procedure will be accommodated in other Centres referred to in Legislative Decree No. 142/2015.

In consideration of the efforts made by the Italian Government in order to strongly reduce the migration flows, these Centres are adequate to host all possible beneficiaries, so as to guarantee the protection of the fundamental rights, particularly the family unity and the protection of minors.”²⁰⁹

The latest Circular has been deemed by Germany and the Netherlands as sufficient basis to carry out transfers without requesting individual guarantees.²¹⁰

The letter seems to imply that places are no longer reserved in second-line reception even for vulnerable Dublin returnees who are beneficiaries of international protection.

As regards the implementation of incoming transfers, only in cases where it expressly recognises its responsibility under the Dublin Regulation does Italy indicate the most convenient airport where Dublin returnees should be sent in order to easily reach the competent Questura, meaning the Questura of the area where the asylum procedure had been started or assigned. In other cases, where Italy becomes responsible by tacit acceptance of incoming requests, persons transferred to Italy from another Member State usually arrive at the main Italian airports such as **Rome Fiumicino Airport** and **Milan Malpensa Airport**. At the airport, the Border Police provides to the person returned under the Dublin Regulation an invitation letter (*verbale di invito*) indicating the competent Questura where he or she has to go.

On 12 December 2018 the Danish Refugee Council and Swiss Refugee Council published a report with their monitoring of the situation of 13 vulnerable Dublin returnees in Italy in 2017-2018.²¹¹ The report illustrates the arbitrariness underlying Dublin returnees' reception by the authorities, timely access to accommodation and to the asylum procedure, and quality of reception conditions. Many asylum seekers have had to wait for several hours or even days without any support at airports such as Rome Fiumicino Airport and Milan Malpensa Airport before being received by the police.

²⁰⁷ In a ruling concerning an Afghan family with 6 children who were initially hosted in a CARA in Bari before travelling to Austria and then Switzerland, the ECtHR found that Switzerland would have breached Article 3 ECHR if it had returned the family to Italy without having obtained individual guarantees by the Italian authorities on the adequacy of the specific conditions in which they would receive the applicants. The Court stated that it is “incumbent on the Swiss authorities to obtain assurances from their Italian counterparts that on their arrival in Italy the applicants will be received in facilities and in conditions adapted to the age of the children, and that the family will be kept together.”: ECtHR, *Tarakhel v. Switzerland*, Application No 29217/12, Judgment of 4 November 2014, para 120.

²⁰⁸ See e.g. Dublin Unit, Circular: Dublin Regulation Nr. 604/2013. Vulnerable cases. Family in SPRAR projects, 4 July 2018, available at: <https://bit.ly/2OwbIGT>.

²⁰⁹ Dublin Unit, Circular No 1/2019, 8 January 2019.

²¹⁰ ECRE, *The implementation of the Dublin III Regulation in 2018*, March 2019, available at: <https://bit.ly/2G7KZsk>, 18.

²¹¹ Danish Refugee Council and Swiss Refugee Council, *Mutual Trust is still not enough*, December 2018, available at: <https://bit.ly/2GdnxMj>. See also *Is mutual trust enough? – The situation of persons with special reception needs upon return to Italy*, February 2017, available at: <http://bit.ly/2kWjtTT>.

Some Dublin returnees were denied access to the Italian reception system upon arrival altogether or had to wait a long time before they were accommodated in SPRAR facilities.²¹² In its latest report of February 2018, MSF documented an increase of Dublin returnees among the homeless persons in Rome, **Lazio** who have no immediate and automatic access to the reception system.²¹³

It should be noted that if returnees had been placed in reception facilities and they had moved away, they could encounter problems on their return to Italy for their new accommodation request. Due to their first departure, in fact, and according to the rules provided for the [Withdrawal of Reception Conditions](#), the Prefecture could deny them access to the reception system.²¹⁴

Substandard conditions in first reception centres and CAS were widely reported, falling far below standards for persons with special needs. The two organisations also found that oftentimes the receiving authorities were unaware of the specific vulnerability of the Dublin returnees.²¹⁵ In one incident at Caserma Caraverzani, Udine, **Friuli-Venezia Giulia**, an Afghan asylum seeker returned from Austria to Italy committed suicide in August 2018. The person was under treatment by the local mental health service in Austria. It seems that no information was provided about his health status before or after the Dublin transfer.²¹⁶

Re-accessing the asylum procedure

Access to the asylum procedure is equally problematic. Asylum seekers returned under the Dublin Regulation have to approach the Questura to obtain an appointment to lodge their claim. However, the delay for such an appointment reaches several months in most cases.²¹⁷ The competent Questura is often located very far from the airport and asylum seekers only have a few days to appear there; reported cases refer to persons arriving in Milan, **Lombardy** and invited to appear before the Questura of Catania, **Sicily**. In addition, people are neither accompanied to the competent Questura nor informed of the most suitable means of transport thereto, thereby adding further obstacles to reaching the Questura within the required time. In some cases, however, people are provided with tickets from the Prefecture desk at **Milan Malpensa Airport**.

Dublin returnees face different situations depending on whether or not they had applied for asylum in Italy before moving on to another European country, and whether or not the Territorial Commission had taken a decision on the application.²¹⁸

- ❖ In “take charge” cases where the person had not applied for asylum during his or her initial transit or stay in Italy before moving on to another country,²¹⁹ he or she should be allowed to lodge an application under the regular procedure. However, the person could be considered an irregular migrant and be notified an expulsion order. In September 2018 a Libyan national arriving from Germany at **Milan Malpensa Airport** after Italy had accepted its responsibility was not allowed to seek asylum and received an expulsion order. An ASGI lawyer is representing the individual before the Magistrates’ Court (*giudice di pace*) of Varese that has not yet decided whether the removal

²¹² *Ibid.*

²¹³ MSF, *Fuori campo*, February 2018, 25.

²¹⁴ According to Articles 13 and 23(1) Reception Decree, the withdrawal of reception conditions can be decided when the asylum seeker leaves the centre without notifying the competent Prefecture. See also ASGI, *Il sistema Dublino e l'Italia, un rapporto in bilico*, March 2015.

²¹⁵ Danish Refugee Council and Swiss Refugee Council, *Mutual Trust is still not enough*, December 2018.

²¹⁶ Friuliserà, ‘Tragedia alla ex Caserma Cavarzerano di Udine’, 1 September 2018, available in Italian at: <http://bit.ly/2HxRIST>; Meltingpot, ‘Si muore nei confini, si muore in mare, si muore nei campi e si muore anche nei CAS’, 14 August 2018, available in Italian at: <http://bit.ly/2XXnSjr>.

²¹⁷ Danish Refugee Council and Swiss Refugee Council, *Mutual Trust is still not enough*, December 2018.

²¹⁸ For more details, see ASGI, *Il sistema Dublino e l'Italia, un rapporto in bilico*, 2015, available in Italian at: <http://bit.ly/2kH0mvX>, 28.

²¹⁹ Article 13 Dublin III Regulation.

order should be suspended or not. As reported to ASGI, other Dublin returnees were also denied the possibility to apply for asylum in at Milan Malpensa Airport in 2018.

- ❖ In “take back” cases where the person had already lodged an asylum application and had not appeared for the personal interview, the Territorial Commission may have suspended the procedure on the basis that the person is unreachable (*irreperibile*).²²⁰ He or she may request a new interview with the Territorial Commission if a termination decision has not already been taken after the expiry of 12 months from the suspension of the procedure. If the procedure has been terminated, however, the new application will be considered a **Subsequent Application** and will be subject to the stringent regulations set out by the Procedure Decree following the 2018 reform.
- ❖ In “take back” cases where the person’s asylum application in Italy has already been rejected by the Territorial Commission,²²¹ if the applicant has been notified of the decision and lodged no appeal, he or she may be issued an expulsion order and be placed in a CPR. According to the new notification procedure applied since the end of October 2018 (see **Regular Procedure: General**), the same could happen even in case the applicant had been not been directly notified of the decision, since in case the applicant is deemed unreachable (*irreperibile*), the Territorial Commission notifies the decision by sending it to the competent Questura and notification is deemed to be complete within 20 days of the transmission of the decision to the Questura.²²²

Courts from other countries have not taken a uniform approach to the compliance of transfers to Italy with fundamental rights, including following the amendments to the reception system by Decree Law 113/2018. Inconsistent court decisions have been noted in Germany and the Netherlands. In Switzerland, courts have not changed their previous position on the legality of transfers to Italy.²²³ In the United Kingdom, however, the Upper Tribunal annulled a transfer to Italy on 4 December 2018 concerning one asylum seeker and one beneficiary of international protection finding that the threshold for ill-treatment prohibited by Article 3 ECHR may be met in cases involving demonstrably vulnerable asylum seekers and beneficiaries of international protection.²²⁴

3. Admissibility procedure

3.1. General (scope, criteria, time limits)

Article 29 of the Procedure Decree sets out the grounds for inadmissibility. Decree Law 113/2018 has introduced a new Article 29-bis to the Procedure Decree, setting out an additional inadmissibility ground.

The Territorial Commission may declare an asylum application inadmissible where the applicant:

1. Has already been recognised as a refugee by a state party to the 1951 Refugee Convention and can still enjoy such protection;²²⁵
2. Has made an **Subsequent Application** after a decision has been taken by the Territorial Commission, without presenting new elements concerning his or her personal condition or the situation in his or her country of origin;²²⁶
3. Has made a **Subsequent Application** during the execution of an imminent removal order.²²⁷

²²⁰ Article 18(1)(c) Dublin III Regulation.

²²¹ Article 18(1)(d) Dublin III Regulation.

²²² Article 11(3-ter) and (3-quater) Procedure Decree, as amended by Article 6 Decree Law 13/2017 and L 46/2017.

²²³ ECRE, *The implementation of the Dublin III Regulation in 2018*, March 2019, available at: <https://bit.ly/2G7KZsk>, 19.

²²⁴ United Kingdom Upper Tribunal, *SM v Secretary of State for the Home Department* [2018] UKUT 429 (IAC), 4 December 2018, available at: <http://bit.ly/2O8aLPG>.

²²⁵ Article 29(1)(a) Procedure Decree.

²²⁶ Article 29(1)(b) Procedure Decree.

According to ASGI, Article 29-bis of the Procedure Decree is likely to violate the recast Asylum Procedures Directive, as the lodging of a subsequent application for the sole purpose of delaying or frustrating removal is not among the grounds of inadmissibility in Article 33(2) of the Directive. Moreover, the Directive does not allow for the omission of a preliminary examination of subsequent applications, except where a such application is made by a person with regard to whom a Dublin transfer decision has to be enforced.²²⁸

The President of the Territorial Commission shall conduct a preliminary assessment of the admissibility of the application, aimed at ascertaining whether new elements have emerged which are relevant to the granting of international protection.²²⁹ The obligation of the Territorial Commission to inform the applicant of his or her right to submit observations within 3 days in the case of subsequent applications has been deleted by Decree Law 113/2018.²³⁰

As regards the new inadmissibility ground, the law states that no assessment of the admissibility of new elements is conducted.²³¹

3.2. Personal interview

Indicators: Admissibility Procedure: Personal Interview

Same as regular procedure

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the admissibility procedure? Depending on ground
 - ❖ If so, are questions limited to nationality, identity, travel route? Yes No
 - ❖ If so, are interpreters available in practice, for interviews? Yes No
2. Are interviews conducted through video conferencing? Frequently Rarely Never

The law does not draw a distinction between the interview conducted in the regular procedure and that applicable in cases of inadmissibility. However, following Decree Law 113/2018, implemented by L 132/2018, it is possible for certain [Subsequent Applications](#) to be automatically dismissed as inadmissible without examination.

3.3. Appeal

Indicators: Admissibility Procedure: Appeal

Same as regular procedure

1. Does the law provide for an appeal against an inadmissibility decision?

	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
❖ If yes, is it	<input checked="" type="checkbox"/> Judicial	<input type="checkbox"/> Administrative
❖ If yes, is it suspensive	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

For applications dismissed as inadmissible, the time limit for appealing a negative decision is 30 days, as in the [Regular Procedure: Appeal](#). However, the appeal has no automatic suspensive effect.²³²

²²⁷ Article 29-bis Procedure Decree, inserted by Article 9 Decree Law 113/2018 and L 132/2018.

²²⁸ In which case the subsequent application must be examined by the responsible Member States in accordance with the recast Asylum Procedures Directive, including a preliminary examination of the new elements submitted: Article 40(7) recast Asylum Procedures Directive.

²²⁹ Article 29(1-bis) Procedure Decree, inserted by the Reception Decree.

²³⁰ Article 29(1-bis) Procedure Decree, as amended by Article 9 Decree Law 113/2018 and L 132/2018.

²³¹ Article 29-bis Procedure Decree, inserted by Article 9 Decree Law 113/2018 and L 132/2018.

²³² Article 35-bis(3) Procedure Decree, as amended by Decree Law 113/2018 and L 132/2018.

3.4. Legal assistance

The rules and criteria for legal assistance are the same as in the [Regular Procedure: Legal Assistance](#).

4. Border procedure (border and transit zones)

4.1. General (scope, time limits)

Indicators: Border Procedure: General

1. Do border authorities receive written instructions on the referral of asylum seekers to the competent authorities? Yes No
2. Can an application made at the border be examined in substance during a border procedure? Yes No
3. Is there a maximum time limit for a first instance decision laid down in the law? Yes No
❖ If yes, what is the maximum time limit? 9 days

Decree Law 113/2018 has amended the Procedure Decree to introduce a border procedure, applicable in border areas and transit zones to be defined by decree of the Ministry of Interior.²³³ To this end, the amended Procedure Decree also foresees the creation of up to five Territorial Commissions to examine asylum applications subject to the border procedure.²³⁴

Under the border procedure, the entire examination of the asylum application can take place directly at the border area or in the transit zone.²³⁵

The border procedure may be applied where the applicant:²³⁶

- Makes an application directly at the designated border areas or transit zones after being apprehended for evading or attempting to evade controls;
- Comes from a [Safe Country of Origin](#).

The border procedure under Article 28-bis(1-ter) of the Procedure Decree follows the same rules as the 9-day [Accelerated Procedure](#) relating to applications made from CPR or hotspots under Article 28-bis(1). Upon receipt of the application, the Questura, immediately transmits the necessary documentation to the Territorial Commission, which must take steps for the personal interview within 7 days of the receipt of the documentation. The decision must be taken within the following 2 days.²³⁷

According to ASGI, the manner in which the provision is worded could allow for automatic application of accelerated border procedure to persons seeking asylum at the border as it makes its application solely contingent on the person having tried to evade controls. In this sense the provision does not comply with Article 43 the Asylum Procedures Directive, as the attempt to evade border controls is not included in the acceleration grounds laid down in Article 31(8) of the Directive which could lead to the application of a border procedure.

Moreover, the requirement of Article 43 of the Directive to allow the applicant to enter the territory if the determining authority has not taken a decision within 4 weeks has not been incorporated in the Procedure Decree. The Territorial Commission maintains the possibility of extending the duration of the procedure – while the applicant would remain at the border or in the transit zone – to a maximum of 18 months to ensure an adequate examination of the application.²³⁸

²³³ Article 28-bis(1-quater) Procedure Decree, as amended by Article 9 Decree Law 113/2018 and L 132/2018.

²³⁴ *Ibid.*

²³⁵ Article 28-bis(1-ter) Procedure Decree, as amended by Article 9 Decree Law 113/2018 and L 132/2018.

²³⁶ *Ibid.*

²³⁷ Article 28-bis(1) Procedure Decree, inserted by the Reception Decree.

²³⁸ Article 28-bis(3) Procedure Decree, citing Article 27(3) and (3-bis).

The border procedure has not yet been applied in practice, as a Ministry of Interior decree designating the relevant border areas and transit zones has not been adopted.

4.2. Personal interview

The same guarantees are those applied during the [Regular Procedure: Personal Interview](#) are applied.

4.3. Appeal

Indicators: Border Procedure: Appeal

Same as regular procedure

1. Does the law provide for an appeal against the decision in the border procedure?

❖ If yes, is it

❖ If yes, is it suspensive

Yes

No

Judicial

Administrative

Yes

No

An appeal against a negative decision in the border procedure has to be lodged before the Civil Court within 30 days.²³⁹ The appeal does not have automatic suspensive effect, however.²⁴⁰

4.4. Legal assistance

The rules and criteria for legal assistance are the same as in the [Regular Procedure: Legal Assistance](#).

5. Accelerated procedure

5.1. General (scope, grounds for accelerated procedures, time limits)

Article 28-bis of the Procedure Decree, as amended by Decree Law 113/2018, implemented by L 132/2018, provides for different accelerated procedures that foresee different time limits following the immediate transmission of the file from the Questura to the Territorial Commission, depending on the applicable ground:

5-day procedure: The Territorial Commission takes a decision within 5 days of receipt of the file where:²⁴¹

1. The applicant comes from a [Safe Country of Origin](#);
2. The applicant makes a [Subsequent Application](#) without presenting new elements.

9-day procedure: The Territorial Commission takes steps to organise the personal interview within 7 days of receipt of the file and decides within the 2 following days where:

3. The asylum application is made by a person detained in a CPR or in a hotspot or first reception centre;²⁴²
4. The asylum application is made at the border and is subject to the [Border Procedure](#), i.e. following apprehension for evading or attempting to evade border controls, or by a person coming from a safe country of origin.²⁴³

18-day procedure: The Territorial Commission has 14 days upon receipt of the file from the Questura to organise the interview and another 4 days to take a decision, where:²⁴⁴

²³⁹ Article 35-bis(2) Procedure Decree, as amended by Article 6 Decree Law 13/2017 and L 46/2017.

²⁴⁰ Article 35-bis(3) Procedure Decree, as amended by Article 6 Decree Law 13/2017 and L 46/2017, as amended by Article 9 Decree Law 113/2018 and L 132/2018.

²⁴¹ Article 28-bis(1-bis) Procedure Decree, inserted by Article 9 Decree Law 113/2018 and L 132/2018.

²⁴² Article 28-bis(1) Procedure Decree, as amended by Article 3 Decree Law 113/2018 and L 132/2018.

²⁴³ Article 28-bis(1-ter) Procedure Decree, inserted by Article 9 Decree Law 113/2018 and L 132/2018.

²⁴⁴ Article 28-bis(2) Procedure Decree, as amended by Article 9 Decree Law 113/2018 and L 132/2018.

5. The application is manifestly unfounded (see [Regular Procedure: General](#));
6. The applicant made an application after being apprehended for irregular stay, with the sole purpose to delay or frustrate the issuance or enforcement of a removal order.

According to Article 28-bis(3) of the Procedure Decree, the Territorial Commission may exceed the abovementioned time limits where necessary to ensure an adequate and complete examination of the asylum application, subject to a maximum time limit of 18 months.²⁴⁵ Where the application is made by the applicant detained in CPR or a hotspot or first reception centre, the maximum duration of the procedure cannot exceed 6 months.²⁴⁶ The law does not clarify whether the procedure can be declared accelerated even if the time limits set out in the law have not been respected.

In practice, ASGI reported in 2017 that asylum seekers whose application had been rejected as manifestly unfounded in some regions only became aware of the fact that they had been involved in an accelerated procedure, and that they had only 15 days instead of 30 to appeal against the decision, when they were notified of the negative Territorial Commission decision by the Questura. Most of the appeals were considered inadmissible by the Civil Court of Naples because they were not lodged within the ostensible 15-day deadline. The judges, after refusing the request for suspensive effect, gave dates for the hearing one year later.

The Court of Appeal of Naples overturned the Court's decisions on 3 January 2018, stating that the shorter time limits for appeal only apply in the cases set out in Article 28-bis(2) of the Procedure Decree and in cases where an asylum seeker applies from a CPR.²⁴⁷ It highlighted that, in order to safeguard the asylum seeker's rights of defence, the accelerated procedure must be triggered by the Territorial Commission before a decision is taken, and with the applicant being informed thereof, rather than retrospectively applied after a rejection decision has been issued following the regular procedure.²⁴⁸

As a result of the Court of Appeal decision, this unlawful practice stopped in 2018.

5.2. Personal interview

The same guarantees are those applied during the [Regular Procedure: Personal Interview](#) are applied.

5.3. Appeal

Indicators: Accelerated Procedure: Appeal

Same as regular procedure

1. Does the law provide for an appeal against the decision in the accelerated procedure?

❖ If yes, is it

❖ If yes, is it suspensive

Yes No

Judicial Administrative

Depending on ground

The time limits for appealing a negative decision depend on the type of accelerated procedure applied by the Territorial Commission:

Time limits for appeals in accelerated procedures: Article 35-bis(2) Procedure Decree		
Ground for accelerated procedure	Legal basis	Days
Safe country of origin	Article 28-bis(1-bis)	30
Subsequent application without new elements	Article 28-bis(1-bis)	30

²⁴⁵ Article 28-bis(3) Procedure Decree, citing Article 27(3)-(3-bis).

²⁴⁶ *Ibid.*

²⁴⁷ Article 35-bis(2) Procedure Decree, as amended by Article 6 Decree Law 13/2017 and L 46/2017.

²⁴⁸ Court of Appeal of Naples, Decision 17/2018 3 January 2018, available at: <http://bit.ly/2mxJHvD>.

Border procedure	Article 28-bis(1-ter)	30
Manifestly unfounded application	Articles 28-bis(2)(a) and 28-ter	15
Application after apprehension for irregular entry with the sole purpose of frustrating issuance or execution of removal order	Article 28-bis(2)(c)	15
Applicant detained in a CPR, hotspot or first reception centre	Article 28-bis(1)	15

The time limits for appealing a negative decision under Article 35-bis(2) and corresponding provisions of the Procedure Decree raise issues of consistency following the 2018 reform. More specifically, if Safe Country of Origin is applied as a self-standing ground for applying the accelerated procedure,²⁴⁹ the applicant would have 30 days to lodge an appeal. If, however, the accelerated procedure is applied on the basis of a manifestly unfounded application, which includes safe country of origin grounds,²⁵⁰ the applicant would only have 15 days to appeal.

The automatic suspensive effect of the appeal also depends on the ground for applying the accelerated procedure. The appeal in the accelerated procedure generally has automatic suspensive effect, except for the following cases:²⁵¹

- Applications by persons detained in a CPR or hotspot or first reception centre;
- Manifestly unfounded applications;
- Applications subject to the [Border Procedure](#);
- Applications made after apprehension for irregular entry with the sole purpose of frustrating issuance or execution of removal order.

As stated in [Regular Procedure: Appeal](#), appeals against decisions rejecting the application as manifestly unfounded also lack automatic suspensive effect.

5.4. Legal assistance

The same rules apply as under the regular procedure.

6. Immediate procedure

In addition to the [Border Procedure](#) and the different types of [Accelerated Procedures](#), Decree Law 113/2018 has also amended the Procedure Decree to introduce an “immediate procedure” (*procedimento immediato*), applicable where the applicant:²⁵²

- ❖ Is subject to investigation for crimes which may trigger exclusion from international protection, and [Grounds for Detention](#) in a CPR apply;²⁵³
- ❖ Has been convicted, including by a non-definitive judgment, of crimes which may trigger exclusion from international protection.

²⁴⁹ Article 28-bis(1-bis) Procedure Decree, as amended by Article 9 Decree Law 113/2018 and L 132/2018.

²⁵⁰ Articles 28-bis(2) and 28-ter(b) Procedure Decree, as amended by Article 9 Decree Law 113/2018 and L 132/2018.

²⁵¹ Article 35-bis(3) Procedure Decree, as amended by Article 9 Decree Law 113/2018 and L 132/2018.

²⁵² Article 32(1-bis) Procedure Decree, inserted by Article 10 Decree Law 113/2018 and L 132/2018.

²⁵³ The crimes are those cited by Articles 12(1)(c) and 16 (1)(d-bis) Qualification Decree, which include some serious crimes such as devastation, looting, massacre, civil war, mafia related crimes, murder, extortion, robbery, kidnapping even for the purpose of extortion, terrorism, selling or smuggling weapons, drug dealing, slavery, child prostitution, child pornography, trafficking in human beings, purchase and sale of slaves, sexual violence. Decree Law 113/2018 has also included other crimes excluding the recognition of international protection which are: violence or threat to a public official; serious personal injury; female genital mutilation; serious personal injury to a public official during sporting events; theft if the person wears weapons or narcotics, without using them; home theft. The grounds for detention referred to are those in Article 6(2)(a), (b) and (c) Reception Decree.

Under the immediate procedure, the Questura promptly notifies the Territorial Commission, which “immediately” proceeds to an interview with the asylum seeker and takes a decision accepting the asylum application, suspending the procedure or rejecting the application.²⁵⁴

In case of rejection, and unless special protection has to be granted, the law provides that the applicant has an obligation to leave the national territory even in case of an appeal, i.e. suspensive effect is not automatically granted, nor can it be requested before the court. In this case the rules governing the expulsion of foreigners apply.²⁵⁵

The Procedure Decree also provides that when the grounds for the immediate procedure arise during the appeal procedure, previously granted suspensive suspect shall be withdrawn.²⁵⁶

In this respect, the immediate procedure seems incompatible with the recast Asylum Procedures Directive, which does not foresee such derogations and only allows for an exception to the right to remain on the territory pending the examination of the asylum application at first instance in the case of a subsequent application or in the context of a surrender or extradition procedure.²⁵⁷

D. Guarantees for vulnerable groups

1. Identification

Indicators: Identification

1. Is there a specific identification mechanism in place to systematically identify vulnerable asylum seekers?
 Yes For certain categories No
❖ If for certain categories, specify which:
2. Does the law provide for an identification mechanism for unaccompanied children?
 Yes No

The Procedure Decree describes the following groups as vulnerable: minors, unaccompanied minors, pregnant women, single parents with minor children, victims of trafficking, disabled, elderly people, persons affected by serious illness or mental disorders; persons for whom has been proved they have experienced torture, rape or other serious forms of psychological, physical or sexual violence; victims of genital mutilation.²⁵⁸

1.1. Screening of vulnerability

There is no procedure defined in law for the identification of vulnerable persons. However, the Ministry of Health published guidelines for assistance, rehabilitation and treatment of psychological disorders of beneficiaries of international protection victims of torture, rape or other serious forms of psychological, physical or sexual violence. The guidelines highlight the importance of multidisciplinary teams and synergies between local health services and all actors coming into contact with asylum seekers (see [Content of Protection: Health Care](#)).

The identification of victims of torture or extreme violence may occur at any stage of the asylum procedure by lawyers, competent authorities, professional staff working in reception centres and specialised NGOs.

²⁵⁴ Article 32(1-bis) Procedure Decree, inserted by Article 10 Decree Law 113/2018 and L 132/2018.

²⁵⁵ *Ibid*, citing Article 13(3), (4) and (5) TUI.

²⁵⁶ Article 35-bis(5) Procedure Decree, as amended by Article 10 Decree Law 113/2018 and L 132/2018.

²⁵⁷ See Articles 9(2)-(3) and 46(8) recast Asylum Procedures Directive.

²⁵⁸ Article 2(1)(h-bis) Procedure Decree.

The Territorial Commission, on the basis of elements provided by the applicant, may also request a medical examination aimed at ascertaining the effects of persecution or serious harm suffered by the applicants, to be carried out in accordance with the aforementioned guidelines.²⁵⁹

Children

The protection of asylum seeking children has been strengthened with the adoption of LD 18/2014 and L 47/2017. Article 3(5)(e) LD 18/2014 provides the obligation to take into account the level of maturity and the personal development of the child while evaluating his or her credibility, while Article 19(2-bis) expressly recalls and prioritises the principle of the best interests of the child.

Any action necessary to identify the family members of the unaccompanied minor seeking asylum is promptly started in order to ensure the right to family reunification. The Ministry of Interior shall enter into agreements with international organisations, intergovernmental organisations and humanitarian associations, on the basis of the available resources of the National Fund for asylum policies and services, to implement programs directed to find the family members. The researches and the programs directed to find such family members are conducted in the superior interest of the minor and with the duty to ensure the absolute privacy and, therefore, to guarantee the security of the applicant and of his or her relatives.²⁶⁰

A member of the Territorial Commission, specifically skilled for that purpose, interviews the minor at the presence of the parents or the legal guardian and the supporting personnel providing specific assistance to the minor. For justified reasons, the Territorial Commission may proceed to interview again the minor at the presence of the supporting personnel even without the presence of the parent or the legal guardian, if considered necessary in relation of the personal situation of the minor concerned, degree of maturity and development, in the sole minor's best interests.²⁶¹

Survivors of torture

During the personal interview, if the members of the Territorial Commissions suspect that the asylum seeker may be a torture survivor, they may refer him or her to specialised services and suspend the interview.

Since April 2016, MSF started a project in Rome, **Lazio** in collaboration with ASGI and opened a centre specialising in the rehabilitation of victims of torture.²⁶² The project is intended to protect but also to assist in the identification of victims of torture who, without proper legal support, are unlikely to be treated as vulnerable people.

The Reception Decree provides that persons for whom has been proved they have experienced torture, rape or other serious forms of violence shall have access to appropriate medical and psychological assistance and care on the basis of Guidelines that will be issued by the Ministry of Health, as mentioned above. To this end, health personnel shall receive appropriate training and must ensure privacy.²⁶³

Victims of trafficking

Where during the examination procedure, well-founded reasons arise to believe the applicant has been a victim of trafficking, the Territorial Commissions may suspend the procedure and inform the Questura,

²⁵⁹ Article 8(3-bis) Qualification Decree.

²⁶⁰ Article 19(7) Reception Decree.

²⁶¹ Article 13(3) Procedure Decree.

²⁶² See Redattore Sociale, 'Migranti, apre a Roma il centro di riabilitazione per le vittime di tortura', 4 April 2016, available in Italian at: <http://bit.ly/1ShpCGG>.

²⁶³ Article 17(8) Reception Decree.

the Prosecutor's office or NGOs providing assistance to victims of human trafficking thereof.²⁶⁴ LD 24/2014, adopted in March 2014 for the transposition of the Anti-Trafficking Directive, foresees that a referral mechanism should be put in place in order to coordinate the two protection mechanisms established for victims of trafficking, namely the protection systems for asylum seekers and beneficiaries of international protection, coordinated at a central level, and the protection system for victims of trafficking established at a territorial level.²⁶⁵

Giving effect to the legal provision, in 2017, the National Commission (CNDA) and UNHCR published detailed guidelines for the Local Commissions on the identification of victims of trafficking among applicants for international protection and the referral mechanism.²⁶⁶

Reception Decree clarifies that trafficked asylum seekers shall be channelled into a special programme of social assistance and integration.²⁶⁷ Recognised victims of trafficking can also be accommodated in second-line SIPROIMI reception facilities (see [Special Reception Needs](#)).

1.2. Age assessment of unaccompanied children

The Procedure Decree includes a specific provision concerning the identification of unaccompanied children. It foresees that in case of doubt on the age of the asylum seeker, unaccompanied children can be subjected to an age assessment through non-invasive examinations.²⁶⁸ The age assessment can be triggered by the competent authorities at any stage of the asylum procedure. However, before subjecting a young person to a medical examination, it is mandatory to seek consent of the unaccompanied child concerned or of his or her legal guardian.²⁶⁹ The refusal by the applicant to undertake the age assessment has no negative consequences on the examination of the asylum application.

On 6 January 2017, Decree 234/2016 adopted on 10 November 2016 entered into force. The Decree lays down a procedure for determining the age of unaccompanied children victims of trafficking, in implementation of Article 4 LD 24/2014.

L 47/2017 has laid down rules on age assessment which apply to all unaccompanied children.²⁷⁰ The Law provides that within 120 days of its entry into force, a decree of the President of the Council of Ministers should be adopted regulating the interview with the minor aiming at providing further details on his family and personal history and to bring out any other useful element relevant to his/her protection.²⁷¹ However, to date, such decree has not yet been adopted.

Identification documents and methods of assessing age

The law states that, in the absence of identification documents,²⁷² and in case of doubt about the person's age, the Public Prosecutor's office at the Juvenile Court, may order a social / medical examination.²⁷³ This provision may put an end to the critical practice of Questure which directly sent

²⁶⁴ Article 32(3-bis) Procedure Decree.

²⁶⁵ Article 13 L 228/2003; Article 18 TUI.

²⁶⁶ CNDA and UNHCR, *L'identificazione delle vittime di tratta tra i richiedenti protezione internazionale e procedure di referral*, September 2017, available in Italian at: <http://bit.ly/2FttAeK>.

²⁶⁷ Article 17(2) Reception Decree in conjunction with Article 18(3-bis) LD 286/1998 and LD 24/2014.

²⁶⁸ Article 19(2) Procedure Decree.

²⁶⁹ *Ibid.*

²⁷⁰ Article 19-bis Reception Decree, inserted by Article 5 L 47/2017.

²⁷¹ Article 5 L 47/2017.

²⁷² Article 19-bis(3) Reception Decree.

²⁷³ Article 19-bis(4) Reception Decree.

children to hospital facilities without any order by judicial authorities, even when children had valid documents.²⁷⁴

The person is informed in a language he or she can understand taking into account his or her degree of literacy and maturity, with the assistance of a cultural mediator, of the fact that an age assessment will be conducted through a social / medical examination. The guardian is also informed of the process.

The examination is conducted under a multidisciplinary approach by appropriately trained professionals, using the least invasive methods possible and respecting the integrity of the person.²⁷⁵

Pending the outcome of the procedure, the applicant benefits from the provisions on reception of unaccompanied children.²⁷⁶ The benefit of the doubt shall be granted if doubts persist following the examination.²⁷⁷

The law also states that the final decision on the age assessment, taken by the Juvenile Court, is notified to the child and to the guardian or the person exercising guardianship and must indicate the margin of error.²⁷⁸

Currently, however, according to ASGI's experience, L 47/2017 is not properly applied. Age assessment is conducted only through wrist X-ray, the margin of error is not written on the report and the decision is notified many months later or not even adopted. Moreover, the applicant is often treated as an adult while awaiting the age assessment, contrary to the principle of the benefit of the doubt.²⁷⁹

During a visit to the First Aid and Reception Centre (*Centro di primo soccorso et di accoglienza*, CPSA) of Roma Capitale, a first reception centre for children in Rome, **Lazio**, carried out in December 2017, the Children's Ombudsman found that, after a first interview, the children were subjected to age assessment through medical examination in all cases where they had no identification document certifying their age, and then submitted to the photo-dactyloscopic surveys at the offices of the Scientific Police.²⁸⁰

In its most recent report published in March 2019, the Children's Ombudsman pointed out that the judges interviewed reported that the frequency of procedures for age assessment is still very low.²⁸¹

Challenging age assessment

According to L 47/2017, the age assessment decision can be appealed, and any administrative or criminal procedure is suspended until the decision on the appeal.²⁸² Before this law, in the absence of a specific provision, children were often prevented from challenging the outcome of age assessments.

The ECtHR communicated a case against Italy on 14 February 2017 concerning alleged violations of Articles 3 and 8 ECHR stemming from the absence of procedural guarantees in the age assessment procedure.²⁸³

²⁷⁴ Elena Rozzi, 'L'Italia, un modello per la protezione dei minori stranieri non accompagnati a livello europeo?', in *Il diritto d'asilo*, Fondazione Migrantes, February 2018.

²⁷⁵ Article 19-bis(5) Reception Decree.

²⁷⁶ Article 19-bis(6) Reception Decree.

²⁷⁷ Article 19-bis(8) Reception Decree.

²⁷⁸ Article 19-bis(7) Reception Decree.

²⁷⁹ Elena Rozzi, 'L'Italia, un modello per la protezione dei minori stranieri non accompagnati a livello europeo?', in *Il diritto d'asilo*, Fondazione Migrantes, February 2018.

