

Asylum Information Database

# National Country Report

*Italy*



## ACKNOWLEDGMENTS

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**The information in this report is up-to-date as of April 2014.**

## The AIDA project

The AIDA project is jointly coordinated by the European Council on Refugees and Exiles (ECRE), Forum Réfugiés-Cosi, Irish Refugee Council and the Hungarian Helsinki Committee. It aims to provide up-to date information on asylum practice in 14 EU Member States (AT, BE, BG, DE, FR, GR, HU, IE, IT, MT, NL, PL, SE, UK) which is easily accessible to the media, researchers, advocates, legal practitioners and the general public through the dedicated website [www.asylumineurope.org](http://www.asylumineurope.org). Furthermore the project 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.



This report is part of the AIDA project (Asylum Information Database) funded by the European Programme for Integration and Migration (EPIM). Additional research for the second update of this report was developed with financial support from the Fundamental Rights and Citizenship Programme of the European Union ([FRAME Project](#)). The contents of the report are the sole responsibility of the Hungarian Helsinki Committee and ECRE and can in no way be taken to reflect the views of the European Commission.



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## Statistics

**Table 1: Applications and granting of protection status at first instance in 2013**

	Total applicants 2013	Refugee status	Subsidiary protection	Humanitarian Protection	Rejections (in-merit and admissibility)	Refugee rate	Subsidiary protection rate	Humanitarian Protection rate	Rejection rate
		B	C	D	E	B/(B+C+D+E)%	C/(B+C+D+E)%	D/(B+C+D+E)%	E/(B+C+D+E)%
<b>Total numbers</b>	27 930	3310	5550	7525	9060	12%	20%	27%	32%
<b>Breakdown by countries of origin of the total numbers</b>									
<b>Nigeria</b>	3 580	65	205	1425	1850	2%	6%	40%	52%
<b>Pakistan</b>	3 310	240	370	705	1345	9%	14%	27%	51%
<b>Somalia</b>	2 885	330	1210	15	45	21%	76%	1%	3%
<b>Eritrea</b>	2 215	940	420	60	95	62%	28%	4%	6%
<b>Afghanistan</b>	2 175	285	1170	185	140	16%	66%	10%	8%
<b>Mali</b>	1 870	10	1025	480	200	1%	60%	28%	12%
<b>The Gambia</b>	1 825	20	10	355	300	3%	1%	52%	44%
<b>Senegal</b>	1 060	40	30	275	490	5%	4%	33%	59%
<b>Egypt</b>	975	100	55	205	135	20%	11%	41%	27%
<b>Syria</b>	695	260	150	0	370	33%	19%	0%	47%
<b>Others<sup>1</sup></b>									
<b>Russia</b>	40	0	0	5	15	0%	0%	25%	75%
<b>Serbia</b>	165	0	10	130	150	0%	3%	45%	52%
<b>Kosovo</b>	105	5	10	50	45	5%	9%	45%	41%

Source: Eurostat, *Asylum and new asylum applicants by citizenship, age and sex Annual aggregated data (rounded) [migr\_asyappctza]* and *First instance decisions on applications by citizenship, age and sex Annual aggregated data (rounded) [migr\_asydcfsta]*, extracted on 23 May 2014

<sup>1</sup> Other main countries of origin of asylum seekers in the EU in 2013.

**Table 2: Gender/age breakdown of the total numbers of applicants in 2013**

	<b>Number</b>	<b>Percentage</b>
<b>Total number of applicants</b>	<b>27930</b>	
<b>Men</b>	24 005	86%
<b>Women</b>	3 925	14%
<b>Unaccompanied children</b>	805	2.9%

Source: Eurostat, *Asylum and new asylum applicants by citizenship, age and sex Annual aggregated data (rounded) [migr\_asyappctza]* and *First instance decisions on applications by citizenship, age and sex Annual aggregated data (rounded) [migr\_asydcfst]*, and *Asylum applicants considered to be unaccompanied minors by citizenship, age and sex Annual data (rounded) [migr\_asyunaa]*

## Overview of the legal framework and practice

### **Main legislative acts relevant to asylum procedures, reception conditions and detention**

Title in English	Original title	Abbreviation	Weblink
Law 722/1954 ratifying and giving execution to the 1951 Geneva Convention	Legge 24 luglio 1954, n. 722 ratifica ed esecuzione della Convenzione relativa allo status dei rifugiati firmata a Ginevra il 28 luglio 1951	L. 722/1954	<a href="http://www.asgi.it/public/parser_download/save/legge.24.luglio.1954.n.722.pdf">http://www.asgi.it/public/parser_download/save/legge.24.luglio.1954.n.722.pdf</a>
Legislative Decree n. 286/98 Consolidated Act on disposition concerning the Immigration regulations and stranger conditions norms" (modified by the Law 189/2002)	Decreto Legislativo 25 luglio 1998, n. 286  "Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero"	TU. 286/98	<a href="http://www.camera.it/parlam/leggi/deleghe/98286dl.htm">http://www.camera.it/parlam/leggi/deleghe/98286dl.htm</a>
Law n. 189/2002 concerning amendments on immigration and asylum	Legge 30 luglio 2002, n. 189  "Modifica alla normativa in materia di immigrazione e di asilo" o "Legge Bossi-Fini"	L. 189/2002	<a href="http://www.camera.it/parlam/leggi/02189l.htm">http://www.camera.it/parlam/leggi/02189l.htm</a>
Law 94/2009 norms on public security (so-called Security Package)	Legge 15 luglio 2009, n. 94  "Disposizioni in materia di sicurezza pubblica"  (Pacchetto Sicurezza)	L. 94/2009	<a href="http://www.parlamento.it/parlam/leggi/09094l.htm">http://www.parlamento.it/parlam/leggi/09094l.htm</a>
Legislative Decree n. 140/2005 on minimum standards for the reception of the asylum seekers in Member States	Decreto Legislativo 30 maggio 2005, n. 140  "Attuazione della direttiva 2003/9/CE che stabilisce norme minime relative all'accoglienza dei richiedenti asilo negli Stati membri"	Legislative Decree 140/05	<a href="http://www.camera.it/parlam/leggi/deleghe/05140dl.htm">http://www.camera.it/parlam/leggi/deleghe/05140dl.htm</a>
Legislative Decree n. 251/2007 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	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, nonche' norme minime sul contenuto della protezione riconosciuta."	Dlgs 251/07	<a href="http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2007:251">http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2007:251</a>
Legislative Decree n.25/2008 on minimum standards on procedures in Member States for granting and withdrawing refugee status.	Decreto Legislativo 28 gennaio 2008, n.25  "Attuazione della direttiva 2005/85/CE recante norme minime per le procedure	Dlgs 25/08	<a href="http://www.camera.it/parlam/leggi/deleghe/08025dl.htm">http://www.camera.it/parlam/leggi/deleghe/08025dl.htm</a>

	applicare negli Stati membri ai fini del riconoscimento e della revoca dello status di rifugiato"		
Legislative Decree n.159/2008 on "Amendments and integration of the legislative Decree of 28 January 2008, n. 25 on minimum standards on procedures in Member States for granting and withdrawing refugee status	Decreto Legislativo 3 ottobre 2008, n. 159 "Modifiche ed integrazioni al decreto legislativo 28 gennaio 2008, n. 25, recante attuazione della direttiva 2005/85/CE relativa alle norme minime per le procedure applicate negli Stati membri ai fini del riconoscimento e della revoca dello status di rifugiato"	Dlgs 159/08	<a href="http://www.camera.it/parlament/leggi/deleghe/08159dl.htm">http://www.camera.it/parlament/leggi/deleghe/08159dl.htm</a>
Decree-Law n. 89/2011 " Urgent dispositions for the full application of the Directive 2004/38/CE on the free movement of EU citizens and for the transposition of the Directive 2008/115/CE on the returning illegally staying third-country nationals, converted into Law 129 of 2 Augusts 2011.	Decreto-Legge 23 giugno 2011, n. 89 "Disposizioni urgenti per il completamento dell'attuazione della direttiva 2004/38/CE sulla libera circolazione dei cittadini comunitari e per il recepimento della direttiva 2008/115/CE sul rimpatrio dei cittadini di Paesi terzi irregolari	Decree law 89/2011	<a href="http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto-legge:2011:89">http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto-legge:2011:89</a>
Legislative Decree n. 18/2014 on "Implementation on Directive 2011/95/EU on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)"	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"	Dlgs 18/2014	<a href="http://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2014-03-07&amp;atto.codiceRedazionale=14G00028&amp;elenco30giorni=true">http://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2014-03-07&amp;atto.codiceRedazionale=14G00028&amp;elenco30giorni=true</a>

**Main implementing decrees and administrative guidelines and regulations relevant to asylum procedures, reception conditions and detention.**

Title in English	Original title	Abbreviation	Weblink
<p>Decree of the President of the Republic n. 394 of 31st August 1999 " Regulation on norms implementing the consolidated act on dispositions concerning the immigration regulations and stranger conditions norms", modified by the Presidential Decree n. 334 of 18 October 2004 on immigration</p>	<p>Decreto del Presidente della Repubblica 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" aggiornato con le modifiche apportate dal Decreto del Presidente della Repubblica 18 ottobre 2004, n. 334, in materia di immigrazione</p>	<p>D.P.R. 394/1999</p>	<p><a href="http://www.immigrazione.biz/legge.php?id=22">http://www.immigrazione.biz/legge.php?id=22</a></p>
<p>Decree of the President of the Republic n. 303 of 16th September 2004 "Regulation on the procedures for the recognition of refugee status</p>	<p>Decreto del Presidente della Repubblica del 16 settembre 2004, n.303 Regolamento relativo alle procedure per il riconoscimento dello status di rifugiato</p>	<p>D.P.R. 303/2004</p>	<p><a href="http://www.interno.gov.it/mininterno/site/it/sezioni/servizi/legislazione/immigrazione/legislazione_631.html">http://www.interno.gov.it/mininterno/site/it/sezioni/servizi/legislazione/immigrazione/legislazione_631.html</a></p>

## Overview of the main changes since the previous report update

The previous report update was published in December 2013.

- Italian legislation concerning asylum has been amended through the Legislative Decree n. 18/2014 “Implementation of Directive 2011/95/EU on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)”. This led to the adoption of some relevant changes. Firstly, more protective provisions for unaccompanied children have been adopted. Moreover, the residence permits issued to both refugees and beneficiaries of subsidiary protection have now the same duration, entailing an extension of the duration of the residence permit for subsidiary protection from 3 up to 5 years. In addition, beneficiaries of subsidiary protection benefit of the same rights recognised to refugees with regard, in particular, to family reunification.
- “*Mare Nostrum*” was launched by Italian authorities as a “military and humanitarian” operation in the Channel of Sicily immediately after the tragic shipwreck which occurred on 3<sup>rd</sup> October 2013 near the Lampedusa coast, in order to prevent the increasing number of deaths of migrants at sea. This operation, initiated officially on 18 October 2013, aims to strengthen surveillance and patrols on the high seas as well as to increase search and rescue activities. It provides for the deployment of personnel and equipment of the Italian Navy, Army, Air Force, Custom Police, Coast Guards and other institutional bodies operating in the field of mixed migration flows.<sup>2</sup> It is worth noting that since the beginning of the operation *Mare Nostrum*, 27,790 persons (out of which 3.034 children), most of them refugees, have been rescued in the part of the Mediterranean Sea covered by this initiative.<sup>3</sup>
- The national reception system (SPRAR) has been enlarged in order to respond to the increased flows of migrants arrived on national territory. The Ministry of Interior, through its decrees of July and September 2013, has foreseen an increase of the accommodation capacity of the SPRAR system to up to 16,000 places for the three-year period 2014-2016.<sup>4</sup> Following the mentioned decrees of July and September 2013, the Ministry of Interior announced that the capacity of the SPRAR System will be enhanced to up to 20,000 places during the next three years (2014-2016)<sup>5</sup>. At present, the number of reception places financed amounts to 13,020 within the SPRAR system<sup>6</sup>; while an additional 6.490 places will be made available during this three-year period<sup>7</sup>.

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<sup>2</sup> Summary of the operation on the Navy website available [here](#)

<sup>3</sup> CIR, ‘*Mare Nostrum*’, Pinotti: [about 2/3 of migrants have the requirements to claim asylum](#), 8 May 2014; see also [here](#).

<sup>4</sup> Ministry of Interior Decree n. 9/2013 of the 30 July 2013, and Decree of 17th September 2013 adopted by the Ministry of Interior (Department of civil liberties and Immigration).

<sup>5</sup> Ministry of Interior Decree n. 9/2013 of the 30 July 2013, and Decree of 17th September 2013 adopted by the Ministry of Interior (Department of civil liberties and Immigration).

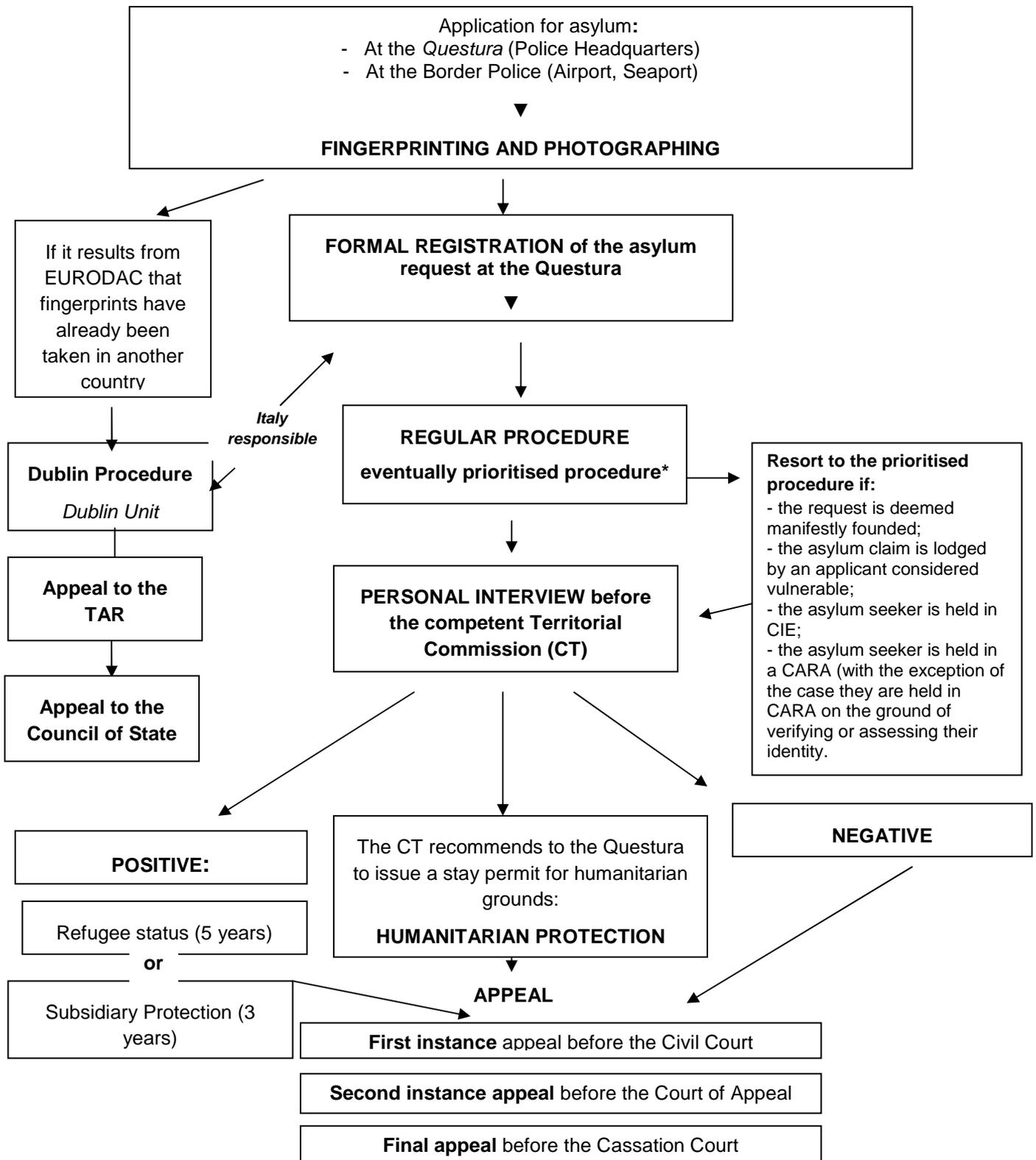
<sup>6</sup> See: Ministry of Interior, [Classification of the SPRAR places](#), 29 January 2014; ANCI, [SPRAR: the new triennium 2014-2016](#).

<sup>7</sup> Asilo in Europa, “[Lo SPRAR al centro](#)”. Intervista a Daniela Di Capua, direttrice del Servizio Centrale dello SPRAR, 4 March 2014 (The SPRAR in focus. Interview with Daniela Di Capua, Director of the Central Service of the SPRAR).

# Asylum Procedure

## A. General

### 1. Flow Chart



\* **Prioritised procedure:** in a number of circumstances prescribed by the law (art. 28 Legislative Decree 25/2008), asylum requests may be examined under the prioritised procedure which is a shorter procedure compared to the regular one.



#### 4. Short overview of the asylum procedure

The Italian asylum system foresees a single regular procedure, the same for the determination of both the refugee status and the subsidiary protection status.

According to the Italian legislation there is no formal timeframe to lodge an asylum request but asylum seekers should present it as soon as possible. The immigration law prescribes as a general rule, for migrants to present themselves within 8 days from their arrival in Italy.

The asylum claim can be lodged either at the border police office or within the territory at the provincial Police station (Questura) where fingerprinting and photographing are carried out. In case the asylum request is made at the border, police authorities invite the asylum seekers to present themselves at the Questura for the formal registration. Police authorities cannot examine the merit of the asylum application.

The police authorities of the Questura ask questions related to the Dublin III Regulation to the asylum seeker during the formal registration and then contact the Dublin Unit of the Ministry of the Interior which will then verify whether Italy is the State responsible for the examination of the asylum application. If Italy is responsible, the asylum applicant will be invited to go to the Questura to continue the regular procedure.