²⁸⁰ Children's Ombudsman and UNHCR, *Minori stranieri non accompagnati: una valutazione partecipata dei bisogni - Relazione sulle visite nei centri*, May 2018, available in Italian at: <http://bit.ly/2TEXUPE>, 19.

²⁸¹ Children's Ombudsman, *I movimenti dei minori stranieri non accompagnati alle frontiere settentrionali*, 29 March 2019, available in Italian at: <https://bit.ly/2v2oNt6>, 29.

²⁸² Article 19-bis(10) Reception Decree.

²⁸³ ECtHR, *Darboe and Camara v. Italy*, Application No 5797/17, Communicated 14 February 2017.

2. Special procedural guarantees

Indicators: Special Procedural Guarantees

1. Are there special procedural arrangements/guarantees for vulnerable people? Yes For certain categories No
❖ If for certain categories, specify which:

2.1. Adequate support during the interview

The Procedure Decree foresees the possibility for asylum seekers in a vulnerable condition to be assisted by supporting personnel during the personal interview even though the legal provision does not specify which kind of personnel.²⁸⁴ During the personal interview, the applicant may be accompanied by social workers, medical doctors and/or psychologists.

According to Reception Decree, unaccompanied children can be assisted, in every state and degree of the procedure, by the presence of suitable persons indicated by the child, as well as groups, foundations, associations or NGOs with proven experience in the field of assistance to foreign minors and registered in the register referred to in Article 42 TUI, with the prior consent of the child, and accredited by the relevant judicial or administrative authority.²⁸⁵

Where it emerges that asylum seekers have been victims of slavery or trafficking in human beings the Territorial Commission transmits the documents to police for the appropriate evaluations.²⁸⁶

2.2. Prioritisation and exemption from special procedures

Vulnerable persons are admitted to the prioritised procedure.²⁸⁷ The Territorial Commission must schedule the applicant's interview "in the first available seat" when that applicant is deemed vulnerable.²⁸⁸ In practice, when the police have elements to believe that they are dealing with vulnerable cases, they inform the Territorial Commissions which fix the personal interview as soon as possible, prioritising their case over the other asylum seekers under the regular procedure. Moreover, this procedure is applied also in case the Territorial Commissions receive medico-legal reports from specialised NGOs, reception centres and Health centres.

Children can directly make an asylum application through their parents.²⁸⁹

It should be noted, however, that the Procedure Decree makes no provision for exemption of unaccompanied children and/or persons in need of special procedural guarantees from the accelerated procedure. No such provisions exist in relation to the border procedure and immediate procedure introduced by Decree Law 113/2018, implemented by L 132/2018.

²⁸⁴ Article 13(2) Procedure Decree.

²⁸⁵ Article 18(2-bis) Reception Decree.

²⁸⁶ Article 32(3-bis) Procedure Decree.

²⁸⁷ Article 28(1)(b) Procedure Decree.

²⁸⁸ Article 7(2) PD 21/2015.

²⁸⁹ Article 6(2) Procedure Decree.

3. Use of medical reports

Indicators: Use of Medical Reports

1. Does the law provide for the possibility of a medical report in support of the applicant's statements regarding past persecution or serious harm?
 Yes In some cases No
2. Are medical reports taken into account when assessing the credibility of the applicant's statements?
 Yes No

The law contains no specific provision on the use of medical reports in support of the applicant's statements regarding past persecutions or serious harm. Nevertheless, the Qualification Decree states that the assessment of an application for international protection is to be carried out taking into account all the relevant documentation presented by the applicant, including information on whether the applicant has been or may be subject to persecution or serious harm.²⁹⁰

Moreover, a medico-legal report may attest the applicant's inability or unfitness to attend a personal interview. According to the Procedure Decree, the Territorial Commissions may omit the personal interview when the applicant is unable or unfit to face the interview as certified by a public health unit or a doctor working with the National Health System.²⁹¹ Moreover, the applicant can ask for the postponement of the personal interview providing the Territorial Commission with pertinent medical documentation.²⁹²

The Qualification Decree allows the Territorial Commission to seek advice, whenever necessary, from experts on particular issues, such as medical, cultural, religious, child-related or gender issues. Where the Territorial Commission deems it relevant for the assessment of the application, it may, subject to the applicant's consent, arrange for a medical examination of the applicant concerning signs that might indicate past persecution or serious harm according to the Guidelines issued by the Ministry of Health by decree on 3 April 2017 to implement Article 27(1-bis) of the Qualification Decree (see [Content of Protection: Health Care](#)).²⁹³ When no medical examination is not provided by the Territorial Commission, the applicants may, on their own initiative and at their own cost, arrange for such a medical examination and submit the results to the Territorial Commission for the examination of their applications.²⁹⁴

In practice, medico-legal reports are generally submitted to the Territorial Commissions by specialised NGOs, legal representatives and personnel working in the reception centres before, or sometimes during or after, the substantive interview at first instance. They may also be submitted to the judicial authorities during the appeal stage.

The degree of consistency between the clinical evidence and the account of torture is assessed in accordance with the Guidelines of the Istanbul Protocol and recent specialised research.

The medical reports are provided to asylum seekers for free. NGOs may guarantee the support and medical assistance through *ad hoc* projects.

²⁹⁰ Article 3 Qualification Decree.

²⁹¹ Article 12(2) Procedure Decree.

²⁹² Article 5(4) PD 21/2015.

²⁹³ Article 27(1-bis) Qualification Decree.

²⁹⁴ Article 8(3-bis) Procedure Decree.

4. Legal representation of unaccompanied children

Indicators: Unaccompanied Children

1. Does the law provide for the appointment of a representative to all unaccompanied children?
 Yes No

The system of guardianship is not specific to the asylum procedure. A guardian is appointed when children do not have legal capacity and no parents or other relatives or persons who could exercise parental authority are present in the territory.²⁹⁵ The guardian is responsible for the protection and the well-being of the child.

The Reception Decree, as amended by L 47/2017, provides that affective and psychological assistance is guaranteed to children in every state of the procedure, through the presence of suitable persons indicated by the child and authorised by the relevant authorities.²⁹⁶ It also guarantees that the unaccompanied child has the right to participate, through a legal representative, in all judicial and administrative proceedings concerning him or her and to be heard on the merits of his or her case. To this end, the law also guarantees the presence of a cultural mediator.²⁹⁷

The individuals working with children shall be properly skilled or shall in any case receive a specific training and have the duty to respect the privacy rights in relation to the personal information and data of the minors.²⁹⁸

The Reception Decree provides that the unaccompanied child can make an asylum application in person or through his or her legal guardian on the basis of the evaluation of the situation of the child concerned.²⁹⁹

4.1. Timing of appointment

The Reception Decree, as amended by LD 220/2017 which entered into force on 31 January 2018, provides that the public security authority must give immediate notice of the presence of an unaccompanied child to the Public Prosecutor at the Juvenile Court and to the Juvenile Court (*Tribunale per i minorenni*) for the appointment of a guardian.³⁰⁰ The Juvenile Court is the sole competent authority following the 2017 reform.

An appeal against the appointment of the guardian is submitted to the Juvenile Court in collegial function. The judge issuing the decision of appointment cannot take part in the examination of the appeal.

Where a guardian has not yet been appointed, the manager of the reception centre is allowed to support the child for the lodging of the asylum application at the Questura.³⁰¹ As clarified by the CNDA, however, the guardian remains responsible for representing the child in the next steps of the procedure.³⁰²

Currently, the most common practice is the appointment of the Mayor of the municipality where the child is residing as guardian. In practice, the Mayor delegates this duty to individuals who provide social assistance or other services for the municipality. These persons have to deal with a high number of

²⁹⁵ Article 343 et seq. Civil Code.

²⁹⁶ Article 18(2-bis) Reception Decree, inserted by L 47/2017.

²⁹⁷ Article 18(2-ter) Reception Decree, inserted by L 47/2017.

²⁹⁸ Article 18(5) Reception Decree.

²⁹⁹ Article 6(3) Procedure Decree.

³⁰⁰ Article 19(5) Reception Decree, as amended by LD 220/2017.

³⁰¹ Article 26(5) Procedure Decree, as amended by L 47/2017.

³⁰² CNDA Circular No 6425 of 21 August 2017, available in Italian at: <http://bit.ly/2Fn38Um>.

other vulnerable persons such as elderly, handicapped persons and so forth, and have no capacity to properly discharge their mandate.

In some cases, this also generates conflicts of interest, as the municipality may have an interest in requesting an age assessment even when there are no doubts, in order to reduce the number of children requiring accommodation.

4.2. Duties and qualifications of the guardian

According to the Procedure Decree, the guardian has the responsibility to assist the unaccompanied child during the entire asylum procedure, and even afterwards, in case the child receives a negative decision on the claim.³⁰³ For this reason, the guardian accompanies the child to the police, where he or she is fingerprinted if he or she is over 14, and assists the child in filling the form and lodge the asylum claim. The guardian also has a relevant role during the personal interview before the Territorial Commission, who cannot start the interview without his or her presence.³⁰⁴ The law provides that a member of the Territorial Commission, specifically trained for that purpose, interviews the child in the presence of his or her parents or the guardian and the supporting personnel providing specific assistance to the child. For justified reasons, the Territorial Commission may proceed to interview again the child, even without the presence of the parent or the legal guardian, at the presence of supporting personnel, if considered necessary in relation of the personal situation of the children, his or her degree of maturity and development, and line with his or her best interests.³⁰⁵

The guardian must be authorised by the Juvenile Court to make an appeal against a negative decision. The law does not foresee any specific provision concerning the possibility for unaccompanied children to lodge an appeal themselves, even though in theory the same provisions foreseen for all asylum seekers are also applicable to them.

Each guardian can be appointed for one child or for a maximum of three children.

To overcome existing deficiencies and lack of professionalism among guardians, L 47/2017 has established the concept of voluntary guardians. A register of such guardians has to be kept in every Juvenile Court.³⁰⁶

The Regional Children's Ombudsman is responsible for selecting and training guardians. The National Children's Ombudsman has established specific guidelines on the basis of which calls for selection of guardians have already been issued in each region.³⁰⁷ Training courses have started in most of the cities.

During monitoring visits carried out between November and December 2017, the Children's Ombudsman noted a strong lack of communication and listening by the guardians who, for example in the experience of children interviewed in the CAS of Cascina Scarampa, Vercelli, **Piedmont** were simply seen as those who "accompany them to the Territorial Commission". In addition, the Ombudsman found serious deficiencies in the provision of information and legal assistance, which according to him resulted in all unaccompanied children accommodated in that CAS almost automatically submitting an asylum application despite the large number of negative decisions issued by the Territorial Commission. The Ombudsman also found an equally high proportion of asylum seekers among unaccompanied children in first reception centres and CAS in **Apulia** (Taranto), **Lombardy**

³⁰³ Article 19(1) Procedure Decree.

³⁰⁴ Article 13(3) Procedure Decree.

³⁰⁵ *Ibid.*

³⁰⁶ Article 11 L 47/2017.

³⁰⁷ Children's Ombudsman, *Guidelines for the selection, training and registration in the lists of voluntary guardians pursuant to Article 11 L 47/2017*, available in Italian at: <http://bit.ly/2Dgl4tS>.

(Como) and **Tuscany** (Firenze).³⁰⁸ According to ASGI's experience, the same problem exists also in other centers.

A total of 3,676 unaccompanied children applied for asylum in 2018, a decrease by almost one third compared to 9,782 in 2017:

Unaccompanied asylum-seeking children: 2018	
Nationality	Number
Gambia	633
Nigeria	411
Guinea	346
Mali	344
Senegal	309
Bangladesh	275
Côte d'Ivoire	262
Pakistan	237
Eritrea	150
Others	709
Total	3,676

Source: Ministry of Labour: <http://bit.ly/2UB1D8p>.

As of 31 December 2018, 5,229 unaccompanied children had absconded, mainly citizens of Eritrea (14.9%), Tunisia (12.7%), Somalia (11.4%) and Afghanistan (10.1%).³⁰⁹

E. Subsequent applications

Indicators: Subsequent Applications

1. Does the law provide for a specific procedure for subsequent applications? Yes No
2. Is a removal order suspended during the examination of a first subsequent application?
 - ❖ At first instance Yes No
 - ❖ At the appeal stage Yes No
3. Is a removal order suspended during the examination of a second, third, subsequent application?
 - ❖ At first instance Yes No
 - ❖ At the appeal stage Yes No

Article 31 of the Procedure allows the applicant to make further submissions and present new documentation at any stage of the asylum procedure. These elements are taken into consideration by the Territorial Commission in the initial procedure.

Decree Law 113/2018, implemented by L 132/2018, has introduced a definition of "subsequent application" (*domanda reiterata*).³¹⁰ An asylum application is considered a subsequent application where it is made after:

- A final decision has been taken on the previous application;

³⁰⁸ Children's Ombudsman and UNHCR, *Minori stranieri non accompagnati: una valutazione partecipata dei bisogni - Relazione sulle visite nei centri*, available in Italian at: <http://bit.ly/2TEuUPE>, May 2018, 16.

³⁰⁹ Ministry of Labour, *I minori stranieri non accompagnati*, 31 December 2018, available at: <http://bit.ly/2UB1D8p>, 7.

³¹⁰ Article 2(1)(b-bis) Procedure Decree, introduced by Article 9 Decree Law 113/2018 and L 132/2018.

- The previous application has been explicitly withdrawn;³¹¹
- The previous application has been terminated or rejected after the expiry of 12 months from suspension on the basis that the applicant was unreachable (*irreperibile*).³¹²

In case of subsequent applications, asylum seekers benefit from the same legal guarantees provided for asylum seekers in general and can be accommodated in reception centres, if places are available.

Subsequent applications have to be lodged before the Questura, which starts a new formal registration that will be forwarded to the competent Territorial Commission.

1. Preliminary admissibility assessment

As stated in [Accelerated Procedure](#), upon transmission without delay of the application by the Questura, the Territorial Commission has 5 days to decide on the subsequent application.³¹³

The President of the Territorial Commission makes a preliminary assessment in order to evaluate whether new elements concerning the personal condition of the asylum seeker or the situation in his or her country of origin have been added to the asylum application.³¹⁴ Where no new elements are identified, the application is dismissed as inadmissible (see [Admissibility Procedure](#)). The possibility in the law for the applicant to submit observations to the Territorial Commission within 3 days has been removed by Decree Law 113/2018.³¹⁵

In case the subsequent application is declared inadmissible, reception conditions can be revoked.³¹⁶

2. Automatically inadmissible subsequent applications

In addition, Decree Law 113/2018 has introduced a new provision governing “subsequent applications during the execution phase of a removal procedure” (*domanda reiterata in fase di esecuzione di un provvedimento di allontanamento*). Where the applicant makes a first subsequent application during the execution of imminent removal, the application is automatically considered inadmissible on the assumption that it is made with the sole purpose of delaying or preventing the execution of the removal order. Consequently, a preliminary admissibility assessment is not conducted.³¹⁷

The law does not clarify how the term “execution phase of a removal procedure” should be interpreted. If this provision is not strictly applied to cases in which the removal is actually being performed, it is likely to result in preventing the asylum application itself as it could be applied to all cases of subsequent applications as currently defined by law. In case of subsequent applications considered as such because they were made after the termination of the procedure through a decision of the Territorial Commission 12 months after the applicant left a reception centre or escaped from detention without having had any personal interview, the provision potentially prevents the examination of the reasons for escaping or leaving reception accommodation. In such case, it would also mean that the asylum application would never have been the subject of any examination.

In practice, the notion of “execution phase of a removal procedure” seems to be read widely. It has been reported to ASGI that the Territorial Commissions of Salerno, **Campania** and Turin, **Piedmont** have already declared a subsequent application inadmissible pursuant to Article 29-bis of the Procedure

³¹¹ Article 23 Procedure Decree.

³¹² Article 23-bis(2) Procedure Decree.

³¹³ Article 28-bis(1-bis) Procedure Decree, as amended by Article 9 Decree Law 113/2018 and L 132/2018.

³¹⁴ Article 29(1)(b) Procedure Decree.

³¹⁵ Article 29(1-bis) Procedure Decree, as amended by Article 9 Decree Law 113/2018 and L 132/2018.

³¹⁶ Article 23(1) Reception Decree.

³¹⁷ Article 29-bis Procedure Decree, inserted by Article 9 Decree Law 113/2018.

Decree at least in two cases of people who applied again for international protection while already being held in a CPR.

Moreover, the law also stops short of specifying whether inadmissibility should be declared by the Questura or by the Territorial Commission. However, the Ministry of Interior Circular of 18 January 2019 contains a template form that the Questura should fill in while delivering a copy to the person concerned.³¹⁸ The template form also mentions that a copy of the act shall be transmitted to the competent Territorial Commission. The template does not provide any indication on deadlines or competent authorities for an appeal.

At the end of February 2019 the Questura of Imperia, **Liguria** declared a subsequent application automatically inadmissible. In this case, the Territorial Commission was not involved in the procedure and the decision did not even mention the terms or competent authority for the appeal.

3. Right to remain and suspensive effect

The Procedure Decree, as amended by Decree Law 113/2018, provides states that the right to remain on the territory until a decision is taken by the Territorial Commission is not in guaranteed where the applicant:

- a. Made a first subsequent application for the sole purpose of delaying or preventing the execution of an imminent removal decision;³¹⁹
- b. Wishes to make a further subsequent application following a final decision declaring the first subsequent application inadmissible, unfounded or manifestly unfounded.³²⁰

The law does not foresee a specific procedure to appeal against a decision on inadmissibility for subsequent applications. The amended Procedure Decree provides, however, that an appeal against an inadmissibility decision on a subsequent application never has suspensive effect, whether automatic or upon request.³²¹ However, the appellant can request a suspension of the decision of inadmissibility, based on serious and well-founded reasons, to the competent court. For the rest of the appeal procedure, the same provisions as for the appeal in the regular procedure apply (see [Regular Procedure: Appeal](#)).

³¹⁸ Ministry of Interior Circular No 10380/2019 of 18 January 2019.

³¹⁹ Article 7(2)(d) Procedure Decree.

³²⁰ Article 7(2)(e) Procedure Decree, as amended by Article 9 Decree Law 113/2018 and L 132/2018.

³²¹ Article 35-bis(3) and (5) Procedure Decree, as amended by Article 9 Decree Law 113/2018 and L 132/2018. Prior to the 2018 reform, the Procedure Decree stated that suspensive effect was not granted for appeals against the inadmissibility of a second subsequent application.

F. The safe country concepts

Indicators: Safe Country Concepts

- | | |
|--|---|
| 1. Does national legislation allow for the use of “safe country of origin” concept? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| ❖ Is there a national list of safe countries of origin? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| ❖ Is the safe country of origin concept used in practice? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| 2. Does national legislation allow for the use of “safe third country” concept? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| ❖ Is the safe third country concept used in practice? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| 3. Does national legislation allow for the use of “first country of asylum” concept? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |

1. Safe country of origin

The “safe country of origin” concept has been introduced in Italian legislation by Decree Law 113/2018, implemented by L 132/2018.³²²

1.1. Definition and list of safe countries of origin

According to the law, a third country can be considered a safe country of origin if, on the basis of its legal system, the application of the law within a democratic system and the general political situation, it can be shown that, generally and constantly, there are no acts of persecution as defined in the Qualification Decree, nor torture or other forms of inhuman or degrading punishment or treatment, nor danger due to indiscriminate violence in situations of internal or international armed conflict.³²³

The designation of a safe country of origin can be done with the exception of parts of the territory or of categories of persons.³²⁴

The assessment aimed at ascertaining whether or not a country can be considered a safe country of origin shall take into account the protection offered against persecution and ill-treatment through:³²⁵

- a. The relevant laws and regulations of the country and the manner in which they are applied;
- b. Respect for the rights and freedoms established in the ECHR, in particular the non-derogable rights of the Convention, in the International Covenant on Civil and Political Rights, and in the United Nations Convention against Torture;
- c. Compliance with the principles set out in Article 33 of the 1951 Refugee Convention; and
- d. The existence of a system of effective remedies against violations of these rights and freedoms.

The assessment shall be based on information provided by the CNDA, as well as on other sources of information, including in particular those provided by other Member States of the European Union, EASO, UNHCR, the Council of Europe and other competent international organisations.³²⁶

A list of safe countries of origin shall be adopted by decree of the Ministry of Foreign Affairs, in agreement with Ministry of Interior and Ministry of Justice. The list must be periodically updated and notified to the European Commission.³²⁷ No such list has been adopted at the time of writing.

³²² Article 2-bis Procedure Decree, inserted by Article 7 Decree Law 113/2018 and L 132/2018.

³²³ Article 2-bis(2) Procedure Decree.

³²⁴ *Ibid.*

³²⁵ Article 2-bis(3) Procedure Decree.

³²⁶ Article 2-bis(4) Procedure Decree.

³²⁷ Article 2-bis(1) Procedure Decree.

1.2. Procedural consequences

An applicant can be considered coming from a safe country of origin only if he or she is a citizen of that country or a stateless person who previously habitually resided in that country and he or she has not invoked serious grounds to believe that the country is not safe due to his or her particular situation.³²⁸

The Questura shall inform the applicant that if he or she comes from a designated country of safe origin, his or her application may be rejected.³²⁹

An application made by an applicant coming from a safe country of origin can be:

- Subject to [Prioritised Examination](#);
- Channelled into an [Accelerated Procedure](#), whereby the Territorial Commission takes a decision within 5 days;
- If made at the border, channelled into the [Border Procedure](#), whereby the Territorial Commission takes steps to organise the personal interview within 7 days and has another 2 days to take a decision.

An application submitted by applicants coming from a safe country of origin can be rejected as manifestly unfounded,³³⁰ whether under the regular procedure or the accelerated procedure. The decision rejecting the application is based on the fact that the person concerned has not shown that there are serious reasons to believe that the designated safe country of origin is not safe in relation to his or her particular situation.³³¹

2. First country of asylum

The Procedure Decree provides for the “first country of asylum” concept as a ground for inadmissibility (see [Admissibility Procedure](#)). The Territorial Commission declares an asylum application inadmissible where the applicant has already been recognised as a refugee by a state party to the 1951 Refugee Convention and can still enjoy such protection.³³²

G. Information for asylum seekers and access to NGOs and UNHCR

1. Provision of information on the procedure

Indicators: Information on the Procedure

1. Is sufficient information provided to asylum seekers on the procedures, their rights and obligations in practice? Yes With difficulty No

❖ Is tailored information provided to unaccompanied children? Yes No

According to Article 10 of the Procedure Decree,³³³ when a person makes an asylum application, the Questura shall inform the applicant about the asylum procedure and his or her rights and obligations, and of time limits and any means (i.e. relevant documentation) at his or her disposal to support the application. In this regard, police authorities should hand over an information leaflet. The amended Procedure Decree adds that the Questura informs the applicant that if he or she comes from a [Safe Country of Origin](#), his or her application may be rejected.³³⁴

³²⁸ Article 2-bis(5) Procedure Decree.

³²⁹ Article 10(1) Procedure Decree, as amended by Article 7 Decree Law 113/2018 and L 132/2018.

³³⁰ Article 28-ter(1)(b) Procedure Decree, inserted Article 7 Decree Law 113/2018 and L 132/2018.

³³¹ Article 9(2-bis) Procedure Decree, inserted by Article 7 Decree Law 113/2018 and L 132/2018.

³³² Article 29(1)(a) Procedure Decree.

³³³ Article 10(1) Procedure Decree.

³³⁴ *Ibid*, as amended by Article 7 Decree Law 113/2018 and L 132/2018.

The Reception Decree provides that Questure, within a maximum of 15 days from the making of the asylum application, shall provide information related to reception conditions for asylum seekers and hand over information leaflets accordingly.³³⁵ The brochures distributed also contain the contact details of UNHCR and refugee-assisting NGOs. However, the practice of distribution of these brochures by police authorities is actually quite rare. Moreover, although Italian legislation does not explicitly state that the information must also be provided orally, this happens in practice but not in a systematic manner and at the discretion of Questure. Therefore, adequate information is not constantly and regularly ensured, mainly due to the insufficient number of police staff dealing with the number of asylum applications, as well as to the shortage of professional interpreters and linguistic mediators.

PD 21/2015 provides that unaccompanied children shall receive information on the specific procedural guarantees specifically provided for them by law.³³⁶ However, during visits to reception centres for unaccompanied children carried out in 2017, the Children’s Ombudsman found a general lack of information to children which caused distress, disorientation and distrust, and significantly increased the risk of children absconding from centres.³³⁷

1.1. Information on the Dublin Regulation

Asylum seekers are not properly informed of the different steps or given the possibility to highlight family links or vulnerabilities in the [Dublin Procedure](#), particularly in the context of the specific procedure applied in **Friuli-Venezia Giulia**. On 25 March 2019, the Civil Court of Rome annulled a Dublin transfer on the basis that the Dublin Unit had not complied with the information obligations set out in Article 4 of the Dublin Regulation, as the Questura of Gorizia had only provided the applicant with information about the asylum procedure.³³⁸

The Children’s Ombudsman verified after his visits to reception centres for unaccompanied children that the children had not received the information leaflet provided for in the Dublin Implementing Regulation. This was reported to be the case in the following centres: first reception centre in Mincio-Rome, **Lazio**, CAS Como, **Lombardy**, first reception centre in San Michele di Ganzaria, Catania, **Sicily**, and the “House of bricks” community centre in Fermo-Ancona, **Marche**.³³⁹

1.2. Information at the border and in detention

According to the law, persons who express the intention to seek international protection at border areas and in transit zones shall be provided with information on the asylum procedure, in the framework of the information and reception services set by Article 11(6) TUI.³⁴⁰

Article 11(6) TUI states that, at the border, “those who intend to lodge an asylum application or foreigners who intend to stay in Italy for over three months” have the right to be informed about the provisions immigration and asylum law by specific services at the borders run by NGOs. These services, located at official border-crossing points, include social counselling, interpretation, assistance with accommodation, contact with local authorities and services, production and distribution of information on specific asylum issues.

In spite of the relevance of the assistance provided, it is worth highlighting that, since 2008, this kind of service has been assigned on the basis of calls for proposals. The main criterion applied to assign these

³³⁵ Article 3 Reception Decree.

³³⁶ Article 3(3) PD 21/2015.

³³⁷ Children’s Ombudsman and UNHCR, *Minori stranieri non accompagnati: una valutazione partecipata dei bisogni - Relazione sulle visite nei centri*, May 2018, available in Italian at: <http://bit.ly/2TE XUPE>.

³³⁸ Civil Court of Rome, Decision 6256/2019, 25 March 2019.

³³⁹ Children’s Ombudsman and UNHCR, *Minori stranieri non accompagnati: una valutazione partecipata dei bisogni - Relazione sulle visite nei centri*, May 2018, 15.

³⁴⁰ Article 10-bis(1) Procedure Decree, inserted by the Reception Decree.

services to NGOs is the price of the service, with a consequent impact on the quality and effectiveness of the assistance provided due to the reduction of resources invested, in contrast with the legislative provisions which aim to provide at least immediate assistance to potential asylum seekers. UNHCR and IOM continue to monitor the access of foreigners to the relevant procedures and the initial reception of asylum seekers and migrants in the framework of their mandates. The activities are funded under the Asylum, Migration and Integration Fund (AMIF).

The Reception Decree provides that foreigners detained in CPR shall be provided by the manager of the facility with relevant information on the possibility of applying for international protection. Asylum seekers detained in such facilities are provided with the relevant information set out by Article 10(1) of the Procedure Decree, by means of an informative leaflet.³⁴¹

2. Access to NGOs and UNHCR

Indicators: Access to NGOs and UNHCR

1. Do asylum seekers located at the border have effective access to NGOs and UNHCR if they wish so in practice? Yes With difficulty No
2. Do asylum seekers in detention centres have effective access to NGOs and UNHCR if they wish so in practice? Yes With difficulty No
3. Do asylum seekers accommodated in remote locations on the territory (excluding borders) have effective access to NGOs and UNHCR if they wish so in practice? Yes With difficulty No

The Procedure Decree expressly requires the competent authorities to guarantee asylum seekers the possibility to contact UNHCR and NGOs during all phases of the asylum procedure.³⁴² For more detailed information on access to CPR, see the section on [Access to Detention Facilities](#).

However, due to insufficient funds or due to the fact that NGOs are located mainly in big cities, not all asylum seekers have access thereto. Under the latest tender specifications scheme (*capitolato d'appalto*) adopted on 20 November 2018, funding for legal support activities in hotspots, first reception centres, CAS and CPR has been replaced by “legal information service” of a maximum 3 hours for 50 people per week (see [Forms and Levels of Material Reception Conditions](#)).

As for the [Hotspots](#), the SOPs ensure that access to international and non-governmental organisations is guaranteed subject to authorisation of the Ministry of the Interior and on the basis of specific agreements, for the provision of specific services. The SOPs also foresee that authorised humanitarian organisations will provide support to the Italian authorities in the timely identification of vulnerable persons who have special needs, and will carry out information activities according to their respective mandates. Currently in the hotspots, UNHCR monitors activities, performs the information service and, as provided in the SOPs, is responsible for receiving applications for asylum together with Frontex, EASO and IOM. Save the Children is also present in hotspots.

Access of UNHCR and other refugee-assisting organisations to border points is provided. For security and public order grounds or, in any case, for any reasons connected to the administrative management, the access can be limited on condition that is not completely denied.³⁴³

³⁴¹ Article 6(4) Reception Decree.

³⁴² Article 10(3) Procedure Decree.

³⁴³ Article 10-bis(2) Procedure Decree.

H. Differential treatment of specific nationalities in the procedure

Indicators: Treatment of Specific Nationalities

1. Are applications from specific nationalities considered manifestly well-founded? Yes No
❖ If yes, specify which: Syria, Afghanistan, Somalia
2. Are applications from specific nationalities considered manifestly unfounded? Yes No
❖ If yes, specify which:

According to Article 12(2-bis) of the Procedure Decree, the CNDA may designate countries for the nationals of which the personal interview can be omitted, on the basis that subsidiary protection can be granted (see [Regular Procedure: Personal Interview](#)). Currently, the CNDA has not yet designated such countries.

The has also introduced the concept of [Safe Country of Origin](#), although no list of safe countries of origin has been adopted yet.

Statistics on decisions in asylum applications in 2018 show a recognition rate of about 98% for **Afghans**, 98% for **Somalis**, 97% for **Syrians** and 95% for **Iraqis**,

In practice, as already highlighted in [Hotspots](#) and [Registration](#), some nationalities face more difficulties to access the asylum procedure, both at hotspots and at Questure. In the hotspots, it has been reported to ASGI in 2018 that people from **Tunisia** were notified expulsion orders despite having expressly requested international protection.

As regards registration, people from **Morocco**, **Algeria** and **Tunisia**, **Serbia**, **Albania**, Colombia, **El Salvador**, together with people coming from **Nigeria** and **Pakistan** in some cases, are often refused access to the asylum procedure and have to return more times to Questure to access the procedure.

Short overview of the Italian reception system

Decree Law 113/2018, implemented by L 132/2018, has brought drastic changes to the design of the Italian reception system, which under the Reception Decree (LD 142/2015) had articulated reception for asylum seekers in phases: a phase of first aid and assistance, a first reception phase in governmental centres; and a second-line reception phase. The 2018 reform transformed the second-line reception system known as System of Protection for Refugees and Asylum Seekers (*Sistema di protezione per richiedenti asilo e rifugiati*, SPRAR) into the System of Protection for Beneficiaries of Protection and Unaccompanied Minors (*Sistema di protezione per titolari di protezione internazionale e minori stranieri non accompagnati*, SIPROIMI).³⁴⁴

The law now draws a clear division between the reception system for asylum seekers and the one for beneficiaries of international protection (see [Content of Protection: Housing](#)). The two reception systems are no longer communicating and become in all respects two parallel systems. SIPROIMI is now available to adults after international protection has been granted. Only unaccompanied children have immediate access to SIPROIMI. Local authorities can also accommodate in SIPROIMI victims of trafficking, domestic violence and particular exploitation, and persons issued a residence permit for medical treatment, due to a natural calamity in the country of origin, or for acts of particular civic value.³⁴⁵

Asylum seekers and humanitarian status holders already present in the former SPRAR system as of 5 October are allowed to remain in this accommodation system until the end of their project.³⁴⁶ The Circular letter issued on 27 December 2018 specifies that at a later stage, asylum seekers can only be sent back to CAS or first reception centres.³⁴⁷

The reception system for asylum seekers is now articulated as follows:

1. First aid and assistance operations that continue to take place in the centres set up in the principal places of disembarkation.³⁴⁸ First Aid and Reception Centres (CPSA),³⁴⁹ created in 2006 for the purposes of first aid and identification before persons are transferred to other centres, and now formally operating as [Hotspots](#).³⁵⁰
2. First reception, to be implemented in existing collective centres or in centres to be established by specific Ministerial Decrees.³⁵¹ This includes the centres previously known as governmental centres for accommodation of asylum seekers (CARA) and accommodation centres (CDA).

Decree Law 113/2018 has abolished the second-line reception phase but has not amended the provisions according to which first reception, guaranteed in governmental centres, is planned for the first assistance and aimed at carrying out the necessary operations to define the legal position of the foreigner concerned.³⁵² Therefore the law seems not to attribute additional targets to the reception system for asylum seekers.

³⁴⁴ Article 1-sexies Decree Law 416/1989, implemented by L 39/1990, as amended by Article 12 Decree Law 113/2018 and L 132/2018.

³⁴⁵ *Ibid*, citing Articles 18, 18-bis, 19(2)(d-bis), 20, 22(12-quater) and 42-bis TUI. The statuses in Articles 20 and 42-bis have been inserted by Decree Law 113/2018.

³⁴⁶ Article 12(5) and (6) Decree Law 113/2018, implemented by L 132/2018.

³⁴⁷ Ministry of Interior Circular of 27 December 2018.

³⁴⁸ Article 8(2) Reception Decree.

³⁴⁹ L 563/1995.

³⁵⁰ Article 10-ter TUI, inserted by Article 17 Decree Law 13/2017 and L 46/2017.

³⁵¹ Article 9 Reception Decree.

³⁵² Article 9(1) Reception Decree.

In case of unavailability of places due to a large influx of arrivals, first reception may be implemented in “temporary” structures” (*strutture temporanee*), also known as Emergency Reception Centres (*Centri di accoglienza straordinaria, CAS*), established by Prefectures, subject to an assessment of the applicant’s health conditions and potential special needs.³⁵³ When reception is provided in CAS, it is limited to the time strictly necessary for the transfer of the applicant in the first reception centres.³⁵⁴

The new reception system for asylum seekers promotes reception in large centres and renders reception in small-scale facilities and apartments economically unsustainable, as discussed below. This ultimately represents an attack on those organisations that have pursued the path of integrated and decentralised reception not only for SPRAR but also for CAS. The reform is therefore premised on a logic of security and control no longer a logic of protection.

Whereas the declared purpose of the reform was to reserve resources for the integration of those who will benefit from international protection,³⁵⁵ the new system ends up allocating time, energy and public funds to organising basic assistance for asylum seekers contrary to a logic of protection and considerably slowing down the process of regaining self-sufficiency.

Financing, coordination and monitoring

The overall activities concerning the first reception and the definition of the legal status of the asylum seeker are conducted under the programming and criteria established by both national and regional Working Groups (*Tavolo di coordinamento nazionale e tavoli regionali*).³⁵⁶ The Department of Civil Liberties and Immigration of the Ministry of Interior, including through the Prefectures, conducts control and monitoring activities in the reception facilities. To this end, the Prefectures may make use of the municipality’s social services.³⁵⁷

The Ministry of Interior announced through an instruction of 23 July 2018 the publication of differentiated tender specifications schemes (*capitolati*) with auction bases varying depending on types of reception facilities, to which the Prefectures should have referred to meet accommodation needs in their respective provinces.³⁵⁸

With a Decree of 20 November 2018, the Ministry of Interior adopted the tender specifications scheme (*capitolato d’appalto*) for the supply of goods and services related to CPSA, first reception centres, CAS and CPR. The Capitolato only foresees a basic level of services and drastically reduces funding for the centres (see further [Forms and Levels of Material Reception Conditions](#)).