The police authorities send the registration form and the documents concerning the asylum application to the Territorial Commissions for international protection or Sub-commissions located throughout the national territory, the only authorities competent for the substantive asylum interview. The National Commission not only coordinates and gives guidance to the Territorial Commissions in carrying out their tasks, but also is responsible for the revocation and cessation of the international protection.

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

By law, the personal interview before the Territorial Commissions should be carried out within a maximum of 30 days from the date that the claim and related documents are received. The Commissions should take the decision within 3 working days after the interview. In practice the administrative procedure typically lasts for several months.

Within the Italian legislation there is no admissibility/ screening procedure or any border or accelerated procedure. In a number of circumstances prescribed by law, asylum applications may be examined under the 'prioritised procedure', meaning that the procedure is shorter. It applies when the request is deemed manifestly founded; when the asylum claim is lodged by an applicant considered vulnerable; or if the asylum seeker has committed crimes or if the person has been given an expulsion or rejection order at the border: these persons are held in CIE -*Centri di identificazione ed espulsione* (Identification and Expulsion Centres). Only in these cases, by law, the Territorial Commissions conduct the personal interview within 7 days from the reception of the documentation from the Questura, and take the decision within the following two days.

Asylum seekers can appeal within 30 days before the competent Civil Tribunal against a negative decision issued by the Territorial Commissions. Rejected asylum seekers in CIE and CARA (Accommodation Centres for Asylum Seekers), with some exceptions, have only 15 days to lodge an appeal. The appeal automatically stays the effect of the decision, with the exception of the following asylum seekers: those who were notified with a rejection or expulsion order before lodging an asylum request; those whose claims were considered "manifestly unfounded"; those who were considered inadmissible; those placed in CIE or in CARA after having been stopped because they avoided or tried to avoid border controls (or immediately after); or those who left the CARA without justification. However, even these individuals can request a stay of the decision from the competent judge.

If the appeal is dismissed it can be appealed to the Court of Appeal within 10 days of the notification of the decision. A final appeal before the highest appellate court (Cassation Court) can be lodged within

30 days of the notification of the dismissal of the previous appeal.

As far as first instance is concerned, the competent body is the Civil Tribunal, which does not exclusively deals with asylum appeals.

## B. Procedures

### 1. Registration of the Asylum Application

#### Indicators:

- Are specific time limits laid down in law for asylum seekers to lodge their application?  
 Yes       No
- 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

Under the law<sup>8</sup>, the asylum claim can be lodged either at the Border Police upon arrival or at the Immigration Office of the Police (hereinafter Questura) if the applicant is already in the territory.

By law, although there is no specific time limit laid down for asylum seekers to lodge their application, the asylum request should be submitted by the applicant as soon as possible unless there is a valid reason excusing the delay. Nevertheless, a delay in filing the request does not affect the asylum process since it cannot be a reason for denying protection.

The procedure for the initial registration of the asylum application, whether at the border or at the Questura, is the same. 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*.

At the Questura, in order to apply for asylum, the person is required to have previously indicated a residence - an address which will be then quoted on the permit of stay. In Rome it is sufficient to show a domicile released by some NGOs, while in other cities Questura requires a residence<sup>9</sup>. By contrast, at the Border Police Office, asylum seekers are not required to provide such residence, that will be indicated after their entry into the Italian territory, and receive a letter (called "*verbale di invito*") inviting them to go to the competent Questura to continue the asylum procedure.

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 destination on the basis of a specific agreement with the competent Prefecture. However, this support is not always guaranteed.

This preliminary phase is followed by a second step, consisting in the formal registration of the asylum request, which is carried out exclusively at the Questura within the national territory. The formal registration of the application (the so-called *verbalizzazione*) is accomplished through a form<sup>10</sup> (*Modello C/3*, commonly called "*verbale*"). It is filled in with all the information regarding the applicant's personal history, the journey they have undertaken to reach Italy and the reasons they fled from their country of origin. This form is signed by the asylum seeker who receives together with a copy of the *verbale*,

<sup>8</sup> Article 6 of the Legislative Decree 25/2008.

<sup>9</sup> Although in big cities asylum seekers are helped in obtaining a residence by several NGOs, in order to receive directly their temporary permit of stay at these addresses, UNHCR reported difficulties encountered in certain Provincial Police HQs (Questura), due to the request of a proof of residence for the registration of the asylum application. See UNHCR, [UNHCR Recommendations on important aspects of refugee protection in Italy](#), July 2013, at p. 6.

<sup>10</sup> "Modello C/3€ -"Modello per il riconoscimento dello status di rifugiato ai sensi della Convenzione di Ginevra" (Form for the recognition of the refugee status in the meaning of the Geneva Convention).

copies of all other documents submitted to the police authorities. In practice, before filling in the *verbale* the applicant may provide a written statement concerning their personal story, which can be written in their mother tongue.

According to the Procedure Decree<sup>11</sup>, when a person claims asylum, police authorities inform the applicant about the asylum procedure and their rights and obligations, times and any means (i.e. relevant documentation) at their disposal to support the application. In this regard police authorities should hand over an information leaflet. In addition, the Reception Decree<sup>12</sup> provides that police authorities, within maximum 15 days from the presentation of the asylum request, should provide information related to the reception conditions of the asylum seekers and accordingly hand over information leaflets.

The leaflets, both those illustrating the different phases of the asylum procedure and those concerning the reception conditions, are drafted in 10 languages. However, the practice of distribution of these *brochures* by police authorities is actually quite rare. Moreover, although the Italian legislation does not explicitly state that the information must be provided also orally, in practice it happens but not in a systematic manner and at the discretion of police authorities. Therefore, adequate information is not constantly and regularly ensured mainly due to the inadequate number of police staff dealing with the number of asylum requests as well as to the shortage of professional interpreters and linguistic mediators.

With the filling in of the *verbale*, the formal stage of applying for international protection is concluded. The "*fotosegnalamento*" and the formal registration 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 requests and to the shortage of police staff. By law, there is no time frame concerning the formal registration of the asylum request. In practice, the formal registration of the asylum request may take place weeks after the date the asylum seeker has made their asylum claim. The delay 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).

Important efforts have been undertaken by the Italian authorities in terms of facilitating and accelerating the access to the asylum procedure. This improvement is due, in particular, to the introduction of a new online system and internal instructions (the so-called VESTANET), which allows a more rapid procedure of registration of the asylum claim, which aim is to reduce the delay between the manifested intention to apply for asylum and the formal registration of the claim. The need to make coincide the moment of the asylum request and the filling of the *Verbale C3* is reaffirmed in the *Comunicazione* (set of operation instructions to the Police headquarters where territorial Commissions are based) of the Chief of the Public Security of the Minister of Interior of February 2013.

By law, asylum seekers, including in the appeal phase, have the right to obtain a permit to stay with the right to work after 6 months from the presentation of the asylum request. In practice the timeframe of 6 months starts from the date of the formal registration of the claim.

With regard to the difficulties in accessing the asylum procedure, it is important to cite the "UNHCR Recommendations on important aspects of refugee protection in Italy" of July 2013. UNHCR has reported about some cases in which Egyptian and Tunisian nationals, who arrived in Lampedusa in an irregular manner by sea and who had expressed the intention to lodge an asylum claim, were only admitted to the asylum procedure thanks to the interventions by *Praesidium* project staff<sup>13</sup> (NGOs and lawyers).<sup>14</sup> Similar concerns have been expressed by CIR in its Report "Access to Protection".<sup>15</sup>

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<sup>11</sup> Art. 10 of the Legislative Decree 25/2008.

<sup>12</sup> Art. 3 of the Legislative Decree 140/2005.

<sup>13</sup> The *Praesidium* project is carried out by UNHCR, Red Cross, Save the Children and IOM to provide information and to identify migrants including asylum seekers, unaccompanied minors and victims of trafficking. *Praesidium* is based at arrival points such as Lampedusa, Sicily, Calabria and Apulia.

<sup>14</sup> UNHCR, *UNHCR Recommendations on important aspects of refugee protection in Italy*, July 2013, at p. 6.

<sup>15</sup> CIR, *Access to Protection: a human right, October 2013*, at p. 35-38, in the framework of the project funded by EPIM Foundation.

Difficulties in the access to the asylum procedure have also been encountered in the framework of certain modalities of removal carried out in the Adriatic ports. These “returns” or “informal custody to the captain” towards Greece of third country nationals coming from this country are issued without any formal proceeding. These “returns” are based on bilateral readmission agreements signed by Italy with Greece<sup>16</sup>. The most critical aspect is that this “informal return” is a *de facto* removal of the person concerned without a written notification of this measure and the relative procedural guarantees<sup>17</sup>. In the case the individual situation is not correctly examined by the authorities, a risk of exposing the third country national sent back to Greece to be subject to indirect *refoulement* exists.

During its daily, direct information and counselling activity at the seaports in the last year, CIR did not notice any case of asylum seekers who tried to claim or claimed asylum and who were refused entry and returned to their country of origin. However, CIR is not able to monitor 24 hours per day the Adriatic ports, as a consequence we cannot declare that cases of removals towards Greece, including cases of potentially eligible asylum seekers, do not occur.

## 5. Regular procedure

### General (scope, time limits)

#### Indicators:

- Time limit set in law for the determining authority to make a decision on the asylum application at first instance (in months): The personal interview must be carried out within 30 days after the determining authorities have received the asylum application from the police authorities and the first instance decision must be taken by the 3 working days following the substantive interview.
- Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing?     Yes     No
- As of 31<sup>st</sup> December 2012, the number of cases for which no final decision (including at first appeal) was taken one year after the asylum application was registered : Not available

The authorities competent in examining the asylum applications and in taking first instance decisions are the 10 Territorial Commissions for International Protection and sub-commissions, which are administrative bodies specialised in the field of asylum. Each of them is composed by 4 members: 2 representatives of the Ministry of Interior out of which one is a senior police officer, one representative of the Municipality (or Province or Region) and one representative of the UN High Commissioner for Refugees (UNHCR). By law, the decision on the merits of the asylum claim must be taken by three members of the Territorial Commission. However, in practice, only one member conducts the personal interview, who then presents the case to the other members to take jointly the decision.<sup>18</sup>

The personal interview must be carried out within 30 calendar days after the determining authorities (Territorial Commissions) have received the asylum application from the Questura (Immigration Office of the Police). By law,<sup>19</sup> the decision on the merits must be taken within 3 working days following the substantive interview. However, the law specifies that whenever a Territorial Commission is unable to adopt a decision within 3 days due to the need to gather new elements, the Commission has to inform the asylum applicant and the competent Questura.

<sup>16</sup> CIR, *Access to protection: a human right*, October 2013, p. 22.

<sup>17</sup> CIR, *Access to protection: a human right*, October 2013, p. 22.

<sup>18</sup> Art. 4(4) of the Legislative Decree No. 25/2008.

<sup>19</sup> Article 27 of the Legislative Decree No. 25/2008.

In practice these time limits are usually much longer considering that the competent determining authorities receive the asylum application only after the formal registration and the forwarding of the *Modello C3* through VESTANET takes place. In addition, the administrative procedure typically lasts for several months, and the delay for the determining authorities to issue a decision vary from one Territorial Commission to another. In some cities, like Rome, the whole procedure takes generally longer, from 6 up to 10 months.

By law, some specific cases are examined by the first instance authorities under a prioritised procedure (shorter). These situations<sup>20</sup> include:

- a) requests deemed manifestly founded;
- b) asylum seeker considered vulnerable<sup>21</sup>;
- c) asylum seekers held in a CARA with the exception of those held in CARA on the ground of verifying or assessing their identity<sup>22</sup>;
- d) when a person is held in CIE (Identification and Expulsion Centres) in application of article 1 F of the 1951 Geneva Convention, or if they have been convicted for crimes such as smuggling, drugs trafficking and sexual exploitation; or they have been notified with an expulsion or a rejection order at the border.

The timeframe of the prioritised procedure is not envisaged by law, except for asylum seekers held in CIE: in this case the determining authorities must carry out the personal interview within 7 calendar days from the reception of the asylum application and must take a decision within the 2 following calendar days.

In practice the prioritised procedure applies to those held in CIEs and rarely to the other categories, namely when the request is deemed manifestly founded and in the situations falling under art. 20 of the Procedure Decree 25/2008. Practice shows that vulnerable cases 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 early identified as such.

In practice with regard to victims of torture and extreme violence, on the basis of CIR (Italian Refugee Council)'s experience, 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.

In practice, the prioritised procedure is also not applied to unaccompanied children mainly because of the delay in appointing their legal guardian by the guardianship judge (*giudice tutelare*).

There are four possible outcomes to the regular procedure. The Territorial Commission may decide

- a. to recognise refugee status, along with the issuance of a 5 year renewable residence permit;
- b. to grant subsidiary protection, along with the issuance of a 5 year renewable residence permit<sup>23</sup>;
- c. not to grant any form of international protection but to recommend to the Police to issue a 1-year residence permit on humanitarian grounds, e.g. for health conditions;
- d. reject the asylum application and issue a return order.

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<sup>20</sup> Listed in article 28 of the legislative Decree 25/2008.

<sup>21</sup> According to art. 8 of the Legislative Decree 140/2005.

<sup>22</sup> According to article 20 of the Procedure Decree 25/2008 the prioritised procedure should be applied also in the following cases: 1) asylum seekers who have presented the asylum request after they have been stopped for having avoided or tried to avoid the border controls; 2) asylum seekers presenting the application after being stopped in situation of irregular stay.

<sup>23</sup> With regard to this particular aspect, as envisaged by art. 23 co. 2 included in the recently adopted Legislative Decree n. 18/2014 on "Implementation on Directive 2011/95/EU on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)", the validity of residence permits issued both to refugees and beneficiaries of subsidiary protection has been equalised, leading to an extension of the duration of a residence permit for subsidiary protection from 3 up to 5 years.

## Appeal

### Indicators:

- Does the law provide for an appeal against the first instance decision in the regular procedure:
  - Yes  No
- o if yes, is the appeal  judicial  administrative
- o If yes, is it suspensive  Yes  No
- Average processing time for the appeal body to make a decision: 6 months /1 year

The legislative Decree No. 25/2008 provides for the possibility for the asylum seeker to appeal before the competent Civil Tribunal (a judicial body) against a negative decision issued by the Territorial Commissions, against a decision to grant subsidiary protection instead of refugee status or to request the issuance of a residence permit on humanitarian grounds.

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

Rejected asylum seekers in detention (CIE) and reception centres (CARA - Accommodation Centres for Asylum Seekers), with some exceptions, have only 15 calendar days to lodge an appeal. The appeal has an automatic suspensive effect, except in the following cases: a) when an asylum seeker has been notified with a rejection or expulsion order before lodging an asylum request; b) when the claim has been considered “manifestly unfounded”; c) when the requests were considered inadmissible<sup>24</sup> when the requests have been made by applicants placed in CIE or in CARA after having been stopped because they avoided or tried to avoid border controls (or immediately after); d) or those who left the CARA without justification. However, in those cases, the applicant can request individually a suspension of the return order from the competent judge.

The Tribunal shall issue a judgement within three months from the submission of the appeal, based on both facts and points of law.<sup>25</sup> It can either reject the appeal or grant international protection to the asylum seeker. In practice, the average processing time for the reviewing body to make a decision exceeds considerably the timeframe foreseen by law: it generally takes six months between the date when the appeal is lodged and the date when the judgement is issued.

By law,<sup>26</sup> if the first instance appeal is dismissed it can be appealed to the Court of Appeal within 10 calendar days of the notification of the decision. The Court of Appeal should then make a decision within three months from the submission of the appeal.<sup>27</sup> The decision is based on points of law and facts. In practice the Court of Appeal takes a decision within at least 5 months. The appeal has no suspensive effect. However, upon an ad hoc request by the appellant, the Court of Appeal may suspend the appeal on serious and well-founded grounds through an order that cannot be challenged. A final appeal before the highest appellate court (Cassation Court) can be lodged within 30 days of the notification of the dismissal of the previous appeal.<sup>28</sup> The Supreme Court takes a decision on the legality and not on the facts (examination of the documents without the adversary proceeding).

<sup>24</sup> By law (article 29 of the Legislative Decree 25/2008), an asylum application is considered inadmissible by the competent Territorial Commission in the following cases:

- a. whenever the applicant has been recognised as refugee in a State Party to the 1951 Geneva Convention and can still benefit from such protection;
- b. the applicant has reiterated his/her asylum request after a decision has been taken by the determining authorities without presenting new elements concerning his/her personal conditions of the situation in his/her country of origin.

<sup>25</sup> Article 35 (10) of the Legislative Decree 25/2008.

<sup>26</sup> Article 35 (11) of the Legislative Decree 25/2008.

<sup>27</sup> Article 35 (13) which makes reference to paragraph 10.

<sup>28</sup> Art. 35 (13) of the Legislative Decree 25/2008.

According to the legislation,<sup>29</sup> the Tribunal and the Court of Appeal must hear the asylum seeker during the appeal procedures. The hearings are not public whereas the decisions are.

Asylum seekers who file an appeal against the first and second judicial instance decision, in particular those who are held in CARAs and CIEs, have to face several obstacles. The time limit of 15 days to lodge an appeal concretely jeopardises the effective enjoyment of the right to appeal since it is too short to find a lawyer or to request free legal assistance, and for preparing the hearing in an adequate manner.

The short timeframe to lodge an appeal does not take due consideration of other factors such as the linguistic barriers between asylum seekers and lawyers, the lack of knowledge of the legal system, the long distance between the residence of the asylum seekers and the competent tribunals. In addition, lawyers are not always adequately trained to draft good quality appeals.

### Personal Interview

#### Indicators:

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

The legislation<sup>30</sup> provides for a personal interview of each applicant, which is not public. In practice asylum seekers are systematically interviewed by the determining authorities. However, art. 12 (2) foresees the possibility to omit the personal interview where determining authorities have enough elements to grant refugee status under the 1951 Geneva Convention without hearing the applicant, or when the applicant is unable or unfit to be interviewed as certified by a public health unit or by a doctor working with the national health system.

The law provides for the hearing to be conducted, where possible, by an interviewer of the same gender (male or female) of applicants if requested by them.<sup>31</sup>

By law<sup>32</sup>, in the phases concerning the presentation and the examination of the asylum claim, applicants shall receive, where necessary, the services of an interpreter in their language or in a language they understand. At border points these services may not be always available depending on the language spoken by asylum seekers and the interpreters available locally. Because 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 great difficulties to provide promptly an adequate number of qualified interpreters also able to cover different idioms.