³⁵³ Article 11(1) Reception Decree, as amended by Article 12 Decree Law 113/2018 and L 132/2018.

³⁵⁴ Article 11(3) Reception Decree, as amended by Article 12 Decree Law 113/2018 and L 132/2018.

³⁵⁵ Ministry of Interior Circular No 83774/2018 of 18 December 2018.

³⁵⁶ Article 9(1) Reception Decree.

³⁵⁷ Article 20(1) Reception Decree.

³⁵⁸ Ministry of Interior, *Direttiva: Servizi di accoglienza per i richiedenti asilo*, 23 July 2018, available in Italian at: <https://bit.ly/2Hm0rTu>.

A. Access and forms of reception conditions

1. Criteria and restrictions to access reception conditions

Indicators: Criteria and Restrictions to Reception Conditions

1. Does the law make material reception conditions to asylum seekers in the following stages of the asylum procedure?

❖ Regular procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Dublin procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Border procedure	<input type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Accelerated procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ First appeal	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Onward appeal	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Subsequent application	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No

2. Is there a requirement in the law that only asylum seekers who lack resources are entitled to material reception conditions? Yes No

The Reception Decree sets out the reception standards for third-country nationals making an application for international protection on the territory, including at the borders and in their transit zones or in the territorial waters of Italy.³⁵⁹

It provides that reception conditions apply from the moment destitute applicants have manifested their willingness to make an application for international protection,³⁶⁰ and that access to the reception measures is not conditioned upon additional requirements.³⁶¹ Destitution is evaluated by the Prefecture on the basis of the annual social income (*assegno sociale annuo*).³⁶²

In practice, the assessment of financial resources is not carried out by the Prefectures, which to date have considered the self-declarations made by the asylum seekers as valid. However, during 2018 in Pordenone, **Friuli-Venezia Giulia**, the Prefecture started to claim that asylum seekers were not destitute and thereby to deny access to accommodation even to vulnerable people. This was the case, for example, for two asylum seekers from Armenia, one of them over the age of 65. In both cases the Prefecture held that the expensive journey they undertook to arrive in Italy showed they had sufficient resources to sustain themselves, and in one case took the disability pension received by the applicant in Armenia as a basis for denying reception. The Administrative Court of Friuli-Venezia Giulia held that no assessment of resources had been actually done by the Prefecture, considering the reference to the minimum invalidity pension and to the cost of the travel insufficient as a ground to decide that there was no need to be accommodated.³⁶³ After this decision, the Prefecture accepted to revoke the second denial of access to accommodation in self-defense, as it was unable to demonstrate the absence of destitution.

1.1. Reception and obstacles to access to the procedure

According to the practice recorded in 2016, 2017 and 2018, even though by law asylum seekers are entitled to material reception conditions immediately after claiming asylum and undergoing initial registration (*fotosegnalamento*), they may access accommodation centres only after their claim has been lodged (*verbalizzazione*). This implies that, since the *verbalizzazione* can take place even months after the presentation of the asylum application, asylum seekers can face obstacles in finding alternative

³⁵⁹ Article 1(1) Reception Decree.

³⁶⁰ Article 1(2) Reception Decree.

³⁶¹ Article 4(4) Reception Decree.

³⁶² Article 14(1) and (3) Reception Decree. For the year 2018, the amount corresponded to 5,889 € and for 2019 to 5,953.87 €.

³⁶³ Administrative Court of Friuli-Venezia Giulia, Decision 184/2018, 23 May 2018.

temporary accommodation solutions. Due to this issue, some asylum seekers lacking economic resources are obliged to either resort to friends or to emergency facilities, or to sleeping rough.³⁶⁴

As reported by MSF in February 2018, at least 10,000 persons were excluded from the reception system, among whom asylum seekers and beneficiaries of international protection. Informal settlements with limited or no access to essential services are spread across the entire national territory, namely Ventimiglia, Turin, Como, Bolzano, Udine, Gorizia, Pordenone, Rome, Bari and Sicily.³⁶⁵

Recent examples of asylum seekers facing obstacles to accessing accommodation include the following:

Friuli-Venezia Giulia: Asylum seekers in Pordenone faced severe obstacles to access asylum procedure and accommodation system in 2018. From November 2017, four asylum seekers, one Afghan citizen and three Pakistanis, had to wait 10 months to access the asylum procedure being refused and bounced from Venice Questura to the Pordenone Questura and back, with neither Questura undertaking responsibility. In September 2018, after several legal warnings the asylum seekers got access to the procedure and lodged their applications at Questura of Venice, but they are still waiting to get a place in the reception system. Three of them lodged an appeal to the Administrative Tribunal of Court against the “administrative silence” of the Prefecture of Venice after they had been convicted for unlawful occupation of the abandoned building they were living in. At the end of February 2019, the Administrative Court of Veneto accepted the appeal and ordered the Prefecture of Venice to activate the requested accommodation within 30 days. They are still waiting for a placement at the time of writing.³⁶⁶

Still in 2018, in Trieste, people waiting to lodge their asylum application and to be accommodated were fined by the police for squatting.

Lazio: On the occasion of the eviction of the building occupied by Eritrean refugees, which took place in Rome on 19 August 2017, UNHCR denounced the fact that hundreds of people fleeing war and persecution in transit in the city of Rome were forced to sleep on the streets in the absence of adequate reception.³⁶⁷ Due to the chronic lack of places in reception, makeshift settlements are increasingly set up in abandoned buildings far from the city centre, where hundreds of people live under squalid conditions.³⁶⁸

Tuscany: In September 2018, a group of 20 to 30 asylum seekers from Pakistan had to wait for about three months to have access to reception facilities in Florence. After the *fotosegnalamento*, the Questura deferred all responsibility to the Prefecture which has been slow in arranging reception despite the intervention of Medici per i diritti umani (MEDU) and ASGI.³⁶⁹ As of 10 January 2019, over 80 people excluded from the reception system, some of them holders of humanitarian protection status and removed from facilities after the entry into force of the legislative decree 113/2018, were sleeping in the Parco delle Cascine in Florence.³⁷⁰

³⁶⁴ For more information, see MSF, *Fuori campo*, February 2018, available in Italian at: <http://bit.ly/2Gagwa2>; *Fuori campo*, March 2016, available in Italian at: <http://bit.ly/2letTQd>, 11; ANCI *et al.*, *Rapporto sulla protezione internazionale in Italia*, 2014, available in Italian at: <http://bit.ly/15k6twe>, 124.

³⁶⁵ MSF, *Fuori campo*, February 2018, 2, 36.

³⁶⁶ Administrative Court of Veneto, Decision 273/2019, 27 February 2019.

³⁶⁷ UNHCR, ‘Roma: UNHCR esprime preoccupazione per la sorte di circa 800 rifugiati richiedenti asilo sgomberati da Via Indipendenza’, 21 August 2017, available in Italian at: <http://bit.ly/2BvbOB6>.

³⁶⁸ MSF, *Fuori campo*, February 2018, 24.

³⁶⁹ ASGI, ‘Firenze: Prefettura e Questura di Firenze consentono l’accesso all’asilo e all’accoglienza’, 21 September 2018, available at: <https://bit.ly/2F9STQm>.

³⁷⁰ Redattore Sociale, ‘Decreto Sicurezza, a Firenze 80 migranti dormono al parco delle Cascine’, 9 January 2019, available in Italian at: <https://bit.ly/2TCaASx>.

Trentino-Alto Adige: In September 2018, almost 80 people were sleeping on the street awaiting to lodge their asylum application and to be accommodated in Trento, as their appointment for *verbalizzazione* at the Questura was for January 2019.³⁷¹

Despite the aforementioned cases, the full extent of this phenomenon is not known, since no statistics are available on the number of asylum seekers who have no immediate access to a reception centre immediately after the *fotosegnalamento*. Moreover, the waiting times between the *fotosegnalamento* and *verbalizzazione* differ between Questura, depending *inter alia* on the number of asylum applications handled by each Questura (see [Registration](#)).

1.2. Reception at second instance

With regard to appellants, the Reception Decree provides that accommodation is ensured until a decision is taken by the Territorial Commission and, in case of rejection of the asylum application, until the expiration of the timeframe to lodge an appeal before the Civil Court. When the appeal has automatic suspensive effect, accommodation is guaranteed to the appellant until the first instance decision taken by the Court.

However, when appeals have no automatic suspensive effect, the applicant remains in the same accommodation centre until a decision on the suspensive request is taken by the competent judge. If this request is positive, the applicant remains in the accommodation centre where he or she already lives.³⁷² The applicant detained in a CPR who makes an appeal and a request of suspensive effect of the order, if accepted by the judge, remains in the CPR. Where the detention grounds are no longer valid, the appellant is transferred to governmental reception centres.³⁷³

The amendments made by Decree Law 113/2018, implemented by L 132/2018, on the exclusion from suspensive effect for some asylum applications in case of appeals or requests for suspensive effect such as [Subsequent Applications](#) has an impact on reception. In Trieste, **Friuli-Venezia Giulia**, since February 2019, people notified of an inadmissibility decision received a decision of withdrawal of reception conditions and an expulsion order on the same day.

As regards reception during onward appeals following Decree Law 13/2017, implemented by L 46/2017, withdrawal of accommodation to asylum seekers whose claims have been rejected at first appeal has become very common. Usually the applicant does not quickly obtain suspensive effect, which has also become extremely difficult to obtain (see [Regular Procedure: Appeal](#)).

2. Forms and levels of material reception conditions

Indicators: Forms and Levels of Material Reception Conditions

1. Amount of the monthly financial allowance/vouchers granted to asylum seekers as of 31 December 2018 (in original currency and in €): 75 €

According to the law, the scope of material reception conditions and services offered to asylum seekers shall be defined by decree of the Ministry of Interior so as to guarantee uniform levels of reception across the territory, taking into account the peculiarities of each type of reception centre.³⁷⁴ The Reception Decree provides for a monitoring system in reception centres by the Prefecture through the social services of municipalities.³⁷⁵

³⁷¹ Meltingpot, 'Trento – Richiedenti asilo fuori accoglienza', 20 September 2018, available in Italian at: <https://bit.ly/2UEhrXY>.

³⁷² Article 14(4) Reception Decree.

³⁷³ Article 14(5) Reception Decree.

³⁷⁴ Article 12(1) Reception Decree.

³⁷⁵ Article 20(1) Reception Decree.

The latest decree approving the tender specifications schemes (*capitolato d'appalto*) was adopted on 20 November 2018.³⁷⁶

Under the tender specifications schemes issued following Decree Law 113/2018, the daily amount per person allocated to managing bodies was reduced from 35 € to 21 €, *de facto* forcing contractors to opt for large centres, reducing the number of operators and the activities offered in the centres. According to a report published in Valori, an online journal of ethical finance and sustainable economy, government policies on the design of the reception system are expected to open a market for large companies such as European Homecare in Germany and the UK, Hero in Norway, and ORS in Switzerland; the latter is already present in the accommodation sector in Rome according to the report.³⁷⁷

Moreover, the tender specification schemes only guarantee basic needs such as personal hygiene, pocket money, and 5 € for phone cards. They no longer cover integration services. Compared to the Capitolato published in 2017, the following expenses are no longer covered: Italian language courses; orientation to local services; professional training; leisure activities.

The new schemes also omit psychological support (which is maintained only in CPR and hotspots), replace legal support with a “legal information service” reduced to 3 hours a week for 50 people, and significantly reduce cultural mediation to an overall 12 hours a week for 50 people. No services for vulnerable people are provided, thus leaving the protection of these persons to purely voluntary contributions.

Some Prefectures have already published new calls for tenders in line with the new Capitolato:

Lombardy: The call for tenders published and valid until 15 March 2019 for 3,200 places in Milan does not include language courses, professional training, psychosocial or work placement support, lawyers, or psychologists. It also cuts funds for transport. The daily amount provided per person is 18 € for apartments, 23 € for centres with up to 50 places, and 21.90 € for centres from 50 to 300 places. The only structures for which the funds are maintained intact compared to the previous call for proposals are the hotspots and CPR.³⁷⁸ Five social cooperatives have not to participate in the call anymore and to appeal the call before the Administrative Court of Lazio.³⁷⁹

Lazio: Following the publication of the call for tenders in Rome, several organisations have highlighted the risk that the tender will favour a new “Mafia Capitale”. MSF has noted that the funding cuts, in particular those for cultural mediators and psychologists, reduce the principles of the reception system to a mere management logic.³⁸⁰

Friuli-Venezia Giulia: After the publication of the new call for tenders in Udine and Gorizia in line with the scheme,³⁸¹ some organisations involved in the accommodation of asylum seekers in small facilities and apartments have appealed to the Administrative Court of Lazio. On 26 February 2019, the Court denied the suspension of the tender of Udine pending its decision on the merits.

³⁷⁶ Ministry of Interior Decree of 20 November 2018, available in Italian at: <https://bit.ly/2UEELoG>.

³⁷⁷ Valori, *Migranti gli sciacalli della finanza brindano a Salvini*, January 2019, available in Italian at: <https://bit.ly/2TE4TmV>.

³⁷⁸ Linkiesta, ‘Ora il business si chiama detenzione e rimpatrio’, 14 February 2019, available in Italian at: <https://bit.ly/2W1rhn0>.

³⁷⁹ Milano Today, ‘Immigrazione a Milano le coop fanno ricorso contro il bando dell'accoglienza diffusa’, 13 March 2019, available in Italian at: <https://bit.ly/2l6Fn3J>.

³⁸⁰ Redattore Sociale, ‘Bandi accoglienza a Roma. Msf: “Via psicologi e mediatori, sistema fragile”, 28 February 2019, available in Italian at: <https://bit.ly/2StEZNq>.

³⁸¹ Affari italiani, ‘Accoglienza ai migranti, c'è il ricorso al Tar: cooperative contro il Viminale’, 20 February 2019, available in Italian at: <https://bit.ly/2XU7E2d>.

Veneto: With a letter sent on 21 December 2018 to all managing bodies of reception centres, the Prefecture of Venice warned that the new and more restrictive conditions laid down in the scheme of tender specifications issued by the Ministry of Interior would be applied from 1 January 2019 to projects extended pending the publication of the new call. The Prefecture asked the managing bodies to join, threatening, in case of non-response, to start the procedure to find other operators interested in performing said services under the new conditions.

Emilia-Romagna: After the Prefecture of Bologna communicated an extension of the expired agreements with the new conditions laid down in the tender scheme, the managing bodies challenged the violation of the current legislation on procurement. Finally, the conventions have been extended for a month under the old conditions pending publication of the new call for tenders.

The law does not provide a definition of “adequate standard of living and subsistence” and does not envisage specific financial support for different categories, such as people with special needs.

In relation to financial allowances i.e. pocket money for personal needs, each asylum seeker hosted in first reception centres receives 2.50 € per day as pocket money. Although the level pocket money in CAS is agreed with the competent Prefecture, according to the Decree of 20 November 2018, the amount received by applicants hosted in CAS should be 2.50 € per day for single adults and up to 7.50 € for families.

The Reception Decree does not provide any financial allowance for asylum applicants who are not in accommodation and often, where there are no places available in CAS or governmental centres, the Prefecture sends asylum seekers to one of those facilities, thereby exceeding their maximum reception capacity. As a result, this causes overcrowding and a deterioration of material reception conditions (see [Conditions in Reception Facilities](#)).

It is not possible to say that the treatment of asylum seekers concerning social benefits is less favourable than that of nationals, since the Qualification Decree establishes only a comparison between nationals and international protection beneficiaries and not with asylum seekers.

3. Reduction or withdrawal of reception conditions

Indicators: Reduction or Withdrawal of Reception Conditions

1. Does the law provide for the possibility to reduce material reception conditions?
 Yes No
2. Does the legislation provide for the possibility to withdraw material reception conditions?
 Yes No

According to Article 23(1) of the Reception Decree, the Prefect of the region where the asylum seeker's accommodation centre is placed may decide on an individual basis with a motivated decision to revoke material reception conditions on the following grounds:³⁸²

- (a) The asylum seeker did not present him or herself at the assigned centre or left the centre without notifying the competent Prefecture;
- (b) The asylum seeker did not present him or herself before the determining authorities for the personal interview even though he or she was notified thereof;
- (c) The asylum seeker has previously lodged an asylum application in Italy;
- (d) The authorities decide that the asylum seeker possesses sufficient financial resources; or
- (e) The asylum seeker has committed a serious violation or continuous violation of the accommodation centre's internal rules or the asylum seeker's conduct was considered seriously violent.

³⁸² See also Article 13 Reception Decree.

The law does not provide for any assessment of destitution risks when withdrawing reception. However, while assessing the withdrawal of reception conditions, the Prefect must take into account the specific conditions of vulnerability of the applicant.³⁸³

Asylum seekers may lodge an appeal before the Regional Administrative Court (*Tribunale amministrativo regionale*) against the decision of the Prefect to withdraw material reception conditions.³⁸⁴ To this end, they can benefit from free legal aid.

Available figures seem to corroborate an overly broad use of withdrawal provisions. According to an investigation carried out by Altreconomia, on the basis of data from only 58 out of 100 Prefectures between 2016 and 2017, at least 39,963 asylum seekers lost the right to accommodation in reception centres. According to the report, the numbers of withdrawals were as follows: 4,408 in Rome, **Lazio**, of which 233 for violation of house rules; 2,222 in Brescia, **Lombardy**, of which 37 for violations of house rules; 2,202 in Bologna, **Emilia-Romagna** 1,686 in Caserta, **Campania**; 1,217 in Cuneo, **Piedmont**.³⁸⁵

3.1. Departure from the centre

According to the Reception Decree, when asylum seekers fail to present themselves to the assigned centre or leave the centre without informing the authorities, the centre managers must immediately inform the competent Prefecture.³⁸⁶ In case the asylum seeker spontaneously presents him or herself before the police authorities or at the accommodation centre, the Prefect could decide to readmit the asylum seeker to the centre if the reasons provided are due to *force majeure*, unforeseen circumstances or serious personal reasons as the ground to be readmitted to the centre.³⁸⁷

Certain Prefectures have interpreted this ground particularly strictly:

Veneto: On 22 September 2017, the Prefecture of Verona issued a note which provides for the automatic withdrawal of reception conditions without any evaluation of individual circumstances in cases of unauthorised absence of even one night from the reception centre, where it is not adequately justified.³⁸⁸

Campania: On 16 June 2017, the Prefecture of Naples adopted a new regulation to be applied in CAS. The regulation provides for the “withdrawal of reception measures” in case of unauthorised departure from the centre even for a single day, also understood as the mere return after the curfew, set at 22:00, and at 21:00 in spring and summer. ASGI has challenged the regulation before the Council of State claiming a violation of the law, as the Prefecture has effectively introduced a ground for withdrawal of reception conditions not provided in the law. Between then and the end of August more than 100 withdrawal of accommodation decisions had been taken in Naples on the ground of the violation of the curfew. In August 2018, ASGI sent a letter to the Prefecture of Naples urging for a proper application of Article 23 of the Reception Decree.³⁸⁹

³⁸³ Article 23(2) Reception Decree.

³⁸⁴ Article 23(5) Reception Decree.

³⁸⁵ Altreconomia, '40mila richiedenti asilo tagliati fuori dal sistema di accoglienza in due anni', 30 May 2018, available in Italian at: <https://bit.ly/2tRv2zR>; 'Richiedenti asilo: i numeri record delle revoche dell'accoglienza', 1 March 2018, available in Italian at: <http://bit.ly/2FVb7Eg>.

³⁸⁶ Article 23(3) Reception Decree.

³⁸⁷ Article 23(3) Reception Decree.

³⁸⁸ Prefecture of Verona, Note 66/2017. See LasciateCIEntrare, 'Verona e le "facili" revoche dall'accoglienza dei richiedenti asilo', 11 January 2018, available in Italian at: <http://bit.ly/2GidEch>.

³⁸⁹ ASGI, 'Revoche dell'accoglienza a Napoli, ASGI: la regola del rientro viola il principio di libera circolazione', 24 August 2018, available in Italian at: <https://bit.ly/2CioQ8g>.

3.2. Violation of house rules and violent behaviour

In case of violation of the house rules of the centre or of violent behavior, the manager of the reception facility shall send to the Prefecture a report on the facts that can give rise to the potential withdrawal of reception conditions within 3 days from their occurrence.³⁹⁰ The duty to involve the asylum seeker in the procedure and to allow him or her to make submissions prior to the issuance of a decision affecting him or her was highlighted in a recent ruling of the Administrative Court of **Campania**, which annulled a decision taken solely on the basis of declarations made by the manager of a reception facility in Naples.³⁹¹

The law does not clarify what is meant by “serious violations” of the centre’s house rules and, in ASGI’s experience, this has allowed Prefectures to misuse the provision revoking reception measures on ill-founded grounds. According to ASGI, such misuse of the provision amounts to a violation of the Article 20 of the recast Reception Conditions Directive according to which the withdrawal of reception conditions should be an exceptional measure. It also infringes Article 20 of the Directive since it does not include measures through which the reception measures may be reduced without being completely withdrawn.

Prefectures have interpreted conditions strictly or have considered certain forms of conduct to be “serious” without evaluating them in the context in which they occurred:

Veneto: The aforementioned note of the Prefecture of Verona, dated 22 September 2017, provides for the automatic withdrawal of reception conditions without any evaluation of individual circumstances in violations of the prohibition of smoking and consumption of alcohol and drugs, both inside and outside the centre, as well as the accumulation of more than one absence from Italian language courses.

Friuli-Venezia Giulia: In December 2017, the Prefecture of Udine withdrew the reception conditions of two asylum seekers, one of whom suffering from mental distress, who had rebelled against the decision to move to another facility and shouted threats against the operators. The Administrative Court for Friuli-Venezia Giulia confirmed the withdrawal considering the danger of repetition and aggravation of the censored conduct and considering the medical certificates produced not proving any mental distress but only referring to a “single episode of post-stress anxiety with somatisation”, not implying any vulnerability according to the Court.³⁹²

Lombardy: With a decision published on 18 June 2018, the Administrative Court of Lombardy accepted the appeal lodged by an asylum seeker whose reception had been withdrawn by the Prefecture of Monza and Brianza due to a small theft of clothes, worth 26 €. The Court considered the decision contrary to the principle of proportionality pursuant to Article 20 of the recast Reception Conditions Directive.³⁹³

Apulia: In one case following an attack on an asylum seeker in the reception centre, who was hospitalised for injuries, both the perpetrator and the victim had their accommodation withdrawn by the Prefecture. The Administrative Court of Apulia found on 20 February 2018 that the decision lacked justification as there was no evidence of wrongdoing on the part of the victim, and infringed the principle of proportionality since withdrawal, a last resort measure, was applied without prior measures such as a warning. The Court also noted that the attack was an isolated incident.³⁹⁴

³⁹⁰ Article 23(4) Reception Decree.

³⁹¹ Administrative Court of Campania, Decision 5476/2018, 12 September 2018, available at: <https://bit.ly/2VJU2VL>.

³⁹² Administrative Court of Friuli-Venezia Giulia, Decision 79/2018, 26 March 2018.

³⁹³ Administrative Court of Lombardy, Decision 1527/2018, 18 June 2018.

³⁹⁴ Administrative Court of Apulia, Decision 243/2018, 20 February 2018, available at: <https://bit.ly/2KL5wHE>.

In 2018, the provision has continued to be used in several cases against asylum seekers who have participated in protests against the conditions of the centre where they were accommodated. This happened among others in:

Lomardy: In Gabbioneta Binanuova, Cremona, in August 2018, the provision was used against six asylum seekers who protested at the Prefecture building to complain about the treatment at the reception centre.³⁹⁵

Tuscany: Three asylum seekers who protested against the quality of the food in Pisa had their accommodation withdrawn in May 2018. The Administrative Court of Tuscany annulled the withdrawal decision, considering that the administration had not carried out any further investigation into the reasons of the protest.³⁹⁶

Lazio: In January 2018, it was used against five asylum seekers who protested against the accommodation condition of the centre in Frosinone. The Administrative Court of Lazio-Latina accepted their appeal.³⁹⁷

In 2017, the provision was applied *inter alia* against seven asylum seekers who protested to obtain identification documents, health cards and pocket money in La Spezia, **Liguria**,³⁹⁸ against six asylum seekers who protested in order to obtain a certificate of attendance of Italian language courses in Nuoro, **Sardinia**,³⁹⁹ and against two asylum seekers in Vicenza, **Veneto**.⁴⁰⁰

On 26 September 2018, the Administrative Court of Tuscany asked the CJEU to rule on the compatibility of Article 23 of the Reception Decree with Article 20(4) of the recast Reception Conditions Directive, to ascertain whether violations of general rules of the domestic legal system, not specifically laid down in the house rules of the reception centres, can constitute serious violations of the house rules for the purpose of withdrawing reception conditions.⁴⁰¹

3.3. Possession of sufficient resources

Another worrying practice relates to withdrawal of reception conditions for reasons of sufficient resources (see [Criteria and Restrictions to Access Reception Conditions](#)).

Prefectures use the annual social income level to evaluate the sufficiency of the applicant's financial resources so as to justify the withdrawal of reception conditions. According to the Reception Decree, if it is established that the applicant is not destitute, the applicant is required to reimburse the costs incurred for the measures from which he or she has unduly benefitted.⁴⁰²

In several cases in 2018, however, Prefectures have withdrawn reception conditions based on a decision that does not comply with the law or the spirit of the recast Reception Conditions Directive. For example, the Prefecture of Pordenone, **Friuli-Venezia Giulia** decided to withdraw reception conditions of persons who started employment activity based on a mere forecast of sufficient economic resources.

³⁹⁵ Cremona Oggi, 'Sei richiedenti asilo nel limbo della clandestinità, revocati i benefici dell'accoglienza', 3 October 2018, available in Italian at: <https://bit.ly/2OaoohE>.

³⁹⁶ Administrative Court of Tuscany, Decision 1128/2018, 11 December 2018, available in Italian at: <https://bit.ly/2Y0OCHf>.

³⁹⁷ Avvenire, 'Roma. Arcinazzo, il Tar dà ragione ai tre nigeriani: un errore revocare l'accoglienza', 24 April 2018, available in Italian at: <https://bit.ly/2F4UPcC>.

³⁹⁸ La Nazione, 'Rivolta tra i profughi, "dateci i nostri soldi"', 30 October 2017, available in Italian at: <http://bit.ly/2xEjFLv>.

³⁹⁹ La Nuova Sardegna, 'Dopo le proteste accoglienza revocata a nove migranti', 12 November 2017, available in Italian at: <http://bit.ly/2hngT6S>.

⁴⁰⁰ Corriere del Veneto, 'Proteste a Vicenza: Stop all'accoglienza per due migranti', 5 January 2017, available in Italian at: <http://bit.ly/2lJimv6>.

⁴⁰¹ Administrative Court of Tuscany, 1481/2018, 12 November 2018, EDAL, available at: <https://bit.ly/2VKeHsL>.

⁴⁰² Article 23(6) Reception Decree.

In one case, the decision was taken with retroactive effect, as of the month following the starting date of employment, even though the person's financial remuneration had not exceeded the reference limit set by law. The case has been brought before the Administrative Court of Friuli-Venezia Giulia.

In other cases Prefectures have taken a withdrawal decision solely based on a presumption of existence of resources. In 2018, this was the case in Matera, **Basilicata** where the Prefecture revoked reception conditions of asylum seekers who had been employed. On 3 January 2019, ASGI sent a letter to the Prefecture of Matera requesting a review of the decisions and asking it to ascertain the effective sufficiency of resources for the asylum seeker involved in the procedures.⁴⁰³

Where detention grounds apply to asylum seekers placed in reception centres, the Prefect orders the withdrawal of the reception conditions and refers the case to the Questura for the adoption of the relevant measures.⁴⁰⁴

Following the 2018 reform of the reception system, the above rules no longer apply to the withdrawal of accommodation in SIPROIMI.

4. Freedom of movement

Indicators: Freedom of Movement

1. Is there a mechanism for the dispersal of applicants across the territory of the country? Yes No
2. Does the law provide for restrictions on freedom of movement? Yes No

Italian legislation does not foresee a general limitation on the freedom of movement of asylum seekers. Nevertheless, the law specifies that the competent Prefect may limit the freedom of movement of asylum seekers, delimiting a specific place of residence or a geographic area where asylum seekers may circulate freely.⁴⁰⁵ In practice, this provision has never been applied so far.

4.1. Dispersal of asylum seekers

Asylum seekers can be placed in centres all over the territory, depending on the availability of places and based on criteria which provide about 2.5 accommodated asylum seekers per thousand inhabitants in each region. The placement in a reception centre is not done through a formal decision and is therefore not appealable by the applicant.

At the end of 2018, the distribution of migrants across the regions was as follows:

Distribution of migrants arriving in Italy per region: 31 December 2018		
Region	Number of migrants	Percentage
Lombardy	18,582	14%
Lazio	12,249	9%
Campania	11,962	9%
Emilia-Romagna	11,354	8%
Sicily	11,251	8%
Piedmont	11,098	8%
Tuscany	9,416	7%

⁴⁰³ Meltingpot, 'Revoca dell'accoglienza per presunta "sufficienza di mezzi economici" nei confronti di richiedenti asilo e titolari di Protezione. Le associazioni scrivono al Prefetto di Matera', 8 January 2019, available in Italian at: <https://bit.ly/2lfRY4G>.

⁴⁰⁴ Article 23(7) Reception Decree.

⁴⁰⁵ Article 5(4) Reception Decree.

Veneto	9,374	7%
Apulia	7,129	5%
Calabria	5,123	4%
Liguria	4,771	4%
Friuli-Venezia Giulia	4,670	3%
Marche	3,625	3%
Trentino-Alto Adige	2,992	2%
Abuzo	2,990	2%
Sardinia	2,775	2%
Umbria	2,205	2%
Molise	2,125	2%
Basilicata	1,927	1%
Aosta	240	0%

Source: Ministry of Interior: <https://bit.ly/2RVxHqI>.

Transfers between reception centres

After their initial allocation, asylum seekers may be moved from one centre to another, passing from: (1) CPSA / hotspots; to (2) governmental first reception centres or to CAS.

Asylum seekers are often moved from one CAS to another CAS, in order to try to balance the presence of centres across the regions and provinces. These transfers are decided by Prefectures, while the relevance of choice of people to move varies from place to place. Transfers cannot be appealed.

The first reception centre of Castelnuovo di Porto, Rome, **Lazio** was closed in January 2019 and more than 300 asylum seekers accommodated there were moved within a week without notice or information and without taking into account the individual paths that linked many of them to the local social network and labour market. The transfer modalities triggered widespread criticism.⁴⁰⁶

In October 2017, local organisations and asylum seekers hosted in the CAS set up in the former Montello barracks in **Milan**, whose closure was scheduled for 31 December 2017, organised a protest in the city centre to denounce the ways in which transfers were taking place, without taking into account asylum seekers' integration prospects and often advising residents to collect their personal effects only a few hours before being moved to another facility.⁴⁰⁷

In some regions, during 2016 and 2017, asylum seekers and beneficiaries of international protection had to be moved due to the discontent of the local population. In some cases, the protest of the inhabitants entirely prevented their reception. In Gorino, Ferrara, **Emilia-Romagna**, 20 asylum seekers, including 12 women and 8 children, were blocked on arrival on 24 October 2016, obliging the Prefecture to find temporary accommodation in a nearby town. In Sinagra and Castell'Umberto, Messina, **Sicily** the mayors and other residents blocked access roads to the hotel – placed in the border area between the two villages – where 50 unaccompanied children were to arrive on 15 July 2017. The next day they blocked the supply of electricity and one mayor posted comments against the Prefecture on social media. The Children were nevertheless accommodated but 25 of them were soon transferred elsewhere.⁴⁰⁸

⁴⁰⁶ Redattore Sociale, 'Non difendiamo i grandi centri ma così è inumano', 23 January 2019, available in Italian at: <https://bit.ly/2TEGca1>.

⁴⁰⁷ Milano Today, 'Caserma Montello, trasferiti alcuni migranti «senza alcun preavviso»', 22 September 2017, available in Italian at: <http://bit.ly/2xWVImC>.

⁴⁰⁸ Il Fatto Quotidiano, 'Migranti, barricate e proteste nel Messinese contro l'arrivo di 50 profughi. E il sindaco stacca la luce', 15 July 2017, available in Italian at: <http://bit.ly/2EeuMPz>; Il Post, 'Le proteste per i migranti arrivati in provincia di Messina', 16 July 2017, available in Italian at: <http://bit.ly/2tZ15ga>.

In other cases, even the news of imminent transfers have sparked protests among the local population. In Rocca di Papa, Rome, **Lazio**, the announced arrival of people disembarked by the *Diciotti* ship from Catania, Sicily in August 2018 created tension in front of the centre where they would be accommodated for a few days, between two opposing factions of citizens pro and against migrants.⁴⁰⁹ In Pistoia, **Tuscany**, the inhabitants protested and collected 400 signatures against the imminent opening of a reception centre in July 2017. The same happened in San Salvo, Chieti, **Abruzzo**, where some mayors from the region gathered to protest against the opening of a reception centre that would accommodate 100 migrants. In Breno, Piacenza, **Emilia-Romagna** in August 2017, 15 children were greeted by the writing on the walls: “no to blacks and to invasion”.⁴¹⁰

4.2. Restrictions in accommodation in reception centres

The Reception Decree also clarifies that asylum applicants are free to exit from first reception centres during the daytime but they have the duty to re-enter during the night time. The applicant can ask the Prefecture for a temporary permit to leave the centre at different hours for relevant personal reasons or for those related to the asylum procedure.⁴¹¹ The law does not provide such a limitation for people accommodated in CAS but rules concerning the entry to / exit from the centre are also laid down in an agreement signed between the body running the structure and the asylum seeker at the beginning of the accommodation period.

Applicants' freedom of movement can be affected by the fact that it is not possible to leave the reception centre temporarily e.g. to visit relatives without prior authorisation. Authorisation is usually granted with permission to leave for some days. In case a person leaves the centre without permission and they do not return to the structure within a brief period of time (usually agreed with the management body), that person cannot be readmitted to the same structure and material reception conditions can be withdrawn (see [Reduction or Withdrawal of Material Reception Conditions](#)).

On 16 June 2017, the Prefecture of Naples adopted a new regulation to be applied in CAS. The regulation establishes a curfew at 22:00, or 21:00 in spring and summer. The regulation also foresees [Withdrawal of Reception Conditions](#) if the curfew is not observed. The regulation has been challenged by ASGI before the Council of State.

⁴⁰⁹ Il Tempo, 'Migranti della Diciotti a Rocca di Papa. Primo pullman arrivato a tarda sera Tensione tra CasaPound e centri sociali divisi da un cordone di polizia', 28 August 2018, available in Italian at: <https://bit.ly/2wuuYGZ>.

⁴¹⁰ Il Fatto Quotidiano, 'Migranti, balle di fieno e scritta razzista contro l'arrivo di 15 profughi minorenni nel Piacentino: "No ai neri e invasione"', 24 August 2017, available in Italian at: <http://bit.ly/2GnEOOU>.

⁴¹¹ Article 10(2) Reception Decree.