In practice there are not enough interpreters available and skilled 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 ensures this service, has drafted a Code of conduct for interpreters.

Audio or video recording is not foreseen in the law and is not used. Interviews are transcribed in a report that is given to the applicant at the end of the interview. The applicants are given the opportunity to make further comments and corrections soon after the personal interview before the final official report

<sup>29</sup> Art. 35 (10) of the Legislative Decree 25/2008.

<sup>30</sup> Article 12 of the legislative Decree n. 25/2008.

<sup>31</sup> Art. 12 (1) of the legislative Decree n. 25/2008.

<sup>32</sup> Art. 10 (4) of the Legislative Decree 25/2008.

is handed over to them. The quality of this transcript can vary depending on the interviewer and the Territorial Commission which conducts the interview but complaints on the quality of the transcripts are not frequent.

### Legal assistance

#### Indicators:

- Do asylum seekers have access to free legal assistance at first instance in the regular procedure in practice?  Yes  not always/with difficulty  No
- Do asylum seekers have access to free legal assistance in the appeal procedure against a negative decision?  Yes  not always/with difficulty  No
- In the first instance procedure, does free legal assistance cover:  
 representation during the personal interview  legal advice  both  Not applicable
- In the appeal against a negative decision, does free legal assistance cover  
 representation in courts  legal advice  both  Not applicable

According to the legislation,<sup>33</sup> 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 who are allocated by private foundations and associations. In particular, the main source of economic funds provided by Italian institutions is the National Fund for Asylum policies and services, financed by the Ministry of Interior. This fund allows, *inter alia*, local entities (municipalities, provinces) to benefit and therefore to allocate through specific projects economic resources to NGOs in order to offer legal counselling services inside CARA-Accommodation Centres for Asylum Seekers (this possibility will change in 2014). National funds are also allocated for providing information and legal counselling at official land, air, sea border points and where migrants arrive by boat. In addition, some funds for financing legal counselling may also derive from European projects/programmes or private foundations. However, it should be underlined that funds are not sufficient.

The lawyer or the legal advisor from specialised NGOs prepares the 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 story 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 on 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.

<sup>33</sup> Article 16 of the Legislative Decree 25/2008.

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.

Asylum seekers that may benefit from a legal assistance or a legal advice before or during the personal interview, especially those who have suffered torture and extreme violence, may have more chances to be granted by the competent Territorial Commission the status of international protection they effectively deserve, accordingly reducing the resort to appeal against a first instance decision. In this context it is important to emphasise that 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.<sup>34</sup> During the personal interview the applicant may be accompanied by social workers, medical doctors and/or psychologists.

With regard to the appeal phase, free legal aid (the so-called "gratuito patrocinio"), funded by the State is provided by law.<sup>35</sup> Nevertheless, the Presidential Decree 115/2002<sup>36</sup> concerning the judicial expenses sets out an important restriction to the enjoyment of this right: only those applicants who may prove to have a yearly taxable income lower than 10.628,16 euros may benefit from the free legal aid.<sup>37</sup> 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<sup>38</sup>. However, the law prescribes that if the person is unable to obtain this documentation, they may alternatively provide a self-declaration of income<sup>39</sup>. In this regard, during the last years there has been a worrying trend developed by the Rome Bar Council which has adopted the practice to require systematically an official certification of the income released by the consular authorities of the country of origin of the asylum seeker concerned in order to guarantee their access to the *gratuito patrocinio*. As underlined by the UNHCR<sup>40</sup> and several NGOs<sup>41</sup>, taking into consideration that in the majority of cases the persecution of asylum seekers is perpetrated by the authorities of their country of origin and, thus, that the persons concerned are in most cases unable to present themselves to the consular authorities to obtain the certification of their income, the practice adopted by the Rome Bar Association prevents many applicants to have access to free legal aid.

In addition, access to free legal assistance is also subject to a merits test by the competent Bar Council ("Consiglio dell'ordine degli avvocati") which assesses whether the asylum seeker's motivations for appealing are not manifestly unfounded.<sup>42</sup> Moreover, it may happen that the applicant is initially granted free legal aid by a Bar Council but, as prescribed by law, the tribunal may revoke the decision if it considers that the admission requirements assessed by the Bar Council are not fulfilled.<sup>43</sup>

Applicants that live in big 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 already specified, in the Italian legal system the assistance of a lawyer is needed more in the appeal phase. On the basis of CIR experience, qualified lawyers are available to assist asylum seekers in lodging an appeal against the negative decision issued by the determining authorities. Concretely the problem of lawyers in taking on the case is the uncertainty to obtain free

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<sup>34</sup> Article 13(2) of the Legislative Decree 25/2008.

<sup>35</sup> Article 16 (2) of the Legislative Decree 25/2008.

<sup>36</sup> Presidential Decree 115/2002 – Consolidated rules and regulation on legal costs (*Decreto del Presidente della Repubblica 30 maggio 2002, n. 115, Testo unico delle disposizioni legislative e regolamentari in materia di spese di giustizia*).

<sup>37</sup> Art. 76 (1) of the Presidential Decree 115/2002.

<sup>38</sup> Article 79 (2) of the Presidential Decree 115/2002.

<sup>39</sup> Article 94 (2) of the Presidential Decree 115/2002, and specifically with regard to the right of asylum seekers to benefit from the free legal aid article 16(2) of the of the Legislative Decree 25/2008.

<sup>40</sup> UNHCR, [advisory opinion sent to the Rome Bar Council](#), January 2013.

<sup>41</sup> On 10th May 2013 a network of NGOs, the Italian Council for Refugees (CIR), ASGI, Laboratorio 53, Associazione Progetto Diritti, Associazione Europa Levante, Senzaconfine, Focus- Casa dei Diritti Sociali, Arci – Roma, Save the children Italia, A buon diritto, Fondazione Centro Astalli, sent a letter to the Ministry of Interior, the Ministry of Justice and to the Ministry of Foreign Affairs with a view to stop the illegal practice of the Rome Bar Council. The letter is available [here](#).

<sup>42</sup> Article 126 of the Presidential Decree 115/2002.

<sup>43</sup> Art.136 of the Presidential Decree 115/2002.

legal aid by the State, as well as the delay in receiving State reimbursement, i.e. the small amount of money foreseen for each case. In some cases, lawyers evaluate the individual case on the merits, thereby deciding on whether to appeal the case or not.

To conclude, it might happen that lawyers paid by the Italian State may unlawfully request funds also from the applicants. This practice has been denounced by some NGOs and by some lawyers during some conferences and workshop, and it has also been reported directly to the Italian Refugee Council (CIR) by some asylum seekers.

## 6. Dublin

### *Indicators:*

- Number of outgoing requests in the previous year: not available
- Number of incoming requests in the previous year: not available
- Number of outgoing transfers carried out effectively in the previous year: not available
- Number of incoming transfers carried out effectively in the previous year: not available

The information concerning the Dublin procedure provided below have been extracted from the Dublin II Regulation National Report on Italy of December 2012 elaborated by the Italian Refugee Council (CIR) within the framework of the Project “European network for technical cooperation on the application of Dublin II Regulation”.<sup>44</sup>

### *Procedure*

#### *Indicator:*

- If another EU Member State accepts responsibility for the asylum applicant, how long does it take in practice (on average) before the applicant is transferred to the responsible Member State? Not available

All asylum applicants are photographed and fingerprinted by police authorities who systematically check them in EURODAC. When there is a Eurodac hit, the police contact the Italian Dublin Unit, an office of the Department for the civil liberties and immigration of the Ministry of Interior.

Moreover, the Questura (Immigration Office of the Police), after the formal registration of the asylum request, on the basis of the information gathered and if it considers that the Dublin III Regulation should be applied, transmits the pertinent documents to the Dublin Unit which examines the criteria set out in the Dublin II Regulation to identify the Member State responsible.

According to the law, the Italian authorities may declare themselves responsible for the examination of applications of asylum seekers held in detention centres (CIEs) or reception centres (CARAs) with the exception of those staying in CARAs in order to have their identity verified.

In case another Member State is considered responsible under the Dublin Regulation, the asylum procedure is declared closed. In case the responsibility of another Member State is established, 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 to appeal against the Dublin decision. Afterwards, the Questura will organise the transfer.

<sup>44</sup> Available [here](#).

The applicants must then present themselves at the place and date indicated by the Questura. In case the applicant does not present themselves for the transfer (which happens in most cases), the Italian authorities ask the responsible Member State for an extension of the deadline up to 18 months.<sup>45</sup>

The applicants held in CIEs are brought by the police authorities to the border from which they will be transferred to the responsible Member State.

Because 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. It depends on many factors, including the availability of means of transports, the personal condition of the person, whether or not the Police needs to accompany the person concerned etc.

The Dublin Unit has not provided updated data on the enforcement of the discretionary clauses (the sovereignty clause – Art. 3 par. 2 - of the Regulation and the humanitarian one – Art. 15)<sup>46</sup>. The last data available (dating back from 2008) shows, however, that Italy ordered the enforcement of the above-mentioned clauses and decided to have jurisdiction on 178 cases, out of which only 2 of them according to the humanitarian clause.<sup>47</sup> The humanitarian clause seems to be rarely applied.

However, the Italian Dublin unit seems to be applying more frequently the discretionary clauses to cases of vulnerable applicants. Following a Ministerial Circular sent by the Dublin Unit in February 2009, which stated the grounds for asking for a revision of a transfer order, many revision requests were filled and the sovereignty clause was applied in many cases.<sup>48</sup>

The application of the humanitarian or sovereignty clauses is not automatic and is subject to a case by case discretionary decision by the Dublin unit, which often takes place upon a request for revision.

Italy has never taken a stand on the necessary automatic enforcement of the sovereignty clause, not even when the transfer to another country would put the asylum seeker at risk of serious human rights violations (in Greece for instance). In this regard, the Italian Refugee Council (CIR) has asked the competent authorities to adopt a general policy to suspend transfers to Greece following the European Court on Human Rights' *M.S.S v. Belgium and Greece* judgement, but the Dublin Unit has never taken an official position on this issue. However, compared to the past years, numbers are now very low; the data provided by the Dublin Unit shows that in 2011 there were 210 outgoing requests to Greece and two were accepted despite the European and the Italian jurisprudence<sup>49</sup>.

Concerning Malta and Hungary, the Italian Ministry of Interior has not taken an official position even though in practice it seems there is a trend of not transferring asylum seekers towards these countries. This practice is also supported by some decisions issued by Administrative Courts, declaring transfers to Malta and Hungary unlawful.<sup>50</sup>

With regard to Hungary, the Administrative Tribunal of Lazio in its Judgment no. 5292/2012 of the 11<sup>th</sup> June 2012 declared the cancellation of a decision of transfer to Hungary due to the fact that the National authorities cannot automatically consider another European country as a safe country; this requires an assessment. The judge considered also the situation of Hungary in terms of violation of the asylum seekers' human rights.

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<sup>45</sup> As envisaged by art. 19 (4) and 20 (2) of the Dublin Regulation.

<sup>46</sup> Please note that these information refer to the period before the entry into force of the Dublin III Regulation.

<sup>47</sup> CIR "Dubliners Project, final report" April 2010. The data are provided by the Ministry of Interior.

<sup>48</sup> For more information, see CIR, European network for technical cooperation on the application of the Dublin II Regulation, [Dublin II Regulation National Report on Italy](#), December 2012.

<sup>49</sup> With regard to the Italian jurisprudence see: Administrative Tribunal of Lazio, judgment No. 1363/2011 of the 11th February 2011; Administrative Tribunal of Lazio, judgment No. 8508/2010 of the 26th April 2010; Administrative Tribunal of Lazio, judgment No. 1551/2012 of the 15th February 2012.

<sup>50</sup> Administrative Tribunal of Lazio, Judgment no. 5292/2012, of the 11th June 2012.

With regard to Malta, the Council of State in its judgment n. 4195 of 19 October 2012 ruled that “it is sufficiently proved that the minimum standards for asylum seekers are not guaranteed by Malta”.<sup>51</sup> Therefore, the Tribunal decided to suspend the transfer towards Malta on the basis of art 3.2 of the Dublin Regulation.

Asylum seekers are not properly informed on the different steps in the Dublin procedure. Generally speaking they are not assisted by lawyers but they might be assisted by specialised NGOs. Generally, the interview before the Police during the formal registration of the asylum request is made in a language the asylum seekers do not always fully understand and they are not informed about the reason why some information is requested and its pertinence related to the Regulation’s applicability. Indeed, it occurs very frequently that the Immigration Office explains the Dublin procedure in a superficial manner. Furthermore, when asylum seekers in a Dublin procedure receive some explanation from the authorities it is very often not adapted to their education level, which makes it very difficult for them to understand. Having information in writing can be more helpful, but it is not always understandable because of the language barrier, the use of legal terms or because it happens that some asylum seekers are illiterate. From CIR’s experience, the majority of the interviewees cannot understand the Dublin procedure and the decision taken by the Dublin Unit. Furthermore, they do not know about their rights and consequently they can hardly lodge an appeal. CIR, in the framework of the national European Refugee Fund through the Ministry of Interior, has produced and distributed informative leaflets in ten languages to inform asylum seekers on the Dublin Regulation and the Italian asylum procedure.<sup>52</sup>

As far as “cultural and family ties” are concerned, no specific questions are submitted to asylum seekers about family or other links to a certain Member State, they are not informed about the rules governing family reunion under Dublin criteria or - for example - the possibility, in certain Member States, for unmarried couples living together in a stable relationship, to be considered in the same way as married couples. From the beginning of January 2014, following the adoption of more protective rules<sup>53</sup>, the competent authorities have now the obligation to appropriately inform the asylum seeker on the Regulation and make an individual interview aiming at verifying the correct comprehension of the information provided.

After the formal registration of the asylum application, if a procedure for determining the Member State responsible for examining the application starts under the Regulation, no information is provided to the asylum seeker, not even when it implies a delay of the whole procedure. During the procedure, it happens frequently that the word “Dublin” figures in the receipt of the asylum claim (“*cedolino*”) without providing the asylum seeker with explanation of what this means.

The length of the procedure for the determination of the state responsible under Dublin Regulation usually overcomes the timeframes foreseen by law. UNHCR noted that often the procedures may last up to 24 months, affecting the living conditions of asylum seekers, including persons with special need and unaccompanied and separated children<sup>54</sup>. While waiting for the result of their Dublin procedure, asylum seekers are not detained.

The applicant usually waits for months without knowing if the Dublin procedure started, towards which country it has been addressed and the basis 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 public authorities to get the required information.

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<sup>51</sup> [Judgment](#) of the Council of State (judicial body for administrative appeals) n. 4195 of 19 October 2012.

<sup>52</sup> Italian Council for Refugees (CIR), “*The Dublin Regulation and the asylum procedure in Italy. Are you aware of your rights? Guide for asylum seekers*”, 2012.

<sup>53</sup> Article 4 and 5 of the Dublin III Regulation 604/2013.

<sup>54</sup> With regard to the causes of the long delays in Dublin procedure, see *UNHCR Recommendations*, July 2013, p. 7.

In order to overcome this length of the procedure, the Ministry of Interior together with the National Commission for the Right of Asylum decided to accelerate the procedures related to Dublin cases hosted in Reception Centres for Asylum-Seekers (CARAs)<sup>55</sup>.

Asylum applicants are informed of the decision of the Dublin Unit concerning the taking back/taking charge of the applicant to another Member State at the end of the procedure when they are notified through the Questura of the transfer decision issued by the Dublin Unit. Asylum seekers may be informed on the possibility to lodge an appeal against this decision generally by specialised NGOs. The appeal has no suspensive effect.

With regard to Dublin returnees who are transferred to Italy from another Member State, they usually arrive to the main Italian airports such as Rome and Milan. At the airport, border police provides to the person returned under Dublin Regulation an invitation letter ("*verbale di invito*") indicating the competent Questura where (s)he has to go.

Dublin returnees may face different situations depending on whether they have applied for asylum in Italy before moving on to another European country, and whether the determining authority has taken its decision on the status determination<sup>56</sup>. Accordingly, the procedure to be applied to the Dublin returnee's case will depend on the category they fall into.

In case the Dublin returnee did not apply for asylum during their initial transit or stay in Italy before moving on to another European country, when they are sent back to Italy they can file an asylum application following the ordinary asylum procedure, like all asylum seekers.

In case the person transferred back to Italy had, during their previous stay in Italy, submitted an asylum claim, then various situations may take place:

- a. the determining authority may have in the meantime adopted a positive decision on the asylum application, therefore the Dublin returnee is issued a permit of stay;
- b. the determining authority may have taken a negative decision before the person left Italy. In this case: if the person concerned had already been informed and they did not lodge an appeal, they can be notified with an expulsion order and eventually be placed into a CIE (Centre for Identification and Expulsion). By contrast, if the Dublin returnee has not been notified with the negative outcome of the personal interview before the eligibility authority, they can lodge an appeal.
- c. the Territorial Commission has not taken a decision yet, therefore the procedure will continue and, while awaiting their decision, the Dublin returnee has the same rights as any other asylum seeker.
- d. the Dublin returnee did not present themselves before the determining authority for their personal interview since they already left Italy to move on to another European country. In this case, the person concerned will be delivered a negative decision, but they may request the competent Territorial Commission to have a new interview.

The main problem Dublin returnees face when they are transferred back to Italy is in relation to the reception system, which is, however, a problem for all asylum seekers.

The issue of Dublin returnees has been recently addressed by the Swiss Refugee Council, which stressed the concern for the reception system conditions affecting asylum seekers, refugees and those granted status on the basis of humanitarian grounds sent back to Italy. According to the Swiss Refugee Council, considering the number of Dublin transfers ordered towards Italy (3000 out of 3551 of the total

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<sup>55</sup> Note issued by the National Commission for the right of asylum, Rome May 6<sup>th</sup> 2013.