B. Housing

1. Types of accommodation

Indicators: Types of Accommodation

1. Number of reception centres: Not available
2. Total number of places in the reception centres: Not available
3. Type of accommodation most frequently used in a regular procedure:
 Reception centre Hotel or hostel Emergency shelter Private housing Other
4. Type of accommodation most frequently used in an accelerated procedure:
 Reception centre Hotel or hostel Emergency shelter Private housing CPR

There are no available comprehensive statistics on the capacity and occupancy of the entire reception system, given the different types of accommodation facilities existing in Italy. The following sections contain information and figures on: CPSA / hotspots; governmental reception centres; and CAS.

At the end of 2018, the number of asylum seekers and beneficiaries of international protection in the reception system was as follows:

Occupancy of the reception system: 31 December 2018				
Hospots	First reception centres	CAS	SIPROIMI (ex SPRAR)	Total
453	8,990	138,503	25,657	173,603

Source: La Voce, 'Ecco le cifre dell'accoglienza in Italia', 29 January 2019: <https://bit.ly/2IsQPWO>.

1.1. First reception: CPSA / Hotspots

The Reception Decree states that the first rescue and assistance operations take place in the centres regulated by L 563/1995 which, though improperly, is considered to govern the First Aid and Reception Centres (CPSA) present at the main places of disembarkation.⁴¹² During 2016, the Government clarified that such centres served as **Hotspots**. According to the SOPs, persons should stay in these centres "as short as possible", but in practice they are accommodated for days or weeks.

By the end of 2018, four hotspots were operating in **Apulia** (Taranto) and **Sicily** (Lampedusa, Pozzallo, and Messina), down from five in 2017. The hotspots of Lampedusa and Pozzallo have been reopened following temporary closure in 2018; only partial closure in the case of Lampedusa.⁴¹³ According to figures cited by media, a total of 453 persons were accommodated in hotspots at the end of the year.⁴¹⁴

1.2. Governmental first reception centres

The Reception Decree provides that the governmental first reception centres are managed by public local entities, consortia of municipalities and other public or private bodies specialised in the assistance of asylum applicants through public tender.⁴¹⁵

At the time of writing, 14 first reception centres are established in seven regions in Italy:

⁴¹² Article 8(2) Reception Decree.

⁴¹³ Il Fatto Quotidiano, 'Anac: "Anomalie negli appalti dell'hotspot migranti. Troppe proroghe e affidamenti diretti in maniera impropria"', 15 March 2018, available in Italian at: <http://bit.ly/2GbcamP>; ASGI et al., *Scenari di frontiera: il caso Lampedusa*, October 2018.

⁴¹⁴ La Voce, 'Ecco le cifre dell'accoglienza in Italia', 29 January 2019, available in Italian at: <https://bit.ly/2IsQPWO>.

⁴¹⁵ Article 9(2) Reception Decree.

First reception centres by region	
First reception centre	Region
Gorizia	Friuli-Venezia Giulia
Udine (Caserma Cavarzerani)	Friuli-Venezia Giulia
Udine (Friuli)	Friuli-Venezia Giulia
Bologna (Mattei)	Emilia-Romagna
Foggia (Borgo Mezzanone)	Apulia
Bari	Apulia
Brindisi	Apulia
Crotone (Sant' Anna)	Calabria
Catania (Mineo)	Sicily
Caltanissetta	Sicily
Agrigento (Villa Sikanìa)	Sicily
Messina (ex Caserma Gasparro)	Sicily
Padova (Bagnoli di Sopra)	Veneto
Treviso (ex Caserma Serena)	Veneto

According to figures cited by media, a total of 8,990 persons were accommodated in first reception centres at the end of the year.⁴¹⁶

The situation has changed as of early 2019 as some centres have been closed by the Government. This is the case of Castelnuovo di Porto, Rome, **Lazio**,⁴¹⁷ whose closure, albeit long awaited, has sparked serious criticism for the way in which it happened, and Cona, Venice, **Veneto**.⁴¹⁸

According to media sources, the Ministry of Interior intends to close within the year all the large first reception centres, former CARA, namely those of Bologna, Crotone, Bari and Foggia.⁴¹⁹ At a press conference of 23 January 2019, the Ministry of the Interior explained the need to close down large centres and to accommodate migrants in smaller centres because they are easier to control.⁴²⁰

1.3. Temporary facilities: CAS

In case of temporary unavailability of places in the first reception centres, the Reception Decree provides the use of Emergency Reception Centres (*centri di accoglienza straordinaria*, CAS). The CAS system, originally designed as a temporary measure to prepare for transfer to second-line reception, expanded in recent years to the point of being entrenched in the ordinary system. The Reception Decree adopted in August 2015 missed the opportunity to actually change the system and simply renamed these centres from emergency centres to “temporary facilities” (*strutture temporanee*).

The CAS are identified and activated by the Prefectures, in cooperation with the Ministry of Interior. Following Decree Law 113/2018, CAS facilities can be activated only after obtaining the opinion of the

⁴¹⁶ La Voce, ‘Ecco le cifre dell'accoglienza in Italia’, 29 January 2019, available in Italian at: <https://bit.ly/2IsQPWO>.

⁴¹⁷ Redattore Sociale, ‘Non difendiamo i grandi centri ma così è inumano’, 23 January 2019, available in Italian at: <https://bit.ly/2T4Dzt2>; ‘Cara Castelnuovo parlamentare blocca un pullman con i migranti’, 23 January 2019, available in Italian at: <https://bit.ly/2W0tn6P>.

⁴¹⁸ Venezia Today, ‘Chiuso centro di accoglienza Conetta’, 20 December 2018, available in Italian at: <https://bit.ly/2O4ouXH>.

⁴¹⁹ Corriere della Sera, ‘Migranti chiuso il Cara di Castelnuovo pronta la lista del Viminale dei prissimi centri da chiudere’, 22 January 2019, available in Italian at: <https://bit.ly/2HHEFud>.

⁴²⁰ Ministry of Interior, ‘Presentati, al Viminale, i dati aggiornati sull'immigrazione’, 23 January 2019, available in Italian at: <https://bit.ly/2VZf2r7>.

local authority on whose territory the structures will be set up.⁴²¹ Activation is reserved for emergency cases of substantial arrivals but applies in practice to all situations in which, as it is currently the case, capacity in ordinary centres are not sufficient to meet the reception demand.

The CAS are specifically designed only for the first accommodation phase for the time “strictly necessary” until the transfer of asylum seekers to a first reception centre.⁴²² The services guaranteed are merely essential as in the first reception centres (see [Forms and Levels of Material Reception Conditions](#)).⁴²³

Decree Law 113/2018, implemented by L 132/2018, refrained from defining time limits for transfer to first reception centres, thus further endorsing a temporary and precarious approach to reception for asylum seekers. That said, the law states that within one year of the entry into force of the reform, the Minister of Interior shall monitor the progress of migratory flows with a view to the gradual closure of the CAS centres.⁴²⁴

There are over 9,000 CAS established across Italy.⁴²⁵ By the end of 2018, the number of people accommodated in CAS was 138,503.⁴²⁶

The fact that the majority of available places are currently in CAS, coupled with the cancellation of the possibility to access second-line reception facilities, illustrates a policy in favour of asylum seekers spending their entire asylum procedure in emergency accommodation.

1.4. Private accommodation with families and churches

In addition to the abovementioned reception centres, there is also a network of private accommodation facilities which are not part of the national reception system, provided for example by Catholic or voluntary associations, which support a number of asylum seekers and refugees. Several churches had already accommodated refugees and many others have decided to do so following the Pope’s call of 6 September 2015.⁴²⁷

It is very difficult to ascertain the number of available places in these forms of reception. The function of these structures is relevant especially in emergency cases or as integration pathways, following or in lieu of accommodation in SPRAR prior to the reform. Some of these initiatives are ongoing for example in Bologna, **Emilia-Romagna**,⁴²⁸ and Trieste, **Friuli-Venezia Giulia**.⁴²⁹

As of April 2017, over 500 families in Italy were hosting a refugee. Moreover, under the project “*Rifugiato a casa mia*” led by Caritas, 115 migrants were hosted in families, 227 in parishes, 56 in religious institutes and 139 in apartments as of May 2017. Moreover, the network Refugees Welcome ran 35 projects of refugees hosted in families in 2017.⁴³⁰

⁴²¹ Article 11(2) Reception Decree, as amended by Article 12 Decree Law 113/2018 and L 132/2018. Prior to the reform, the law provided that the local authorities should only be notified and issue a non-binding opinion.

⁴²² Article 11(1) and (3) Reception Decree, as amended by Decree Law 113/2018 and L 132/2018 only refer to Article 9 on first reception centres and no longer to second-line centres.

⁴²³ Articles 10(1) and 11(2) Reception Decree.

⁴²⁴ Article 12-bis Decree Law 113/2018, as amended by L 132/2018.

⁴²⁵ According to the latest figures on file with the author, on 30 June 2018 the number of CAS was 9,132.

⁴²⁶ 24 Ore Italia, ‘Migranti: ecco le cifre dell’accoglienza in Italia’, 10 February 2019, available in Italian at: <https://bit.ly/2BtYX56>.

⁴²⁷ Il Fatto Quotidiano, ‘Profughi, l’appello di Papa Francesco: “Ogni parrocchia accolga una famiglia”’, 6 September 2015, available in Italian at: <http://bit.ly/2GjNpLL>.

⁴²⁸ In Bologna, the project is coordinated by the cooperative Camelot, that also created in April 2016 a website to connect the families involved: <http://bit.ly/2lkoEv0>.

⁴²⁹ In Trieste, the project started by the end of 2015 and is coordinated by the NGO Ics-Ufficio Rifugiati.

⁴³⁰ Il Venerdì di Repubblica, ‘Ospitare un profugo? In Italia si fa così’, 28 April 2017, available in Italian at: <http://bit.ly/2FjMksA>.

On the other hand, during 2017, the mayors of some municipalities in **Lombardy**, all members of the Lega Nord party, issued orders they called “anti-reception” on the basis of which individuals would face fines ranging from 2,500 € to 15,000 € for accommodating migrants without prior notification to the municipality, especially if they had an agreement with the Prefecture for a CAS.⁴³¹ ASGI and other organisations have lodged appeals against these illegal orders, and as of November 2017 almost all mayors have revoked these orders with very little explanation or without any motivation.⁴³²

2. Conditions in reception facilities

Indicators: Conditions in Reception Facilities

1. Are there instances of asylum seekers not having access to reception accommodation because of a shortage of places? Yes No
2. What is the average length of stay of asylum seekers in the reception centres? Not available
3. Are unaccompanied children ever accommodated with adults in practice? Yes No

Reception conditions only have to satisfy a basic level in first reception centres and in CAS.–The Reception Decree provides that the respect of private life, gender and age specific concerns, physical and mental health, family unit and the situation of vulnerable persons shall be ensured in first reception centres and CAS. Measures to prevent any form of violence and to ensure the safety and security of applicants shall be adopted.⁴³³

As stated in [Forms and Levels of Material Reception Conditions](#), the Decree of the Ministry of Interior of 20 November 2018 providing the tender specification schemes (*capitolati*) for first reception, cancelled all integration services as well as funding related to psychological support, which is guaranteed only in CPR and hotspots. Conversely, former SPRAR projects ensured interpretation and linguistic-cultural mediation services, legal counselling, teaching of the Italian language and access to schools for minors, health assistance, socio-psychological support in particular to vulnerable persons, training and re-training, support at providing employment, counselling on the services available at local level to allow integration locally, information on (assisted) voluntary return programmes, as well as information on recreational, sport and cultural activities.⁴³⁴

In practice, reception conditions vary considerably among different reception centres and also between the same type of centres. While the services provided are the same, the quality can differ depending on the management bodies running the centres. While the SPRAR system published an annual report on its reception system, no comprehensive and updated reports on reception conditions are available for the entire Italian territory.

It is not possible to determine an overall average of duration of stay. However, asylum seekers remain in reception centres throughout the whole asylum procedure, which may last several months, as well as during the appeal procedure. The Reception Decree does not provide any timeframe on the reception, since this has to be provided since the expression of the intention to make an asylum application and throughout the asylum procedure.

⁴³¹ Repubblica, ‘Migranti, ordinanze e multe ai privati: un patto dei sindaci leghisti contro l'accoglienza’, 29 August 2017, available in Italian at: <http://bit.ly/2wGsB5J>.

⁴³² ASGI, ‘Accoglienza dei richiedenti asilo: i sindaci revocano le ordinanze’, 20 November 2017, available in Italian at: <http://bit.ly/2BxERUw>; ASGI, ‘La Prefettura di Milano invita i Comuni milanesi a revocare le ordinanze sindacali anti-richiedenti asilo’, 19 September 2017, available in Italian at: <http://bit.ly/2DUAacE>.

⁴³³ Articles 10(1) and 11(2) Reception Decree.

⁴³⁴ Article 30 Ministry of Interior Decree 10 August 2016.

2.1. Conditions in first reception centres

Whereas first reception centres are the main form of accommodation following the 2018 reform, the law still states that their aim is to offer accommodation to asylum seekers for the purpose of completion of operations necessary for the determination of their legal status,⁴³⁵ and of medical tests for the detection of vulnerabilities, to take into account for a subsequent and more focused placement.⁴³⁶

First reception centres are collective centres, up until now set up in large facilities, isolated from urban centres and with poor or otherwise difficult contacts with the outside world.

Generally speaking, all governmental centres are very often overcrowded. Accordingly, the quality of the reception services offered is not equivalent to reception facilities of smaller size. In general, concerns have systematically been raised about the high variability in the standards of reception centres in practice, which may manifest itself in: overcrowding and limitations in the space available for assistance, legal advice and social life; physical inadequacy of the facilities and their remoteness from the community; or difficulties in accessing appropriate information.⁴³⁷ Nevertheless, it must be pointed out that the material conditions also vary from one centre to another depending on the size, the occupancy rate, and the level and quality of the services provided by the body managing each centre.

More detailed information on specific centres are provided in the reports published by the NGOs belonging to the campaign [LasciateCIEntrare](#) among others:

Sant’Anna, Crotona, Calabria: LasciateCIEntrare visited the centre on 28 October 2018. The centre is located inside a former military aeronautical base along a high-speed highway, 5km far away from the town of Isola Capo Rizzuto and 16km from the city of Crotona. Inside the centre, two large sheds are used for identification. The delegation reported that although the area reserved for families is separate from the exclusively male area, there are no doors that can be closed and the bathrooms are shared. Residents reported the presence of numerous unaccompanied children but the management of centre stated that they were accompanied. People also report that every time they go to the infirmary they only receive sedative medication.⁴³⁸

Mineo, Catania, Sicily: The Chamber of Deputies’ Commission of inquiry on reception visited the centre twice in 2016 and highlighted conditions incompatible with dignified standards. The Commission emphasised the isolation of the centre from urban centres, as well as the large population hosted in the facility, which constantly creates tensions within and outside the centre and fuels a feeling of physical and moral isolation among residents. People are free to exit the centre but have no means of transport to get to Mineo. Given that all activities must take place within the centre, integration in local communities is impossible. Moreover, the sanitary conditions of the centre were described by the Commission as precarious, in addition to crumbling infrastructure, loss-making services including medical services, and insufficient number of staff. Safety regulations were also described as inappropriate: the Commission referred to an evident presence of black market, exploitation, drug trafficking and prostitution, with law enforcement officials being aware of abuses and violence but preferring to monitor at a distance.⁴³⁹ The centre is also the subject of the “Mafia Capitale” investigation.⁴⁴⁰

⁴³⁵ Article 9(1) Reception Decree.

⁴³⁶ Article 9(4) Reception Decree.

⁴³⁷ This is a recurring concern: Council of Europe Commissioner for Human Rights, *Report by Nils Muiznieks, Commissioner for Human Rights of the Council of Europe, following his visit to Italy from 3 to 6 July 2012*, CommDH(2012)26, 18 September 2012, 36.

⁴³⁸ LasciateCIEntrare, *Report della visita della delegazione della campagna LasciateciEntrare al centro di accoglienza Sant’Anna*, 28 October 2018, available in Italian at: <https://bit.ly/2Y0BIcs>.

⁴³⁹ Chamber of Deputies, *Relazione sulle vicende concernenti il centro di accoglienza (ex CARA) di Mineo*, 21 June 2017, available in Italian at: <http://bit.ly/2HnXCNA>.

⁴⁴⁰ See also News Deeply, ‘Living on Mafia Leftovers: Life in Italy’s Biggest Refugee Camp’, 19 February 2018, available at: <http://bit.ly/2HzxIN7>.

As of 7 February 2019 massive transfers of people out of Mineo have started. In 100 days, 100 people have been transferred and others are still to follow. The Ministry of Interior has announced the intention to close Mineo within the year.⁴⁴¹

Villa Sikania, Agrigento, Sicily: When visiting the centre on 16 January 2017, the Guarantor for the rights of detained persons found that the facility also operated as a hotspot for 379 persons disembarked at Porto Empedocle on 30 December 2016. The centre is divided in two parts: one originally intended as a hotel with 42 rooms, mainly hosting relocation candidates, families and women; and an “outdoor gazebo” with four large dorms. Degrading conditions were noted in bathrooms, as there were no doors, no hot water and many showers were broken.⁴⁴²

Cavarzerani, Udine, Friuli-Venezia Giulia: The centre is divided into two buildings and a tent area. In the first building there were six big rooms, with 20-25 beds. In the bathrooms, they found that five showers were broken, the sinks had leaks of water and hot water was continuously interrupted. In the second building there were 9 rooms with about 165 beds. The tent area had more critical conditions. There were 38 tents, with 9-12 persons each. Inside the tents there was no light and no heating, despite critical temperatures in the winter. Bathrooms and showers were too few: about 10 bathrooms and 14 showers for at least 400 persons, with inadequate hygienic conditions. The MEP Elly Schlein, who visited the centre on 29 July 2016 reported that the persons accommodated at the moment of the visit were 789, almost exclusively Pakistani asylum seekers. In January 2017, there were 644 people accommodated, out of whom 400 in the buildings and the rest in the tent area. Most persons were Pakistani nationals. People could make the first access to the centre only from 19:30 to 20:30 every day and could leave the centre during the day but they could return only when the gates were open. In all the centre, there was no access to a legal support service. No form of pocket money was planned for people who were in the centre. The management body explained that the Ministry was in debt of at least €3 million and that the last payment had been made in September 2015. The average duration of stay was reported at 6-8 months, although this fluctuates given that the majority of asylum seekers hosted there were Dublin cases.⁴⁴³

In August 2018 an Afghan Dublin returnee suffering from mental illness committed suicide in the centre.⁴⁴⁴ According to media reports, the barracks were hosting about 700 people during those summer months, whereas the maximum capacity is 350 people.

Friuli, Udine, Friuli-Venezia Giulia: Still in August 2018, due to numerous arrivals and the high number of asylum seekers already present in the city, the authorities opened another first reception centre located inside a former army barracks, the Friuli.⁴⁴⁵

Managers tend to avoid accommodating together people of the same nationality but belonging to different ethnicities, religion, or political groups that may be in conflict in order to prevent of the rise of tensions and violence.

⁴⁴¹ Today, ‘Cara di Mineo, nuovi trasferimenti e allontanamenti “volontari”: si va verso la chiusura’, 28 February 2019, available in Italian at: <https://bit.ly/2O85V4C>.

⁴⁴² Guarantor for the rights of detained persons, *Rapporto sulle visite nei CIE e negli hotspot in Italia 2016/2017*, 11 May 2017, available in Italian at: <http://bit.ly/2HtaH8C>, 48-49.

⁴⁴³ LasciateCIEntrare, *Report20giugno*, October 2016; *Report dell’ ingresso alla ex caserma Cavarzerani*, 26 January 2017: <http://bit.ly/2jXFSwi>.

⁴⁴⁴ Friuliserà, ‘Tragedia alla ex Cavarzerani di Udine: parla Giovanni Tonutti presidente di Oikos onlus, una delle associazioni impegnate nell’accoglienza’, 1 September 2018, available in Italian at: <https://bit.ly/2FfOjkQ>.

⁴⁴⁵ Diaro di Udine, ‘Sempre più migranti in città: riapre la Friuli’, 19 August 2018, available in Italian at: <https://bit.ly/2F3N9HO>.

2.2. Conditions in CAS

According to the Reception Decree, services guaranteed in temporary centres (CAS) are the same as those guaranteed in first reception centres.⁴⁴⁶

The chronic emergency state under which the CAS operate has forced the improvisation of interventions and favoured the entry into the reception network of bodies lacking the necessary skills and, in the worst cases, only interested in profits.

Reports published from 2016 to 2019 by organisations such as Medici per i diritti umani (MEDU),⁴⁴⁷ Naga,⁴⁴⁸ Lunaria,⁴⁴⁹ and LasciateCIEntrare together with Libera and Cittalia,⁴⁵⁰ have clearly demonstrated the serious problems and deficiencies of many CAS: unsuitable facilities; lack of hygiene and lack of safety conditions minimally adequate for both guests and workers; lack of preparation of the staff and staff shortages. A few observations this period are recounted below by way of example:

Enea, Rome, Lazio: The centre has a maximum capacity of 316 persons. At the time of the visit of LasciateCIEntrare on 19 January 2019, it hosted 316 persons. It is a large centre with security guards at the entrance. In the last months, many persons have arrived after the closure of smaller CAS facilities. There are also Dublin returnees sent there from Fiumicino Airport. The number of staff is 50. There are only three washing machines and the asylum seekers report that hot water, pocket money and telephone cards are not provided.⁴⁵¹

Milan, Lombardy: According to a report by Naga, the contracts for management of CAS in Milan are awarded by the Prefecture to the tender with the lowest price, without specifying the requisite skills of operators employed in the centres and no longer containing an obligation on centres to guarantee Italian language courses. As many as 3,650 people were housed in CAS in Milan as of the end of July 2017.⁴⁵²

Casotto, Veneto: A delegation of LasciateCIEntrare visited the CAS on 2 November 2017. Although the area is isolated from urban areas, asylum seekers are not provided with tickets for public transport. The delegation also noted the absence of qualified personnel and cultural mediators in the facility.⁴⁵³

Roggiano Gravina, Cosenza, Calabria: LasciateCIEntrare visited the CAS three times during 2017. Residents stated that they were not issued a health card and that they receive the same medicine for any health condition reported. They also reported that the manager of the centre calls the police in any protest against the quality of services.⁴⁵⁴

Cona, Venezia, Veneto: Several organisations, including ASGI, requested Rule 39 interim measures from the ECtHR on 11 January 2017 due to the inhuman and degrading conditions in the centre facing three children and an adult. While the Court has requested information from the Italian authorities, the

⁴⁴⁶ Articles 11(2) and 10(1) Reception Decree.

⁴⁴⁷ MEDU, *Asilo Precario*, April 2016, available in Italian at: <http://bit.ly/2ljmxa6>.

⁴⁴⁸ Naga, *(Ben)venuti! Indagine sul sistema di accoglienza dei richiedenti asilo a Milano e provincia*, April 2016, available in Italian at: <http://bit.ly/2kDbCZT>.

⁴⁴⁹ Lunaria, *Il mondo di dentro. Il sistema di accoglienza di richiedenti asilo e rifugiati a Roma*, October 2016, available in Italian at: <http://bit.ly/2fy1cac>.

⁴⁵⁰ LasciateCIEntrare et al., *InCAsStrati*, February 2016, available in Italian at: <http://bit.ly/2ljAFQI>.

⁴⁵¹ LasciateCIEntrare, 'LasciateciEntrare in visita al Cas Enea: Online il report del monitoraggio', 30 January 2019, available in Italian at: <https://bit.ly/2Tbj1Pu>.

⁴⁵² Naga, *(Stra)ordinaria accoglienza*, October 2017, available in Italian at: <http://bit.ly/2FttAM2>.

⁴⁵³ LasciateCIEntrare, 'Il CAS pensato per far riflettere i richiedenti asilo, report della visita al CAS Casotto di Pedemonte (VI)', 21 November 2017, available in Italian at: <http://bit.ly/2zWjZtd>.

⁴⁵⁴ LasciateCIEntrare, 'Straordinaria accoglienza, ordinari emergenza, report al CAS di Roggiano Gravina', 7 November 2017, available in Italian at: <http://bit.ly/2hiixuk>.

Prefecture has transferred the children concerned out of the centre, so as to prevent the Court from granting interim measures.⁴⁵⁵ The case was communicated later in 2017.⁴⁵⁶

Piano Torre di Isnello, Palermo, Sicily: The centre is located far away from the town of Isnello. During a visit by LasciateCIEntrare on 29 December 2016, the centre hosted 90 persons. Heating is available, although residents reported that it is underused by the management of the centre, and the clothes provided are insufficient for all guests and inadequate for cold weather. Rooms, on average the size of a double room, were reported to be overcrowded, as each room is occupied on average by 6 people, with the exception of a room hosting 10 people.⁴⁵⁷

Telese, Campania: On 19 November 2016, LasciateCIEntrare activists met some asylum seekers accommodated in the centre for more than six months. They had no knowledge of the Italian language and they had no basic legal information about the asylum procedure they were involved in. They lacked adequate winter clothing and they complained about weak relations with the social operators of the CAS. They also reported they had no interaction with the local community. After some weeks, the situation recorded was even worse because of the intermittent availability of hot water and electricity.⁴⁵⁸

Montalto Uffugo, Calabria: The centre, located far away from the town, consists of two areas, a two storey house and a smaller house: The first one has 4 large bedrooms, each with 5 beds, but a single toilet and two showers on the floor and two more bathrooms at the lower level. The second one has two bedrooms for seven guests and one bathroom. LasciateCIEntrare visited the centre on 29 August 2016 and found satisfactory formal compliance with standards but difficult relations with the manager of the structure and lack of real paths of inclusion for the residents.⁴⁵⁹

In September 2018, the manager of a CAS in Caserta, **Campania** has been sentenced to 4 years and 8 months' imprisonment for opening fire at a 19-year-old Gambian asylum seeker at the end of 2017.⁴⁶⁰ The centre had been closed by the Prefecture after the brutal episode.

However, as the functioning of CAS depends on agreements by the management bodies with the Prefectures and on the professionalism of the bodies involved, there are notable cases in which the reception conditions were equal to those of former SPRAR, such as the CAS of Trieste, **Friuli-Venezia Giulia**.⁴⁶¹ As discussed in [Forms and Levels of Material Reception Conditions](#), however, the new calls for tenders modelled on the Ministry of Interior tender scheme of 20 November 2018 will result in the disappearance of these virtuous projects, if not annulled by the Court.

2.3. Conditions in makeshift camps

As discussed in [Criteria and Restrictions to Access Reception Conditions](#), at least 10,000 persons were excluded from the reception system as of February 2018, among whom asylum seekers and beneficiaries of international protection.

⁴⁵⁵ ASGI, 'Cona(VE): minorenni nel centro di accoglienza. La CEDU chiede chiarimenti all'Italia', 15 January 2017, available in Italian at: <http://bit.ly/2jY3uWl>.

⁴⁵⁶ ECtHR, *Darboe and Camara v. Italy*, Application No 5797/17, Communicated on 14 February 2017.

⁴⁵⁷ LasciateCIEntrare, *Migranti, visita al CAS di Piano Torre di Isnello (PA): il report*, 10 January 2017, available in Italian at: <http://bit.ly/2lfgQhq>.

⁴⁵⁸ LasciateCIEntrare, *Migranti, LasciateCIEntrare visita al Centro di Accoglienza Straordinaria di Telese (BN)*, 10 January 2017, available in Italian at: <http://bit.ly/2jY2xsp>.

⁴⁵⁹ LasciateCIEntrare, *Migranti, LasciateCIEntrare visita il Centro di Accoglienza Straordinaria di Montalto Uffugo (CS)*, 29 December 2016, available in Italian at: <http://bit.ly/2khklua>.

⁴⁶⁰ Caserta News, 'Condannato Della Gatta per gli spari nel centro migranti', 28 September 2018, available in Italian at: <https://bit.ly/2TaCFv0>.

⁴⁶¹ ASGI, *Il diritto d'asilo tra accoglienza ed esclusione* (Dell'Asino, 2015) and *Il Sistema Dell'accoglienza Di Trieste: Report Statistico 2017*, 19 July 2018, available in Italian at: <https://bit.ly/2O1vJiD>.

Informal settlements with limited or no access to essential services are spread across the entire national territory. A report by MSF published in February 2018 described the situation in some makeshift camps:⁴⁶²

Piedmont: In Turin, among the several informal settlements for refugees and asylum seekers, the buildings of the former Olympic village (MOI), were occupied in March 2013 by North African refugees. MSF recorded settlements in the Via Madonna de la Salette, in Via Bologna, mainly occupied by Sudanese refugees, and in Corso Chieri, mainly occupied by Somali refugees.

Lazio: In Rome, MSF reports a proliferation informal settlements in abandoned buildings far away from the city centre. In the Tor Cervara area, near Tiburtina station, hundreds of migrants and refugees live without water, electricity and gas, often surrounded by areas of illegal dumping, infested with rats. Around 100 settlements in Rome are organised occupations. At least 600 asylum seekers and beneficiaries of international protection were reported to live in these places.

Apulia: The “Ferrhotel” in Bari has occupied for years by dozens of Somali refugees, without water or light. Among the 500 homeless people registered by the municipality at the end of June 2017, many were asylum seekers.

Friuli-Venezia Giulia: In Gorizia, in February 2019 asylum seekers were found in a dangerous situation on the banks of the Isonzo river. According to the local authorities, they were all asylum seekers accommodated who preferred to spend their days there. However, mattresses and blankets were also found on site.⁴⁶³ In Trieste, in August 2018, asylum seekers were found sleeping in the city centre and they were evicted by the Deputy Mayor who accused reception management bodies of not taking care of them.⁴⁶⁴ During 2018, dozens of asylum seekers who were waiting early in the morning for the opening of the Questura to express their intention to seek asylum or who were waiting to be accommodated received fines of 100 € for sleeping rough by the local police.⁴⁶⁵

By the end of 2018, some of these camps had been rapidly evacuated. This happened to the former Olympic village (MOI), in Turin,⁴⁶⁶ and to the Ferrhotel in Bari.⁴⁶⁷ In both cases people were warned only two days before the eviction and it is not clear if they have been transferred to proper reception facilities or simply evicted.

The makeshift camp of San Ferdinando, **Calabria**, a tent camp where among others migrants, some asylum seekers and agricultural workers were living was evacuated on 6 March 2019. Asylum seekers have been dispersed or transferred to CAS of other regions. Many of them protested because they would lose their job and salary.⁴⁶⁸

⁴⁶² MSF, *Fuori campo*, February 2018, 2, 36.

⁴⁶³ Il Piccolo, ‘Migranti, tornano i bivacchi lungo le rive dell’Isonzo’, 28 February 2019, available in Italian at: <https://bit.ly/2HBixAO>.

⁴⁶⁴ Il Messaggero, ‘Blitz del vicesindaco di Trieste nella notte: “sgombera” i migranti dalle Rive’, 25 August 2018, available in Italian at: <https://bit.ly/2T8dmK4>.

⁴⁶⁵ Il Piccolo, ‘Bivacchi sulle rive, 15 multe’, 10 August 2018, available in Italian at: <https://bit.ly/2JeXB16>.

⁴⁶⁶ Il Giornale, ‘Torino, la polizia sgombera l’ex Moi: liberato il ‘villaggio dei migranti’’, 17 December 2018, available in Italian at: <https://bit.ly/2CnQEYX>.

⁴⁶⁷ Il Giornale, ‘Bari, sgomberati i locali della Ferrhotel occupati da extracomunitari’, 12 October 2018, available in Italian at: <https://bit.ly/2HBfOGQ>.

⁴⁶⁸ Internazionale ‘A San Ferdinando sgomberata una tendopoli se ne apre un’altra’, 6 March 2019, available in Italian at: <https://bit.ly/2F2S3EQ>.

C. Employment and education

1. Access to the labour market

Indicators: Access to the Labour Market

1. Does the law allow for access to the labour market for asylum seekers? Yes No
❖ If yes, when do asylum seekers have access the labour market? 2 months
2. Does the law allow access to employment only following a labour market test? Yes No
3. Does the law only allow asylum seekers to work in specific sectors? Yes No
❖ If yes, specify which sectors
4. Does the law limit asylum seekers' employment to a maximum working time? Yes No
❖ If yes, specify the number of days per year
5. Are there restrictions to accessing employment in practice? Yes No

According to the Reception Decree, an asylum seeker can start to work within 60 days from the moment he or she lodged the asylum application.⁴⁶⁹ Even if he or she start working, however, the asylum seeker permit cannot be converted into a work or residence permit.⁴⁷⁰

Even though the law makes a generic reference to the right to access to employment without indicating any limitations, and albeit being entitled to register with Provincial Offices for Labour, in practice asylum seekers face difficulties in obtaining a residence permit which allows them to work. This is due to the delay in the [Registration](#) of their asylum applications, on the basis of which the permit of stay will be consequently issued, or to the delay in the renewal thereof.

Moreover, as reported to ASGI, many Provincial Offices for Labour do not allow asylum seekers under the Dublin procedure to enrol on the lists of unemployed persons and some Questure have expressed a negative opinion about the possibility for these people to be employed before it is confirmed that Italy is responsible for their asylum application. During 2018, however, some regions where this occurred such as **Friuli-Venezia Giulia** changed their position on this issue.

In addition, the objective factors affecting the possibility of asylum seekers to find a job are the current financial crisis affecting Italy, language barriers, the remote location of the accommodation and the lack of specific support founded on their needs.

Decree Law 113/2018, implemented by L 132/2018, has abolished the possibility for asylum seekers to be involved in activities of social utility in favour of local communities.⁴⁷¹ The (former) SPRAR system was the only integrated system that provided these kind of services to residents. Asylum seekers or beneficiaries of international protection accommodated in the SPRAR system were generally supported in their integration process, by means of individualised projects which include vocational training and internships.⁴⁷²

As asylum seekers now no longer have access to SIPROIMI centres, their integration pathways will not start in the reception centre except for those who manage to enter the SIPROIMI after having obtained international protection. As discussed in [Forms and Levels of Material Reception Conditions](#), the calls for tenders for first reception centres and CAS, modelled on the tender specifications scheme (*capitolato*) published by the Ministry of Interior on 20 November 2018, no longer provide integration

⁴⁶⁹ Article 22(1) Reception Decree.

⁴⁷⁰ Article 22(2) Reception Decree.

⁴⁷¹ Article 22-bis(3) Reception Decree, as amended by Article 12 DecreeLaw 113/2018 and L 132/2018 now only refers to beneficiaries of international protection, no longer to asylum seekers.

⁴⁷² SPRAR, *Manuale per operatori*, April 2015, available in Italian at: <https://bit.ly/2UzwNBf>, 34-37.

services such as professional orientation services. This will certainly result in a considerable difference of opportunities in accessing integration programmes as they will strictly depend on the services provided by the reception centres where asylum seekers are accommodated.

The 2018 reform has also abolished the provision allowing asylum applicants seekers in the (former) SPRAR centres to attend vocational training when envisaged in programmes eventually adopted by the public local entities.⁴⁷³ Vocational training or other integration programmes can be provided also by the means of National public funds (*8xmille*) or AMIF. In this case, the Ministry of Interior can finance specific projects to NGOs at national level concerning integration and social inclusion. The projects financed under AMIF are, however, very limited in terms of period of activity and in number of beneficiaries.

2. Access to education

Indicators: Access to Education

1. Does the law provide for access to education for asylum-seeking children? Yes No
2. Are children able to access education in practice? Yes No

Italian legislation provides that all children until the age of 16, both nationals and foreigners, have the right and the obligation to take part in the national education system. Under the Reception Decree, unaccompanied asylum-seeking children and children of asylum seekers exercise these rights and are also admitted to the courses of Italian language.⁴⁷⁴ The Reception Decree makes reference to Article 38 TUI, which states that foreign children present on Italian territory are subject to compulsory education, emphasising that all provisions concerning the right to education and the access to education services apply to foreign children as well.