<sup>56</sup> For more details see: CIR, "Gente di Dublino" project, Guide for asylum seekers "The Dublin Regulation and the asylum procedure in Italy", April 2012; [www.cir-onlus.org](http://www.cir-onlus.org). See also CIR, [Dublin II Regulation Italian national report, project European network for technical cooperation on the application of the Dublin II Regulation](#), December 2012.

amount of the transfers ordered by Switzerland), deep concern emerges from the lack of “sufficient reception places” and from the difficulty to access to accommodation centres, to social services or other assistance, and to the labour market as well<sup>57</sup>, criticism, which affects all the Dublin Returnees in Italy in the same manner<sup>58</sup>. Furthermore, another case against a transfer to Italy decided by the Swiss authorities is pending before the European Court of Human Rights: *Tarakhel v. Switzerland*). The applicant complained against the reception conditions in the CARA of Bari during his stay in the centre<sup>59</sup>.

For sure, problems arise concerning the reception system in Italy. As CIR emphasised in its “Dubliners Project reports”, Dublin returnees may have, in practice, more limited access to reception facilities than other asylum-seekers, mainly due to the fact that the asylum procedure of a number of those transferred to Italy has already been concluded. Therefore, they are no longer considered asylum-seekers and they should lose, by law, their right to be accommodated in CARA structure.<sup>60</sup> For the beneficiaries of international protection or of humanitarian status, the possibility to be accommodated in SPRAR centres exists, but the number of places is limited. In addition, if these persons have already been accommodated in one of these centres they cannot be housed there again.

However, in order to improve the reception conditions of Dubliners some initiatives have been adopted. From 2011 the Italian Ministry of Interior, through the European Refugee Fund, has financed some specific projects<sup>61</sup> for the provision of reception, information and legal assistance nearby the main airports where Dublin returnees arrive (Venice, Milan, Rome, Bologna, and Bari). These projects are addressed to either all the Dublin returnees or to vulnerable categories among Dubliners.

These projects are addressed to asylum seekers under the Dublin procedure, while beneficiaries of subsidiary protection are admitted only after a specific authorisation issued by the Ministry of Interior.

Once the asylum seekers arrive at the airport (Milan, Rome, Bari, Venice and Bologna) they are assisted by a specific NGO and referred to the reception centre, on the basis of the individual situation (vulnerable or ‘ordinary’ categories). Nevertheless, the problem remains that the capacity within reception centres is not sufficient and the projects are limited in terms of timeframe. Generally speaking these projects have a one-year duration.

Another important issue is related to a phenomenon reported by *Praesidium* partners, and CIR operators in their daily work in some CARA centres, which arose during last summer. Some asylum seekers refused to be fingerprinted or have been reluctant to do this in Lampedusa to avoid the Dublin Regulation. After Lampedusa when migrants are transferred to other reception centres in Southern Italy some leave during the night for onward travel. The refusal or the reluctance to be fingerprinted is particularly prevalent among Eritreans, Somalis and Syrians. This phenomenon has been registered in other locations where migrants and refugees disembark. Please note that the centre of Lampedusa is currently under renovation.

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<sup>57</sup> See ECRE, “[Swiss Refugee Council: Dublin transfers to Italy leave people exposed to destitution](#)”, ECRE Weekly Bulletin, 18 October 2013.

<sup>58</sup> See Dublin Transnational Project, *Final Report*, May 2011, at p. 72.

<sup>59</sup> ECtHR (Grand Chamber), *Tarakhel v. Switzerland*, application n. 29217/12, pending case.

<sup>60</sup> CIR Dubliners Project Report, April 2010, at p.35.

<sup>61</sup> In this regard it is worth mentioning the following projects:

CIR carries out the project “Locanda Dublino”, financed through the ERF of the Ministry of Interior (year 2013-2014) concerning intervention for reception, support and counselling addressed to Dublin returnees who are sent back under the Dublin Regulation to the airport Marco Polo of Venice. The project provides 40 places and ends on the 30 June 2014.

A. M. I. C. I. (Accogliere, Mediare, Informare, Curare, Integrare) is another project whose aim is the reception and medical-social assistance of vulnerable asylum seekers transferred to Italy under the Dublin Regulation. The project is based in Rome. This project is financed through the European Refugee Fund and is carried out jointly by the University “Cattolica del Sacro Cuore” and by the Italian Red Cross.

In Rome, there are other reception centres specifically dedicated to Dublin returnees such as the project called “Centro Dublino” run by Domus Caritatis under public funds.

The phenomenon of the refusal of some asylum seekers to be fingerprinted is also present at the border point of the Adriatic ports (Venezia, Bari, Ancona and Brindisi). In these ports the asylum seekers come from Greece and their number is quite low. Even if these persons are in need of protection, it can happen they decide not to ask for asylum, in order to avoid being subjected to the Dublin procedure. Generally speaking they prefer to reach other European countries for family reasons or for a better living condition. On the contrary, e.g. some Syrian families arrived during 2013 in Bari, asked for asylum immediately. They were then admitted to the asylum procedure. In the same night, however, they left the reception centre, presumably to reach their desired destination countries.<sup>62</sup>

## Appeal

### Indicators:

- Does the law provide for an appeal against the decision in the Dublin procedure:
  - Yes       No
  - o if yes, is the appeal       judicial       administrative
  - o If yes, is it suspensive       Yes       No
- Average processing time for the appeal body to make a decision:      Not available

According to the law, the transfer decision under Dublin II Regulation can be appealed within 60 calendar days from the notification before the Regional Administrative Tribunal - TAR (Jurisdictional territorial body competent for evaluating in first instance the legitimacy of a decision taken by the Public Administration). TAR is not a specialised body in International Protection Law. At the second instance, the competent body is the Council of State ("*Consiglio di Stato*"), which is a central administrative court.

The law envisages also the opportunity to lodge an appeal to the President of the Republic within 120 calendar days from the notification of the transfer decision. In this case, unlike the judicial appeal, the applicant may lodge the appeal without the help of a lawyer, even if in practice it is quite difficult to do so autonomously. In case the applicant cannot afford to pay a lawyer, the possibility to require the State to pay for the expenses is foreseen by Presidential Decree 115/2002 (see regular procedure).

The Court, on the basis of the asylum seeker's story, must evaluate the lawfulness of the transfer decision. In case the Court deems the transfer decision illegitimate, due to a violation of the Dublin II Regulation or of another rule, or when it is necessary for the application of the sovereignty clause, it revokes the transfer decision and declares the Italian authorities responsible for the examination of the international protection status. In fact, the Court itself even carries out further investigations when this needed. Furthermore, the Court applies directly, if necessary, the discretionary clauses - both the humanitarian and the sovereignty clause.

The appeal against a decision to transfer the applicant to another Member States under the Dublin Regulation has no automatic suspensive effect<sup>63</sup> vis-à-vis the transfer during the hearing before the Court unless this body grants suspensive effect upon a specific request of the claimant. The transfer is not automatically suspended from the moment the asylum applicant forward their request, but only when the Court takes the decision to halt such measure.<sup>64</sup>

<sup>62</sup> See CIR, "Access to protection: a human right", October 2013, at p. 46; UNHCR, "*UNHCR Recommendations on important aspects of refugee protection in Italy*", July 2013, at p. 6. Information are also acquired by CIR operators in the field.

<sup>63</sup> Please note that since the entry into force of the Dublin III Regulation the appeal has an automatic suspensive effect.

<sup>64</sup> Without explicitly considering a system whereby a provisional measure must be requested to obtain suspensive effect as incompatible with Article 13 ECHR, the European Court on human Rights nevertheless

The most frequent appeals are on the basis of the following reasons:

- procedural failures of the Dublin Unit: lack of sufficient investigations in order to determine the Member State responsible, not founded reasoning concerning the transfer decision. This could for example be the case when, during the procedure determining the Member State responsible, the authorities do not verify adequately the real conditions of the claimant or the existence of other circumstances that could change the final decision. The Dublin Unit issues a transfer decision that only indicates the responsible Member State but does not provide any reasoning for the decision.
- violation of the Dublin II Regulation: particularly with reference to the non-respect of the timeframes foreseen by Article 20; or
- mandatory application of the discretionary clauses because the Member State is not considered as safe or because the asylum seeker is vulnerable and therefore not transferable.

According to the Italian jurisprudence judges tend to take into account the level of protection and the living conditions of asylum seekers in Greece, Hungary and Malta when taking decisions on the implementation of the Dublin Regulation.

### Personal Interview

#### Indicators:

- Is a personal interview of the asylum seeker conducted in most cases in practice in the Dublin procedure?  Yes  No
  - o If yes, is the personal interview limited to questions relating to nationality, identity and travel route?  Yes  No

According to the asylum legislation, with the exception of the verbalisation of the asylum request by the competent Questura (Immigration Office of the Police), no personal interview of asylum seekers during the Dublin procedure is envisaged.

### Legal assistance

#### Indicators:

- Do asylum seekers have access to free legal assistance at the first instance in the Dublin procedure in practice?  Yes  not always/with difficulty  No
- Do asylum seekers have access to free legal assistance in the appeal procedure against a Dublin decision?  Yes  not always/with difficulty  No

In order to guarantee an effective remedy the Italian law foresees that in case of appeal the third country national has to be assisted by a lawyer and is admitted to the free legal aid ("*Patrocinio a spese dello Stato*, so-called *Gratuito Patrocinio*") when the conditions mentioned in the Presidential Decree 115/2002 are met.

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recalled in the recent case of *M.A. v. Cyprus* that there are risks involved in "a system where stays of execution must be applied for and are granted on a case-by-case basis", see ECtHR, *M.A. v. Cyprus*, Application No. 41872/10, Judgment of 23 July 2013, para. 137.

The same law and practices described under the section on the regular procedure apply to the Dublin procedure with regard to legal assistance, including the merits and means test. Not all lawyers can provide free legal aid as only those lawyers that are registered on a specific list can do so. Although this is a public list, in practice, it is not easy for asylum seekers to actually find a lawyer who is available. It is often only with the support of an NGO that asylum seekers manage to be assisted by a lawyer free of charge.

### Suspension of transfers

#### Indicator:

- Are Dublin transfers systematically suspended as a matter of policy or as a matter of jurisprudence to one or more countries?  Yes  No

In Italy, during recent years there has been a growing tendency to suspend the transfer of asylum seekers to specific EU Member States that normally would be responsible under the Dublin II Regulation. In particular, since 2009 the Dublin Unit has revoked some decisions to send back asylum seekers to Greece, Hungary and Malta, applying discretionary clauses, in particular the sovereignty clause laid down in Art. 3.2 of the previous Regulation (Dublin II Regulation).

Nevertheless, the Italian authorities have so far not adopted an official position to systematically suspend all transfers towards a specific country, not even when the transfer to such country would involve a general risk that the person concerned will be subject to gross and systematic violation of their human rights (Greece for instance). As a result the decision whether or not an asylum seeker should be transferred is taken on a case-by-case basis by the Dublin Unit at its discretion.

Several Courts have ordered the suspension of the transfer to certain EU Member States. With regard to transfers to Greece, the process has been long and difficult. The Italian Administrative Judges have considered all transfer decisions to Greece unlawful. In the beginning this was because the EU Directives on international protection were not implemented by that Member State and because Greece automatically rejected all asylum applications that had been “interrupted” upon the return of the asylum seekers in Greece. Afterwards, the decisions were based on the proven fact that in Greece asylum seekers have no access to basic reception conditions and the asylum procedure. These judgements have allowed the use of the Regulation, in order not to transfer asylum seekers arriving in Italy to that country.<sup>65</sup>

The Italian Dublin Unit In a recent judgement the Court condemned the Italian authorities also to the payment of the judicial expenses “*due to the persistence of the Dublin Unit not to enforce the precautionary measures disposed by this Court, concerning transfers to Greece, where many legal arguments are still pending*”.<sup>66</sup>

According to a later judgement of TAR-Lazio (no. 1551/2012 dated 15th February 2012) – even though Greece has ratified and implemented the “Asylum Procedures Directive” ( 2005/85/CE) on 11/07/08, the “Qualification Directive” (2004/83/CE) on 30/07/07 and the “Reception Directive” (2003/9/CE) on 13/11/07, and although since July 2008 the automatic denial of access to the asylum procedures in so-called “interrupted” cases has been no longer enforced – “*the situation of the asylum seekers in Greece is better than before, but not comparable to that existing in other Member States, as emerges from examining the Recommendation of the United Nations High Commissioner for Refugees on December 2009 (issued after the implementation of the EU Directives in Greek legislation). The TAR in ruling out the inadmissibility of the transfer towards Greece has referred to the UNHCR who stated that “the*

<sup>65</sup> See Tribunale Amministrativo del Lazio judgement no. 1363/2011 dated 11th February 2011; Consiglio di Stato: parere cautelare ordinanza no. 3428/2009 of the 14th July 2009 and Tribunale Amministrativo del Lazio judgement no 8508/2010 of the 26th April 2010.

<sup>66</sup> Tribunale amministrativo del Lazio No. 7880/2012.

*organization goes on opposing to transfers to Greece according to the Dublin II Regulation taking into account the problems observed in the Greek asylum procedure.”*

On the basis of the above-mentioned jurisprudence which recalls the principles of the European jurisprudence, the Dublin Unit, in establishing which State is responsible to examine an asylum claim already submitted, has the obligation to verify the real existing conditions in the Member State responsible under the Dublin Regulation and to enforce the sovereignty clause whenever a situation of violation of the obligations derived from the European provisions and a lack of respect of the standards foreseen by them will be proven. In fact, the lack of evaluation of these circumstances and the consequent transfer to these Member States can lead to a violation of Articles 3 and 13 of the European Convention of Human Rights by Italy.

Moreover, the Italian jurisprudence has declared the transfers to countries such as Malta<sup>67</sup> and Hungary unlawful.<sup>68</sup>

Moreover, it should also be noted that in the jurisprudence the need to apply the sovereignty clause in case of poor health conditions in individual cases has often been expressed. The TAR-Lazio has deemed these conditions to be valid also when *“the asylum seeker presented complex symptoms ascribable to repeated and continuous traumatic experiences and he needed to be frequently subjected to psychiatric and specialist check-ups”*.

## **7. Admissibility procedures**

The Italian legislation does not foresee admissibility procedures.

## **8. Border procedure (border and transit zones)**

Border procedures do not exist in Italian law. Border Police authorities must admit asylum seekers to the national territory and they are therefore channelled through the regular procedure.

## **9. Accelerated procedures**

The Italian legislation does not foresee any accelerated procedure but some cases may be examined under a prioritised procedure, which is shorter than the regular procedure. The specificities of that procedure are described under the section on the Regular Procedure.

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<sup>67</sup> [Judgment](#) of the Council of State (judicial body for administrative appeals) n. 4195 of 19 October 2012.

<sup>68</sup> Tribunale amministrativo del Lazio, Judgement n. 5292/2012 of the 11th June 2012.

## C. Information for asylum seekers and access to NGOs and UNHCR

### Indicators:

- Is sufficient information provided to asylum seekers on the procedures in practice?  
 Yes       not always/with difficulty       No
- Is sufficient information provided to asylum seekers on their rights and obligations in practice?  
 Yes       not always/with difficulty       No
- Do asylum seekers located at the border have effective access to NGOs and UNHCR if they wish so in practice?       Yes       not always/with difficulty       No
- Do asylum seekers in detention centres have effective access to NGOs and UNHCR if they wish so in practice?       Yes       not always/with difficulty       No
- 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       not always/with difficulty       No

The legislation provides that at the time of submission of the asylum request, police authorities inform the applicants about the asylum procedure, their rights and obligations, and the times and means at their disposal. Information should be provided by handing over to them an informative leaflet,<sup>69</sup> illustrating the different phases of the asylum procedure, their rights, information on health services and reception system as well as modalities to access them. The brochures distributed also contain the contact details of UNHCR and other refugee-assisting NGOs. The legislation specifies that these leaflets must be elaborated in a language understandable by the asylum seeker or, if this is unfeasible, in English, French, Spanish, Arabic, according to the preference of the person concerned.<sup>70</sup> However, in practice, these leaflets have been drafted by the Ministry of Interior in 10 languages.<sup>71</sup>

In addition, under the law, police authorities should provide, within maximum 15 days from the presentation of the asylum request, information related to the reception conditions of the asylum seekers and hand over information leaflets.<sup>72</sup>

The practice of distribution of the mentioned brochures concerning both the asylum procedure and reception conditions is actually quite rare. In practice, information is not systematically provided, mainly due to the inadequate number of police staff dealing with the amount of asylum requests and due to the shortage of professional interpreters and linguistic mediators.

By law, in all phases of the submission and the examination of the asylum claim, asylum seekers should receive, where necessary, the services of an interpreter in their language or in a language they understand.<sup>73</sup> This provision also prescribes that in case the information on the asylum procedure cannot be provided in the first language required by the asylum seeker, they should be given in English, French, Spanish or Arabic according to the preference expressed by the person concerned.

In practice, there is an overall lack of skilled interpreters at any stage of the asylum process. During the phase of fingerprinting and of the formal submission of the asylum request at the Questura (Immigration Office of the Police), the police authorities do not inform asylum seekers on the different steps concerning the Dublin procedure and the correlated applicants' rights and obligations, or it occurs very

<sup>69</sup> Article 10 (1) of the Legislative Decree 25/2008.

<sup>70</sup> Article 2 (6) of the Presidential Decree 303/2004 read in combination with article 4.

<sup>71</sup> Leaflets are drafted in Italian, English, French, Spanish, Arabic, Somali, Kurdish, Amharic, Farsi and Tigrinya. For more details, visit the Ministry of Interior [website](#).

<sup>72</sup> Article 3 of Legislative Decree 140/2005.

<sup>73</sup> Article 10 (4) of the Legislative Decree 25/2008.

frequently that the Immigration Office explains the Dublin procedure in a superficial manner. Furthermore, the information given is not always understandable since it is provided without taking into consideration the education level of asylum applicants. Asylum seekers are not informed on the different criteria applied to identify the Member state responsible under the Dublin Regulation, such as to possibility to join a family member.

With the entry into force of the Dublin III Regulation, reception centres for unaccompanied children and children' homes have been provided by Italian authorities with a new version of the asylum application form which includes new questions. This new model has introduced all the amendments adopted through the Dublin III Regulation. However, on the basis of the information acquired by CIR<sup>74</sup>, at present both the common leaflet as well as the specific brochure for unaccompanied children drawn up by the European Commission, as prescribed by art. 4(3) of the Dublin III Regulation, have not yet been distributed.

Depending on the type of accommodation centres where asylum seekers are placed, they will receive different quality level of information and interpretation services. Asylum seekers may benefit from the assistance of NGOs, however, due to insufficient funds or because these organisations are located mainly in big cities, not all asylum seekers have access to them.

The law provides for an explicit obligation for the competent authorities to guarantee the possibility to contact UNHCR and NGOs to asylum seekers during all phases of the asylum procedure.<sup>75</sup> Moreover, the law specifies that the access to the detention centres (Centre for Identification and Expulsions - CIEs) shall be ensured to the representatives of the UNHCR, to lawyers and to entities working for the protection of refugees, which are authorised by the Ministry of the Interior.<sup>76</sup>

By law,<sup>77</sup> at the border, "*those who intend to lodge an asylum request or foreigners who intend to stay in Italy for over three months*" have the right to be informed about the immigration and asylum law by specific services at the borders run by NGOs. These services, located at the official border points, also ensure "*social counselling, interpreting service, search for accommodation, contact with local authorities/services, production and distribution of informative documents on specific asylum issues*".<sup>78</sup>

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 services to NGOs is the price of the service, with a consequent impact on the quality and effectiveness of the assistance due to the reduction of resources invested, in contrast with the legislative provisions which aim to provide at least an immediate assistance to potential asylum seekers.

With regard to third-country nationals who arrive by boat at non-official border points, UNHCR in the frame of the *Presidium* project provides information on the right to seek for asylum at arrival, monitors access to legal assistance and identifies vulnerable cases<sup>79</sup>.

In April 2011, the former Minister of Interior issued a circular letter prohibiting the access to CIEs to the media, independent organisations (with some exceptions mentioned in the letter) and of civil society to the CIEs<sup>80</sup>. This caused a strong mobilisation of NGOs and the media that led to the *LasciateCIEntrare* (Open Access Now) campaign. In December 2011, the Directive No. 11050 issued by the Ministry of Interior revoked the circular letter, specifying, nevertheless, that Prefectures can prohibit the access to CIEs not only for public order reasons, but also for safety reasons, in cases of facility's renovation.

According to the Senate's report, in practice, difficulties concerning the authorisation to access CIEs still remain due to the excessive discretion of the Ministry of the Interior.

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<sup>74</sup> This information was confirmed by interviews and during CIR's participation to the working group organised in the framework of National Consultancy body (of the Garante per l'Infanzia e l'adolescenza).

<sup>75</sup> Article 10 para. 3 of the Legislative Decree n. 25/2008.

<sup>76</sup> Article 21 paragraph 3 of the Legislative Decree n. 25/2008.

<sup>77</sup> Art. 11 (6) of the Legislative Decree 286/98, read in conjunction with Article 4 of the Ministry of Interior Decree of 22 December 2000.

<sup>78</sup> CIR, S.A.B. Project, Services at Borders: a practical cooperation, Final report, 2008, p. 21.

<sup>79</sup> For more detail on *Presidium* Project see [here](#).

<sup>80</sup> Circular Letter n. 1305 by the Ministry of Interior, April 2011.

Within the frame of the Presidium Project IOM, UNHCR, the Red Cross and Save the Children benefit from access to CIEs. Nevertheless, these organisations are still not given full and continuous access to these centres. Moreover, other organisations find it difficult to access the centres at will. Thus, it is necessary to move beyond the project-based Presidium initiative and establish a nation-wide institutional framework in which NGOs, international organisations, journalists and lawyers can freely access and monitor the facilities, and the implementation of recommendations is transparent and easily monitored.<sup>81</sup>

## D. Subsequent applications

### Indicators:

- Does the legislation provide for a specific procedure for subsequent applications?  
 Yes       No
- Is a removal order suspended during the examination of a first subsequent application?
  - o At first instance       Yes       No       Not systematically
  - o At the appeal stage       Yes       No       Not systematically
- Is a removal order suspended during the examination of a second, third, subsequent application?
  - o At first instance       Yes       No       Not systematically
  - o At the appeal stage       Yes       No       Not systematically

No clear definition of subsequent application is included in the law. However two provisions make reference to the possibility of filing a new asylum application.

The first is related to the possibility of the asylum seeker to present new elements before the Territorial Commission takes the final decision. According to the legislation, the applicant has the right to submit new elements and documents to the competent Territorial Commission (TC) in any phase of the asylum procedure, even after their personal interview.<sup>82</sup> In addition in case the asylum seekers make a subsequent application before the determining authorities have taken the decision on their initial asylum request, the new elements of the request are examined in the framework of the previous request leading to a unique decision issued by the Territorial Commissions. In the decision the competent authorities specify if the applicant made more than one asylum request indicating the statements and documents attached to each request.

The second situation is related to a new application filed after the notification of the decision by the determining authorities. Under the law, the Territorial Commission shall declare inadmissible an asylum request that has been submitted for the second time after a decision has been taken by the determining authorities without presenting new elements concerning the personal condition of the asylum seeker or the situation in their country of origin.<sup>83</sup> In case of a subsequent application, the TC makes a preliminary assessment in order to evaluate whether new elements have been added to the asylum request, and takes a decision without proceeding to an examination on the merit of the asylum application and without conducting a personal interview.<sup>84</sup> No time limits are foreseen by law. The law also does not specify what can be considered as “new elements”.

<sup>81</sup> UN Special Rapporteur on the human rights of migrants, [Report drafted following his third country visit in Italy during his regional study on the human rights of migrants at the borders of the European Union](#), 8 October 2012.

See also Medici per i Diritti umani, *Arcipelago CIE: indagine sui centri di identificazione ed espulsione italiani (Archipelgo CIE: survey of Italians identification and expulsion centres)*, May 2013, at p. 28.

<sup>82</sup> Article 31 (1) of the legislative Decree 25/2008.

<sup>83</sup> Article 29 (1 b) of the legislative Decree 25/2008.

<sup>84</sup> Article 29 (1 b) of the legislative Decree 25/2008.

In practice the Territorial Commissions tend to carry out a personal interview even when the new elements provided by asylum seekers on their personal story are in contradiction with their previous declarations, taking in due consideration the negative consequences for the person concerned in case of an inadmissibility decision.

Subsequent applications have to be lodged before the Questura (Immigration Office of the Police), which starts a new formal registration that will be forwarded to the competent Territorial Commission. The Questura is not competent on the merit of the new application, but it should transmit the application to the competent Commission.

The National Commission of the right of asylum<sup>85</sup> (*Commissione nazionale per il diritto di asilo*) has issued a Circular on 30 April 2010 addressed to the Territorial Commissions indicating that the Territorial Commission which receives the subsequent application should transmit all relevant documentation to the Commission which took the first decision, as they will be in charge of taking the decision on the subsequent application.

The Italian legislation does not foresee a specific procedure to appeal against a decision on inadmissibility for subsequent applications. The legislation provides that asylum seekers can lodge an appeal against inadmissibility decisions without a suspensive effect. However, the appellant can request a suspension of the decision of inadmissibility based on serious and well founded reasons, to the competent judge who takes a decision on this request within the following 5 days. For the rest of the procedure, the same provisions than for the appeal in the regular procedure apply (see Appeal section, Regular procedure).

Asylum seekers who lodge a subsequent application benefit from the same legal guarantees foreseen for asylum seekers in general and can be accommodated in accommodation centres (CARA), if places are available.

Considering that subsequent applications are examined under the regular procedure, asylum seekers can be assisted by a lawyer at their expenses (like any other asylum seeker) during the first instance administrative procedure whereas they benefit from the free legal assistance during the appeal phase (see section on Legal Assistance, Regular procedure).

## E. Guarantees for vulnerable groups of asylum seekers (children, traumatised persons, survivors of torture)

### 1. Special Procedural guarantees

#### Indicators:

- Is there a specific identification mechanism in place to systematically identify vulnerable asylum seekers?     Yes     No     Yes, but only for some categories
- Are there special procedural arrangements/guarantees for vulnerable people?     Yes     No     Yes, but only for some categories

There is no procedure defined in law for the identification of vulnerable persons. Additionally, no national plan exists defining the procedures, roles and functions of public and private actors involved in the identification, referral and care of torture survivors, nor for coordination of services, nor for an

<sup>85</sup> The National Commission coordinates the Territorial Commissions and is also responsible for the revocation and cessation of the international protection.

effective monitoring system. Consequently, the identification of and assistance provided to torture survivors are often carried out without a common and coordinated framework.<sup>86</sup>

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.

Despite the lack of specific provisions and of a comprehensive national plan, good practices have been developed and adopted in part thanks to projects funded at EU, national and international levels.

Since 1996, the Italian Council for Refugees (CIR) has carried out several projects under the acronym Vi.To (Victims of Torture),<sup>87</sup> providing interdisciplinary services such as legal, social and psychological counselling and assistance to torture survivors.

Moreover, in 2007, the National Commission for the Right of Asylum, UNHCR, CIR and the Centre for the Study and the treatment of post-traumatic and stress pathologies of the San Giovanni Hospital in Rome - established NIRAST (Italian Network for Asylum Seekers who Survived Torture).<sup>88</sup> This network worked to improve standards of identification as well as the psychosocial and legal services provided to torture survivors. Through the project determining authorities were trained, and a process of exchange and capacity building on these issues was promoted. Furthermore, ad hoc training sessions have been conducted involving 10 national Medical Psychological Centres (part of the National Health System) located near the Territorial Commissions. These training sessions, specifically directed to health professionals working inside the CARAs and in the ASLs (Local Public Health Units), have resulted in a network of medical centres all over Italy with staff are competent to identify, treat and draft medico-legal reports on behalf of torture victims.

NIRAST produced a questionnaire specifically designed to assist in identifying torture survivors, the "Clinical Interview for the Early Identification of Torture Survivors" (hereafter ETSI Interview). NIRAST also trained the medical and psychological teams operating in the CARA regarding the use of the ETSI Interview. When a large number of asylum seekers need to be screened, the ETSI Interview can be used as a Triage evaluation to determine the likelihood that a person has experienced extreme trauma, and the urgency for specialised care. Currently this tool is being tested by some NGOs and caseworkers from Cameroon and Chad with the aim to further disseminate it. Moreover, NIRAST also designed a referral procedure to ensure that those identified as possible torture survivors receive prompt specialised medical and psychological care from the NIRAST centres. However, this Network had to shut down in March 2012 due to lack of funds, and is currently looking for new grants to fund it.

In detention centres (CIEs - Centres for Identification and Expulsion), legal assistance and psychological support is not systematic. 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 CIE 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 CIE to another.

During the personal interview, if the members of the Territorial Commissions suspect that the asylum seeker may be a torture survivor they may refer them to specialised services and suspend the interview. In 2005, the National Commission for the Right of Asylum issued "Guidelines for the assessment of applications for the recognition of the refugee status".<sup>89</sup> These Guidelines make reference to the standards and techniques to be used during the substantive interview. Special attention is given to the communication barriers due to the effects of trauma suffered by asylum seekers, emphasising that it is the duty of the interviewer to try to obtain the pertinent elements of the personal history. The Guidelines

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<sup>86</sup> CIR, *Maieutics "Elaborating a common interdisciplinary working methodology (legal-psychological) to guarantee the recognition of the proper international status to victims of torture and violence"*, December 2012, at p. 55-57.

<sup>87</sup> More information available [here](#).

<sup>88</sup> More information available [here](#).

<sup>89</sup> See *"Linee Guida per la valutazione delle richieste di riconoscimento dello status di rifugiato"*, Ministero dell'Interno, Commissione Nazionale per il diritto D'asilo, anno 2005, pp. 83-85.

underscore the usefulness of medical reports to corroborate the declarations made by the torture survivors who have difficulties disclosing their personal stories. The Guidelines instruct that when asylum seekers manifest serious difficulties in answering questions during the substantive interview, members of the Territorial Commissions should make contact with specialised services, not only out of interest for the well-being of the asylum seekers but also in order to obtain additional useful information concerning their health and pertinent elements of their personal stories. It should be underlined the necessity to foresee ad hoc procedures and Guidelines focused on the modalities to interview vulnerable groups (children, traumatised persons, survivors of torture and violence) as well as skilled personnel competent to deal with these cases. However, the reinforcement of the protection of child asylum seekers deriving from the adoption of Legislative Decree n. 18/2014 should be mentioned. Article 3 (5e) envisages the obligation to take into account the level of maturity and the personal development of the child while evaluating their reliability<sup>90</sup>. Furthermore, art. 19 (2-bis) of the same Legislative Decree expressly recalls and prioritises the principle of the best interest of the child<sup>91</sup>.

Vulnerable persons are admitted to the prioritised (shorter) procedure. 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.

The identification of vulnerable asylum seekers is not mainstreamed in the training of police authorities, caseworkers, or interpreters.

The law requires the National Commission for the Right of Asylum which coordinates the Territorial Commissions 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. In 2012 the National Commission organized no training at central level. However, *ad hoc* trainings addressed to the Territorial Commissions personnel were organised locally.

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. 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.

## 2. Use of medical reports

### Indicators:

- Does the legislation provide for the possibility of a medical report in support of the applicant's statements regarding past persecution or serious harm?
 

<input type="checkbox"/> Yes	<input type="checkbox"/> Yes, but not in all cases	<input checked="" type="checkbox"/> No
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- Are medical reports taken into account when assessing the credibility of the applicant's statements?
 

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
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The Italian legislation has not introduced a specific provision explicitly foreseeing the possibility of a medical report in support of the applicant's statements regarding past persecutions or serious harm. Nevertheless, Legislative Decree No. 251/2007 (Qualification Decree) states that the assessment of an application for international protection is to be carried out taking into account all the relevant

<sup>90</sup> Art. 3 (5 e) of the Legislative Decree n. 18/2014.

<sup>91</sup> Article 19 (2 – bis) of the Legislative Decree No. 18/2014.

documentation presented by the applicant including information on whether the applicant has been or may be subject to persecution or serious harm.<sup>92</sup>

According to the legislation, 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.<sup>93</sup>

In practice, the 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.<sup>94</sup>

The Territorial Commissions consider these reports very useful in assisting them to properly conduct the personal interviews with vulnerable persons and, in evaluating the credibility of the applicant's personal story with a view to take a fair decision. During the *ad hoc* training addressed to the members of the Territorial Commissions, CARAs staff and other authorities, organised by CIR in collaboration with the National Commission for the right of asylum, the determining authorities have stressed the importance of receiving medico-legal reports before the personal interview by experts with a view to adopt a proper decision. In addition, from the decisions of the determining authorities examined it emerges that in cases where the personal story is deemed not consistent but a medical-legal report has been issued by an expert to explain the reasons of this inconsistencies, the Territorial Commissions usually consider the contents of the medico-legal report and grant the proper form of international protection.

It may happen (not systematically) that the Territorial Commissions have consultations with experts before, after or during the personal interview in case the asylum seekers are accompanied by these experts.

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.<sup>95</sup> However, asylum seekers, in particular those not living in reception centres or those living in remote areas, may have less or no chance to be detected and referred to specialised services due to a lack of information and specialised counselling.

The medical reports are provided to asylum seekers for free. NGOs may guarantee the support and medical assistance through *ad hoc* projects. Another example of good practice for torture survivors in Italy is represented by medico-legal reports provided for free by Sa.Mi.Fo, a project funded thanks to the collaboration between the Association Centro Astalli and the Azienda di Sanità Pubblica ASL RM A (Public Health Unit)<sup>96</sup>. This service assists also asylum seekers and victims of torture offering legal medical-psychological and psychiatric assistance.<sup>97</sup>

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<sup>92</sup> Article 3 of the Legislative Decree No. 251/2007 on minimum standards for the qualification and status of third country nationals as refugees or as persons who otherwise need international protection.

<sup>93</sup> Article 12(2) of the Legislative Decree 25/2008.

<sup>94</sup> CIR, Maieutics "[Elaborating a common interdisciplinary working methodology \(legal-psychological\) to guarantee the recognition of the proper international status to victims of torture and violence](#)", December 2012, at p. 61.

<sup>95</sup> See in this regards: CIR, Maieutics, *op. cit.*; Van der Kolk B.A., Roth S., et alii, *Disorders of Extreme Stress: The Empirical Foundation of a Complex Adaptation to Trauma*, (2005) *Journal of Traumatic Stress*, Vol. 18, No. 5, pp. 389–399; Van der Kolk B.A., McFarlane A.C., Weisaeth L., *Traumatic Stress*, Guilford Press, 1996; Bromberg, P.M., *Standing in the spaces: Essays on clinical process, trauma, and dissociation*, (1998) New Jersey: Analytic Press; Mears R., *Intimacy and Alienation: Memory, Trauma, and Personal Being*, Brunner-Routledge, 2001; Bromberg, P.M. *The shadow of the tsunami and the growth of the relational mind*, Routledge, 2011.

<sup>96</sup> See CIR, *Maieutics*, *op. cit.*, at p. 61.

<sup>97</sup> According to Centro Astalli 2012 [Report](#), last year 267 medico-legal reports have been issued by SA.Mi.FO. For further information and more detailed data, Centro Astalli, *Rapporto annuale 2013*, March 2013, at p. 30-31.

### 3. Age assessment and legal representation of unaccompanied children

#### Indicators:

- Does the law provide for an identification mechanism for unaccompanied children?  
 Yes       No
- Does the law provide for the appointment of a representative to all unaccompanied children?  
 Yes       No

The Italian legislation includes a specific provision concerning the identification of unaccompanied children. It foresees that in case of doubts on the age of the asylum seeker, unaccompanied children can be subjected to an age assessment through non-invasive examinations.<sup>98</sup> 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 their legal guardian.<sup>99</sup> The refusal by the applicant to undertake the age assessment has no negative consequences on the reception of the asylum request.

This legislation however does not clearly lay down detailed rules on the age assessment methods; it only specifies that the age assessment must be carried out through non-invasive medical examinations.

According to Circular No. 17272/7 it is necessary to resort to all kind of examinations, giving however priority to the medical examinations carried out in public health structures with paediatric departments.<sup>100</sup> This Circular emphasises that considering that the age assessment cannot lead to an exact result, the benefit of the doubt principle should be always applied when doubts remain concerning the real age of the applicant.