This principle has been further clarified by Article 45 PD 394/1999 which gives foreign children equal rights to education as for Italian children, even when they are in an irregular situation. Asylum seeking children have access to the same public schools as Italian citizens and are entitled to the same assistance and arrangements in case they have special needs. They are automatically integrated in the obligatory National Educational System. No preparatory classes are foreseen at National level, but since the Italian education system envisages some degree of autonomy in the organisation of the study courses, it is possible that some institutions organise additional courses in order to assist the integration of foreign children.

In practice, the main issues concerning school enrolment lie in: the reluctance of some schools to enrol a high number of foreign students; the refusal from the family members and/or the child to attend classes; and the insufficiency of places available in schools located near the accommodation centres and the consequent difficulty to reach the schools if the centres are placed in remote areas.

In some cases, attempts to make up for the lack of places in Italian language courses by introducing other courses have not delivered positive results. In Udine, **Friuli-Venezia Giulia**, additional literacy courses were introduced in October 2017 for asylum seekers during morning hours, which coincided with middle school classes. This led to protests by parents and the teaching staff.⁴⁷⁵

⁴⁷³ Article 22(3) Reception Decree has been repealed by Article 12 Decree Law 113/2018.

⁴⁷⁴ Article 21(2) Reception Decree.

⁴⁷⁵ Udine Today, 'Lezioni ai richiedenti asilo a fianco dei ragazzi delle medie: è caos', 29 October 2017, available in Italian at: <http://bit.ly/2GncxrV>.

D. Health care

Indicators: Health Care

1. Is access to emergency healthcare for asylum seekers guaranteed in national legislation?
 Yes No
2. Do asylum seekers have adequate access to health care in practice?
 Yes Limited No
3. Is specialised treatment for victims of torture or traumatised asylum seekers available in practice?
 Yes Limited No
4. If material conditions are reduced or withdrawn, are asylum seekers still given access to health care?
 Yes Limited No

Asylum seekers and beneficiaries of international protection are required to register with the National Health Service.⁴⁷⁶ They enjoy equal treatment and full equality of rights and obligations with Italian citizens regarding the mandatory contributory assistance provided by the National Health Service in Italy.

There is no distinction between asylum seekers benefitting from material reception conditions and those who are out of the reception system, since all asylum seekers benefit from the National Health System.

1. Practical obstacles to access to health care

The right to medical assistance is acquired at the moment of the lodging of the asylum application but very often the exercise of this fundamental right is hindered and severely delayed, depending upon the attribution of the tax code assigned by Questure when lodging the asylum application. This means that it reflects the delay in lodging the asylum claim, which corresponds to several months in certain regions (see [Registration](#)).

Pending enrollment, asylum seekers only have access to medical treatment ensured by Article 35 TUI to irregular migrants: they have access to emergency care and essential treatments and they benefit from preventive medical treatment programmes aimed at safeguarding individual and public health.⁴⁷⁷

Asylum seekers have to register with the national sanitary service in the offices of the Local Health Board (*Azienda sanitaria locale*, ASL) competent for the place they declare to have a domicile.⁴⁷⁸ Once registered, they are provided with the European Health Insurance Card (*Tessera europea di assicurazione malattia*, TEAM), whose validity is related to the one of the permit of stay. Registration entitles the asylum seeker to the following health services:

- Free choice of a general doctor from the list presented by the ASL and choice of a paediatrician for children (free medical visits, home visits, prescriptions, certification for access to nursery and maternal schools, obligatory primary, media and secondary schools);
- Special medical assistance through a general doctor or paediatrician's request and on presentation of the health card;
- Midwifery and gynaecological visits at the "family planning" (*consultorio familiare*) to which access is direct and does not require doctors' request; and
- Free hospitalisation in public hospitals and some private subsidised structures.

Whereas delays in the issuance of health cards had been exacerbated in 2016 due to the attribution of special tax codes to asylum seekers other than the ones attributed to other people, consisting in

⁴⁷⁶ Article 34 TUI; Article 16 PD 21/2015; Article 21 Reception Decree.

⁴⁷⁷ Article 21 Reception Decree; Article 16 PD 21/2015.

⁴⁷⁸ Article 21(1) Reception Decree, citing Article 34(1) TUI; Accordo della Conferenza Stato-Regioni del 20 dicembre 2012 "Indicazioni per la corretta applicazione della normativa per l'assistenza sanitaria alla popolazione straniera da parte delle Regioni e Province Autonome italiane".

numerical and not alphanumeric codes,⁴⁷⁹ no such obstacles were reported with regard to access to health cards in 2017 and 2018. These problems persist with regard to access to other social rights, however.

The right to medical assistance should not expire in the process of the renewal of the permit of stay,⁴⁸⁰ however in practice, asylum seekers with an expired permit of stay have no guarantee of access to non-urgent sanitary treatments for a significant length of time due to the bureaucratic delays in the renewal procedure. This also means that where asylum seekers do not have a domicile to renew their permit of stay, for example because their accommodation right has been revoked, they cannot renew the health card.

Medical assistance is extended to each regularly resident family member under the applicant's care in Italy and is recognised for new-born babies of parents registered with the National Health System.⁴⁸¹

Regarding the effective enjoyment of health services by asylum seekers and refugees, it is worth noting that there is a general misinformation and a lack of specific training on international protection among medical operators.⁴⁸² In addition, medical operators are not specifically trained on the diseases typically affecting asylum seekers and refugees, which may be very different from the diseases affecting Italian population.

One of the most relevant obstacles to access health services is the language barrier. Usually medical operators only speak Italian and there are no cultural mediators or interpreters who could facilitate the mutual understanding between operator and patient.⁴⁸³ Therefore asylum seekers and refugees often do not address their general doctor and go to the hospital only when their disease gets worse. These problems are worsening due to the adverse conditions of the accommodation centres and, as highlighted by MSF in the *Fuori Campo* reports published in March 2016 and February 2018, the informal accommodation in different metropolitan areas.⁴⁸⁴

2. Contribution to health care costs

Asylum seekers benefit from free of charge health services on the basis of a self-declaration of destitution submitted to the competent ASL. The medical ticket exemption is due to the fact that asylum seekers are treated under the same rules as unemployed Italian citizens,⁴⁸⁵ but the practice is very different throughout the country.

In all regions, the exemption is valid for the period of time in which applicants are unable to work, corresponding by law to 2 months from the lodging of the asylum application (see [Access to the Labour Market](#)). During this period they are assimilated to unemployed people and granted with the same exemption code.

For the next period, in some regions such as **Lazio**, **Veneto** and **Tuscany**,⁴⁸⁶ asylum seekers are no longer exempted from the sanitary ticket because they are considered inactive and not unemployed. In other regions such as **Piedmont** and **Lombardy**, the exemption is extended until asylum seekers do

⁴⁷⁹ Ministry of Interior Circular of 1 September 2016; Revenue Agency Circular No 8/2016.

⁴⁸⁰ Article 42 PD 394/1999.

⁴⁸¹ Article 22 Qualification Decree.

⁴⁸² See M Benvenuti, *La protezione internazionale degli stranieri in Italia*, Jovene Editore, Napoli 2011, 263.

⁴⁸³ *Ibid.*

⁴⁸⁴ MSF, *Fuori Campo: Richiedenti asilo e rifugiati in Italia: insediamenti informali e marginalità sociale*, March 2016, available in Italian at: <http://bit.ly/1S5IHGh>.

⁴⁸⁵ Ministry of Health Circular No 5 of 24 March 2000.

⁴⁸⁶ Information provided to ASGI by the Italian Society of Migration Medicine (SIMM), In **Lazio**, the exemption is valid for 6 months, in **Tuscany** for 2 months and another 6 in case of unemployment, and in **Veneto** for 2 months.

not actually find a job. In order to maintain the ticket exemption, asylum seekers need to register in the registry of the job centres (*centri per l'impiego*) attesting their unemployment.

On 18 April 2016, ASGI together with other NGOs sent a letter to the Ministry of Health requesting that effect be given to Article 17(4) of the recast Reception Conditions Directive, according to which asylum seekers may be required to contribute to the costs for health care only if they have sufficient resources, for example if they have been working for a reasonable period of time. ASGI also asked to consider that from the approval of LD 150/2015 on granting the right to the exemption from participation in health spending, there can no longer be a distinction between the unemployed and the inactive.⁴⁸⁷ As of 9 of May 2016, the Ministry of Health replied to have involved the Ministry of Economy and the Ministry of Labour and Social Policy in order to achieve a uniform interpretation of the aforementioned rules.

The entry into force of Decree Law 113/2018, implemented by L 132/2018, which abolished civil registration of asylum seekers (see [Civil Registration](#)), has also created difficulties for access to health treatment with exemption from a medical ticket. In Italy, people can in fact benefit from an exemption from medical costs not only in the case of unemployment but also on the basis of (low) income. However, to do so, one must produce documentation that certifies income based on the Equivalent Economic Situation Indicator (*Indicatore della situazione economica equivalente*, ISEE). However, such documentation is only issued to residents by the Fiscal Assistance Centres (*Centri assistenza fiscale*, CAF) Although the Decree Law clarifies that all services must be ensured to asylum seekers on the basis of their domicile only, in the absence of internal circulars, health service offices are denying this right.

3. Specialised treatment for vulnerable groups

Asylum seekers suffering from mental health problems, including torture survivors, are entitled to the same right to access to health treatment as provided for nationals by Italian legislation. In practice, they may benefit from specialised services provided by the National Health System and by specialised NGOs or private entities.

The Ministry of Interior has clarified that the Guidelines on assistance and rehabilitation of refugees and subsidiary protection holders victims of torture or serious violence, issued by Decree on 3 April 2017 to implement Article 27(1-bis) of the Qualification Decree, also apply to asylum seekers (see [Content of Protection: Health Care](#)).

In order to ensure the protection of the health of foreign citizens in Italy, ASGI has collaborated with the Italian Society of Migration Medicine (*Società italiana di medicina delle migrazioni*, SIMM) since 2014, monitoring and reporting cases of violation of the constitutional right to health.

Since 2015, ASGI also collaborates with MSF, providing legal support for migrants victims of violence. As of April 2016, the two organisations have started a project in **Rome** opening a centre specialising in the rehabilitation of victims of torture.⁴⁸⁸ The project is intended to protect but also to assist in the identification of victims of torture who, without proper legal support, are unlikely to be treated as vulnerable people.⁴⁸⁹

⁴⁸⁷ Article 19 LD 150/2015 states that “unemployed” are workers who declare, in electronic form, their immediate availability to exercise work activities.

⁴⁸⁸ Redattore Sociale, ‘Migranti, apre a Roma il centro di riabilitazione per le vittime di tortura’, 4 April 2016, available in Italian at: <http://bit.ly/1ShpCGG>.

⁴⁸⁹ MSF, *Fuori campo*, February 2018, 39.

E. Special reception needs of vulnerable groups

Indicators: Special Reception Needs

1. Is there an assessment of special reception needs of vulnerable persons in practice?
 Yes No

Article 17(1) of the Reception Decree provides that reception is provided taking into account the special needs of the asylum seekers, in particular those of vulnerable persons such as children, unaccompanied children, disabled persons, elderly people, pregnant women, single parents with minor children, persons who have been subjected to torture, rape or other forms of psychological, physical or sexual violence, victims of trafficking and genital mutilation, as well as persons affected by serious illness or mental disorders (see [Identification](#)).

There are no legal provisions on how, when and by whom this assessment should be carried out. The Reception Decree provides that asylum applicants undergo a health check since they enter the first reception centres and in temporary reception structures to assess their health condition and special reception needs.⁴⁹⁰ The Decree provides, in theory, that special services addressed to vulnerable people with special needs shall be ensured in first reception centres.⁴⁹¹ However, the reduction of funding and services provided in first reception centres under the 20 November 2018 tender specifications scheme (*capitolato*) of the Ministry of Interior and the exclusion of psychologists' services from eligible costs will render the effective identification and protection of these categories of people even more precarious (see [Forms and Levels of Material Reception Conditions](#)).

Decree Law 113/2018, implemented by L 132/2018, has repealed the provision that envisaged the activation of special reception services in the SPRAR facilities for vulnerable people.⁴⁹²

The law clarifies the need to set up specific spaces within governmental first reception centres where services related to the information, legal counseling, psychological support, and receiving visitors are ensured.⁴⁹³ Where possible, adult vulnerable people are placed together with other adult family members already present in the reception centres.⁴⁹⁴ The manager of reception centres shall inform the Prefecture on the presence of vulnerable applicants for the possible activation of procedural safeguards allowing the presence of supporting personnel during the personal interview.⁴⁹⁵

1. Reception of families and children

The Reception Decree specifies that asylum seekers are accommodated in facilities which ensure the protection of family unity comprising of spouses and first-degree relatives.⁴⁹⁶ The management body of the reception centres shall respect the family unity principle. Therefore they cannot separate children from parents who live in the same wing of the facility. In practice, it may happen that a father is accommodated in a wing for single men and his wife and children in the wing for women. In general, dedicated wings are designed for single parents with children. It may also happen that the parents are divided and placed in different centres, and usually the children are accommodated with the mother.

It may happen in first reception centres that families are divided in case the accommodation conditions are deemed not adequate and suitable for children. In these situations mothers and children are hosted in a facility, and men in another. The centre of Gorizia, **Friuli-Venezia Giulia** is an example where

⁴⁹⁰ Articles 9(4) and 11(1) Reception Decree.

⁴⁹¹ Article 17(3) Reception Decree.

⁴⁹² Article 17(4) Reception Decree has been repealed by Article 12 Decree Law 113/2018 and L 132/2018.

⁴⁹³ Article 9(3) PD 21/2015.

⁴⁹⁴ Article 17(5) Reception Decree.

⁴⁹⁵ Article 17(7) Reception Decree.

⁴⁹⁶ Article 10(1) Reception Decree.

families are usually divided. By contrast, in some other centres, families are accommodated together, for instance in, Mineo in Catania, **Sicily** and Crotone, **Calabria**.

Following the 2018 reform of the reception system, families accommodated in first reception centres or CAS could be subsequently transferred to a SIPROIMI facility only when at least one member of the family has been granted international protection or another status that allows access to second-line reception (see [Content of Protection: Housing](#)). However, the transfer depends on factors such as the composition of the family, its vulnerability and/or health problems and the availability of places in the SIPROIMI system.

Based on NGOs' experience, no specific or standardised mechanisms are put in place to prevent gender-based violence in reception centres. As a general rule, permanent law enforcement personnel is present outside governmental centres with the task of preventing problems and maintaining public order. Generally speaking, the management body of governmental centres divides each family from the others hosted in the centre. Women and men are always separated.

2. Reception of unaccompanied children

The Reception Decree states that the best interests of the child have priority in the application of reception measures, in order to ensure living conditions suitable for a child with regard to protection, well-being and development, including social development, in accordance with Article 3 of the Convention on the Rights of the Child.⁴⁹⁷

In order to evaluate the best interests of the child, the child shall be heard, taking into account his or her age, the extent of his or her maturity and personal development, also for the purpose of understanding his or her past experiences and to assess the risk of being a victim of trafficking, and the possibility of family reunion pursuant to Article 8(2) of the Dublin Regulation as long as it corresponds to the best interests.⁴⁹⁸

At the end of 2018, the total number of unaccompanied children accommodated in Italy was 10,787. Of those, 10,326 (95.7%) were accommodated in reception facilities while 461 (4.3%) were accommodated in private housing (with families). The majority of unaccompanied children were accommodated in **Sicily** (38%), followed by **Lombardy** (8%), **Emilia-Romagna** (7.3%), **Friuli-Venezia Giulia** (7.3%), **Lazio** (7.1%), **Calabria** (4.8%) and **Tuscany** (4.4%).⁴⁹⁹ Compared to 2017, the percentage of unaccompanied minors has increased in **Tuscany** and **Friuli-Venezia Giulia**. In **Apulia** and **Sardinia** the numbers have considerably decreased.

2,378 unaccompanied children absconded from accommodation. Of those, 25.1% were Tunisians, 17.2% Eritreans and 8.2% of Guineans.⁵⁰⁰

2.1. Dedicated facilities for unaccompanied children

At the end of 2018, there were 1,374 reception facilities hosting unaccompanied children, mainly boys aged 16 to 17.

Out of the 10,787 accommodated unaccompanied children, 7,294 were in second-line reception facilities (67.6%) which include SIPROIMI facilities, second-line accommodation facilities funded by

⁴⁹⁷ Article 18(1) Reception Decree.

⁴⁹⁸ Article 18(2) Reception Decree.

⁴⁹⁹ Ministry of Labour, *I minori stranieri non accompagnati*, 31 December 2018, available in Italian at: <https://bit.ly/2GjpkIR>, 6, 9, 18.

⁵⁰⁰ *Ibid*, 7.

AMIF and all second-level structures authorised at regional or municipal level. Another 3,032 were in first reception centres.⁵⁰¹

SIPROIMI

According to the law, the accommodation of unaccompanied children shall primarily take place in SIPROIMI (former SPRAR) facilities.⁵⁰² All unaccompanied children, including those seeking asylum, have access to SIPROIMI.

Children reaching adulthood in SIPROIMI centres can remain there until a final decision on their asylum application.⁵⁰³ According to ASGI, SIPROIMI should also accommodate unaccompanied minors asylum seekers who have become adults who did not have access to second-line reception due to lack of places. Circulars issued by the Ministry of the Interior of 27 December 2018 and 3 January 2019 specify that in case the unaccompanied child is granted international protection, he or she can stay in SIPROIMI for another 6 months (see [Content of Protection: Housing](#)).

The same Circulars specify that unaccompanied children who obtained an administrative extension of their placement can remain in second-line reception for the entire duration of the extension.

As of January 2019, 3,730 places were financed for unaccompanied children in 155 (former) SPRAR projects, including 24 AMIF-funded projects.⁵⁰⁴ Even though the number of unaccompanied children arriving in Italy decreased in 2018, and even though SIPROIMI is no longer available to adult asylum seekers, the number of places dedicated to unaccompanied children still falls short of current needs, i.e. 10,787 unaccompanied children present in the reception system.

First reception centres and CAS for unaccompanied children

In case of lack of available places in the SIPROIMI system and for immediate relief and protection purposes, unaccompanied children may be accommodated in governmental first reception facilities. The first reception facilities are funded by AMIF, implemented by the Ministry of Interior in agreement with the local authority on whose territory the structure is located, and managed by the Ministry of the Interior also in agreement with the local authorities.⁵⁰⁵

Where implemented, stay in first reception centres cannot exceed 30 days and must last for the strictly necessary time for identification, which must be completed within 10 days. This serves to identify and assess the age of the child and to receive any information on the rights recognised to the child and on the modalities of exercise of such rights, including the right to apply for international protection. Throughout the time in which the child is accommodated in the first reception centre, one or more meetings with an age development psychologist are provided, where necessary, in presence of a cultural mediator, in order to understand the personal condition of the child, the reasons and circumstances of departure from his or her home country and his or her travel, as well as his or her future expectations.⁵⁰⁶

The Ministry of Interior Decree issued on 1 September 2016 has identified the structural requirements and the services ensured in such centres.⁵⁰⁷ The Decree states that these centres are located in easily

⁵⁰¹ *Ibid*, 19.

⁵⁰² Article 19(2) Reception Decree.

⁵⁰³ Article 12(5-bis) Decree Law 113/2018, as amended by L. 132/2018.

⁵⁰⁴ SPRAR, *I numeri dello Sprar*, January 2019, available at: <http://www.sprar.it/i-numeri-dello-sprar>.

⁵⁰⁵ Article 19(1) Reception Decree.

⁵⁰⁶ *Ibid*.

⁵⁰⁷ Ministry of Interior Decree of 1 September 2016 on the establishment of first reception centres dedicated to unaccompanied minors.

accessible places in order to ensure access to services and social life of the territory and that each structure can accommodate up to a maximum of 30 children.⁵⁰⁸

Between November and December 2017, the Children's Ombudsman and UNHCR jointly implemented a programme of visits to emergency, first and second-line reception centres for unaccompanied children.⁵⁰⁹ The visits conducted at CAS in Como, CAS Taranto, CAS adults Caresana, CPA San Michele di Ganzaria, CPSA Capocorso, CPA Minci, Rome have made it possible to ascertain that the permanence of minors in first reception centers is extended well beyond the deadline of 30 days, and continues in most cases up to the actual completion of age, involving the lack of access to second reception projects. In the first accommodation and identification center of Rome -CPSA - It has been found that the actual average time of stay it is about 10 days, during which children undergoing identification procedures are forbidden from leaving the centres. The visits to some first reception centres found limited conditions possibility of movement by minors. according to the rules in force in these centres, in order to protect the potential victims of trafficking, minors could not own cell phones and exit only in the presence of operators.

As reported by the Children's Ombudsman, the frequent stay in these first reception centers well beyond the prescribed 30 days often creates feelings of despondency and abandonment among children. This can play an important role in absconding from centres.⁵¹⁰

If even first reception centres are saturated, reception must be temporarily assured by the public authority of the Municipality where the child is located, without prejudice to the possibility of transfer to another municipality in accordance with the best interests of the child.⁵¹¹ According to Article 19(3-bis) of the Reception Decree, in case of mass arrivals of unaccompanied children and unavailability of the dedicated reception centres, the use of CAS to accommodate children is permitted.⁵¹²

Similar to the temporary shelters for adults (see [Types of Accommodation](#)), these CAS are implemented by Prefectures. The law states that each structure may have a maximum capacity of 50 places and may ensure the same services as governmental first reception centres dedicated to children.⁵¹³ Also in this case, no time limit is actually provided for the staying in these centres; according to the law, accommodation is limited to the time "strictly necessary" until the transfer to adequate structures.⁵¹⁴ In any event, these temporary centres cannot host children under the age of 14. The accommodation of children has to be communicated by the manager of the temporary structure to the municipality where the structure is located, for the coordination with the services of the territory.⁵¹⁵

Many NGOs including Save the Children and ASGI have raised strong concerns about this provision. In a letter sent to the Senate on 29 July 2016,⁵¹⁶ ASGI highlighted that the law represents a strong disincentive for municipalities to participate in SPRAR projects and that it strongly discriminates children accommodated in first reception centres and CAS compared to those accommodated in SPRAR and other facilities. According to ASGI, the use of temporary shelters for children should be forbidden and there should be a fair distribution among the Italian regions and municipalities under the ordinary reception system.

⁵⁰⁸ Article 3 Ministry of Interior Decree of 1 September 2016.

⁵⁰⁹ Children's Ombudsman and UNHCR, *Minori stranieri non accompagnati: una valutazione partecipata dei bisogni – Relazione sulle visite nei centri*, May 2018, available in Italian at: <http://bit.ly/2TExUPE>.

⁵¹⁰ Children's Ombudsman, *I movimenti dei minori stranieri non accompagnati alle frontiere settentrionali*, 29 March 2019, available in Italian at: <https://bit.ly/2v2oNt6>.

⁵¹¹ Article 19(3) Reception Decree.

⁵¹² Article 19(3-bis) Reception Decree, citing Article 11.

⁵¹³ Article 19(1) Reception Decree.

⁵¹⁴ Article 19(3-bis) Reception Decree, citing Article 19(2)-(3).

⁵¹⁵ Article 19(3-bis) Reception Decree.

⁵¹⁶ ASGI, *Letter to the Senate: 'Misure straordinarie di accoglienza per i minori stranieri non accompagnati previste dal disegno di legge di conversione in legge del decreto legge 24 giugno 2016, n. 113'*, 28 July 2016, available in Italian at: <http://bit.ly/2bjh9D0>.

In practice, worrying living conditions have been reported in the centres for unaccompanied children located *inter alia* in the region of **Calabria**. LasciateCIEntrare has collected evidence from the centres in the province of Vibo Valentia, specifically Brognaturo, Mongiana, Joppolo and Filadelfia. Testimonies refer to: a lack of hot water and heating; delays or non-payment of pocket money; abuse by social operators; inadequate clothes for the period and cases of children who still wore the clothes they had at the time of disembarkation; poor quality food; and failure to appoint the guardian.⁵¹⁷ On 3 January 2018, the Children's Ombudsman of the Calabria Region committed to investigating these reports.⁵¹⁸

At the end of 2018, first reception centres accommodated 3,032 unaccompanied children. These centres include government centres financed by AMIF, CAS activated by the Prefects; first reception facilities authorised by the municipalities or regions; and emergency and provisional centres.

Specifically as regards AMIF-funded first reception centres, from 23 August 2016 to 31 December 2018, the number of unaccompanied children hosted was 5,331. Out of those, 1,236 minors made an application for international protection, 2,180 voluntarily left accommodation, while 2,848 have been transferred, of whom 2,006 to second-line reception facilities belonging to the SPRAR network or in second-line reception facilities financed with AMIF funds – at the end of 2018, there were 303 unaccompanied children present in these facilities.⁵¹⁹

The Children's Ombudsman has critically highlighted the lack of sufficient numbers of centres for unaccompanied children in the border areas, resulting in a lack of adequate response to the needs of unaccompanied children in transit at the northern borders.⁵²⁰

The reception of unaccompanied children not transferred to the governmental centres or SIPROIMI facilities remains under the responsibility of the city of arrival. The amended Reception Decree states that the interested municipalities should not have any expenses in charge.⁵²¹

2.2. Accommodation with adults and destitution

Unaccompanied children cannot be held or detained in governmental reception centres for adults and CPR.⁵²² However, throughout 2017 and 2018, both due to the problems related to age assessment (see [Identification](#)) and to the unavailability of places in dedicated shelters, there have been reported cases of children accommodated in adults' reception centres, or not accommodated at all.

Piedmont: In the Cascina Scarampa CAS for adults in Vercelli, visited by the Children's Ombudsman in December 2017, it was found that the children were forced to share the bedrooms with adults and that no adequate living conditions were ensured with respect to age protection and well-being of the child. Children were placed in the structure shortly after arriving, and stayed in the centre on average for 730 days.⁵²³

Liguria: In Ventimiglia, construction works for a centre for unaccompanied children were interrupted on 9 August 2017 following protest from several citizens. As a result, as reported by several NGOs including ASGI, many unaccompanied children were accommodated in the Parco Roja reception centre for adults for several months or even not accommodated and abandoned to stay on the banks of the

⁵¹⁷ LasciateCIEntrare, 'Minori non accompagnati nei centri calabresi, situazione drammatica', 2 January 2018, available in Italian at: <http://bit.ly/2r1Cm2l>.

⁵¹⁸ Tirreno News, 'Centri di accoglienza nel vibonese senza riscaldamenti ed acqua calda', 3 January 2018, available in Italian at: <http://bit.ly/2DB6DkT>.

⁵¹⁹ Ministry of Labour, *I minori stranieri non accompagnati*, 31 December 2018, 21.

⁵²⁰ Children's Ombudsman, *I movimenti dei minori stranieri non accompagnati alle frontiere settentrionali*, 29 March 2019.

⁵²¹ Article 19(3) Reception Decree, as amended by Article 12 Decree Law 113/2018 and L 132/2018.

⁵²² Article 19(4) Reception Decree.

⁵²³ Children's Ombudsman and UNHCR, *Minori stranieri non accompagnati: una valutazione partecipata dei bisogni – Relazione sulle visite nei centri*, May 2018.

Roja river, in makeshift shelters without heating, toilets or access to drinking water and food. As of 11 December 2017, the centre hosted 24 unaccompanied children together with 426 adults, 9 single women and 30 families. ASGI and other NGOs sent an official letter to the Prefecture of Imperia in December 2017, urging an end to these unlawful practices and the preparation of the necessary measures for these children to be accommodated and placed in appropriate reception centres, possibly on the territory of Ventimiglia or nearby.⁵²⁴

The report published by the Children's Ombudsman in March 2019 denounces that Parco Roja is the only transit solution for accommodation in the absence of governmental centres but still presents serious problems, rendering it unsuitable for children. These include: promiscuity between children and adults and, in particular, unaccompanied girls are placed in the family zone, finding themselves sharing the room with adults, including men; absence of separate toilets for unaccompanied children and poor hygienic conditions; unduly small spaces, flooding and poor access to natural light. Furthermore, children are not registered with the health service and are not subjected to any health screening.⁵²⁵

Still, in Ventimiglia, the problems of promiscuity with adults are also present at the adult CAS managed by the Red Cross in agreement with the municipality, where 10 places have been reserved for minors. These minors are not directly placed there but upon advice of social workers.

Trentino-Alto Adige: Due to persisting push backs on the Austrian border (see [Access to the Territory](#)), many unaccompanied children remain outside the reception system. Children have been accommodated in several centres for adults such as Casa Aaron, Gorio and Ex Lemayr. In Ex Lemayr, children reside in three rooms separate from the adult dorm. Since the facility is not officially dedicated to children, they did not benefit from counsellors, dedicated legal advice, enrolment at school or the timely appointment of a guardian.⁵²⁶ In many cases, police authorities attach children to present adults without confirming the existence of substantial and effective links between them.⁵²⁷

Veneto: In January 2017, at least 30 minors were reported to be in the CAS of **Cona**, Venice, which was not authorised to host unaccompanied minors. This was the subject of appeals by ASGI and other NGOs to the ECtHR on overcrowding and the degrading conditions in which people are accommodated (see [Conditions in CAS](#)). The CAS of Cona had a capacity of around 500 people but housed around 1,400 people at the time of the disputed facts. The applicants' dormitory was 360 m² and accommodated 250 people in total.

The Strasbourg Court ordered five interim measures pursuant to Rule 39 of the Court's Rules of Procedure, ordering the Italian Government to "transfer the applicants to appropriate structures, ensuring reception conditions that comply with the rules of domestic and international law regarding the protection of unaccompanied minors."⁵²⁸ In the case of *Darboe and Camara v. Italy*, the Court decided under Rule 41 to examine the applications by way of priority. Following the measures ordered by the ECtHR, the Prefecture of Venice activated temporary accommodation facilities for the children in order to guarantee reception in adequate centres and avoid condemnation by the Court against Italy. In the case of *Sadio v. Italy* and two other applications, related to 4 children accommodated in Cona, before the Court could examine the request for interim measures the children had been transferred to centres for unaccompanied children.⁵²⁹ Cona was closed in December 2018.

⁵²⁴ ASGI, 'Ventimiglia, le organizzazioni: forte preoccupazione per mancata accoglienza minori stranieri', 15 December 2017, available in Italian at: <http://bit.ly/2GoxQJu>.

⁵²⁵ Children's Ombudsman, *I movimenti dei minori stranieri non accompagnati alle frontiere settentrionali*, 29 March 2019.

⁵²⁶ ASGI et al., *Lungo la rotta del Brennero*, September 2017, 28.

⁵²⁷ *Ibid.*, 61.

⁵²⁸ ECtHR, *Darboe and Camara v. Italy*, Application No 5797/17, Communicated on 14 February 2017. See also ECtHR, *Dansu v. Italy*, Application No 16030/17, Communicated on 20 March 2017.

⁵²⁹ ECtHR, *Sadio v. Italy*, Application No 3571/17, Communicated on 2 February 2017.

Throughout 2017, more appeals were presented to the ECtHR to protect unaccompanied children placed in adult reception centres in Italy, including Rome, **Lazio**,⁵³⁰ and Como, **Lombardy**.⁵³¹

These cases follow on from reports of children accommodated in inadequate structures in 2016. This happened in Como, where from 14 July to 23 August 2016, 454 unaccompanied children readmitted in Italy from Switzerland were entrusted by the Italian police to the Head of Caritas in Como and then placed in a structure at the Parish of Rebbio, not authorised for the reception of children. Costs incurred for the reception of these children they were not covered by any institution.⁵³²

F. Information for asylum seekers and access to reception centres

1. Provision of information on reception

According to the Procedure Decree, upon submission of an asylum application, police authorities have to inform applicants through a written brochure about their rights and obligations and the relevant timeframes applicable during asylum procedures (see [Provision of Information on the Procedure](#)).⁵³³ The brochure also includes information on health services and on the reception system, and on the modalities to access to these services. In addition, it contains the contact details of UNHCR and other specialised refugee-assisting NGOs. The Reception Decree contains a provision on the right to information, confirming the obligation to hand over the brochure, as stated above, and states that these information are provided in reception centres within 15 days from the presentation of the asylum application. These information are ensured through the assistance of an interpreter.⁵³⁴

This provision, unlike Article 5 of the recast Reception Conditions Directive, does not explicitly foresee that information shall be provided orally.

However, in practice the distribution of these leaflets, written in 10 languages,⁵³⁵ is actually quite rare at the Questure. Although it is not foreseen by law, the information is orally provided by police officers but not in a systematic way mainly due to the shortage of professional interpreters and linguistic mediators. The gaps in providing information is of concern to NGOs as it is considered necessary that asylum seekers receive information orally, taking into consideration their habits, cultural backgrounds and level of education which may constitute obstacles in effectively understanding the contents of the leaflets.

Upon arrival in the reception centres, asylum seekers are informed on the benefits and level of material reception conditions. Depending on the type of centre and the rules adopted by the managers of the reception centres, asylum seekers may benefit from proper information of the asylum procedure, access to the labour market or any other information on their integration rights and opportunities. Generally speaking, leaflets are distributed in the accommodation centres and asylum seekers are informed orally through the assistance of interpreters.

⁵³⁰ ECtHR, *Bacary v. Italy*, Application No 36986/17, Communicated on 5 July 2017.

⁵³¹ ECtHR, *M.A. v. Italy*, Application No 70583/17, Communicated on 3 October 2017.

⁵³² ASGI, *Le riammissioni di cittadini stranieri alla frontiera di Chiasso: profili di illegittimità*, August 2016, available in Italian at: <http://bit.ly/2bBpAKe>, 8-9.

⁵³³ Article 10(1) Procedure Decree.

⁵³⁴ Article 3 Reception Decree and Article 10 PD 21/2015.

⁵³⁵ Italian, English, French, Spanish, Arabic, Somali, Kurdish, Amharic, Farsi and Tigrinya.

2. Access to reception centres by third parties

Indicators: Access to Reception Centres

1. Do family members, legal advisers, UNHCR and/or NGOs have access to reception centres?
 Yes With limitations No

According to the Reception Decree, applicants have the opportunity to communicate with UNHCR, NGOs with experience in the field of asylum, religious entities, lawyers and family members.⁵³⁶ The representatives of the aforementioned bodies are allowed to enter in these centres, except for security reasons and for the protection of the structures and of the asylum seekers.⁵³⁷ The Prefect establishes rules on modalities and the time scheduled for visits by UNHCR, lawyers, NGOs as well as the asylum seekers' family members and Italian citizens who must be authorised by the competent Prefecture on the basis of a previous request made by the asylum applicant living in the centre. The Prefecture notifies these decisions to the managers of the centres.

It is worth noting that these centres are open, therefore asylum seekers are free to contact NGOs, lawyers and UNHCR offices outside of the centres.

Concerning the governmental first reception centres for unaccompanied children, the law allows entry into the centres for members of the national and European Parliament, as well as to UNHCR, IOM, EASO and to the Children's Ombudsman, to the Mayor or a person delegated by him or her. Access is also allowed to persons who have a motivated interest, because of their institutional engagement within the region or the local authority where the centres is based, to child protection agencies with long experience, to representatives of the media, and to other persons who present a justified request.⁵³⁸

With regard to access to SPRAR centres by virtue of Article 15(5) of the Reception Decree, lawyers and legal counsellors indicated by the applicant, UNHCR as well as other entities and NGOs working in the field of asylum and refugees protection have access to these facilities in order to provide assistance to hosted asylum seekers.