However, the reinforcement of the protection of child asylum seekers deriving from the adoption of the Legislative Decree n. 18/2014 should be mentioned., Article 3 (5 e) envisages the obligation to take into account the level of maturity and the personal development of the child while evaluating their reliability<sup>101</sup>. Furthermore, article 19 (2 – bis) of the same Legislative Decree expressly recalls and prioritises the principle of the best interest of the child<sup>102</sup>.

In practice, as underlined by several NGOs, in most cases where asylum seekers declare to be children or are suspected to be adults by the police, they are subjected to the age assessment procedure, which is often not carried out by specialised doctors through x-ray methods.<sup>103</sup> In fact in the 5<sup>th</sup> Report on the monitoring of the Convention on the Rights of the Child in Italy (2011-2012) the CRC Group recommend that the age assessment is carried out in health facilities and by specialised personnel.<sup>104</sup>

With regard to the appointment of a legal representative to an unaccompanied child, the legislation states that when an asylum request is made by an unaccompanied child, the competent authority suspends the asylum procedure and immediately inform both the Juvenile Court ("*Tribunale per i minorenni*") and the Judge for guardianship (*Giudice tutelare*).<sup>105</sup> The Judge for guardianship has to appoint a legal guardian within 48 hours following the communication by the Police Immigration Office (*Questura*). The Italian legislation foresees no exception to this rule.

<sup>98</sup> Article 19 (2) of the Legislative Decree 25/2008.

<sup>99</sup> *Ibidem*.

<sup>100</sup> Circular No. 17272/7 of the 9 July 2007 of the Ministry of Interior for the age assessment.

<sup>101</sup> Art. 3 (5 e) of the Legislative Decree n. 18/2014.

<sup>102</sup> Article 19 (2 – bis) of the Legislative Decree No. 18/2014.

<sup>103</sup> Analysis and position of Save the children Italy on the Protocol concerning the assessment of the age of unaccompanied minors elaborated in June 2009 by the Ministry of Labour, the Ministry of Health and that of Social Affairs, September 2010. See also: Save the Children Italia, Principi Generali in Materia di Accertamento dell'Età, July 2009.

<sup>104</sup> Gruppo CRC, 5 Rapporto di aggiornamento sul monitoraggio della Convenzione sui diritti dell'infanzia e dell'adolescenza in Italia 2011-2012 (*5th update report on the monitoring of the Convention on the Rights of the Child in Italy*), p. 111-112.

<sup>105</sup> Article 26 of the Legislative Decree 25/2008.

The legal guardian, when appointed, takes immediately contact with the police authorities to confirm and reactivate the asylum procedure and the adoption of measures related to the accommodation and the care of the child.

According to the Legislative Decree 25/2008, the legal guardian has the responsibility to assist the unaccompanied child during the whole asylum procedure, and even afterwards, in case they receive a negative decision on their claim.<sup>106</sup> For this reason the legal guardian accompanies the child to the police, where they are fingerprinted if they are over 14, and assists the child in filling the form and formalise the asylum claim. The legal guardian has also a relevant role during the personal interview before the determining authorities, who cannot start the interview without their presence. The legal guardian must be authorised by the judge for guardianship to make an appeal against a negative decision. In practice this happens rarely because in general legal guardians do not consider necessary to appeal the decisions due to the fact that children already got a form of protection status or they could obtain a stay permit until they are 18. In addition, guardians may think that the appeal is useless or that the judicial procedure would be too burdensome.<sup>107</sup>

The asylum legislation does not foresee any specific provision concerning the possibility of appeal by unaccompanied children themselves, even though in theory the same provisions foreseen for all asylum seekers are also applied to them.

The system of legal guardianship is not specific to the asylum procedure. A legal 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<sup>108</sup>. The guardian is responsible for the protection and the well-being of the child. Usually the Mayor of the Municipality where the minor is residing is appointed as guardian. In practice he 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 other vulnerable persons (elderly, handicapped, etc...) and have no time to accomplish properly their mandate.

Guardianship could also be granted to “volunteer guardians”, a category of qualified persons that have received special training, though this option is not systematically applied. In Venice there is a register of specifically trained “voluntary guardians”, and they are appointed within two months from the moment a request is lodged.

There are no legal provisions specifying that legal guardians should be trained and possess expertise in the field of asylum. In general, the legal guardians are not specifically trained to deal with asylum seekers. There is no monitoring system in place to verify how legal guardians act and perform their mandate.

In practice, legal guardians tend to meet the child only during the formal registration of the asylum request and the hearing before the Territorial Commission, as it is strictly required by law. Legal guardians are rarely appointed within 48 hours as prescribed by the law. Judges for guardianship tend to appoint the legal guardians after several weeks from the submission of the asylum request and not to appoint a legal guardian when a child is 17: in such cases the child cannot reactivate the asylum procedure because they have no legal capacity. Therefore, children are obliged to wait until they turn 18 to make a new asylum request. However, in practice this has never been applied before.

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<sup>106</sup> Art. 19 sub-section 1 of the “Procedures” Decree.

<sup>107</sup> France terre d’asile and CIR, *Right to asylum for unaccompanied minors in the European Union. Comparative study in the 27 EU countries*, 2012.

<sup>108</sup> Art. 343 and following of the Civil Code.

## F. The safe country concepts

### Indicators:

- Does national legislation allow for the use of safe country of origin concept in the asylum procedure?  Yes  No
- Does national legislation allow for the use of safe third country concept in the asylum procedure?  Yes  No
- Does national legislation allow for the use of first country of asylum concept in the asylum procedure?  Yes  No
- Is there a list of safe countries of origin?  Yes  No
- Is the safe country of origin concept used in practice?  Yes  No
- Is the safe third country concept used in practice?  Yes  No

The safe country concepts are not applicable in the Italian context.

## G. Treatment of specific nationalities

The National Commission for the Right of Asylum issued on 15 June 2012 a Circular<sup>109</sup> to the Territorial Commissions indicating that due to the serious humanitarian crisis in Mali, in principle, asylum seekers from Mali should at least be granted subsidiary protection. This Circular specifies also that subsequent asylum applications from asylum seekers from Mali who had previously received a negative decision, should be given priority.

Somalis also generally obtain a form of protection (international protection or humanitarian status) due to the long-lasting instability in Somalia.

Following the exceptional influx of migrants coming from North African countries, mainly due to the conflict in Libya and the politico-social uprisings in Tunisia and Egypt, Italy declared a state of humanitarian emergency on 12 February 2011. As a result, a special system to receive about 19.000 North African migrants and asylum seekers was organised and managed by the National civil protection system. All the individuals among these people who manifested the willingness to present an asylum application have been admitted to the regular asylum procedure.

Non Libyan nationals who had resided many years in Libya and/or had been victims of torture or inhuman treatment were granted a residence permit on humanitarian grounds after having been admitted to the regular asylum procedure, although they were not subject to persecution or serious harm in their countries of origin.

It is worth noting that the Ministry of Interior has issued a Circular (N. 400/C/2012) on 31 October 2012 stating that those non Libyan nationals already notified with a negative decision on their asylum claim could ask for a re-examination of their asylum request.

UNHCR, IOM and Save the Children, in the framework of *Presidium* project, have denounced through a press release issued on 30 April 2013 the widespread practice adopted by Italian authorities towards a hundreds of Egyptians and Tunisians who were prevented from lodging asylum requests and were

<sup>109</sup> Circular 4369 of the Ministry of Interior of 15 June 2012, available [here](#).

subsequently returned to their country of origin without having had the possibility to enter in contact with the mentioned organisations.<sup>110</sup>

During 2013, huge numbers of migrants and asylum seekers (mixed flows) arrived by boat in Italy (not only to Lampedusa). On the basis of data provided on 15<sup>th</sup> October 2013 by the Department for Civil Liberties and Immigration of the Ministry of Interior<sup>111</sup>, it results that from the 1<sup>st</sup> January to the 14<sup>th</sup> October 2013, 35.085 migrants arrived along the Italian coasts. Among them, 9.805 are Syrian nationals, while 8.443 are from Eritrea and 3.140 from Somalia. 25.000 of these migrants have been rescued by Italian authorities during operation in both territorial waters and in the high sea.

The Deputy Minister of Interior, Mr. Bubbico, recently gave more updated statistics concerning the main country of origin of asylum seekers arrived by boat. As reported by him, "in 2013 the main country of origin, identified on the basis of the declarations of third-country nationals at the moment of disembarkation, is Syria. In fact, the total number of Syrians who arrived in Italy is more than 11.000; an exponential increase compared to the year 2012 where the number of Syrians disembarked amounted to just 582 persons"<sup>112</sup>.

Concerning Syrian nationals, it is important to underline what was already described in the section on the Dublin "procedure", concerning the reluctance in being fingerprinted or to claim for asylum and to abscond soon after the admission to the asylum procedure. In this regard, as reported by UNHCR, among the total number of Syrian nationals who arrived in Italy in 2013 only 695 have filed an asylum application.<sup>113</sup>

On the basis of information acquired by CIR, among those who formalised the asylum request, the number of applicants who effectively did the personal interview before the determining authorities, i.e. those that did not leave Italy before their interview, is lower. They are probably untraceable. The persons who arrived at the airports are the main group who apply for asylum.

The determining authorities do not apply *ad hoc* measures for Syrian nationals, but the 'National Commission for the Right of Asylum' has the intention to send to the Territorial Commissions the UNHCR position paper on Syrian nationals<sup>114</sup>.

On the basis of the information acquired by CIR in November 2013, the determining authorities are generally granting refugee status (75%) and subsidiary protection (25%). It seems that no negative decisions have been taken toward Syrian asylum seekers. Those decisions that are deemed negative are those related to cases of "absconding" (decision based on absconding grounds are automatically reviewed when the person concerned present themselves again before the Questura to re-open their case).

The first months of 2014 have seen a large number of arrivals of migrants. In this regard, in March 2014 CIR has reported that "Since the beginning of this year about 10.000 third-country nationals have arrived on Italian territory, while during the same period of 2013 the number of persons arrived amounted to only 900".<sup>115</sup> Only in the last month a further 10.000 persons have arrived in Italy by boat.

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<sup>110</sup> UNHCR, [Le organizzazioni umanitarie chiedono di incontrare i migranti egiziani e tunisini che sbarcano sulle coste italiane](#) (*The humanitarian organisations request to meet with the Egyptian and Tunisian migrants that disembarked on the Italian coast*), 30 April 2013; UNHCR, [Recommendations on important aspects of refugee protection in Italy](#), July 2012, at p. 7. CIR "Access to Protection: a human right", October 2013, at p. 35-36.

<sup>111</sup> These data have been provided during the Conference for the launch of the report elaborated by CIR "Access to Protection: a human right", held on 15<sup>th</sup> October 2013.

<sup>112</sup> CIR, [Sbarchi di migranti in Italia: 42.925 nel 2013; già 2.156 nel gennaio 2014](#) (Boat arrivals of migrants in Italy: 42.925 in 2013; already 2.156 in 2014) 11 February 2014: [4](#).

<sup>113</sup> UNHCR, [Asylum Trends 2013](#), at p. 39.

<sup>114</sup> UNHCR, International protection considerations with regards to people fleeing the Syrian Arab Republic (update II), 22 October 2013.

<sup>115</sup> CIR, [Subito un piano completo per far fronte agli arrivi massicci via mare](#) (A comprehensive plan [needed] now to face massive boat arrivals) 20 March 2014.

As a consequence, from the beginning of 2014 until now, more than 20.500 migrants<sup>116</sup> have arrived to the Italian coast or were rescued at sea in the framework of the “Mare Nostrum” operation.<sup>117</sup> Among the main countries of origin are: Syria, Eritrea, Mali, Gambia, Somalia, Nigeria, Senegal.

The “*Mare Nostrum*” operation was launched by the Italian authorities as a “military and humanitarian” operation in the Channel of Sicily immediately after the tragic shipwreck which occurred on 3<sup>rd</sup> October 2013 near the Lampedusa coast, in order to prevent the increasing number of deaths of migrants at sea.

This operation, initiated officially on 18 October 2013, aims at strengthening surveillance and patrols on the high seas as well as to increase search and rescue activities. It provides for the deployment in the operation of personnel and equipment of the Italian Navy, Army, Air Force, Custom Police, Coast Guards and other institutional bodies operating in the field of mixed migration flows.<sup>118</sup>

It is worth noting that since the beginning of the operation *Mare Nostrum* to the end of April 2014, no deaths of migrants have been registered in the Channel of Sicily, whereas 12.000 persons, most of them refugees, have been rescued in the part of the Mediterranean sea covered by this initiative.<sup>119</sup>

CIR is also convinced “of the necessity of continuing rescue operations which in 6 months saved 15.000 people [...]it is the first time since 1998 that no tragedy occurs at sea...”<sup>120</sup>. *Mare Nostrum per se* is not a pull factor or a cause of increase of the number of boat arrivals. The broader number of disembarkations is due to both the increasing of Syrian nationals, who flee from their country of origin and from neighbouring countries (Jordan, Lebanon etc) and other nationalities most of them in need of protection.

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<sup>116</sup> This data has been provided by the Ministry of Interior on 16 April 2014, “[Information by Alfano to the Deputy Chamber: numbers on migrants arrivals](#)”.

<sup>117</sup> See also: UNHCR, Briefing Notes “Mediterranean crossings rise in first months of 2014 – many fleeing war and persecution, 11 April 2014, available [here](#).

<sup>118</sup> See a summary of the operation on the Navy website [here](#).

<sup>119</sup> CIR, [Sbarchi: 2.128 migranti giunti in 48 h. Intervista di Redattore sociale al Direttore CIR: bene ‘Mare nostrum’, ma preoccupa l’accoglienza](#) (boat arrivals: 2,128 migrants in 48 hours. Interview by Redattore Sociale of the Director of CIR: “we welcome Mare Nostrum, but we are concerned about reception”)19 March 2014.

<sup>120</sup> CIR, 29 April “Mare Nostrum, CIR Director to the press Agency ‘Redattore Sociale’ for the first time from 1998 six months without shipwrecks”, see [www.cir-onlus.org](#)

## Reception Conditions

### A. Access and forms of reception conditions

#### 1. Criteria and restrictions to access reception conditions

##### Indicators:

- Are asylum seekers entitled to material reception conditions according to national legislation :
  - o During the regular procedure:
    - Yes  Yes, but limited to reduced material conditions  No
  - o during the Dublin procedure:
    - Yes  Yes, but limited to reduced material conditions  No
  - o During the appeal procedure (first appeal and onward appeal):
    - Yes  Yes, but limited to reduced material conditions  No
  - o In case of a subsequent application:
    - Yes  Yes, but limited to reduced material conditions  No
- Is there a requirement in the law that only asylum seekers who lack resources are entitled to material reception conditions?  Yes  No

In Italy there is no structural legislation on reception conditions and no uniform reception system.

On the basis of Reception Decree No. 140/2005, asylum seekers who lack financial resources to ensure an adequate standard of living for the health and the subsistence of themselves and their family<sup>121</sup> can present a reception request when they lodge their asylum claim.<sup>122</sup> By law, the access to reception centres shall be provided since the moment of the presentation of the asylum request.<sup>123</sup> In other words, in order to benefit from the reception conditions, an asylum seeker when filing an asylum application at the Questura (Immigration Office of the Police) has also to fill in an *ad hoc* declaration of destitution. In practice, even though by law asylum seekers are entitled to material reception conditions immediately after claiming asylum and the “*fotosegnalamento*” (fingerprinting), they may access accommodation centres only after the formal registration – the so-called “*verbalizzazione*”. This implies that, since the *verbalizzazione* can take place even months after the asylum application, asylum seekers have to find alternative temporary accommodation solutions. However, the awaiting times between the *fotosegnalamento* and *verbalizzazione* differs from Questura to Questura, depending *inter alia* on the number of asylum applications. Due to this issue some asylum seekers, lacking economic resources are obliged to either resort to friends or to emergency facilities, or to sleep on the streets.<sup>124</sup>

The reception request is transmitted by the Questura to the Prefecture (local governmental office), which is in charge of carrying out the assessment of resources on the basis of the criteria laid down for the granting of a tourism visa.<sup>125</sup> It is worth noting that the assessment of the financial resources is not

<sup>121</sup> Art. 5(2), *ibidem*.

<sup>122</sup> Art. 6(1) of the Legislative Decree No. 140/2005.

<sup>123</sup> Article 5(5) of the legislative decree 140/2005.

<sup>124</sup> For more information see the report “[Il Diritto alla Protezione: la Protezione internazionale in Italia: quale futuro?](#)” (*The Right to Protection: International protection in Italy: what future?*) edited by ASGI in partnership with AICCRE, Caritas Italiana, CESPI, Consorzio Communitas onlus and funded by the Ministry Interior through the European Refugee Fund, June 2011.

<sup>125</sup> See Legislative Decree n. 286/1998, art. 4(3).

carried out in practice by the Prefecture which considers valid the self-declarations made by the asylum seekers.<sup>126</sup>

The Prefecture is also in charge of finding a place for the asylum seekers in reception centres.<sup>127</sup> The Prefecture consults the SPRAR (System of protection for asylum seekers and refugees) to verify availability in its structures.<sup>128</sup> If there is no place in the SPRAR system, asylum seekers can be referred to CARAs<sup>129</sup> (reception centres for asylum seekers) under the responsibility of the Prefectures.

The SPRAR, established in 2002,<sup>130</sup> is a publicly funded network of local authorities and non-profit organisations which accommodates asylum seekers, refugees and other beneficiaries of international protection. It is formed by small reception structures where assistance and integration services are provided (see section "Types of accommodation"). The CARA centres were established in 2008 and replaced previous identification centres.<sup>131</sup>

By virtue of art. 20 of the Procedure Decree No. 25/2008 asylum seekers should be accommodated in CARAs for identification reasons only:

- a) if they do not have travel or identity documents or if they have false or counterfeited documents;
- b) if the asylum request has been lodged after the asylum seeker has been stopped for having escaped or attempted to escape the border controls or soon after; or
- c) if they present their asylum request after being stopped for irregular stay in the Italian territory<sup>132</sup>.

In practice, many asylum seekers are placed in CARAs without meeting the criteria set by art. 20 due to a lack of places available in other reception centres and SPRAR System. Therefore, the CARAs provide not only mere first reception for identification reasons, but also reception in residual way.