G. Differential treatment of specific nationalities in reception

Once in reception, there are no recorded differences among asylum seekers on the basis of their nationalities. However, problems have been reported as regards the possibility to access the asylum procedure and the reception system for specific nationalities (see [Registration](#)).

⁵³⁶ Article 10(3) Reception Decree.

⁵³⁷ Article 10(4) Reception Decree.

⁵³⁸ Article 7 Ministry of Interior Decree of 1 September 2016.

Detention of Asylum Seekers

A. General

Indicators: General Information on Detention

1. Total number of persons detained in 2018:	
❖ CPR	4,092
❖ Hotspots	13,777
2. Number of persons in detention at the end of 2018:	
❖ CPR	Not available
❖ Hotspots	453
3. Number of detention centres:	
❖ CPR	7
❖ Hotspots	4
4. Total capacity of detention centres:	
❖ CPR	751
❖ Hotspots	Not available

The Reception Decree prohibits the detention of asylum seekers for the sole purpose of examining their asylum application.⁵³⁹ However, the new provisions introduced by Decree Law 113/2018, implemented by L 132/2018, create the risk of automatic violation of this principle since they foresee detention in suitable facilities set up in hotspots, first reception centres or subsequently in pre-removal centres (*Centri di permanenza per il rimpatrio*, CPR) for the purpose of establishing identity or nationality (see section on [Grounds for Detention](#)).⁵⁴⁰

The number of persons entering the hotspots in 2018 was 13,777:

Persons entering hotspots: 2018	
Hotspot	Number
Pozzallo	3,999
Lampedusa	3,466
Messina	2,649
Trapani	2,685
Taranto	978

Source: Guarantor for the rights of detained persons: <https://bit.ly/2GijVoY>. Trapani was re-purposed into a CPR in September 2018.

In 2018, according to the Guarantor for the rights of detained persons, 4,092 persons were detained in CPR, of whom 3,460 men and 632 women.⁵⁴¹ The main nationalities of persons detained in CPR were the following:

Detentions in CPR by nationality: 2018	
Nationality	Number
Tunisia	1,422
Morocco	549
Nigeria	490

⁵³⁹ Article 6(1) Reception Decree.

⁵⁴⁰ Article 6(3-bis) Reception Decree, inserted by Article 3 Decree Law 113/2018 and L 132/2018.

⁵⁴¹ Guarantor for the rights of detained persons, *Relazione al Parlamento 2019*, 26 March 2019, available in Italian at: <https://bit.ly/2GijVoY>, 134.

Albania	201
China	172
Algeria	153
Egypt	150
Senegal	89
Gambia	80
Others	786
Total	4,092

Source: Guarantor for the rights of detained persons: <https://bit.ly/2GijVoY>.

Of those, only 1,768 were ultimately returned, while in 136 cases persons were released after an asylum application was made.⁵⁴²

The number of CPR has increased from five in 2017 to nine in 2018, of which seven are operational: **Restinco** in Brindisi, **Bari**, **Caltanissetta**, **Ponte Galeria** in Rome (only for women), **Turin**, **Palazzo San Gervasio** in Potenza, **Basilicata** and **Trapani**. The total capacity of the centres was 751 places as of 5 February 2019.

Persons applying for asylum in CPR are subject to the **Accelerated Procedure**. In practice, however, the possibility of accessing the asylum procedure inside the CPR appears to be difficult due to the lack or appropriate legal information and assistance, and to administrative obstacles. In fact, according to the Reception Decree, people are informed about the possibility to seek international protection by the managing body of the centre.⁵⁴³

As reported to the Guarantor for the rights of detained persons during his visit to the CPR of Turin, carried out on 1 March 2018, detainees who intend to apply for asylum must address their request to one of the operators of the managing body. The latter then communicates to the Immigration Office that one of the detainees has requested an appointment, without providing any indication of the intention expressed by the interested party. Detainees wait for the appointment on average between two to three days but, due to the lack of documents certifying the intention to seek asylum, they could also be repatriated during this period.⁵⁴⁴

⁵⁴² Guarantor for the rights of detained persons, *Relazione al Parlamento 2019*, 26 March 2019, available in Italian at: <https://bit.ly/2GijVoY>, 135.

⁵⁴³ Article 6(4) Reception Decree.

⁵⁴⁴ Guarantor for the rights of detained persons, *Rapporto sulle visite effettuate nei centri di permanenza per il rimpatrio (Febbraio – Marzo 2018)*, 6 September 2018, available in Italian at: <http://bit.ly/2uvu4cr>.

B. Legal framework of detention

1. Grounds for detention

Indicators: Grounds for Detention

1. In practice, are most asylum seekers detained
 - ❖ on the territory: Yes No
 - ❖ at the border: Yes No
2. Are asylum seekers detained in practice during the Dublin procedure?
 Frequently Rarely Never
3. Are asylum seekers detained during a regular procedure in practice?
 Frequently Rarely Never

1.1. Asylum detention

Asylum seekers shall not be detained for the sole reason of the examination of their application.⁵⁴⁵ An applicant shall be detained in CPR, on the basis of a case by case evaluation, when he or she:⁵⁴⁶

- (a) Falls under the exclusion clauses laid down in Article 1F of the 1951 Convention, following a decision of the CNDA;
- (b) Is issued an expulsion order on the basis that he or she constitutes a danger to public order or state security,⁵⁴⁷ or as suspected of being affiliated to a mafia-related organisation, has conducted or financed terrorist activities, has cooperated in selling or smuggling weapons or habitually conducts any form of criminal activity,⁵⁴⁸ including with the intention of committing acts of terrorism;⁵⁴⁹
- (c) May represent a danger for public order and security.

According to the law, to assess such a danger, previous convictions, final or non-final, may be taken into account, including the conviction adopted following the enforcement of the penalty at the request of the party pursuant to Article 444 of the Italian Criminal Procedure Code, in relation to certain serious crimes,⁵⁵⁰ to drug crimes, sexual crimes, facilitation of illegal immigration, recruiting of persons for prostitution, exploitation of prostitution and of children to be used in illegal activities.

With regard to this provision, the Court of Cassation annulled an order of the Court of Turin to extend the detention of an asylum seeker convicted for resistance to a public official. The Court considered that the granting of the benefit of the conditional suspension of the penalty contradicted the finding of a threat to public order;⁵⁵¹

- (d) Presents a risk of absconding.

⁵⁴⁵ Article 6(1) Reception Decree.

⁵⁴⁶ Article 6(2) Reception Decree.

⁵⁴⁷ Article 13(1) TUI.

⁵⁴⁸ Article 13(2)(c) TUI.

⁵⁴⁹ Article 3(1) Decree Law 144/2005, implemented by L 155/2005.

⁵⁵⁰ Article 380(1)-(2) Criminal Procedure Code is cited, which refers to individuals who have participated in, among others, the following criminal activities: (a) child prostitution; (b) child pornography; (c) slavery; (d) looting and vandalism; (e) crimes against the community or the state authorities.

⁵⁵¹ Court of Cassation, Decision 27739/2018, 31 October 2018.

The assessment of such risk is made on a case by case basis, when the applicant has previously and systematically provided false declarations or documents on his or her personal data in order to avoid the adoption or the enforcement of an expulsion order, or when the applicant has not complied with alternatives to detention such as, stay in an assigned place of residence determined by the competent authority or reporting at given times to the competent authority.⁵⁵² Following Decree Law 13/2017, implemented by L 46/2017, repeated refusal to undergo fingerprinting at hotspots or on the national territory also constitutes a criterion indicating a risk of absconding.⁵⁵³

1.2. Pre-removal detention

The Reception Decree also provides that:

- (e) Third-country nationals who apply for asylum when they are already held in CPR and are waiting for the enforcement of a return order pursuant to Article 10 TUI or an expulsion order pursuant to Articles 13 and 14 TUI shall remain in detention when, in addition to the abovementioned reasons, there are reasonable grounds to consider that the application has been submitted with the sole reason of delaying or obstructing the enforcement of the expulsion order.⁵⁵⁴

1.3. Detention for identification purposes

Furthermore, a 2018 amendment to the Reception Decree has added that:

- (f) Asylum seekers may be detained in hotspots or first reception centres for the purpose of establishment of their identity or nationality. If the determination or verification of identity or nationality is not possible in those premises, they can be transferred to a CPR.⁵⁵⁵

Prior to the 2018 reform, detention in hotspots occurred *de facto*.⁵⁵⁶ In **Lampedusa**, the civil society organisations were able to observe that the centre gate was constantly closed and migrants could leave the centre only through openings in the fence, regularly adjusted by the administration and reopened by migrants. On the other hand, people taken to Lampedusa are *de facto* detained on the island, because, without an identity document, they cannot purchase a title of travel and leave.⁵⁵⁷

While the law does not clarify the procedure relating to the validation of this form of detention, the Ministry of Interior Circular of 27 December 2018 generically refers to validation by the judicial authority. According to ASGI, the same procedure envisaged for other grounds for detention of asylum seekers should apply to these cases.

In addition, the law does not specify in which cases the need for identification arises, thus linking detention not to the conduct of the applicant but to an objective circumstance such as the lack of identity documents.

⁵⁵² Article 13(5), (5.2) and (13) and Article 14 TUI. Article 13 TUI, to which Article 6 Reception Decree refers, also includes the obligation to surrender a passport but this should not be applied to asylum seekers because of their particular condition.

⁵⁵³ Article 10-ter(3) TUI, inserted by Decree Law 13/2017 and L 46/2017.

⁵⁵⁴ Article 6(3) Reception Decree.

⁵⁵⁵ Article 6(3-bis) Reception Decree, inserted by Article 3 Decree Law 113/2018 and L 132/2018.

⁵⁵⁶ Guarantor for the rights of detained persons, *Relazione al Parlamento*, 15 June 2018, available in Italian at: <http://bit.ly/2TZy9ol>, 233.

⁵⁵⁷ ASGI et al., *Scenari di frontiera: il caso Lampedusa*, October 2018, available in Italian at: <http://bit.ly/2FF2obD>.

According to ASGI, the new detention ground represents a violation of the prohibition on detention of asylum seekers for the sole purpose of examining their application under see Article 8(1) of the recast Reception Conditions Directive. People fleeing their countries often do not have identification documents and cannot contact the authorities of the countries of origin as this could be interpreted as re-availing themselves of the protection of that country.

2. Alternatives to detention

Indicators: Alternatives to Detention

1. Which alternatives to detention have been laid down in the law? Reporting duties
 Surrendering documents
 Financial guarantee
 Residence restrictions
 Other
2. Are alternatives to detention used in practice? Yes No

Article 6(5) of the Reception Decree makes reference to the alternatives to detention provided in the TUI. To this end, authorities should apply Article 14 TUI to the compatible extent, including the provisions on alternative detention measures provided by Article 14(1-bis).

The TUI provides that a foreign national who has received an expulsion order may request to the Prefect a certain period of time for voluntary departure. In that case the person will not be detained and will not be forcibly removed from the territory. However, in order to benefit from this measure, some strict requirements must be fulfilled:⁵⁵⁸

- ❖ No expulsion order for state security and public order grounds has been issued against the person concerned;
- ❖ There is no risk of absconding; and
- ❖ The request of permit of stay has not been rejected as manifestly unfounded or fraudulent.

In case the Prefect grants a voluntary departure period, then by virtue of Article 13(5.2) of the Consolidated Act on Immigration, the chief of the Questura resorts to one or more alternative measures to detention such as:

- (a) The obligation to hand over passport to the police until departure;
- (b) The obligation to reside in a specific domicile where the person can be contacted;
- (c) The obligation to report to police authorities following police instructions.

During 2018, due to the small number of available places in the operating CPR, in many regions asylum seekers whose stay had become irregular were only notified of the order to leave the country within 7 days, as provided by Article 14(5-bis) TUI.

The Reception Decree provides that when the detained applicant requests to be returned to his or her country of origin or to the country from which he or she came from, the removal order⁵⁵⁹ shall be immediately adopted or executed. The repatriation request corresponds to a withdrawal of the application for international protection.⁵⁶⁰

In case the applicant is the recipient of an expulsion order,⁵⁶¹ the deadline for the voluntary departure set out by Article 13(5) shall be suspended for the time necessary for the examination of his/her asylum application. In this case the applicant has access to reception centres.⁵⁶²

⁵⁵⁸ Articles 13(5.2) and 14-ter TUI.

⁵⁵⁹ Pursuant to Article 13(4) and (5-bis) TUI.

⁵⁶⁰ Article 6(9) Reception Decree.

⁵⁶¹ The expulsion order to be executed according to the procedures set out in Article 13(5)-(5.2) TUI.

⁵⁶² Article 6(10) Reception Decree.

3. Detention of vulnerable applicants

Indicators: Detention of Vulnerable Applicants

1. Are unaccompanied asylum-seeking children detained in practice?
 Frequently Rarely Never
- ❖ If frequently or rarely, are they only detained in border/transit zones? Yes No
2. Are asylum seeking children in families detained in practice?
 Frequently Rarely Never

3.1. Detention of unaccompanied children

The law explicitly provides that unaccompanied children can never be held detention.⁵⁶³ However, there have been cases where unaccompanied children have been placed in CPR following wrong age assessment. During his visits carried out between February and March 2018 the Guarantor of the rights of detained people verified that in the CPR of **Brindisi** at least two children had been detained in November 2017, the first for 2 days and the second for 6 days. The Age Assessment guarantees provided by L 47/2017 for ascertaining the age had been not implemented as the children had been subjected to a mere radiological analysis of the wrist.⁵⁶⁴ In the CPR of **Turin**, the Guarantor verified that for at least three persons who had declared themselves to be children, the assessment of age was made, autonomously by the police and without the necessary involvement of the Public Prosecution, only after the validation of the detention. On 9 February 2019, LasciateCIEntrare reported of an unaccompanied minor detained in the CPR of **Trapani** since 20 January 2019, even though his family had sent his birth certificate to the facility manager to prove his minor age.⁵⁶⁵

Children have also been detained in hotspots in practice. A total of 2,700 children were placed in hotspots in 2018, including 2,002 unaccompanied and 698 accompanied children.⁵⁶⁶

In **Lampedusa**, a recent report notes that, although no issues with regard to age assessment were raised in 2018, children have been held in the hotspot for periods reaching a few weeks, or even months in early 2018.⁵⁶⁷ The Guarantor for the rights of detained persons found 14 unaccompanied children in **Pozzallo** in a visit in January 2017.⁵⁶⁸ During that visit, the Guarantor found that the children were free to enter and exit the centre. During a visit to **Taranto** in July 2017, ASGI found 80 unaccompanied children detained in the hotspot, some held there since May 2017 and others held for a few days. These children were *de facto* detained together with adults in a single tent surrounded by high metal grids and guarded by army soldiers, without any written detention order or information on the possibility to seek asylum. They were also deprived of the possibility to communicate with the outside world. Appeals were lodged before the ECtHR for 14 children, which the Court has deemed admissible and has requested responses from the Italian government by 14 May 2018.⁵⁶⁹

⁵⁶³ Article 19(4) Reception Decree.

⁵⁶⁴ Guarantor for the rights of detained persons, *Rapporto sulle visite effettuate nei centri di permanenza per il rimpatrio (Febbraio – Marzo 2018)*, 6 September 2018, available in Italian at: <http://bit.ly/2uvu4cr>.

⁵⁶⁵ LasciateCIEntrare, 'Un MSNA trattenuto al CPR di Trapani', 9 February 2019, available in Italian at: <http://bit.ly/2UgOI40>.

⁵⁶⁶ Guarantor for the rights of detained persons, *Relazione al Parlamento 2019*, 26 March 2019, available in Italian at: <https://bit.ly/2GijVoY>, 133.

⁵⁶⁷ ASGI et al., *Scenari di frontiera: il caso Lampedusa*, October 2018, 17-18.

⁵⁶⁸ Guarantor for the rights of detained persons, *Rapporto sulle visite nei CIE e negli hotspot in Italia 2016/2017*, 11 May 2017, 47.

⁵⁶⁹ ASGI, 'Minori stranieri trattenuti illegalmente nell'hotspot di Taranto: la CEDU chiede chiarimenti al Governo italiano', 11 February 2018, available in Italian at: <http://bit.ly/2pqN4GT>.

3.2. Detention of other vulnerable groups

Detention of children in families in CPR is not prohibited. Children can be detained together with their parents if they request it and if decided by the Juvenile Court. In practice, very few children are detained.

Following the 2017 reform, the law also prohibits the detention of vulnerable persons.⁵⁷⁰ According to the law, in the framework of the social and health services guaranteed in CPR, an assessment of vulnerability situations requiring specific assistance should be periodically provided.⁵⁷¹

In CPR, however, legal assistance and psychological support are not systematically provided, although the latter is foreseen in the tender specifications scheme (*capitolato*) published by the Ministry of Interior on 20 November 2018. To date, no protocol on early identification of and assistance to vulnerable persons, and on the referral system to specialised services and/or reception centres has been adopted. Although standards of services in CPR centres are planned following the national regulation on management of the centres, they are insufficient and inadequate, especially for vulnerable categories of individuals. Moreover, the quality of services may differ from one CPR to another. In this respect, the Reception Decree provides that, where possible, a specific place should be reserved to asylum seekers,⁵⁷² and Article 4(e) of the Regulation of 20 October 2014 of the Minister of Interior provides the same for persons with special reception needs.

4. Duration of detention

Indicators: Duration of Detention

1. What is the maximum detention period set in the law (incl. extensions):	
❖ Asylum detention	12 months
❖ Pre-removal detention	6 months
❖ Detention for the purpose of identification	1 month
2. In practice, how long in average are asylum seekers detained?	
❖ CPR	32.8 days
❖ Hotspots	3.8 days

4.1. Duration of detention for identification purposes

According to the SOPs applying at hotspots, from the moment of entry, the period of stay in the facility should be as short as possible, in accordance with the national legal framework. During 2018 and before the reform, ASGI was able to observe that *de facto* detention in hotspots took place mainly in the first days after arrival and lasted until the identification procedures were concluded.⁵⁷³

However, the newly introduced Article 6(3-bis) of the Reception Decree introduces the possibility to detain asylum seekers in hotspots for the purpose of determining their identity or nationality. The law states that this should happen in the shortest possible time and for a period not exceeding 30 days. If identification has not been possible within that timeframe, they could be sent to CPR for detention up to 180 days.⁵⁷⁴

The provision of a detention period up to 30 days and extendable to up to 180 days in the CPR seems incompatible with the principle laid down in Article 9 of the recast Reception Conditions Directive according to which an applicant shall be detained only for as short a period as possible.

The average duration of stay in hotspots in 2018 was as follows:

⁵⁷⁰ Article 7(5) Reception Decree, as amended by Article 8 Decree Law 13/2017 and L 46/2017.

⁵⁷¹ Article 7(5) Reception Decree.

⁵⁷² Article 6(1) Reception Decree.

⁵⁷³ ASGI et al., *Scenari di frontiera: il caso Lampedusa*, October 2018.

⁵⁷⁴ Article 6(3-bis) Reception Decree, inserted by Article 3 Decree Law 113/2018 and L 132/2018.

Average duration of stay in hotspots in days: 2018		
Hotspot	Adults	Children
Pozzallo	3	2
Lampedusa	4.5	4.5
Messina	4	1
Trapani	6.2	3.7
Taranto	1.5	0
Total	3.8	2.2

Source: Guarantor for the rights of detained persons: <https://bit.ly/2GijVoY>.

4.2. Duration of asylum and pre-removal detention

The maximum duration of detention of asylum seekers is 12 months.⁵⁷⁵ The duration of pre-removal detention has been extended from 90 to 180 days.⁵⁷⁶ According to ASGI, the difference between the maximum duration of ordinary detention for third-country nationals (6 months) and the maximum duration of detention of asylum seekers (12 months) appears as an unreasonable violation of the principle of equality provided for by Article 3 of the Italian Constitution, resulting in a discriminatory treatment of the latter category. Moreover, it is not clear if the 30-day duration of detention for identification reasons may or may not be counted in these maximum detention periods.

When detention is already taking place at the time of the making of the application, the terms provided by Article 14(5) TUI are suspended and the Questore shall transmit the relevant files to the competent judicial authority to validate the detention for a maximum period of 60 days, in order to allow the completion of procedure related to the examination of the asylum application.⁵⁷⁷ However, the detention or the extension of the detention shall not last longer than the time necessary for the examination of the asylum application under the [Accelerated Procedure](#),⁵⁷⁸ unless additional detention grounds exist pursuant to Article 14 TUI. Any delays in the completion of the administrative procedures required for the examination of the asylum application, if not caused by the applicant, do not constitute a valid ground for the extension of the detention.⁵⁷⁹

According to the Reception Decree, the applicant detained in CPR or for identification reasons in hotspots or first governmental reception centres, who appeals against the rejection decision issued by the Territorial Commission, remains in the detention facility until the adoption of the decision on the suspension of the order by the judge.⁵⁸⁰ The detained applicant also remains in detention as long as he or she is authorised to remain on the territory as a consequence of the lodged appeal.⁵⁸¹ The way the law was worded before did not make it clear whether, when the suspensive request was upheld, asylum seekers could leave the CPR, and in practice they did not.

In this respect the Questore shall request the extension of the ongoing detention for additional periods of no longer than 60 days, which can be extended by the judicial authority from time to time, until the above conditions persist. In any case, the maximum detention period cannot last more than 12 months.⁵⁸²

⁵⁷⁵ Article 6(8) Reception Decree.

⁵⁷⁶ Article 14(5) TUI, as amended by Article 2 Decree Law 113/2018 and L 132/2018.

⁵⁷⁷ Article 6(5) Reception Decree.

⁵⁷⁸ Pursuant to Article 28-bis(1) and (3) Procedure Decree.

⁵⁷⁹ Article 6(6) Reception Decree.

⁵⁸⁰ Article 35-bis(4) Procedure Decree.

⁵⁸¹ Article 6(7) Reception Decree, as amended by Article 8 Decree Law 13/2017 and L 46/2017.

⁵⁸² Article 6(8) Reception Decree.

The average duration of detention in CPR in 2018 was as follows:

Average duration of detention in CPR: 2018	
CPR	Average duration in days
Brindisi	56.47
Bari	30.82
Caltanissetta	6.88
Rome	38.85
Turin	41.84
Potenza	42.89
Trapani	11.98
Total	32.8

Source: Guarantor for the rights of detained persons: <https://bit.ly/2GijVoY>.

Out of 4,092 persons detained in CPR in 2018, 807 were released by the Questure following the expiry of the maximum time limit of detention.⁵⁸³

C. Detention conditions

1. Place of detention

Indicators: Place of Detention

- Does the law allow for asylum seekers to be detained in prisons for the purpose of the asylum procedure (i.e. not as a result of criminal charges)? Yes No
- If so, are asylum seekers ever detained in practice in prisons for the purpose of the asylum procedure? Yes No

1.1. Pre-removal detention centres (CPR)

Under the Reception Decree, asylum seekers can be detained in CPR where third-country nationals who have received an expulsion order are generally held.⁵⁸⁴

According to the Ministry of Interior, seven pre-removal centres of the existing 9 are currently operational, following the re-purposing of the hotspot of **Trapani** into a CPR. The CPR of **Potenza** was urgently opened by the end of January 2018 and made operational shortly thereafter. The pre-removal center of **Caltanissetta** was closed in the first few months of 2018 due to the damages caused by an internal uprising, and reopened in December 2018, with a capacity of 96 persons.

The latest data made available by the Guarantor for the rights of detained persons on capacity of CPR and persons detained therein are as follows:

Capacity and detentions by CPR		
CPR	Official capacity	Persons detained in 2018
Brindisi	48	321
Bari	54	868

⁵⁸³ Guarantor for the rights of detained persons, *Relazione al Parlamento 2019*, 26 March 2019, available in Italian at: <https://bit.ly/2GijVoY>, 135.

⁵⁸⁴ Article 6(2) Reception Decree.

Caltanissetta	72	33
Rome	125	631
Turin	147	1,147
Potenza	100	613
Trapani	205	479
Total	751	4,092

Source: Guarantor for the rights of detained persons: <https://bit.ly/2GijVoY>.

The opening of further CPR is planned in:

- Gradisca d'Isonzo, Gorizia, **Friuli-Venezia Giulia**: Since July 2018 people have been moved out of a part of the governmental reception centre – already previously used as a Centre for Identification and Expulsion (CIE).⁵⁸⁵ The Prefecture of Gorizia published on 8 March 2019 a new call for tenders;⁵⁸⁶
- Macomer, Cagliari, **Sardinia**: The call for tenders initially published was revoked but only in order to be replaced with a new call pursuant to indications contained in the tender specifications scheme (*capitolato*) adopted by the Ministry of Interior Decree on 20 November 2018. The CPR will be set up in a former prison;⁵⁸⁷
- Milan, **Lombardy**: from 1 May 2019, 140 places should be provided in a building on Via Corelli, already previously used as CIE;⁵⁸⁸
- Modena, **Emilia-Romagna**: The Ministry of Interior anticipated in June 2018 the assignment of personnel of the armed forces specifically dedicated to the supervision of the centre;⁵⁸⁹
- By the end of 2019 it is expected that the restructuring of the CPR of the former prison Oppido Mamertina, **Reggio Calabria** and former Caserma Serini, Montichiari, Brescia, **Lombardy** will also be completed.⁵⁹⁰

Decree Law 13/2017, implemented by L 46/2017, had foreseen the extension of the network of the CPR to ensure the distribution across the entire national territory.⁵⁹¹ In order to speed up the implementation of CPR, Decree Law 113/2018 encourages the use of negotiated procedures, without tender, for works whose amounts are below the EU threshold relevance and for a maximum period of three years.⁵⁹²

1.2. Hotspots

As described in the [Hotspots](#) section, there are four operating hotspots, where 453 persons were present at the end of 2018. In September 2018, the hotspot of Trapani was converted into a CPR.

The Reception Decree does not provide a legal framework for the operations carried out in the CPSA now converted into hotspots. Both in the past and recently in the CPSA, in the absence of a legislative framework and in the name of unspecified identification needs, asylum seekers have been unlawfully deprived of their liberty and held for weeks in conditions detrimental to their personal dignity. The legal

⁵⁸⁵ Il Piccolo, 'In 200 trasferiti da Gradisca per il via ai lavoro del CPR', 27 July 2018, available in Italian at: <http://bit.ly/2CFt1LH>.

⁵⁸⁶ ANSA, 'Immigrazione: Prefettura di Gorizia, bandi gara per CPR e CARA', 9 March 2019, available in Italian at: <http://bit.ly/2UbpkaC>.

⁵⁸⁷ ANSA, 'Migranti, Prefettura, CPR Macomer si farà', 5 December 2018 available in Italian at: <http://bit.ly/2HGepel>.

⁵⁸⁸ Linkiesta, 'Migranti, ora il business si chiama detenzione e rimpatrio (e a fare i soldi sono i francesi)', 14 February 2019, available in Italian at: <http://bit.ly/2YwGPS7>.

⁵⁸⁹ AskaneWS, 'Centro rimpatri Modena, Salvini: garantiremo sicurezza', 13 June 2018, available in Italian at: <http://bit.ly/2Ougsrd>.

⁵⁹⁰ Guarantor for the rights of detained persons, *Relazione al Parlamento*, 15 June 2018, available in Italian at: <http://bit.ly/2TZy9ol>, 230.

⁵⁹¹ Article 19(3) Decree Law 13/2017 implemented by L 46/2017.

⁵⁹² Article 2(2) Decree Law 113/2018, implemented by L 132/2018.

vacuum, the lack of places in the reception system and the bureaucratic chaos have legitimised in these places detention of asylum seekers without adopting any formal decision or judicial validation.

In the case of *Khlaifia v. Italy*, the European Court of Human Rights (ECtHR) has strongly condemned Italy for the detention of some Tunisians in Lampedusa CPSA in 2011, noting the breach, to them, of various rights protected by ECHR. In particular, the Court found that the detention was unlawful, and that the conditions in which the Tunisians were accommodated – in a situation of overcrowding, poor hygienic conditions, prohibition of contacts with the outside world and continuous surveillance by law enforcement, lack of information on their legal status and the duration and the reasons for detention – constituted a violation of Article 3 ECHR, the prohibition of inhuman and degrading treatment, and of Article 5 ECHR, in addition to the violation of Article 13 ECHR due to the lack of an effective remedy against these violation.⁵⁹³ The Grand Chamber judgment of 15 December 2016 confirmed the violation of such fundamental rights.⁵⁹⁴ Recently, at its meeting held between 12 and 14 March 2019, the Committee of Ministers of the Council of Europe, rejected the request made by the Italian Government to close the supervision processes initiated following the *Khlaifia* ruling. The Committee asked Italy to send further information on the measures adopted by 31 May 2019.⁵⁹⁵

Although the new Article 6(3-bis) of the Reception Decree foresees the possibility of detention for identification purposes in specific places, such places are not specified and they will not be identified by law. In a Circular issued on 27 December 2018, the Ministry of Interior specified that it will be the responsibility of the Prefects in whose territories such structures are found to identify special facilities where this form of detention could be performed.

According to ASGI, detention in facilities other than CPR and prisons violates Article 10 of the recast Reception Conditions Directive, which does not allow any detention in other locations and also because in these places, the guarantees provided by this provision are not in place. According to ASGI, the amended Reception Decree also violates Article 13 of the Italian Constitution, since the law does not indicate the exceptional circumstances and the conditions of necessity and urgency allowing, according to constitutional law, for the implementation of detention. Moreover, the law makes only a generic reference to places of detention, which will be not identified by law but by the prefectures, thus violating the “*riserva di legge*” laid down in the Article 13 of the Constitution, according to which the modalities of personal freedom restrictions can be laid down only in legislation and not in other instruments such as circulars.⁵⁹⁶

2. Conditions in detention facilities

Indicators: Conditions in Detention Facilities

- | | | |
|---|---|--|
| 1. Do detainees have access to health care in practice? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ If yes, is it limited to emergency health care? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

In relation to detention conditions, the Reception Decree provides as a general rule that full necessary assistance and respect of dignity shall be guaranteed to the detainees. Separation of persons in respect of gender differences, maintaining, where possible, the family unity and the access to open-air spaces must be ensured.⁵⁹⁷

⁵⁹³ ECtHR, *Khlaifia and Others v. Italy*, Application No 16483/12, Judgment of 1 September 2015.

⁵⁹⁴ ECtHR, *Khlaifia and Others v. Italy*, Grand Chamber, Judgment of 15 December 2016.

⁵⁹⁵ Council of Europe, Committee of Ministers, ‘Supervision of the execution of judgments of the European Court of Human Rights - Cases examined at 1340th meeting (HR)’, available at: <http://bit.ly/2TEzEDo>. ASGI sent observations to the Committee to request the continuation of the monitoring process: ASGI, *Communication for overseeing the implementation of judgments relating to the Khlaifia v Italy judgment*, February 2019, available at: <http://bit.ly/2Uf0jv2>.

⁵⁹⁶ ASGI, *Manifeste illegittimità costituzionali delle nuove norme concernenti permessi di soggiorno per esigenze umanitarie, protezione internazionale, immigrazione e cittadinanza previste dal decreto-legge 4 ottobre 2018, n. 113*, 15 October 2018, available in Italian at: <http://bit.ly/2FCsyLW>.

⁵⁹⁷ Article 7(1) Reception Decree.

The Reception Decree states that foreigners detained in CPR shall be provided by the manager of the facility with relevant information on the possibility of applying for international protection. The asylum applicants detained in such facilities are provided with the relevant information set out by Article 10(1) of the Procedure Decree, by means of an informative leaflet.⁵⁹⁸

Detention conditions are monitored *inter alia* by the [Human Rights Commission](#) of the Senate, the [Inquiry Commission on the reception system](#) set up by the Chamber of Deputies, as well as the [Guarantor for the rights of detained persons](#).

2.1. Overall conditions

Hotspots

Conditions in hotspots vary given that the facilities host different numbers of persons at any given time.

Lampedusa: The structure consists of prefabricated pavilions, in bad conditions. A visit by ASGI, CILD and IndieWatch in March 2018 found worrying conditions, including mattresses in poor condition, without bed linen or paper sheets changed only every couple of weeks, as well as toilets and showers without doors, therefore not guaranteeing basic privacy.⁵⁹⁹ As reported by the “In Limine”- project, as of May 2018 the reception conditions have improved thanks also to a lower influx of people. However, between May and August 2018, due to overcrowding, there was a lack of places to sleep and some people had to carry mattresses outside the accommodation area. Common areas for meals are still lacking,⁶⁰⁰ as already reported in 2016 by [LasciateCIEntrare](#).⁶⁰¹

Messina: The hotspot consists of a series of zinc plate containers and tensile structures capable of accommodating up to 250 people. A report published on 29 August 2018 revealed numerous irregularities relating to the construction area and compliance with minimum living standards, such as the ventilation and lighting of the containers used as rooms, the absence of common areas, and the inadequacy of the structure in relation to safety standards.⁶⁰² Inside the hotspot, UNHCR, IOM, Save the Children and EASO and present in addition to the police, Frontex and the managing body (Cooperative Badia Grande).

Taranto: As of July 2017, all residents were accommodated and slept in a large tent. The hotspot was surrounded by high metal wires and was consistently guarded by law enforcement personnel and armed soldiers both inside and outside.⁶⁰³

CPR

Persons held in CPR vary significantly in terms of social origin, psychological condition, health condition, legal status. According to the law, asylum seekers detained in CPR should be placed in a dedicated space.⁶⁰⁴ However, as reported by the [Guarantor for the rights of detained persons](#) in his

⁵⁹⁸ Article 6(4) Reception Decree.

⁵⁹⁹ ASGI, ‘Chiuso l’hotspot di Lampedusa-CILD, ASGI e IndieWatch: “Condizioni disumane e violazioni dei diritti umani”’, 14 March 2018, available in Italian at: <http://bit.ly/2FUTswm>.

⁶⁰⁰ ASGI et al., *Scenari di frontiera, il caso Lampedusa*, October 2018, available in Italian at: <http://bit.ly/2FF2obD>.

⁶⁰¹ [LasciateCIEntrare](#), *Report20giugno*, October 2016, 24.

⁶⁰² Stampa Libera, ‘L’inchiesta di Antonio Mazzeo: Hotspot Migranti di Messina. Disumano e abusivo’, 29 August 2018, available in Italian at: <http://bit.ly/2FyfhD7>.

⁶⁰³ ASGI, ‘Minori stranieri trattenuti illegalmente nell’hotspot di Taranto: la CEDU chiede chiarimenti al Governo italiano’, 11 February 2018, available in Italian at: <http://bit.ly/2pqN4GT>.