It is worth noting that most of the asylum seekers coming by boat are placed in CARAs by virtue of art. 20(b), although NGOs have criticised this policy taking into account that those people are forced to flee by boat and have no other means to arrive in Italy and in the EU.

Upon arrival, asylum seekers may also be temporarily placed in CDAs (created in 1995, general first accommodation centres for irregular migrants, but used also for asylum seekers) and CSPAs<sup>133</sup> (first aid and reception centres for migrants and asylum seekers) depending on what is available locally.

The maximum stay in CARAs is 20 days if asylum seekers do not have travel or identity documents or if they have false or counterfeited documents and 35 days<sup>134</sup> in the other cases. Anyway, the actual stay is extended systematically to 6 months and more<sup>135</sup> due to the fact that the asylum procedure lasts several months and the asylum seeker has the right to stay in this centre during the appeal stage.

In practice, asylum seekers are referred to second accommodation centres (SPRAR – System of protection for asylum seekers and refugees) and they are transferred there depending on the availability of places and the urgency and the vulnerability of the case. Asylum seekers stay in the SPRAR typically for 6 months up to 11 months.

If the decision on the asylum request is not adopted within 6 months after its submission, the asylum seeker receives a new 6 month residence permit allowing them to work until the end of the asylum

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<sup>126</sup> As reported to CIR by the Prefettura di Roma. See also: M. Benvenuti, *La protezione internazionale degli stranieri in Italia*, Jovene Editore, Napoli 2011.

<sup>127</sup> Art. 6(2) of the Legislative Decree No. 140/2005.

<sup>128</sup> Art. 5(2) of the Reception Decree No. 140/2005.

<sup>129</sup> Art. 20 of the Legislative Decree No. 25/2008.

<sup>130</sup> Law 189/2002 concerning amendments on immigration and asylum.

<sup>131</sup> See Legislative Decree No. 25/2008.

<sup>132</sup> Art. 20 of the Legislative Decree No. 25/2008.

<sup>133</sup> The CPSA were created in 2006 so that the first identification and emergency aid can be conducted before persons are transferred to other types of centres.

<sup>134</sup> Art. 20 of the Legislative Decree N. 25/2008.

<sup>135</sup> Art. 20 of the Legislative Decree N. 25/2008.

procedure.<sup>136</sup> Asylum seekers who have a job may continue to benefit from the reception measures in the accommodation centre provided that they contribute financially.<sup>137</sup>

Asylum seekers who lodge an appeal against a negative decision on their asylum application are allowed to remain on the national territory and have access to accommodation only in case they are not allowed to work or their physical condition prevents them from working.<sup>138</sup>

There are several obstacles which affect and hamper the access of asylum seekers to material reception conditions.

First, the main negative aspect of the Italian reception system consists in the reduced number of places and structures that are not sufficient in order to provide to all asylum seekers in need an adequate reception. The conditions of arrival by boat of thousands of asylum seekers that require a prompt and immediate response in terms of rescue and reception constitutes another problem with regard to reception in Italy.

A partial response to the problem is the enlargement of the SPRAR system. The Ministry of Interior, through its decrees of July and September 2013, foresees the creation of up to 16.000 places during the next three years (2014-2016) in the SPRAR System.<sup>139</sup> Following the Ministry of Interior's decrees of July and September 2013, the Ministry announced that the capacity of the SPRAR System will be increased up to 20.000 places during the next three years (2014-2016)<sup>140</sup>. At present, the number of reception places financed for the three-year period (2014-2016) amounts to 13,020 places within the SPRAR system<sup>141</sup>. An additional 6,490 places will be created when funds are made available<sup>142</sup>. Moreover, to face the current emergency situation due to consistent arrivals by sea of migrants and asylum seekers, the Italian Ministry of Interior has increased the funds partially allocated to the accommodation system<sup>143</sup>.

In this respect, it is worth mentioning that following the North Africa emergency, in the middle of 2012 the Ministry of Interior has established a permanent National Coordination Body (Tavolo) where representatives of the Ministry of Integration,<sup>144</sup> of Labour and Regions, Provinces, Municipalities and UNHCR, as observer participate. This body has proposed and is currently working on the progressive enlargement of SPRAR centres with the aim to accommodate asylum seekers in little centres for shorter period of times, instead of putting them in CARAs that are often overcrowded<sup>145</sup>.

An important obstacle is also the length of the asylum procedure, including the appeal phase, which leads to asylum seekers staying for long periods in CARAs and SPRAR structures, thus creating difficulties in guaranteeing that places are made available for new asylum seekers. This is a problem deriving both from the previous North African emergency and the current significant increase in the number of asylum applications, which cause delays in the examination of asylum requests by the determining authorities.

In big cities like Rome, for example, an issue is also the lack of information on the way to submit a request for accommodation before the Questura. Another problem is the shortage of Prefecture staff and of cultural mediators and interpreters, who are not able to assess and to process all

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<sup>136</sup> Art. 11 (1) of the Legislative Decree N.140 on reception conditions.

<sup>137</sup> Art 11(4), *ibidem*.

<sup>138</sup> Art. 5(7) of the Legislative Decree No. 140/2005.

<sup>139</sup> Ministry of Interior Decree n. 9/2013 of the 30 July 2013, and Decree of 17th September 2013 adopted by the Ministry of Interior (Department of civil liberties and Immigration).

<sup>140</sup> Ministry of Interior Decree n. 9/2013 of the 30 July 2013, and Decree of 17th September 2013 adopted by the Ministry of Interior (Department of civil liberties and Immigration).

<sup>141</sup> See: Ministry of Interior, [Classification of the SPRAR places](#), 29 January 2014; ANCI, [SPRAR: the new triennium 2014-2016](#).

<sup>142</sup> Asilo in Europa, "[Lo SPRAR al centro](#)". Intervista a Daniela Di Capua, direttrice del Servizio Centrale dello SPRAR, 4 March 2014 (The SPRAR in focus. Interview with Daniela Di Capua, Director of the Central Service of the SPRAR).

<sup>143</sup> Art. 1(2) of the Legislative Decree n. 120 of the 15 October 2013 on Urgent Measures on the rebalances of the public finances and regarding migration.

<sup>144</sup> The Ministry of Integration, which was part of the Tavolo when it was established, has not been renovated by the current Renzi government, which took office in February 2014.

<sup>145</sup> Asilo in Europa, "[Lo SPRAR al centro](#)". Intervista a Daniela Di Capua, direttrice del Servizio Centrale dello SPRAR, 4 March 2014 (The SPRAR in focus. Interview with Daniela Di Capua, Director of the Central Service of the SPRAR).

accommodation requests in due time. Moreover, as reported to CIR by a state officer, in order to accommodate an asylum seeker in a SPRAR facility the Prefecture has to fill in a detailed file (the so-called “scheda socio-sanitaria”, health and social form), which creates further delays because of the shortage of staff and interpreters.

In addition, as reported by the Prefecture of Rome, many asylum seekers do not want to move to other cities, but they prefer to be hosted in accommodation centres in Rome or in surrounding areas.

With regard to the specific case of asylum seekers under the Dublin procedure, the Italian legal framework does not foresee any particular reception system.<sup>146</sup> Two scenarios should be distinguished: the first scenario concerns persons whose application has to be examined by another Member State waiting for their transfer. Since the Italian law does not establish that persons who are waiting to be transferred to another Member State on the basis of the Dublin II Regulation have to be detained, international protection seekers who received transfer orders are accommodated within the reception centres (CARAs or SPRAR projects) described above on the same conditions as the other asylum seekers.<sup>147</sup>

The second scenario refers to those Dublin cases to whom were issued transfer orders from other Member States and, as a consequence, were sent back to Italy. Within this broader category, another distinction is deemed necessary depending on whether the returnee had already enjoyed the reception system while they were in Italy or not. If returnees (asylum seekers, beneficiaries of international protection or of a permit of stay for humanitarian reasons) had not been placed in reception facilities while they were in Italy, they may still enter reception centres. Due to the lack of available places in reception structures and to the fragmentation of the reception system, the length of time necessary to find again availability in the centres is – in most of the cases - too long. Since, there is no general practice, it is not possible to evaluate the time necessary to access an accommodation. In the last years, temporary reception systems have been established to house persons transferred to Italy on the basis of the Dublin II Regulation. However, it concerns a form of temporary reception that lasts until their juridical situation is defined or, in case they belong to vulnerable categories, an alternative facility is found.

Such temporary reception has been set up thanks to targeted projects funded by the European Refugee Fund. At present, 13 centres for the reception of Dublin Returnees are operating, out of which seven are specifically addressed to vulnerable persons. There are 4 centres in Rome, 3 in the province of Milan, 2 in Venice, 2 in Bologna and 2 in Bari. They can accommodate a total of 572 Dublin Returnees. CIR runs an accommodation facility - the “Locanda Dublino” - in Venice, with a capacity of 40 places.

However, it happens that Dublin returnees are not accommodated and find alternative forms of accommodation such as self-organized settlements.<sup>148</sup> If returnees, who have already been granted a form of protection, had already enjoyed the reception system when they were in Italy, they have no more right to be accommodated in CARAs. However, they may be accommodated in these centres in case places are available to allow them to restart the administrative procedure to obtain a permit of stay.

## **2. Forms and levels of material reception conditions**

### *Indicators:*

- Amount of the financial allowance/vouchers granted to asylum seekers on 31/12/2013 (per month, in original currency and in euros): N/A

<sup>146</sup> CIR, Forum Réfugiés –Cosi- Hungarian Helsinki Committee and the European Council on Refugees and Exiles *Dublin II Regulation – National report on Italy*, page 47.

<sup>147</sup> *Ibidem*.

<sup>148</sup> Pro Asyl (eds. Bethke M. & Bender D.), *The living conditions of refugees in Italy*, 2011, p. 23.

By law, the request of accommodation is transmitted by the Questura (Immigration Office of the Police) to the competent Prefecture, which verifies the availability of places in the SPRAR (System of protection for asylum seekers and refugees). If there is no place in the SPRAR system, the Prefecture can refer the asylum seekers also to the CARAs (Accommodation centres for Asylum Seekers).

In practice, upon arrival most asylum seekers are placed in CARAs or may be temporarily placed in CDAs and CPSAs<sup>149</sup> (first aid and reception centres for migrants and asylum seekers) depending on availability in the area, with a view to be subsequently transferred to a SPRAR centre or a CARA.

First accommodation centres (CDA, CPSAs) generally offer basic services compared to those provided by second accommodation structures (SPRAR or other structures).

The first accommodation centres, in fact, are big buildings where high numbers of migrants and asylum applicants are accommodated. These centres offer basic services (food, accommodation, clothing, basic information services including legal services, first aid and emergency treatments). CDA, CPSA and CARA are often overcrowded. Most of the CARAs are located in remote areas with few means of public transports and people do not have the possibility to easily access the centre of the nearby city.

Each centre is run by different entities and the functioning of the services inside the centre depends predominantly on the competences, expertise, and organisational attitude of the running body.

Concerning the SPRAR centres, these structures are run by the regions, in cooperation with the provinces and municipalities and together with civil society actors like NGOs. According to the Presidential Decree N.303/2004, the accommodation centres ensure interpreting and linguistic-cultural mediation services, legal counselling, health assistance, socio-psychological support in particular to vulnerable persons, 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.<sup>150</sup>

By law asylum seekers may remain in CARAs from 20 to 35 days and in SPRAR centres for 6 months. In reality, they stay in the centres for several months: the average stay in CARA is about 8 to 10 months and in SPRAR, asylum seekers can stay 6 to 12 months, particularly in cases of vulnerable persons. This prolonged stay is due to the fact that, according to article 6 of the Legislative Decree no. 140/2005 (Reception Decree), asylum seekers without means of support may continue to be accommodated in CARA centres even beyond the envisaged 35 days, in case it is ascertained that no places are available in the municipality services (SPRAR).

In addition to the services provided within the reception centres (SPRAR and CARA), asylum applicants hosted in CARA receive 2,50 Euro per day per person as pocket money throughout the period they are accommodated. This amount is issued for personal needs. People hosted in a SPRAR centre receive a pocket money, which varies from project to project. For example in the Calabria Region, guests receive 1,50 Euro per day per person, while in the North Region 2.00 Euro per day.

By law, asylum seekers have the right to work after 6 months from the moment they filed the asylum application and the procedure is still on-going. Under these circumstances, if they find a job they may continue to benefit from the reception in the centre but they shall contribute to the cost of accommodation<sup>151</sup>. Actually, on the basis of CIR's experience this provision has never been applied in practice.

It must be pointed out that the information regarding access to the reception system on the basis of art 3 of the Reception decree 140/05 should be provided within 15 days after asylum seekers present their asylum applications. This information should be provided by the Questura in the territory.

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<sup>149</sup> The CPSA were created in 2006 so that the first identification and emergency aid can be conducted before persons are transferred to other types of centres.

<sup>150</sup> See also art. 40 of the TU 286/98.

<sup>151</sup> Leg.ve Decree 140/05 art 11.

In the practice, this communication is not immediate since it occurs only after the formal registration of the asylum request – that can take place after some months with respect to the “*fotosegnalamento*”. While waiting for the formal registration, above all in the metropolitan areas, the asylum seekers find themselves without any accommodation.<sup>152</sup>

Moreover, in practice the Questura often does not transmit the official request for accommodation to the Prefecture on behalf of the asylum seeker as set by the law. This lack of transmission leads to a lack of access to the right to reception of the asylum seekers.

If there is no place in both SPRAR Structures and CARA centres, the Prefecture should by law grant a financial allowance,<sup>153</sup> for the period needed a place is being found for them in one of the accommodation centres. The financial allowance should be provided in two instalments: the first instalment should amount to 557.80 Euros (27.89 per day), covering the first 20 days; the second 418.35 Euros, covering the following 15 days.<sup>154</sup> Nevertheless, in practice this provision has never been applied. In fact, where there is no place available in neither the SPRAR System nor the CARA centres, the Prefecture, nevertheless, sends asylum seekers to those structures, thereby exceeding the maximum reception capacity of these facilities; the consequence is a phenomenon of overcrowding and a deterioration of the material conditions. 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.

It may also happen that asylum seekers have neither access to reception centres, nor to the financial allowance. In these cases they are obliged to live in self-organised settlements that have flourished in metropolitan areas. These self-organised settlements are usually overcrowded, have very bad living conditions and asylum seekers are not integrated into society.<sup>155</sup> A clear example of this serious situation concerning the reception conditions in Italy is given by the Salam Palace, an abandoned university building located in a southern suburb of Rome, occupied by approximately 800 refugees from Sudan and the Horn of Africa.<sup>156</sup>

It is not possible to say that the treatment of asylum seekers concerning social benefits is less favourable than that of nationals, since the law establishes only a comparison between nationals and international protection beneficiaries and not with asylum seekers<sup>157</sup>.

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<sup>152</sup> CIR, Forum Réfugiés –Cosi- Hungarian Helsinki Committee and the European Council on Refugees and Exiles *Dublin II Regulation – National report on Italy*, page 40.

<sup>153</sup> Art. 6 (7) of the legislative Decree 140/2005.

<sup>154</sup> Directive of the Ministry of Interior of 1 March 2000 on the definition of means of subsistence for the entry and stay of foreigners in the territory of the State (published in Official Gazette no. 64 of 17 March 2000). See also M. Benvenuti, *ibidem*.

<sup>155</sup> See Caritas, Mediazioni Metropolitane – *Studio e sperimentazione di un modello di dialogo e intervento a favore dei richiedenti e titolari di protezione internazionale in situazione di marginalità (Study and testing of a model of dialogue and intervention in favour of the applicants and beneficiaries of international protection in situations of marginality)*, June 2012. See also “Le strade dell’Integrazione”, CIR, June 2012.

<sup>156</sup> New York Times, Elisabetta Povoledo, “[In Italy, Shantytowns of Refugees Reflect Paradox on Asylum](#)”, 26 December 2012; Open Society Foundations, [Top Human Rights Official Censures Italy](#), 21 September 2012.

<sup>157</sup> “Legislative Decree 251/2007 of 19 November 2007 and amendments introduced with Legislative Decree 18/2014 of 21st February 2014 (so-called Qualification Decree).

### 3. Types of accommodation

#### Indicators:

- Number of places in all the reception centres (both permanent and for first arrivals): As of 19 March 2014
  - o CPSA: 650.
  - o CDA/CARA: 7.866 (excluding the CARA in Cagliari, since the Ministry of Interior defined it as CPSA/CARA, therefore this is in the CPSA data.
  - o SPRAR centres provide 13.020 places
  - o North Africa emergency centres: at present, about 700 North African migrants and asylum seekers are still accommodated in these centres
- Number of places in private accommodation: Not available
- Number of reception centres: 4 CPSA, 10 CDA and CARA; 456 SPRAR reception projects, 13 reception projects under the ERF through the Italian Ministry of Interior.
- Temporary reception centres to face the massive influx of asylum seekers arrived and rescued at sea: 115 centres for 5.500 places.
- Type of accommodation most frequently used in a regular procedure :
  - Reception centre     Hotel/hostel     Emergency shelter     private housing
  - other (please explain)
- Are there instances of asylum seekers not having access to reception accommodation because of a shortage of places?     Yes     No
- What is, if available, the average length of stay of asylum seekers in the reception centres?  
8-10 months, even more in the case of appeal
- Are unaccompanied children ever accommodated with adults in practice?     Yes     No

According to the data provided to CIR by the Ministry of Interior (Department for Civil Liberties and Immigration)<sup>158</sup>, at present the reception system for asylum seekers includes the following structures:

- **4 Centres for first aid and reception (CPSA)**, which may accommodate in total 650 third-country nationals. At the moment the CPSA in Lampedusa is closed and under renovation
- **10 CARA (Accommodation centres for Asylum Seekers) and CDA (short term accommodation centres)**, whose effective accommodation capacity is 7.866 places. However, at the present they host about 9600 asylum seekers. The situation of some CARAs is particularly critical because of overcrowding. This is the case of: a) the CARA of Bari, which can accommodate 1.216 persons, but currently hosts 1.487 asylum seekers; b) the CARA of Catania Mineo, which can accommodate 3.000 persons, but currently hosts 3.750 asylum seekers; c) the CARA of Crotone, which can accommodate 1.370 persons, but currently hosts 1.500 asylum seekers; d) the CARA of Gorizia, which can accommodate 138 persons, but currently hosts 203 asylum seekers.
- **With regard to the SPRAR System**, on 17 September 2013 the Head of the Department for Civil Liberties and Immigration (Ministry of Interior) issued a decree that foresees an increase of the accommodation capacity of the SPRAR system up to 16.000 places for the three-years period 2014-2016<sup>159</sup>. At present, 456 reception projects<sup>160</sup> have been adopted, out of which 57

<sup>158</sup> Data provided by the Ministry of Interior to CIR on 19 March 2014.