⁶⁰⁴ Article 6(2) Reception Decree.

report of visits to CPR in 2016 and 2017, detained persons in all structures were in a precarious state without any consideration of legal status, not even that of asylum seekers.⁶⁰⁵

In providing for a distribution of CPR on the entire national territory, Decree Law 13/2017, implemented by L 46/2017, specified that this should have followed an accentuation of the role of the Guarantor for the rights of detained persons, and an extension of the power of access for those who do not require authorisation,⁶⁰⁶ and an absolute respect for human dignity. In the report to the Parliament of 15 June 2018,⁶⁰⁷ and in the subsequent report on monitoring visits,⁶⁰⁸ the Guarantor for prisoners noted that the structures had not, however, registered any improvement in the conditions of livability and in respect of fundamental human rights. The Ministry of Interior replied to the Guarantor's report with a letter dated 11 October 2018, claiming that the "efforts to improve the structures" are often thwarted by the "continuous and violent behavior of the guests to the detriment of the premises and furnishings."⁶⁰⁹

Brindisi: The centre is divided into three lots, each equipped with an external courtyard surrounded by wire.⁶¹⁰ LasciateCIEntrare visited the centre on 29 June 2016 and reported that, inside the centre, taking pictures and filming was forbidden.⁶¹¹ After a visit carried out on 19 February 2018, the Guarantor for the rights of detained persons found particularly critical conditions in the bathrooms and showers: many showers were not working, the floor was damp and slippery, the walls were lined with blue and green mold and many bathrooms had no doors.⁶¹²

Bari: The Guarantor for the rights of detained persons who visited the centre on 22 February 2018 reported about beds without sheets and a broken window unrepaired for about three months in the common area.⁶¹³ During a visit organised on 5 August 2018, members of LasciateCIEntrare found many persons detained in a state of dullness: shining eyes, enlarged lips, difficulty in expressing themselves. The detainees asked them to check whether there were any sedative substances in the food. During the interviews they were also told several times that before the expulsions people are beaten by the police and strongly sedated.⁶¹⁴ Between 14 and 15 December 2018 the detainees organised a protest that resulted in a riot against the conditions of detention.⁶¹⁵

On 10 August 2017 the Civil Court of Bari upheld the appeal lodged by popular action, condemning the Ministry of the Interior to pay compensation to local authorities and to pay court costs for damages to the prestige and to the image of the local community due the presence of the former CIE in Bari. According to the Court, the former CIE was not suitable for the assistance of foreigners and the full protection of their dignity as human beings. As migrants had suffered inhuman and degrading treatment

⁶⁰⁵ Guarantor for the rights of detained persons, *Rapporto sulle visite nei CIE e negli hotspot in Italia 2016/2017*, 11 May 2017, 29.

⁶⁰⁶ Article 67 Penitentiary Regulation.

⁶⁰⁷ Guarantor for the rights of detained persons, *Relazione al Parlamento*, 15 June 2018, available in Italian at: <http://bit.ly/2TZy9ol>.

⁶⁰⁸ Guarantor for the rights of detained persons, *Rapporto sulle visite effettuate nei centri di permanenza per il rimpatrio (Febbraio – Marzo 2018)*, 6 September 2018, available in Italian at: <http://bit.ly/2uvu4cr>.

⁶⁰⁹ Ministry of Interior, *Reply to the Guarantor for the rights of detained persons report*, 11 October 2018, available in Italian at: <http://bit.ly/2UXW7x1>.

⁶¹⁰ Guarantor for the rights of detained persons, *Rapporto sulle visite nei CIE e negli hotspot in Italia 2016/2017*, 11 May 2017, 11.

⁶¹¹ LasciateCIEntrare, *Report20giugno*, October 2016, 29.

⁶¹² Guarantor for the rights of detained persons, *Rapporto sulle visite effettuate nei centri di permanenza per il rimpatrio (Febbraio – Marzo 2018)*, 6 September 2018, available in Italian at: <http://bit.ly/2uvu4cr>.

⁶¹³ *Ibid.*

⁶¹⁴ LasciateCIEntrare, 'Migranti: "Lasciateci entrare nei CPR di Bari e Brindisi: online il report"', 7 November 2018, available in Italian at: <http://bit.ly/2CfWpQ>.

⁶¹⁵ Hurriya, 'Fuoco e scontri nel CPR di Bari Palese', 15 December 2018 available in Italian at: <http://bit.ly/2UeKZyq>. See also ASGI, 'Detenzione dei migranti nel CPR a Bari e Potenza. Nota dell'ASGI', 17 December 2018, available in Italian at: <http://bit.ly/2HWGlC>.

in the centre, the Court considered a compensation necessary due to the huge damage to the whole local community, historically open to hospitality.⁶¹⁶

Turin: According to a report of the Guarantor for the rights of detained persons on a visit on 19 January 2017, the centre has seven housing sectors, separated by high iron railings. Within each area, detainees are free to move between the various rooms and the outdoor area but there are no tables, chairs, or equipment. The Guarantor also noted that the contacts with the operators were critical and sporadic and took place exclusively through the bars. He criticised this approach as disrespectful of the human dignity of the persons detained.⁶¹⁷ The Guarantor visited the center again on 1 March 2018 and found no improvement of the situation. He also criticized the lack of doors or curtains between the rooms and the toilets, which are often very close, and the fact that the light inside the rooms can only be turned on or off a central level by staff. Moreover, he underlined that the premises are not equipped with alarm bells or intercoms, which is useful in case of need.

Potenza: the centre has been opened before the renovation work was finished. The Guarantor for the rights of detained persons who visited the centre on 21 of February 2018 found that only three showers were working, therefore the center, prepared for 152 seats, only housed 32 persons. The Guarantor found rooms not equipped with baskets or bags for garbage so the dishes of meals left on the ground attracted cockroaches. The lights could not be turned off from inside the rooms and were reported to be on all night. On 15 December 2018 the detainees sparked a revolt, also setting a fire.⁶¹⁸

Caltanissetta: The centre consists of three residential pavilions, two hosting 36 persons each and one hosting 24. The latter is equipped with built-in beds and foam mattresses. The spaces appear overcrowded, poorly ventilated, cold and without access to natural light, while bathrooms are also in critical condition.⁶¹⁹ The centre is also equipped with an indoor canteen. In December 2018, a fire caused by people detained damaged three pavilions in a restricted area where 90 Tunisians were accommodated. Since its reopening, protests have been very frequent. On 28 December 2018, detainees attempted a mass flight and, in January 2019, a boy who had managed to get to the roof of a structure to escape repatriation was seriously injured.⁶²⁰

Rome: The Guarantor for the rights of detained persons found severe insalubrity in the interior areas of the centre, infested with mosquitoes and insects. In particular, mosquitoes literally carpeted the wall in one toilet.⁶²¹ According to three visits by the Senate in 2017, the occupancy of the centre never exceeded 100 people. Women detained in the CPR could eat in the hall, they could use the library and they had access to health assistance. In one of the visits on 6 May 2017, a woman with evident psychiatric problems was identified in the centre.⁶²²

2.2. Activities

According to Article 4(h) of the CIE Regulation, social, recreational and religious activities shall be organised in the centres. However, the shortage of recreational activities in CPR bears especially negative impact on living conditions of people staying in the CPR 24 hours a day for prolonged periods, thus being one of the main factors entailing distress among people in detention.

⁶¹⁶ Civil Court of Bari, Decision 4089/2017, 10 August 2017, available at: <http://bit.ly/2FI5Y5t>. See also ASGI, 'Danni all'immagine di una comunità accogliente: Governo e Ministero condannati per il CIE di Bari', 19 August 2017, available in Italian at: <http://bit.ly/2FIEixj>.

⁶¹⁷ Guarantor for the rights of detained persons, *Rapporto sulle visite nei CIE e negli hotspot in Italia 2016/2017*, 11 May 2017, 20.

⁶¹⁸ Il Giornale, 'Potenza, paura al Cpr: scoppia rivolta dei migranti contro rimpatrio', 15 December 2018, available at: <http://bit.ly/2WyFh8n>.

⁶¹⁹ Senate, *2017 CPR report*, December 2017, 15.

⁶²⁰ Meltingpot, "Ancora proteste al CPR di Pian del Lago: gravemente ferito un ragazzo tunisino", available at: <http://bit.ly/2TWWOKi>.

⁶²¹ Senate, *2017 CPR report*, December 2017, 21.

⁶²² *Ibid*, 30.

Turin: People spend their time in the centre without doing any activity. Within each area, they are free to move between the various rooms and the outdoor area but there are no tables, chairs, or equipment for doing sports.⁶²³

Caltanissetta: The centre is equipped with a field for outdoor sports.⁶²⁴

Brindisi: The Guarantor for the rights of detained persons visited the centre on 19 February 2018 and confirmed what was reported after his visit in 2017 on the absence of common spaces to be allocated to the organization of activities that in fact were practically absent. The use of the soccer field had been renewed. He also reported that local police officers tend to deny authorization to any activity for security reasons.⁶²⁵

Bari: As reported by the Guarantor for the rights of detained persons who visited the centre on 22 February 2018, the centre is not equipped with sports fields nor other places for social activities.

Potenza: the Guarantor for the rights of detained persons reported that, although recently opened, the center does not provide any common area, thus leisure activities are not carried out. Migrants are forced to eat standing outside or sitting on their beds. The courtyard cannot be used because there is on protection from rain, snow or sun.

2.3. Health care and special needs in detention

Access to health care is guaranteed to all persons in detention. The law provides as a general rule that full necessary assistance and respect of dignity shall be guaranteed.⁶²⁶ The law further states that the fundamental rights of detained persons must be guaranteed and that inside detention centres essential health services are provided.⁶²⁷

Moreover, the Reception provides that asylum seekers with health problems incompatible with the detention conditions cannot be detained and, after the amendment made by Decree Law 13/2017 and L 46/2017, it also establishes the incompatibility of detention for vulnerable people, as defined by Article 17 of the Reception Decree.

However, the delegates of the LasciateCIEntrare campaign who visited the CPR of **Bari** and **Brindisi** on 5 August 2018 verified the presence of people whose state of health was incompatible with the state of detention.⁶²⁸

Within the socio-health services provided in the CPR, a periodical assessment of the conditions of vulnerability requiring special reception measures must be ensured.⁶²⁹ In this regard, Article 3 of the CIE Regulation describes in details the health services provided to detainees and the possibility for the Prefecture to stipulate specific agreements with the public health units.

The CPR of **Caltanissetta** is equipped with a separate area dedicated to medical care.⁶³⁰

⁶²³ Guarantor for the rights of detained persons, *Rapporto sulle visite nei CIE e negli hotspot in Italia 2016/2017*, 11 May 2017, 20.

⁶²⁴ *Ibid*, 15.

⁶²⁵ Guarantor for the rights of detained persons, *Rapporto sulle visite effettuate nei centri di permanenza per il rimpatrio (Febbraio – Marzo 2018)*, 6 September 2018, available in Italian at: <http://bit.ly/2uvu4cr>.

⁶²⁶ Article 14(2) TUI.

⁶²⁷ Article 21(1) and (2) PD 394/1999.

⁶²⁸ LasciateCIEntrare, 'Migranti, Lasciateci entrare nei CPR di Bari e Brindisi online il report', 7 November 2018, available in Italian at: <http://bit.ly/2CIFwpQ>.

⁶²⁹ Article 7(5) Reception Decree.

⁶³⁰ Guarantor for the rights of detained persons, *Rapporto sulle visite nei CIE e negli hotspot in Italia 2016/2017*, 11 May 2017, 15.

Both in the CPR of **Brindisi** and in that of **Turin**, the Guarantor verified between February and March 2018 the practice of using the rooms of sanitary isolation for punitive purposes, although the isolation is not provided for by the CIE Regulation even as an exceptional measure.

3. Access to detention facilities

Indicators: Access to Detention Facilities

- | | | | |
|--|------------------------------|---|-----------------------------|
| 1. Is access to detention centres allowed to | | | |
| ❖ Lawyers: | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> Limited | <input type="checkbox"/> No |
| ❖ NGOs: | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> Limited | <input type="checkbox"/> No |
| ❖ UNHCR: | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> Limited | <input type="checkbox"/> No |
| ❖ Family members: | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> Limited | <input type="checkbox"/> No |

Decree Law 13/2017, implemented by L 46/2017, has clarified that access to CPR is guaranteed under the same conditions as access to prisons. This means that the Guarantor for the rights of detained persons, among other official bodies, has unrestricted access to CPR.

UNHCR or organisations working on its behalf, family members, lawyers assisting asylum seekers, organisations with consolidated experience in the field of asylum, and representatives of religious entities also have access to CPR.⁶³¹ However, an authorisation from the competent Prefecture is necessary for family members, NGOs, representatives of religious entities, journalists and any other person who make the request to enter CPR. Access can be limited for public order and security reasons or for reasons related to the administrative management of CPR but not fully impeded.⁶³²

Access to CPR for journalists is quite difficult. They have to pass through two different stages before gaining authorisation to visit the CPR. Firstly, they need to make a request to the local *prefecture* (the local government representative), which then forwards the request to the Ministry of Interior who investigates the applicant, before finally sending the authorisation back to the Prefecture.

During his visits carried out between February and March 2018 in the CPR of Brindisi, Bari, Potenza and Turin, the Guarantor for the rights of detained persons verified that the possibility of religious practice was strongly limited since no minister of worship actually has access to the centers and there were no spaces set up for places of worship.⁶³³

In order to inform and raise awareness on the effective situation and conditions of migrants inside Italian administrative detention centres, the *LasciateCIEntrare* campaign organizes visits inside CPR with journalists, lawyers, members of Parliament and NGOs.

The Senate highlighted in its December 2017 report that it has often welcomed in its delegations visiting CPR the mayors or the municipal and provincial counsellors of the cities that host CPR. They are unable to enter themselves in those facilities unless authorised by the Prefectures but, as highlighted in the report, easier access could establish closer links to the concerned local populations.⁶³⁴ The situation as regards mayors' access to detention facilities remained the same in 2018.

⁶³¹ Article 7(2) Reception Decree.

⁶³² Article 7(3) Reception Decree.

⁶³³ Guarantor for the rights of detained persons, *Rapporto sulle visite effettuate nei centri di permanenza per il rimpatrio (Febbraio – Marzo 2018)*, 6 September 2018, available in Italian at: <http://bit.ly/2uvu4cr>.

⁶³⁴ Senate, *CPR Report*, December 2017, 24.

During 2018, LasciateCIEntrare found serious obstacles to access CPR. A visit to the CPR of Bari on August 2018 was interrupted for one hour after the Prefecture claimed the delegation had not been authorised even though a Member of the European Parliament was present.⁶³⁵

D. Procedural safeguards

1. Judicial review of the detention order

Indicators: Judicial Review of Detention

- | | | |
|---|---|-----------------------------|
| 1. Is there an automatic review of the lawfulness of detention? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| 2. If yes, at what interval is the detention order reviewed? | 30 days | |

Asylum seekers could be sent to CPR before they have had the possibility to seek asylum, due to lack of proper information on the asylum procedure or because they are denied access to the procedure (see [Registration](#)). In this case they are subject to the procedure for irregular migrants provided by the TUI.

The detention decision must be validated within 48 hours by the competent Magistrates' Court (*guidice di pace*). After the initial period of detention of 30 days, the judge, upon the request by the Chief of the Questura, may prolong the detention in CPR for an additional 30 days.⁶³⁶ After this first extension, the Questore may request one or more extensions to a lower civil court, where it is decided by a Magistrates' Court, in case there are concrete elements to believe that the identification of the concerned third-country national is likely to be carried out or that such delay is necessary to implement the return operations. The assessment concerning the duration of such an extension lies with the magistrate who decides on a case-by-case basis. The third-country national has the right to challenge the detention. The TUI, in fact, provides the right to appeal a detention order or an order extending detention.⁶³⁷

Decree Law 113/2018, implemented by L 132/2018, has provided for the possibility of detention in premises other than CPR. According to the amended Article 13(5-bis) TUI, in case of unavailability of places in the CPR located in the district of the competent Court, the Magistrate, upon request by the Questura, and fixing by decree the hearing to validate the detention, may authorise the temporary stay of the foreigner in different and suitable structures in the availability of the Public Security Authority until the conclusion of the validation procedure. In case the unavailability of places in CPR remain even after the validation hearing, the Magistrate can authorise the stay in suitable places near the Border Police Office concerned until the effective removal and in any case not exceeding 48 hours following the validation hearing.⁶³⁸

If, after being sent to a CPR or other places according to Article 13(5-bis) TUI, third-country nationals apply for asylum, they will be subject to detention pursuant to Article 6 of the Reception Decree.

The Questore's order related to the detention or the extension thereof shall be issued in writing, accompanied by an explanatory statement, and shall indicate that the applicant may submit to the court section responsible for validating the order, personally or with the aid of a lawyer, statements of

⁶³⁵ LasciateCIEntrare, 'Migranti, LasciateciEntrare nei CPR di Bari e Brindisi online il report', 7 November 2018, available in Italian at: <http://bit.ly/2CIFwpQ>.

⁶³⁶ Article 14(5) TUI.

⁶³⁷ Article 14(6) TUI.

⁶³⁸ Article 13(5-bis) TUI, inserted by Article 4 Decree Law 113/2018 and L 132/2018.

defence. Such order shall be communicated to the applicant in the first language that the applicant has indicated or in a language that the applicant can reasonably understand.⁶³⁹

According to the law, the applicant takes part in the hearing on the validation of detention by videoconference, allowing the lawyer to be present at the place where the applicant is located. The presence of a police officer should ensure that there are no impediments or limitations on the exercise of the asylum seeker's rights.⁶⁴⁰ As stressed during the discussion of the provision in the Senate, the lawyer is then forced to choose between being present next to the client or next to the judge at the validation hearing.⁶⁴¹

The Questore shall transmit the relevant files to the competent judicial authority to validate the detention for a maximum period of 60 days, in order to allow the completion of procedure related to the examination of the asylum application.⁶⁴² However, the detention or the prolongation of detention shall not last beyond the time necessary for the examination of the asylum application under accelerated procedure,⁶⁴³ unless additional detention grounds are present pursuant to Article 14 TUI. Any delays in the completion of the administrative procedures required for the examination of the asylum application, if not caused by the applicant, do not constitute valid ground for the extension of the detention.⁶⁴⁴

On 6 October 2016, in the case *Richmond Yaw and others v. Italy*, the European Court of Human Rights condemned Italy for a violation of Article 5 ECHR regarding the detention in CPR of some Ghanese asylum seekers, whose detention had been extended without a validation hearing and therefore without ensuring a debate between the parties.⁶⁴⁵

On January 15, 2019, the Court of Palermo ruled that the request to extend the detention of an asylum seeker within CPR of Trapani was inadmissible in the absence of the procedural guarantees provided by law. The request for extension had in fact been sent to the Court by the immigration office of the Questura without any written provision adopted by the Quaestor of Trapani and nothing had been notified to the person concerned.⁶⁴⁶

Out of 4,092 persons placed in detention in 2018, 954 were released following an order from the court.

2. Legal assistance for review of detention

Indicators: Legal Assistance for Review of Detention

1. Does the law provide for access to free legal assistance for the review of detention?
 Yes No
2. Do asylum seekers have effective access to free legal assistance in practice?
 Yes No

According to Article 2 of the CIE Regulation the individual is informed of his or her rights and duties in a language he or she understands and is provided with the list of lawyers. Due to the broad discretion of each Prefecture in authorising access to CPR (see section on [Access to Detention Facilities](#)), however, lawyers may have problems in entering these detention structures.⁶⁴⁷

⁶³⁹ Article 6(5) Reception Decree, as amended by L 46/2017. Nevertheless, as reported to ASGI, some Questure, when issuing the detention order, do not provide asylum seekers with copy of such orders nor explanations of the reasons for detention.

⁶⁴⁰ Article 6(5) Reception Decree, as amended by L 46/2017.

⁶⁴¹ Senate, *2017 CPR Report*, December 2017.

⁶⁴² Article 6(5) Reception Decree.

⁶⁴³ Pursuant to Article 28-bis(1) and (3) Procedure Decree.

⁶⁴⁴ Article 6(6) Reception Decree.

⁶⁴⁵ ECtHR, *Richmond Yaw and others v. Italy*, Application No 3342/11, Judgment of 6 October 2016.

⁶⁴⁶ Civil Court of Palermo, Decision 439/2019, 15 January 2019, available at: <http://bit.ly/2UIWEvH>.

⁶⁴⁷ *LasciateCIEntrare, Mai più CIE*, 2013, 7.

Under the TUI, free legal aid must be provided in case of appeal against the person's expulsion order, on the basis of which third-country nationals who have not lodged their asylum application can be detained.⁶⁴⁸

Free legal aid is provided for the validation of detention of asylum seekers, as well. In this case, the asylum seeker concerned can also request a court-appointed lawyer. Lawyers appointed by the State have no specific expertise in the field of refugee law and they may not offer effective legal assistance due to lack of interest in preparing the case. In addition, according to some legal experts, assigned attorneys may not have enough time to prepare the case as they are usually appointed in the morning of the hearing.

In his report published after the visit carried out in February 2018 in the CPR of **Brindisi**, the Guarantor for the rights of detained persons, expressed concern about a communication he found of the local Prefecture addressed to the managing body about the need to reduce access to the CPR to the legal advisers of the detainees, limiting it only to Monday to Friday and in time slots established by the same managing body. Noting how the limitation is improper, he asked for the reasons.⁶⁴⁹

Some Bar Councils such as those in **Turin** and **Bari** set up specific lists of Court-appointed lawyers specialised in immigration law.

As for legal assistance inside the CPR, it should be provided by the body managing the centre, which however does not often guarantee this service and usually provides low-quality legal counselling. In this regard, it appears that there is a lack of sufficient and qualified legal assistance inside CPR.⁶⁵⁰

Another relevant obstacle which hampers persons detained in CPR from obtaining information on their rights and thus enjoying their right to legal assistance is the shortage of interpreters available in the detention centres, who should be provided by the specific body running the structure. In **Brindisi**, for example, a visit by *LasciateCIEntrare* on 29 June 2016 reported that there were lists with names and phone numbers of some lawyers in the building, which seemed to be the only lawyers people could contact.⁶⁵¹

E. Differential treatment of specific nationalities in detention

Following a Ministry of Interior Circular of January 2017, encouraging Questure to trace **Nigerians**, and in light of the readmission agreements signed by Italy with countries such as Sudan, Libya or Egypt, practice indicates that this nationality is particularly targeted for detention.

In 2018, however, the main nationality of persons placed in CPR was **Tunisia**, accounting for more than one third of detentions.

⁶⁴⁸ Article 13(5-bis) TUI.

⁶⁴⁹ Guarantor for the rights of detained persons, *Rapporto sulle visite effettuate nei centri di permanenza per il rimpatrio (Febbraio – Marzo 2018)*, 6 September 2018, available in Italian at: <http://bit.ly/2uvu4cr>.

⁶⁵⁰ Senate, *CIE Report*, September 2014, 30.

⁶⁵¹ *LasciateCIEntrare*, *Report20giugno*, October 2016, 29.

A. Status and residence

1. Residence permit

Indicators: Residence Permit

1. What is the duration of residence permits granted to beneficiaries of protection?
 - ❖ Refugee status 5 years
 - ❖ Subsidiary protection 5 years
 - ❖ Special protection 1 year

International protection permits for both refugee status and subsidiary protection are granted for a period of 5 years.⁶⁵²

The application is submitted to the territorially competent Questura of the place where the person has a registered domicile.

The main problem for the issuance of these permits is, often, the lack of a domicile (registered address) which must be provided to the police. Domicile has to be attached to the application submitted to the Questura, but some beneficiaries of international protection do not have a fixed address to provide. Even if it is possible to have a registered address at an organisation's address – a legal, not an actual domicile – not all Questuras accept an organization's address as domicile and also the organisations not always allow beneficiaries of protection to use their address.

The renewal of the residence permit for asylum is done by filling out the appropriate form and sending it through the post office. After the application for renewal has been submitted, people have to wait a long time up to several months to know the outcome of the request and to obtain the new permit.

According to the law, the residence permit for **subsidiary protection** can be renewed after verification that the conditions imposed in Article 14 of the Qualification Decree are still satisfied.⁶⁵³ The application is sent back to the administrative Territorial Commission that decided on the original asylum application and the Commission uses information provided by the police station, about any crimes committed during the person's stay in Italy, to deal with the case. In practice, these permits are usually renewed and the main reason why renewal may not happen is the commission of serious crimes. For humanitarian protection beneficiaries, even the commission of 'light' crimes can affect the renewal of the permit.

Another frequent reason why these permits are not renewed is evidence that the refugee has had contacts with his or her embassy or has returned to the country of origin, even for a short period. Sometimes, on this basis, the non-renewal procedure has been initiated on this basis even for **subsidiary protection** beneficiaries but thanks to the legal defence the refusal has been cancelled. On 27 February 2019, the Civil Court of Naples accepted the appeal lodged by a Nigerian citizen to whom the Questura of Naples refused to issue the subsidiary protection status permit because she did not have a passport from her country of origin.⁶⁵⁴

Following the abolition of the humanitarian protection status upon entry into force of Decree Law 113/2018 on 5 October 2018 (see [Regular Procedure](#)), two-year residence permits for humanitarian protection reasons can no longer be renewed to those who had previously obtained such permit.

⁶⁵² Article 23(1) and (2) Qualification Decree.

⁶⁵³ Article 23(2) Qualification Decree.

⁶⁵⁴ Civil Court of Naples, Decision 35170/2018, 27 February 2019.

The government justified the abolition of humanitarian protection with the need to delimit the issuance of this residence permit, claiming to circumscribe the humanitarian reasons to certain hypotheses and introducing, for this purpose, some new residence permits that can be released directly by the Questuras: the permit for medical treatment,⁶⁵⁵ the permit for particular civil value,⁶⁵⁶ the permit for natural calamity.⁶⁵⁷ Special protection permits have a one-year duration and allow access to the labour market but, contrary to permits for humanitarian protection, they cannot be converted into a labour residence permit. They can be renewed, subject to a favourable opinion by the Territorial Commission.⁶⁵⁸

The 2018 reform has provided for a transitional regime only for those who have been waiting for the issuance of the first residence permit for humanitarian protection or those to whom the Territorial Commissions had already granted, although not yet communicated, humanitarian protection before 5 October 2018. These persons receive a residence permit for “special cases” granted for two years and convertible into a labour residence permit.⁶⁵⁹ Upon expiry, if not converted into work permits, the “special cases” permits are not renewed. The only option for the holders of such permit is then for such persons to obtain a “special protection” permit if they meet the conditions. However, as mentioned above, the latter is only valid for one year and cannot be converted into a work permit.

2. Civil registration

Beneficiaries of international protection or special protection can apply for registration.

Decree Law 113/2018 has repealed the rules governing civil registration (*iscrizione anagrafica*) of asylum seekers,⁶⁶⁰ and stated that the residence permit issued to them does not constitute a valid title for registration at the registry office.⁶⁶¹

Many organisations, including ASGI, have raised the discriminatory aspect of this rule which, by denying a subjective right to one single category of foreigners, asylum seekers, would violate the principle of equality enshrined by Article 3 of the Italian Constitution. In fact, the TUI, which was not amended, states that the registration of personal data and changes to such data for legally residing foreigners are carried out under the same conditions as Italian citizens.⁶⁶²

On 18 March 2019, the Civil Court of Florence upheld the appeal brought by an asylum seeker confirming his right to be registered at the registry office. According to the Court, even after the changes made by Decree Law 113/2018, the law cannot be interpreted in such a way as to exclude asylum seekers from the right to residence. Such an interpretation would violate the constitutional principle of equality and the prohibition of discrimination pursuant to Article 14 ECHR.⁶⁶³

Some municipalities have openly declared they will refuse to apply the amendments to the law.⁶⁶⁴ The Mayor of Naples, **Campania**, for instance, has decided to register asylum seekers in the registry of temporarily resident persons.⁶⁶⁵

⁶⁵⁵ Article 19(2)(d-bis) TUI, inserted by Article 1(1)(g) Decree Law 113/2018 and L 132/2018.

⁶⁵⁶ Article 42-bis TUI, inserted by Article 1(1)(q) Decree Law 113/2018 and L 132/2018.

⁶⁵⁷ Article 20-bis TUI, inserted by Article 1(1)(h) Decree Law 113/2018 and L 132/2018. It is issued when the country to which the foreigner should return has a situation of contingent and exceptional calamity that does not allow the return and the stay in safe conditions. The permit is valid for 6 months, only in national territory, and allow to work but it is not convertible into a work permit.

⁶⁵⁸ Article 32(3) Procedure Decree, as amended by Article 1(2)(a) Decree Law 113/2018 and L 132/2018.

⁶⁵⁹ Article 1(9) Decree Law 113/2018 and L 132/2018.

⁶⁶⁰ Article 5-bis Reception Decree was repealed by Article 13 Decree Law 113/2018 and L 132/2018.

⁶⁶¹ Article 4(1-bis) Reception Decree, inserted by Article 13 Decree Law 113/2018 and L 132/2018.

⁶⁶² Article 6(7) TUI.

⁶⁶³ Civil Court of Florence, Order 361/2019, 18 March 2019, available at: <https://bit.ly/2TZ9DTG>.

⁶⁶⁴ Lettera 43, ‘Il sindaco Orlando ha sospeso il decreto Salvini a Palermo’, 2 January 2019, available in Italian at: <https://bit.ly/2F3kWRk>.

⁶⁶⁵ Repubblica Napoli, ‘Migranti, de Magistris sfida il governo: “I richiedenti asilo nell'elenco temporaneo dell'anagrafe”’, 15 January 2019, available in Italian at: <https://bit.ly/2TDuEEc>.

At the same time, the amended Article 5(3) of the Reception Decree states that asylum seekers have access to reception conditions and to all services provided by law in the place of domicile declared to Questura upon the lodging of the application or subsequently communicated to Questura in case of changes.⁶⁶⁶ As some provisions of social welfare are conditional upon registration at the registry office, the Reception Decree should allow access to all social assistance services to asylum seekers on the basis of their domicile only; by considering their domicile equivalent to residence.

2.1. Registration of child birth

The child birth can be registered at hospital within 3 days from the birth, or later at the municipality, with the presentation of a valid identification document.

2.2. Registration of marriage

According to the Italian Civil Code, foreign citizens who intend to contract a marriage in Italy must present a certification of the absence of impediments to contracting the marriage (*nulla osta*), issued by their embassy.⁶⁶⁷ **Refugees** can substitute the *nulla osta* with a UNHCR certification. This practice was established following a formal note sent on 9 April 1974 by the Ministry of Justice to the Ministry of Foreign Affairs, copying UNHCR.

In order to obtain authorisation for the marriage, refugees must produce:

- A declaration (affidavit), signed before the Civil Court or before a notary and certified by two witnesses;
- The decision granting them refugee status;
- A valid residence permit; and
- A valid document of the future spouse.

The law does not provide a solution for beneficiaries of **subsidiary protection** who cannot request the *nulla osta* from their embassy with a view to registering a marriage. In this case, they can follow the procedure set out in the Article 98 of the Italian Civil Code, which entails a request for the marriage authorisation to the municipality and, after the refusal of the request for want of *nulla osta*, an appeal to the Civil Court, asking the Court to ascertain that there are no impediments to the marriage.

With a decree issued on February 2012, the Civil Court of Bari has authorised the marriage between a subsidiary protection holder and an asylum seeker even in the absence of authorisation from their country of origin. The Court observed that in relation to the certification needed for contracting a marriage, “refugees and subsidiary protection beneficiaries appear to have similar positions, but unjustifiably treated in a non-homogeneous way...”⁶⁶⁸

3. Long-term residence

Indicators: Long-Term Residence

- | | |
|---|---------------|
| 1. Number of long-term residence permits issued to beneficiaries in 2018: | Not available |
|---|---------------|

According to Article 9(1-bis) TUI, refugees and subsidiary protection beneficiaries residing in Italy for at least 5 years can obtain a long-term resident status if they have an income equal or higher than the minimum income guaranteed by the State. The starting point to count the period of stay for beneficiaries of international protection is the date of submission of the application for international protection.⁶⁶⁹

⁶⁶⁶ Article 5(3) Reception Decree, as amended by Article 13 Decree Law 113/2018 and L 132/2018.

⁶⁶⁷ Article 116 Civil Code.

⁶⁶⁸ Civil Court of Bari, Decree of 7 February 2012, available in Italian at: <http://bit.ly/2GUUsJAR>.

⁶⁶⁹ Article 9(5-bis) TUI.

In case of vulnerabilities, the availability of a free dwelling granted by recognised charities and aid organisations, contributes figuratively toward the income to the extent of 15% of the amount.

Contrary to other third-country nationals, international protection beneficiaries do not have to prove the availability of adequate accommodation responding to hygiene and health conditions, nor to pass the Italian language test, before obtaining long-term residence.⁶⁷⁰

The application to obtain the long term residence permit is submitted to the Questura and must be issued within 90 days.⁶⁷¹ The issuance of the permit is subject to a contribution of 100 €. ⁶⁷²

4. Naturalisation

Indicators: Naturalisation

- | | |
|---|---------------|
| 1. What is the waiting period for obtaining citizenship? | |
| ❖ Refugee status | 5 years |
| ❖ Subsidiary protection | 10 years |
| 2. Number of citizenship grants to beneficiaries in 2018: | Not available |

Italian citizenship can be granted to **refugees** legally resident in Italy for at least 5 years.⁶⁷³ Beneficiaries of **subsidiary protection** are instead subject to the general rule applied to third-country nationals: they can apply for naturalisation after 10 years of legal residence.⁶⁷⁴

In both cases, the beneficiary's registration at the registry office must be uninterrupted. This is particularly challenging for beneficiaries of international protection, as the law does not ensure to them an accommodation after getting a protection status and, due to the precarious situation they come to face, they will be hardly able to maintain a residence. Moreover, following the entry into force of the Decree Law 113/2018, implemented by L 132/2018, registration at the registry can only be obtained after the grant of a protection status (**Civil Registration**).

The 2018 reform has also introduced the requirement of good knowledge of the Italian language of at least B1 level, attested through specific certifications or through the qualification in an educational institution recognised by the Ministry of Education.⁶⁷⁵ Applications presented after 5 December 2018 without meeting this requirement will be rejected.⁶⁷⁶

The amended Citizenship Act also provides that citizenship obtained by way of naturalisation can be revoked in the event of a final conviction for crimes committed for terrorist purposes.⁶⁷⁷ The law does not provide any guarantee to prevent statelessness.

Naturalisation procedure

The application is submitted online through the website of the Ministry of Interior, by attaching the extract of the original birth certificate and the criminal records certificate, issued in the country of origin and duly translated and legalised. The originals are submitted to the Prefecture of the place of residence.

⁶⁷⁰ Article 9(1-ter) and (2-ter) TUI.

⁶⁷¹ Article 9(2) TUI.

⁶⁷² Ministerial Decree of 8 June 2017.

⁶⁷³ Articles 9 and 16 L 91/1992 (Citizenship Act).

⁶⁷⁴ Article 9(1)(f) Citizenship Act.

⁶⁷⁵ Article 9.1 Citizenship Act, inserted by Article 14 Decree Law 113/2018 and L 132/2018.

⁶⁷⁶ Ministry of Interior Circular No 666 of 28 January 2019.

⁶⁷⁷ Article 10-bis Citizenship Act, inserted by Article 14 Decree Law 113/2018 and L 132/2018.

Refugees can replace the documentation requested to prove their exact personal data and their legal position in the country of origin with a declaration (affidavit), signed before the Court and certified by two witnesses. This possibility is not provided for beneficiaries of **subsidiary protection**.

The application is subject to the payment of a 250 € (up from 200 €) contribution.

The evaluation of the citizenship application is largely discretionary. As consistently confirmed by the case law of the Administrative Courts,⁶⁷⁸ the denial may be motivated by the lack of knowledge of Italian language and insufficient social inclusion in the national context. Even if not provided by law, as evidence of social inclusion, it is usually requested that the income of the last 3 years be equal or higher than the minimum income guaranteed by the State.

Decree Law 113/2018, implemented by L 132/2018 has extended the time limit for the completion of the procedure from 730 days to 48 months from the date of application.⁶⁷⁹ As before, this is a non-mandatory time limit. The new time limit applies to all pending procedures. The Administrative Court of Lazio decided that it also applies to cases already brought to Court before the date of coming into force of the Decree Law, since the Decree Law is silent on the date of entry into force.⁶⁸⁰

The person concerned is notified about the conclusion of the procedure by the Prefecture. In case of approval, he or she is invited to give, within 6 months, the oath to be faithful to the Italian Republic and to observe the Constitution and the laws of the State. In case of denial, he or she can appeal to the Administrative Court.

5. Cessation and review of protection status

Indicators: Cessation

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the cessation procedure? Yes No
2. Does the law provide for an appeal against the first instance decision in the cessation procedure? Yes No
3. Do beneficiaries have access to free legal assistance at first instance in practice? Yes With difficulty No

5.1. Grounds for cessation

According to Article 9 of the Qualification Decree, a third-country national shall cease to be a **refugee** if he or she:

- (a) Has voluntarily re-availed himself or herself of the protection of the country of nationality;
- (b) Having lost his nationality, has voluntarily re-acquired it;
- (c) Has acquired Italian nationality, or other nationality, and enjoys the protection of the country of his or her new nationality;
- (d) Has voluntarily re-established him or herself in the country which he or she left or outside which he or she remained owing to fear of persecution;
- (e) Can no longer, because the circumstances in connection with which he has been recognised as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of nationality; or
- (f) In the case of a stateless person, he or she is able, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, to return to the country of former habitual residence.

⁶⁷⁸ See e.g. Administrative Court of Lazio, Decision 8967/2016, 2 August 2016.

⁶⁷⁹ Article 19-ter Citizenship Act, inserted by Article 14 Decree Law 113/2018 and L 132/2018.

⁶⁸⁰ Administrative Court of Lazio, Decision 1323/2019.

The change of circumstances which led to the recognition of protection is also a reason for the cessation of **subsidiary protection**.⁶⁸¹

Decree Law 113/2018 has introduced a new provision to the Qualification Decree according to which any return of a beneficiary of international protection to the country of origin which is not justified by serious and proven reasons is relevant for the assessment of cessation of international protection.⁶⁸²

In both cases, the change must be of non-temporary nature and there must not exist serious humanitarian reasons preventing return to the country of origin.⁶⁸³ Although the law provides that protection may cease in these cases, this does not happen in practice. The Qualification Decree states that, even when the situation in the country of origin has changed, the beneficiary of international protection can invoke compelling reasons arising out of previous persecution for refusing to avail him or herself of the protection of the country of nationality not to be returned.⁶⁸⁴

5.2. Cessation procedure

The CNDA is responsible for deciding on cessation.⁶⁸⁵ According to the law, cessation cases of **refugees** have to be dealt individually.⁶⁸⁶ No specific groups of beneficiaries in Italy specifically face cessation of international protection.

However, several cases of cessation of **subsidiary protection** have been started by the CNDA in 2017 and 2018 regarding people who were found at airports or borders with stamps on their passports attesting they had returned to their country of origin. The new provision introduced by Decree Law 113/2018 on the relevance of any return of the beneficiary to the country of origin for cessation, will likely result in automatically initiating the cessation procedure in such cases.

The person concerned must be informed in writing of the specific reasons why the Commission considers whether to review of his or her legal status. The person has the right to take part in the proceedings, to request to be heard and to produce written documentation, but has not access to free legal assistance. The CNDA sets a hearing only if it is deemed as necessary. If the person, duly notified, fails to appear, the decision is made on the basis of the available documentation.

The Commission should decide within 30 days after the interview or after the expiration of time allowed for sending documents.

An appeal against the decision can be lodged before the competent Civil Court, within 30 days from notification. The appeal has automatic suspensive effect and follows the same rules as in the [Regular Procedure: Appeal](#).⁶⁸⁷

The person who has lost refugee status or subsidiary protection may be granted a residence permit on other grounds, according to the TUI. The CNDA can approve an international protection status different from the status ceased or, if it considers that the foreigner can not be expelled nor refouled, it can transmit the documents to the *Questura* for the issuance of a residence permit of special

⁶⁸¹ Article 15(1) Qualification Decree.

⁶⁸² Articles 9(2-ter) and 15(2-ter) Qualification Decree, inserted by Article 8 Decree Law 113/2018 and L 132/2018.

⁶⁸³ Articles 9(2) and 15(2) Qualification Decree.

⁶⁸⁴ Articles 9(2-bis) and 15(2-bis) Qualification Decree.

⁶⁸⁵ Article 5 Procedure Decree; Article 13 PD 21/2015.

⁶⁸⁶ Article 9(1) Qualification Decree.

⁶⁸⁷ Article 35-bis(3) Procedure Decree.

protection.⁶⁸⁸ If the permit of stay for refugee status or subsidiary protection expires in the course of proceedings before the CNDA, it is renewed until the Commission's decision.⁶⁸⁹

6. Withdrawal of protection status

Indicators: Withdrawal

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the withdrawal procedure? Yes No
2. Does the law provide for an appeal against the withdrawal decision? Yes No
3. Do beneficiaries have access to free legal assistance at first instance in practice? Yes With difficulty No

Cases of withdrawal of international protection are provided by Article 13 of the Qualification Decree for **refugee status** and by Article 18 of the same Decree for **subsidiary protection**.

Both provisions state that protection status can be revoked when it is found that its recognition was based, exclusively, on facts presented incorrectly or on their omission, or on facts proved by false documentation.

Withdrawal is also imposed when, after the recognition, it is ascertained that the status should have been refused to the person concerned because:

- (a) He or she falls within the exclusion clauses.

Decree Law 113/2018, implemented by L 132/2018, has extended the list of crimes triggering exclusion and withdrawal of international protection, including violence or threat to a public official; serious personal injury; female genital mutilation; serious personal injury to a public official during sporting events; theft if the person wears weapons or narcotics, without using them; home theft.⁶⁹⁰

- (b) There are reasonable grounds for regarding him or her as a danger to the security of Italy or, having been convicted by a final judgment of a particularly serious crime, he or she constitutes a danger for the public order and public security.

The withdrawal of a protection status,⁶⁹¹ and the appeals against it,⁶⁹² are subject to the same procedure foreseen for **Cessation** decisions.

A total 260 protection statuses were withdrawn in 2017 and 180 in 2018.⁶⁹³

⁶⁸⁸ Article 33(3) Procedure Decree, referring to the amended Article 32(3).

⁶⁸⁹ Article 33 Procedure Decree; Article 14 PD 21/2015.

⁶⁹⁰ Articles 12(1)(c) and 16(d-bis) Qualification Decree, as amended by Article 8 Decree Law 113/2018 and L 132/2018.

⁶⁹¹ Article 33 Procedure Decree; Article 14 PD 21/2015.

⁶⁹² Article 19(2) LD 150/2011.

⁶⁹³ Eurostat. The numbers cited do not include withdrawals of humanitarian protection statuses.

B. Family reunification

1. Criteria and conditions

Indicators: Family Reunification	
1. Is there a waiting period before a beneficiary can apply for family reunification?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
❖ If yes, what is the waiting period?	
2. Does the law set a maximum time limit for submitting a family reunification application?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
❖ If yes, what is the time limit?	
3. Does the law set a minimum income requirement?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Since the entry into force of LD 18/2014, the family reunification procedure governed by Article 29bis TUI, previously issued only for refugees, is applied to both **refugees** and beneficiaries of **subsidiary protection**.

Beneficiaries can apply as soon as they obtain the electronic **Residence Permit** – that means several months in some regions – and there is no maximum time limit for applying for family reunification.

Contrary to what is provided for other third-country nationals,⁶⁹⁴ beneficiaries of international protection do not need to demonstrate the availability of adequate accommodation and a minimum income. They are also exempted from subscribing a health insurance for parents aged 65 and over.

Beneficiaries may apply for reunification with:⁶⁹⁵

- (a) Spouses aged 18 or over, that are not legally separated;
- (b) Minor children, including unmarried children of the spouse or born out of wedlock, provided that the other parent has given his or her consent;
- (c) Adult dependent children, if on the basis of objective reasons, they are not able to provide for their health or essential needs due to health condition or complete disability;
- (d) Dependent parents, if they have no other children in the country of origin, or parents over the age of 60 if other children are unable to support them for serious health reasons.

Where a beneficiary cannot provide official documentary evidence of the family relationship, the necessary documents are issued by the Italian diplomatic or consular representations in his or her country of origin, which makes the necessary checks at the expense of the person concerned. The family relationship can also be proved by other means, including the DNA test, and through UNHCR involvement. The application cannot be rejected solely for lack of documentation.

2. Status and rights of family members

According to the law,⁶⁹⁶ family members who do not have an individual right to international protection, have the same rights recognised to the sponsor. Once in Italy, they get a residence permit for family reasons,⁶⁹⁷ notwithstanding whether they were previously irregularly present.⁶⁹⁸ These provisions do not apply to family members who should be excluded from the international protection.⁶⁹⁹

⁶⁹⁴ Article 29-bis TUI, citing Article 29(3) TUI.

⁶⁹⁵ Article 29(1) TUI.

⁶⁹⁶ Article 22 Qualification Decree.

⁶⁹⁷ Article 30 TUI.

⁶⁹⁸ Article 30 TUI.

⁶⁹⁹ Occurring cases governed by Articles 10 and 16 Qualification Decree.

Minor children, present with the parent at the moment of the asylum application, also obtain the same status recognised to the parent.⁷⁰⁰

C. Movement and mobility

1. Freedom of movement

Refugees and beneficiaries of subsidiary protection, like asylum seekers, can freely circulate within the Italian territory, without prejudice to the limits established by Article 6(6) TUI, for the stay in municipalities or localities affecting the military defence of the State. They can also settle in any city if they can provide for themselves.

If accommodated in a government reception centre (see [Reception Conditions: Freedom of Movement](#)), they could be requested to return to the structure by a certain time, in the early evening. More generally, in order not to lose their accommodation place, they are not allowed to spend days out of the structures without authorisation.

In some areas, during 2016, asylum seekers and beneficiaries of international protection had to be moved due to the discontent of the local population. In some cases, the protest of the inhabitants entirely prevented their reception as it happened in Gorino, Ferrara, **Emilia-Romagna** where, on 24 October 2016, 20 asylum seekers, including 12 women and 8 children, were blocked on arrival, obliging the Prefecture to find an emergency accommodation in a nearby town.

Once obtained a place in a SPRAR project, beneficiaries have to accept it even if it implies to be moved to a different city. If they refuse the transfer, they have to leave the reception system definitively.

2. Travel documents

Travel documents for beneficiaries of international protection are governed by Article 24 of the Qualification Decree.

For **refugees**, the provision refers to the 1951 Refugee Convention and states that travel documents (*documenti di viaggio*) issued for refugees are valid for 5 years, renewable. They could be refused for serious reasons related to public order and national security. These are usually automatically given to refugees.

Beneficiaries of subsidiary protection can get a “travel permit” (*titolo di viaggio*), as opposed to a travel document (*document di viaggio*), explaining in a note to the *Questura* the reasons why they cannot ask or obtain a passport from their country’s embassy. They can get a travel document if they have no representative authorities of their country in Italy.

Therefore, they can invoke reasons linked to their status and to their asylum stories. However, the Council of State has clarified in a case on travel permits for **beneficiaries of humanitarian protection** that the reasons to be adduced are not implicit in the reasons why the protection has been recognised and that it is not enough to generally declare that, because of the problems faced in the country of origin, it is impossible to contact the diplomatic authorities of that country in Italy.⁷⁰¹

Beneficiaries can also invoke reasons linked to the procedures applied by their embassies or to the lack of documentation requested, such as original identity cards or birth certificates. The *Questura* verifies whether the person in fact is not in possession of these documents, looking at the documents he or she

⁷⁰⁰ Article 6(2) Procedure Decree; Article 31 TUI.

⁷⁰¹ Council of State, Section III, Decision No 451, 4 February 2016, available at: <http://bit.ly/2k5xcFS>.

provided during the asylum procedure. In some cases, immigration offices contact the embassies asking confirmation of the reported procedure.

The applicant assumes responsibility, under criminal law, for his or her statements. Evidence, such as a written note from the embassy refusing a passport, is not required but helpful if provided.

The Questura can reject the application if the reasons adduced are deemed unfounded or not confirmed by embassies. According to the law, rejection can also be decided in case of doubts on the person's identity, but administrative case law has affirmed that it is contradictory to deny, on this basis, the travel document to someone who has obtained a residence permit on international protection grounds.⁷⁰²

In case of rejection, the beneficiary concerned can appeal to the Administrative Court.

Acting against the widespread practice of some Questura not to respond to applications for travel documents submitted by holders of subsidiary protection, ASGI has lodged an appeal against the administrative silence of the Questura of Turin, **Piedmont**. The case concerned a Senegalese holder of humanitarian protection but the rules applied and referred to by the Administrative Court of Piedmont which upheld the appeal are the same as for subsidiary protection holders.⁷⁰³ The Court accepted the appeal and ordered the Questura to adopt a reasoned decision on the request within 30 days.⁷⁰⁴

Italian law does not prohibit beneficiaries of **subsidiary protection** from using the Italian travel permit to go back to their country of origin.

D. Housing

Indicators: Housing

- | | |
|--|---------------|
| 1. For how long are beneficiaries entitled to stay in SIPROIMI? | 6 months |
| 2. Number of beneficiaries staying in reception centres as of 31 December 2018 | Not available |

In Italy, beneficiaries of international protection face a severe lack of protection concerning accommodation. The reform of the reception system by Decree Law 113/2018, implemented by L 132/2018, provides a clear distinction between asylum seekers, accommodated of first reception centres and CAS, and beneficiaries of international protection, who have access to second-line reception.

1. Stay in first reception centres and CAS

Asylum seekers who are granted international protection can later access second-line reception, discussed below. However, there are no longer provisions dealing with the transition from first reception for asylum seekers to second-line reception for beneficiaries. As a consequence, since the coming into force of Decree Law 113/2018 on 5 October 2018, it has become even more difficult than before to obtain from the authorisation the Prefecture to stay in CAS or first reception centres after a protection status has been granted.

A protection status does not allow the holder to remain in first reception facilities or CAS. This creates a protection gap in practice, given the scarcity of places in the SIPROIMI. Already before the reform, on the basis of a strictly literal interpretation of this Decree some public administration offices considered that material conditions may immediately cease after the status recognition.

⁷⁰² Administrative Court of Lazio, Decision 11465/2015, 30 September 2015, available at: <http://bit.ly/2kgkOFB>.

⁷⁰³ Article 24(2) Qualification Decree.

⁷⁰⁴ Administrative Court of Piedmont, Decision 34/2018, 8 January 2018.

Although depending on the discretionary decisions of the responsible Prefectures and on bureaucratic delays, beneficiaries of international protection, after obtaining protection status, could be allowed to stay in the reception centre a few months, a few days, or even just one day after the notification. Examples of this divergent practice had been reported across different regions:

Marche: The Prefecture of Macerata informed CAS operators on 19 December 2017 of its decision not to extend accommodation to beneficiaries of international protection until they find a place in SPRAR. Reception therefore stops as soon as beneficiaries obtain their residence permit. In Ancona, the Prefecture gave instructions to CAS operators on 28 September 2016 to immediately communicate the names of accommodated persons who have been granted protection, in order to place them out of the centre.

Lombardy: A similar situation to Macerata occurred in Lecco during 2017. In Milan, on the other hand, the Prefecture allows beneficiaries to stay in the centres for 5 days after notification of a positive decision on their asylum application.

Veneto: As of 25 of January 2016, the Prefecture of Padova has instructed CAS operators to allow persons obtaining international or humanitarian protection to remain in the reception centre only for the next 24 hours after the notification of the decision. It has been reported that across the entire Veneto region, the cessation of reception measures in CAS is imposed immediately after the recognition of one of the forms of protection.

Campania: CAS in Salerno allow people to wait for the receipt of the electronic residence permit before requesting them to leave the centre.

The situation worsened after the coming into force of the Decree Law 113/2018 as even those Prefectures – such as the one of Trieste – which allowed accommodation for a long period after the status notification - informed the organizations involved in managing accommodation centres that beneficiaries will be now allowed to stay in reception centers only until obtaining the electronic residence permit.

Also, it is not clear on which legal basis the withdrawal of accommodation for beneficiaries will be decided, as Article 23 of the Reception Decree now relates only to asylum seekers.

These situations lead beneficiaries of international protection to face risks of destitution and homelessness. In Bari, **Apulia**, in October 2018, 26 Somali refugees who have been living since 2009 in an occupied building in the heart of the city – “Ferrhotel” – without water or electricity, have been evicted by the police.⁷⁰⁵ Also in Rome, **Lazio**, as of 13 November 2018, the police evicted the Baobab camp,⁷⁰⁶ born in the so called Maslax square near Tiburtina station after the last 2017 eviction.⁷⁰⁷ During the eviction, tents in which some beneficiaries of international protection excluded from the reception system were living, were also destroyed.

⁷⁰⁵ Repubblica, ‘Bari, la Prefettura sgombera il Ferrhotel, era abitato da 26 migranti somali’, 11 October 2018, available in Italian at: <https://bit.ly/2F661po>. The situation before the eviction was described in MSF, *Fuori campo*, February 2018, 30.

⁷⁰⁶ Internazionale, ‘L’ultimo sgombero del Baobab e la crisi di Roma’, 14 November 2018, available in Italian at: <https://bit.ly/2CkOnO6>.

⁷⁰⁷ Internazionale, ‘A Roma i rifugiati eritrei finiscono per strada’, 21 August 2017, available in Italian at: <http://bit.ly/2ENamNA>. About 800 refugees, mainly Eritreans and Ethiopians, evicted in the early hours of 19 August 2017 by the police without warning from a building occupied in Rome since 2013, after the tragic shipwreck off Lampedusa on 3 October 2013.

2. Accommodation in SIPROIMI

Second-line reception is provided through the System for the Protection of Refugees and Unaccompanied Minors (*Sistema di protezione per titolari di protezione internazionale e minori stranieri non accompagnati*, SIPROIMI), the former SPRAR established by L 189/2002. SIPROIMI is a publicly funded network of local authorities and NGOs which accommodates unaccompanied children and beneficiaries of international protection.

It is formed by small reception structures where assistance and integration services are provided. In contrast to the large-scale buildings provided in CARA, CDA, CPSA and CAS, SIPROIMI comprised of over 875 smaller-scale decentralised projects as of January 2019.⁷⁰⁸ The projects funded a total of 35,650 accommodation places.⁷⁰⁹ Of those, 155 reception projects with 3,730 financed places are dedicated to unaccompanied children, while 49 reception projects with 704 financed places are destined to persons with mental disorders and disabilities.

On 10 August 2016, based on a provision now repealed by the 2018 reform,⁷¹⁰ the Ministry of Interior issued a Decree to facilitate the accession of municipalities to the SPRAR system, making it possible at any time to join without any ultimate deadline. Later, on 11 October 2016, the Ministry issued a Circular concerning a plan to improve the accommodation system in order to obtain a gradual and sustainable distribution of asylum seekers and refugees across the country. The plan, based on an agreement signed between the Ministry of the Interior and the National Association of Italian Municipalities (*Anci*), envisaged the phasing out of the CAS, with a view to the consolidation of a uniform reception system obtained through an expansion of the SPRAR system. It provided for the implementation of the so-called “safeguard clause” (*Clausola di salvaguardia*), which allows the municipalities that join the SPRAR network with a sufficient number of places according to the agreed allocation share (equal to about 2.5 places per thousand inhabitants, with variations for metropolitan areas) to be exempted from the activation of other forms of reception, such as temporary centres, and can proceed with the gradual closure of those residing on their territory.

Subsequently, Decree Law 193/2016, implemented by L 225/2016, provided financial incentives for municipalities involved in the reception system, allocating 500 € to each municipality for each asylum seeker hosted in its territory, not distinguishing between accommodation in SPRAR and CAS or governmental centres.⁷¹¹ These measures probably represented a strong incentive to join the network if between October 2016 and March 2018 the participating municipalities increased by more than 700 units.

Perhaps not coincidentally, with the arrival of the new government that in June 2018, the expansion of the SPRAR network came to a standstill as the ranking of successful entities, scheduled for July 2018, has not yet been published. At the moment, more than 100 municipalities await an answer to their request to enter the SIPROIMI network or a response to their expansion request, for a total of around 4,000 places.⁷¹²

Decree Law 113/2018, implemented by L 132/2018, has modified two of the most important aspects of the (former) SPRAR financing mechanism, The new provision repeals references to the timing of the financing, which previously had to take place annually, and to the share of state funding. The law now only provides that the Minister of Interior provides by decree for the funding of projects presented by

⁷⁰⁸ SPRAR, *I numeri dello Sprar*, available at: <http://www.sprar.it/i-numeri-dello-sprar>.

⁷⁰⁹ *Ibid.*

⁷¹⁰ Article 14(2) Reception Decree, repealed by Article 12 Decree Law 113/2018 and L 132/2018.

⁷¹¹ Article 12 Decree Law 193/2013, implemented by L 225/2016.

⁷¹² For more detailed information on the developments of the Sprar system, see Monica Giovannetti, ‘La frontiera mobile dell'accoglienza per richiedenti asilo e rifugiati in Italia’, *Diritto Immigrazione e Cittadinanza*, 1/2019, available in Italian at: <https://bit.ly/2CkYKBq>.

local authorities.⁷¹³ Once more, against the backdrop of another reform of the reception system, ASGI claims that the solution should have been approached from the mainstreaming of reception into the obligations of municipalities in the context of social services, in line with the Italian constitutional settlement.⁷¹⁴

The Ministry of Interior has clarified in a Circular of 27 December 2018 that beneficiaries of international protection can stay in SIPROIMI for 6 months of the grant of protection.⁷¹⁵

3. Access to public housing

Refugees and beneficiaries of subsidiary protection have a right to access public housing units under the same conditions as nationals.⁷¹⁶ The plan focused on accompaniment towards housing solutions for both those who leave CAS and those who leave SIPROIMI centres, and highlights the importance of starting measures for residence in time in order for beneficiaries to access public housing within the limits of availability in each region.

In some regions, access to public housing is subject to a minimum residence requirement on the national territory. In **Friuli-Venezia Giulia**, for example, access has been limited to those who can prove 5 years of uninterrupted residence in the region. This can represent a further obstacle for beneficiaries of international protection as **Civil Registration** at the registry office can only be obtained after the recognition of a protection status.

E. Employment and education

1. Access to the labour market

The residence permit issued to refugees and to subsidiary protection beneficiaries allows access to work and even to public employment, with the only permissible limit of positions involving the exercise of public authority or responsibility for safeguarding the general interests of the State.⁷¹⁷ However, the Navigation Code states that enrollment of cadets, students and pupils is reserved only for EU or Italian citizens, a rule that appears to be discriminatory.⁷¹⁸

Beneficiaries are entitled to the same treatment as Italian citizens in matters of employment, self-employment, subscription to professional bodies, vocational training, including refresher courses, for training in the workplace and for services rendered by employment centres.

With an amendment introduced to the budget law in December 2017, tax incentives are provided for social cooperatives which will recruit beneficiaries of international protection with a permanent contract in 2018.⁷¹⁹

⁷¹³ Article 1-sexies(2) Decree Law 416/1989, implemented by L 39/1990, as amended by Article 12 Decree Law 113/2018 and L 132/2018.

⁷¹⁴ According to Article 118 of the Italian Constitution, administrative functions are attributed to the municipalities. See ASGI, *Manifeste illegittimità costituzionali delle nuove norme concernenti permessi di soggiorno per esigenze umanitarie, protezione internazionale, immigrazione e cittadinanza previste dal decreto-legge 4 ottobre 2018, n. 113*, 15 October 2018, available in Italian at: <https://bit.ly/2W4am3n>. For a more detailed analysis, see Gianfranco Schiavone, 'Le Prospettive Di Evoluzione Del Sistema Unico Di Asilo Nell'unione Europea E Il Sistema Di Accoglienza Italiano. Riflessioni Sui Possibili Scenari' in Fondazione Migrantes, *Il diritto d'asilo, minori rifugiati e vulnerabili senza voce, Report 2017*, February 2017.

⁷¹⁵ Ministry of Interior Circular No 22146 of 27 December 2018.

⁷¹⁶ Article 29 Qualification Decree; Article 40(6) TUI.

⁷¹⁷ Article 25 Qualification Decree.

⁷¹⁸ Article 119 Navigation Code.

⁷¹⁹ Royal Decree 327 of 30 March 1942. See Redattore Sociale, 'Rifugiati equiparati a categorie protette: incentivi a cooperative che li assumono', 19 January 2018, available in Italian at: <http://bit.ly/2FSIZ5o>.

According to the law, the Prefects, in agreement with the Municipalities, promote any initiative for the voluntary involvement of beneficiaries of international protection in activities of social utility in favour of local communities. The activities are unpaid and financed by EU funds.⁷²⁰

2. Access to education

According to the law, minors present in Italy have the right to education regardless of their legal status. They are subject to compulsory education and they are enrolled in Italian schools under the conditions provided for Italian minors. The enrollment can be requested at any time of the school year.⁷²¹

The law distinguishes between minors under the age of 16 and over 16.

- Minors under 16 are subject to compulsory education and they are enrolled in a grade corresponding to their actual age. Taking into account the curriculum followed by the pupil in the country of origin and his or her skills, the Teachers' Board can decide otherwise, providing the assignment to the class immediately below or above the one corresponding to the minor's age.⁷²²
- Minors over 16 and no longer subject to compulsory education are enrolled if they prove proper self-preparation on the entire prescribed programme for the class they wish to follow.⁷²³

Current legislation does not allow the establishment of special classes for foreign students and the Circular of the Ministry of Education of 8 January 2010 maintains that the number of non-nationals in school classes should be limited to 30%.

Schools are not obliged to provide specific language support for non-national students but, according to the law, the Teachers' Board defines, in relation to the level of competence of foreign students, the necessary adaptation of curricula and can adopt specific individualised or group interventions to facilitate learning of the Italian language.

As underlined by the Ministry of Education in guidelines issued on February 2014, special attention should be paid to Italian language labs. The Ministry observes that an effective intervention should provide about 8-10 hours per week dedicated to Italian language labs (about 2 hours per day) for a duration of 3-4 months.⁷²⁴

The Qualification Decree also specifies that minors holding refugee status or subsidiary protection status have access to education of all levels, under the same procedures provided for Italian citizens,⁷²⁵ while adult beneficiaries have the right of access to education under the conditions provided for the other third-country nationals.

International protection beneficiaries can require the recognition of the equivalence of the education qualifications.

F. Social welfare

Article 27 of the Qualification Decree specifies that beneficiaries of international protection are entitled to equal treatment with Italian citizens in the area of health care and social security.⁷²⁶

⁷²⁰ Article 22-bis Reception Decree, as amended by Article 8 Decree Law 13/2017 and L 46/2017.

⁷²¹ Article 38 TUI; Article 45 PD 394/1999.

⁷²² Article 45(2) PD 394/1999.

⁷²³ Article 192(3) LD 297/1994.

⁷²⁴ For more information, see ASGI, *Minori stranieri e diritto all'istruzione e alla formazione professionale. Sintesi della normativa vigente e delle indicazioni ministeriali*, ASGI, March 2014, available at <http://bit.ly/2kHi5Sf>.

⁷²⁵ Article 26 Qualification Decree.

⁷²⁶ Article 27 Qualification Decree.

Social security contributions in Italy are mainly provided by the National Institute of Social Security (*Istituto Nazionale di Previdenza Sociale*, INPS), the National Institute for Insurance against Accidents at Work (*Istituto Nazionale Assicurazione Infortuni sul Lavoro*, INAIL), municipalities and regions.

The provision of social welfare is not conditioned on residence in a specific region but in some cases is subject to a minimum residence requirement on the national territory. This is namely the case for income support (*Reddito di Cittadinanza*), to be paid from 1 April 2019, which is subject to 10 years of residence on the national territory out of which at least 2 years' uninterrupted residence.⁷²⁷

This can entail serious obstacles for beneficiaries of international protection in practice, more so after the entry into force of Decree Law 113/2018, according to which the registration at the registry office can only be obtained after the grant of a protection status (see [Civil Registration](#)).

G. Health care

Article 27 of the Qualification Decree specifies that beneficiaries of international protection are entitled to equal treatment with Italian citizens in the area of health care and social security.

Like asylum seekers, beneficiaries of international protection have to register with the national health service.⁷²⁸ They have equal treatment and full equality of rights and duties as Italian nationals concerning the obligation to pay contributions and the assistance provided in Italy by the national health service.

Registration is valid for the duration of the residence permit and it does not expire in the renewal phase of the residence permit.⁷²⁹ As highlighted by MSF in March 2016, problems related to the lack of accommodation and to the lack of a domicile for beneficiaries of international protection also affect the exercise of their right to medical assistance, as the renewal of the health card depends on the renewal of the permit of stay and many health services (such as the choice of a general doctor) are connected with the place of domicile given for the renewal of the residence permit.⁷³⁰

1. Contribution to health spending

Similar to asylum seekers after their right to work is provided, in some regions – such as **Lazio** and **Tuscany**, beneficiaries of international protection are no longer exempted from contribution to health spending (*partecipazione alla spesa sanitaria*), also known as “sanitary ticket”, because they are considered inactive and not unemployed. In other regions such as **Piedmont** and **Lombardy**,⁷³¹ the exemption is extended until asylum seekers do actually find a job. However, only a few regions such as **Friuli-Venezia Giulia** and **Apulia** apply the same principle to beneficiaries.

On 18 April 2016, ASGI and other NGOs sent a letter to the Ministry of Health, asking it to give effect to Article 17(4) of the recast Reception Conditions Directive, according to which asylum seekers may be required to contribute to the costs for health care only if they have sufficient resources, for example if they have been working for a reasonable period of time. ASGI also asked the Ministry to consider that, following the adoption of the LD 150/2015 for granting the right to exemption from participation in health

⁷²⁷ Article 2(1)(a)(2) Decree Law 4/2019.

⁷²⁸ Article 34 TUI; Article 16 PD 21/2015; Article 21 Reception Decree.

⁷²⁹ Article 42 PD 394/1999.

⁷³⁰ MSF, *Fuori campo: Richiedenti asilo e rifugiati in Italia: insediamenti informali e marginalità sociale*, March 2016, available in Italian at: <http://bit.ly/1S5IHGh>.

⁷³¹ See Note of Piedmont Region, Health Office, 4 March 2016.

spending, distinctions can no longer be drawn between unemployed and inactive persons.⁷³² On 9 May 2016, the Ministry of Health replied to have involved the Ministry of Economy and the Ministry of Labour and Social Policy in order to achieve a uniform interpretation of the aforementioned rules.

While waiting for the Government to take an official position on the matter, ASGI lawyers have lodged an appeal against the refusal to exempt an Iraqi female refugee from contribution to health spending on the ground that she was was inactive and not unemployed, since she was entitled to access the labour market. The Civil Court of Rome upheld the appeal and stated that, after the entry into force of LD 150/2015, the distinction between unemployed and inactive persons is no longer valid. Therefore even beneficiaries of international protection are entitled to the aforementioned exemption.⁷³³

In 2018, the Civil Court of Rome confirmed the previous decision and upheld the appeal filed by a Sudanese citizen with subsidiary protection status, reaffirming the right to the exemption from the “sanitary ticket” provided to the benefit of people without employment and income.⁷³⁴

Unfortunately, the law is not equally applied across the national territory. In 2018, ASGI filed numerous appeals in **Lombardy** against the denial of the right to exemption for inactive beneficiaries of international protection. In a ruling of 22 October 2018, the Court of Appeal of Milan upheld the appeal stating that under the law it is not possible to make any distinction between those who have already had a job and who lost it (unemployed) and those who have never had it such a, for example, asylum seekers and refugees (inactive people).⁷³⁵ The Civil Court of Brescia ruled on 31 July 2018 in a similar way.⁷³⁶

2. Specialised treatment

To implement Article 27(1-bis) of the Qualification Decree, the Ministry of Health published on 22 March 2017 the Guidelines for the planning of assistance and rehabilitation as well as for treatment of psychological disorders of refugees and beneficiaries of international protection victims of torture, rape or other serious forms of psychological, physical or sexual violence.⁷³⁷ The Guidelines, adopted by the Ministry of Health by a Decree issued on 3 April 2017, specify that they also apply to asylum seekers.

The Guidelines highlight the importance of early detection of such vulnerable cases in order to provide probative support for the asylum application, to direct the person to appropriate reception facilities and to a path of protection even after the grant of protection, but also to provide for rehabilitation itself. According to the Guidelines, the recognition of a traumatic experience is the first step for rehabilitation. The work of multidisciplinary teams and the synergy of local health services with all those who in various ways come into contact with protection holders or asylum seekers – reception operators, educators, lawyers – is deemed decisive in these cases.

According to the Guidelines, the medical certification, to be understood not as a merely technical act but as the result of a network collaboration, must follow the standards set out by the Istanbul Protocol and maintain maximum impartiality, without expressing any judgment on the veracity of the individual’s narrative but only being limited to an assessment of the consistency of the person’s statements with the verified outcomes. The Guidelines also propose templates of health certificates to be adopted in cases of torture, trauma, psychiatric or psychological disorders and propose the use of the final formulas

⁷³² Article 19 LD 150/2015 states that “unemployed” are workers who declare, in electronic form, their immediate availability to exercise work activities.

⁷³³ Civil Court of Rome, Decision 33627/16, 17 February 2017, available at: <http://bit.ly/2nIv0HF>.

⁷³⁴ Civil Court of Rome, Decision 5034/2018, 13 June 2018.

⁷³⁵ Court of Appeal of Milan, Decision 1626/2018, 22 October 2018, available at: <https://bit.ly/2uTd5kx>.

⁷³⁶ Civil Court of Brescia, Order 5185/2018, 31 July 2018, available in Italian at: <https://bit.ly/2GdgbVJ>.

⁷³⁷ Ministry of Health, *Linee guida per la programmazione degli interventi di assistenza e riabilitazione nonché per il trattamento dei disturbi psichici dei titolari dello status di rifugiato e dello status di protezione sussidiaria che hanno subito torture, stupri o altre forme gravi di violenza psicologica, fisica o sessuale*, 22 March 2017, available in Italian at: <http://bit.ly/2EalNAY>.

suggested by the Istanbul Protocol; evaluation of non-compatibility, compatibility, high compatibility, typicality, specificity.

The organisation of a network collaboration as required by the Guidelines has not yet started in all the health care institutions across the national territory. At the moment, the guidelines seem to be applied in Rome, Parma, Trieste and Brescia.

ANNEX I – Transposition of the CEAS in national legislation

Directives and other CEAS measures transposed into national legislation

Directive	Deadline for transposition	Date of transposition	Official title of corresponding act	Web Link
Directive 2011/95/EU Recast Qualification Directive	21 December 2013	21 February 2014	Decreto Legislativo 21 febbraio 2014, n. 18 “Attuazione della direttiva 2011/95/UE recante norme sull'attribuzione, a cittadini di paesi terzi o apolidi, della qualifica di beneficiario di protezione internazionale, su uno status uniforme per i rifugiati o per le persone aventi titolo a beneficiare della protezione sussidiaria, nonché sul contenuto della protezione riconosciuta”	http://bit.ly/1LEIVBj (IT)
Directive 2013/32/EU Recast Asylum Procedures Directive	20 July 2015 Article 31(3)-(5) to be transposed by 20 July 2018	15 September 2015	Decreto legislativo 18 agosto 2015, n. 142 “Attuazione della direttiva 2013/33/UE recante norme relative all'accoglienza dei richiedenti protezione internazionale, nonché della direttiva 2013/32/UE, recante procedure comuni ai fini del riconoscimento e della revoca dello status di protezione internazionale”	http://bit.ly/1Mn6i1M (IT)
Directive 2013/33/EU Recast Reception Conditions Directive	20 July 2015	15 September 2015	Decreto legislativo 18 agosto 2015, n. 142 “Attuazione della direttiva 2013/33/UE recante norme relative all'accoglienza dei richiedenti protezione internazionale, nonché della direttiva 2013/32/UE, recante procedure comuni ai fini del riconoscimento e della revoca dello status di protezione internazionale”	http://bit.ly/1Mn6i1M (IT)
Regulation (EU) No 604/2013 Dublin III Regulation	Directly applicable 20 July 2013		N/A	