<sup>159</sup> Decree by Head of Department for Civil Liberties and Immigration, 17 September 2013.

reception projects are dedicated to unaccompanied children, while 32 reception projects are destined to persons with mental disorders and disabilities. the total number of accommodation places in SPRAR facilities currently financed amounts to 13.020. However, according to the official data of the SPRAR system, during the three-years period 2014-2016 further 6.490 places will be made available<sup>161</sup>.

- **With regards to Dublin returnees** in the last years, temporary reception systems have been established to host persons transferred to Italy on the basis of the Dublin Regulation. However, it concerns a form of temporary reception that lasts until their juridical situation is defined or, in case they belong to vulnerable categories, an alternative facility is found.

These temporary reception structures have been set up thanks to targeted projects financed by the Italian Ministry of Interior through the European Refugee Fund. These EU projects started in 2012<sup>162</sup> and they are not usually automatically prolonged. Each year a new call for proposals is launched for a further period of one year or more.

At the present 13 centres for the reception of Dublin Returnees are operating, out of which seven are specifically addressed to vulnerable persons. There are 4 centres in Rome, 3 in the province of Milan, 2 in Venice, 2 in Bologna and 2 in Bari. They can accommodate a total of 572 Dublin Returnees. CIR runs an accommodation facility - the "Locanda Dublino" - in Venice, with a capacity of 40 places.

The places available are still not sufficient to accommodate all migrants and asylum seekers, therefore CARA or CPSA are often overcrowded. It may happen that about 2000 people can be accommodated in one CARA, like the CARA in Crotona, which has a total capacity of 1370 places, creating huge problems in managing these centres. On the basis of the information provided by the Ministry of Interior, on 19 March 2014, 1,500 asylum seekers were hosted in the CARA/CDA of Crotona.

In addition, asylum seekers are often kept in CARAs for extended periods of time, as opposed to being transferred to a SPRAR centre after the completion of identification procedures as originally intended due to lack of places.

The Ministry of Interior Decree of 21 November 2008 defines common minimum standards for CARAs at the national level, which are included in all contracts for the management of these reception facilities, services. The CARA centres can be managed by public local entities and other public or private bodies specialised in the assistance of asylum seekers, through *ad hoc* agreements valid for a period of 3 years.<sup>163</sup> In practice, however, these accommodation centres are managed by private companies or consortium of social cooperatives and consortium of social enterprises.

CARAs do not all offer the same reception services. Their quality of assistance<sup>164</sup> varies between facilities and sometimes failing to meet adequate standards, especially regarding the provision of legal and psycho-social assistance; identification, referral and care provided to vulnerable individuals is often inadequate due to low levels of coordination among stakeholders, an inability to provide adequate legal and social support as well as the necessary logistical follow-up.<sup>165</sup> Finally, the monitoring of reception

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<sup>160</sup> SPRAR projects are "integrated reception" projects organized and run by local authorities, which do not only provide food and, but also information, assistance, orientation and individualized socio-economic integration, accommodation. The number of places provided through each project may vary. For more information see [here](#).

<sup>161</sup> ANCI, *SPRAR: Il nuovo triennio 2014-2016* (SPRAR: the new triennium 2014-2016), available at:

<sup>162</sup> For more details: Ministry of Interior, "[Dal Fondo europeo per i rifugiati 2008-2013, stanziati oltre 15 milioni di euro a favore dei richiedenti o titolari di protezione internazionale](#)" ("From the European Refugee Fund 2008-2013 allocated more than 15 million euros in favour of asylum seekers and beneficiaries of international protection"), 15 Dec 2012.

<sup>163</sup> Regulated by the Presidential Decree 303/2004.

<sup>164</sup> UNHCR Recommendations on Important aspects on Refugee Protection in Italy, July 2012, page 12.

<sup>165</sup> CIR et al., *Maieutics handbook – Elaborating a common interdisciplinary working methodology (legal-psychological) to guarantee the recognition of the proper international protection status to victims of torture and violence*, December 2012.

conditions by the relevant authorities is generally not systematic and complaints often remain unaddressed.<sup>166</sup>

SPRAR centres, funded by the Ministry of Interior - Department of Civil Liberties and Immigration, are managed by local authorities through the National Association of Italian Municipalities in cooperation with NGOs. They offer several services aiming at integrating asylum seekers and refugees in the Italian society. In general, as noted by the Council of Europe's Commissioner Niels Muzienieks, *"in contrast to CARAs and emergency reception centres, which tend to be big institutions hosting significant numbers of persons at one time, the SPRAR is composed of approximately 150 smaller-scale projects [...] and it also seeks to provide information, assistance, support and guidance to beneficiaries to facilitate socio-economic inclusion. [...] SPRAR reception facilities are less homogeneous and accommodation is generally foreseen in small to medium-sized facilities such as flats where services are geared towards facilitating local integration"*.<sup>167</sup>

With regards to categories with special needs, it is important to underline that the law provides that accommodation be provided taking into consideration the special needs of asylum seekers and their family members, in particular of vulnerable persons such as children, disabled persons, elderly people, pregnant women, single parents with children, when, after assessment, asylum seekers have been considered victims of torture, rape, or any other form of psychological, mental and sexual violence.<sup>168</sup> In addition, the Italian legislation specifies that asylum seekers are accommodated in structures which ensure the protection of family unity, "wherever possible".<sup>169</sup>

Both in SPRAR centres and in CARAs, the management body of the accommodation centres should respect the family unity principle<sup>170</sup>. Therefore they cannot separate children from parents who live in the same wing of the accommodation structure. 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 that in CARA centres families are divided in case the accommodation conditions are deemed not adequate and suitable for children. In these situations mothers and kids are hosted in a facility, and men in another. The CARA in Gorizia is an example where families are usually divided. By contrast in some CARAs families are accommodated together, like for instance in the CARA of Castelnuovo di Porto (near Rome), the CARA in Mineo (close to Catania) and CARA in Crotone (Calabria region)

In some circumstances, it may occur that families accommodated in CARAs are subsequently transferred to a SPRAR facility, since it constitutes a more adequate reception centre for the specific situation of the family concerned. This transfer depends on some factors such as *inter alia* the composition of the family, its vulnerability and/or health problems and the number of asylum seekers awaiting for a place in the SPRAR System.

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 the rise of tensions and violence.

Based on CIR's 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 each CARA with the task of preventing problems and maintaining public order. Generally speaking, the management body of CARAs divides each family from the others hosted in the centre. Women and men are always separated.

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<sup>166</sup> UNHCR Recommendations on Important aspects on Refugee Protection in Italy, July 2012, page 12.

<sup>167</sup> Report by Nils Muiznieks, Commissioner for Human Rights of the Council of Europe, following his visit to Italy from 3 to 6 July 2012, Comm DH (2012)26, 18 September 2012.

<sup>168</sup> Art 8 of the Legislative Decree 140/2005.

<sup>169</sup> Art 9(1)(a) of the Legislative Decree 140/2005.

<sup>170</sup> SPRAR Manual, at p. 7 and 13.

Concerning unaccompanied children, by law the reception of children is ensured by the local public entities (municipalities) on the basis of a decision taken by the juvenile Court. Unaccompanied children cannot be held in CARAs. Usually, unaccompanied children are accommodated in SPRAR centres. In case places in SPRAR centres are not available, unaccompanied children are placed in specialised centres for children.

In practice, due to time constraint and difficulties in finding interpreters and linguistic-cultural mediation, children are not always identified as such soon after arrival. Therefore, they can be transferred to CARA as “adults”. When an asylum seeker indicates that they are a child, the manager of the centre immediately informs the competent authorities of their presence. An age assessment follows and if the person is recognised to be a child, then they are transferred to a SPRAR centre or, in case no place is available, to a specialised centre for children.

Alternative types of accommodation with respect to CARA, CPSA and SPRAR system have been established in order to respond to the big number of arrivals in the last few months. From the beginning of 2014, more than 20.500 migrants<sup>171</sup> have arrived to the Italian coast or were rescued at sea in the framework of the “Mare Nostrum” operation.<sup>172</sup> Considering the huge number of people, the Italian authorities issued a Circular<sup>173</sup> requesting local Prefectures to find reception places (preferably not hotels) and sign agreement with local entities and NGOs for their management.

In this regard, UNHCR, during the consultation with the Parliamentary Committee on control of the implementation of the Schengen agreement, expressed the need to plan a more stable reception system for those asylum seekers who are expected to arrive to Italy during the coming months.<sup>174</sup> CIR has also requested that Italian authorities elaborate and put in place a comprehensive plan for reception which should guarantee shorter periods of stays in reception centres and should reduce the delays of the asylum procedure.<sup>175</sup> Furthermore, the plan should facilitate integration paths for international protection beneficiaries.

Finally, in addition to the above mentioned reception centres, there is also a network of private accommodation structures 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 in addition to the places available through the SPRAR. It is very difficult to know the number of places. The function of these structures is relevant especially in emergency cases or of families.

#### 4. Conditions in reception facilities

Reception conditions are very different among different accommodation centres and also among the same type of centres. Therefore it is extremely difficult to give a full picture and reliable information for each reception centre.

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<sup>171</sup> This data has been provided by the Ministry of Interior on 16 April 2014, “[Information by Alfano to the Deputy Chamber: numbers on migrants arrivals](#)”.

<sup>172</sup> See also: UNHCR, Briefing Notes “[Mediterranean crossings rise in first months of 2014 – many fleeing war and persecution](#)”, 11 April 2014.

For more information on *Mare Nostrum*, see the section on “Treatment of specific nationalities”.

<sup>173</sup> Circular of the Ministry of Interior, 8 January 2014 and subsequent circular of 19 March 2014.

<sup>174</sup> UNHCR, “[UNHCR expresses its concern for the absence of a comprehensive plan for reception of asylum seekers and asks for more attention to the asylum reform](#)”, 25 March 2014. see also UNHCR Recommendations on Important Aspects on Refugee Protection in Italy, July 2012.

<sup>175</sup> CIR, “[Subito un piano complete per far fronte agli arrive via mare](#)” 20 March 2014.

Generally speaking SPRAR centres meet better standards than CARA, CDA and CPSA. However, SPRAR centres are of different types reception centres, apartments and hotels. Services provided are the same, but the quality can differ depending on the management bodies running the centres.

While the SPRAR publishes annual report on its reception system, no comprehensive and updated reports on reception conditions in all the Italian territory are available. For this reason in this part of the report CIR makes reference to the information obtained by some reports and by the managers of some CARA.

As acknowledged by the extraordinary Commission for the protection and promotion of human rights of the Senate, “in Italy from 2011 a progressive deterioration of the accommodation standards for asylum seekers has been registered, which has worsened since 2012 and 2013”<sup>176</sup>.

Information provided here is based on the situation in 4 CARAs<sup>177</sup> and some examples from SPRAR centres.

The accommodation conditions in the facilities of the SPRAR system differ considerably from those in CARAs.

In fact, generally speaking, all CARAs are very often overcrowded, accordingly the quality of the accommodation services offered is not equivalent to the SPRAR centres or other reception facilities of smaller size. In general, concerns have been raised about the high variability in the standards of reception centres in practice, which may manifest itself in, for example: overcrowding and limitations in the space available for assistance, legal advice and socialisation; physical inadequacy of the facilities and their remoteness from the community; or difficulties in accessing appropriate information.<sup>178</sup>

Nevertheless, it must be pointed out that the material conditions also vary from CARA to CARA depending on the size, the effective number of asylum seekers hosted compared to the actual capacity of the centre, and the level and quality of the services provided by the body managing each CARA. In addition, another critical aspect concerning CARAs lies with their location, usually far from city centres.

In the CARA of Gorizia (at the border with Slovenia), managed by the non-profit cooperative *Connecting people* and which at present hosts 203 asylum seekers, the centre is structured in big rooms accommodating around 8 persons each. There is one big shared bathroom, which includes 5-6 toilets and some showers, for approximately 20 persons.

By contrast, in the CARA of Crotone (in Calabria, in the south-east of the country) 1.500 asylum seekers are accommodated in 2 different sort of facilities. 700 persons are hosted in prefabricated housing units” (moduli abitativi), which include a toilet, but no kitchen. 800 asylum seekers are placed in containers, each of them hosting 10-12 persons. These containers do not have a toilet inside, however this kind of accommodation is going to be substituted by flats. Newly built apartments have been assigned to families and some individuals.

The CARA of Mineo (in Sicily) is a huge area where there are several facilities, composed by housing units, which host thousands of asylum seekers. The CARA of Mineo may accommodate up to 3.000 individuals; however at present, according to the data of the Ministry of Interior, almost 4.000 asylum seekers live in this centre, becoming the biggest reception centre in the whole Europe..<sup>179</sup>

A member of the municipality of Vizzini (near Catania), Giuseppe Coniglione, after his recent visit to the CARA of Mineo has reported that migrants and asylum seekers met inside the centre “sleep on sponge

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<sup>176</sup> Commission for the protection and promotion of human rights of the Senate, [Resolution n. 183 adopted on 28 November 2013](#).

<sup>177</sup> The CARA taken into consideration are the following: CARA of Mineo (Sicily); CARA of Crotone (Calabria); CARA of Gorizia (Friuli Venezia Giulia, North-East Italy); CARA of CastelNuovo di Porto (Rome).

<sup>178</sup> Report by Nils Muiznieks, Commissioner for Human Rights of the Council of Europe, following his visit to Italy from 3 to 6 July 2012, Comm DH (2012)26, 18 September 2012, at p. 36.

<sup>179</sup> Data provided by the Ministry of Interior to CIR on 19 March 2014.

mattresses without sheets, toilets do not work properly and there is no shower inside the housing units"<sup>180</sup>.

Usually, the first time asylum seekers enter a CARA they are provided with a kit containing sheets, pillow case, and clothes.

In CARAs, asylum seekers are not allowed to cook, even though some structures are equipped with kitchens. Meals are always provided by an external catering entity and they eat in a common canteen inside the CARA. For example, in the CARA of Mineo, Sicily, although each house is equipped with a kitchen, it is forbidden to cook for security reasons (also in the rooms)<sup>181</sup>

In addition, each asylum seeker has a pre-paid card, worth 2.5 Euros per day, for purchasing items in the shop inside the centre. The card can also be used as a "meal voucher" to buy goods in some supermarkets in Mineo, Caltagirone and Catania.

The cleaning of the CARAs centres is done by the staff of the managing organisation. In the case where the CARA is organised in apartments, sometimes people can help cleaning their own rooms.

The general level of cleanliness in the center is sufficient, although this aspect is strictly related to the asylum seekers accommodated in the center, since cleaning and laundry services are equally carried out through the cooperation ensured by asylum seekers with the ad hoc cleaning companies externally contracted.

In the CARA of Castelnuovo di Porto (near Rome), which is established in the compound of an ex hotel, bathrooms are private and included in the rooms, that are generally spacious. Asylum seekers are separated by gender, and each room can accommodate up to 4 women or 5 men.

Cleaning services in the rooms is the responsibility of the asylum seekers, while the cleaning of common areas is carried out by a cleaning company, that usually executes disinfections as well, since the compound is located in the countryside. In addition, the center provides a self-service laundry, thanks to 6 washing-machines at asylum seekers' disposal.

In the center, asylum seekers are not allowed to cook in their rooms, although they can consume uncooked meals in the kitchen of the center. The center is also provided with a meeting hall, a hairdressing and barber service twice a week, a TV hall and adequate facilities to attend courses of Italian language.

Although services provided in CARA centres are not uniform, normally rooms are equipped with a TV and guests have the possibility to access outdoor space, even though no particular activities are organised for them. For instance, in the CARA of Crotone no TV is available, nor other recreational activities are organised. Children go to school, that is guaranteed by law.

A number of protests have been taking place in CARAs (from north to south) for various reasons: material conditions, delays in the definition of the Dublin procedure, and inadequacy of food.

With regards to the accommodation within the SPRAR system, the structures available to host asylum seekers and refugees mainly consist of flats (75% of the total number of facilities), small reception centres (19%), and community homes (6%).<sup>182</sup>

In bigger facilities of the SPRAR System rooms may accommodate up to 4 persons, while in flats, rooms can accommodate 2 or 3 persons. In all reception centres a common space for the recreational activities should be guaranteed.

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<sup>180</sup> Attilio Occhipinti, [Emergency at the CARA of Mineo](#), 19 April 2014.

<sup>181</sup> Il Sette e Mezzo Magazine, Giacomo Belvedere, "[Dossier 'Carissimo Cara' – Costi umani ed economici del mega centro di accoglienza di Mineo](#)" ("Expensive CARA. Human and economic costs of the mega accommodation centre of Mineo"), , 29 June 2013.

See also: "[In che condizioni realmente vivono i richiedenti asilo nel megaCarA di Mineo? Dalla Rete Antirazzista Catanese un approfondimento sulle condizioni di vita all'interno del CARA di Mineo](#)", March 2012.

<sup>182</sup> SPRAR, Report 2012-2013, at p. 39, available [here](#)

SPRAR structures have to provide hygienic services which are adequate and proportionate to the number of asylum seekers hosted, that is 1 bathroom each 6 individuals.

In some SPRAR structures it is possible to cook autonomously, using either pocket money given by the managing entity to buy food or the products/ingredients provided. In this case the kitchen is shared by the guests. In other structures, meals are provided by an external catering or internal canteen<sup>183</sup>.

With regard to the cleaning service of the facility, asylum seekers are more or less involved depending on the type of SPRAR centre.

The SPRAR system foresees a pocket money for guests, whose amount varies mainly depending on the typology of beneficiaries (e.g. normally is more for vulnerable individuals) .

The above mentioned criteria are considered the minimum standards foreseen in the SPRAR System. In the case of reception projects hosting categories with particular need or for example unaccompanied children, these services are normally widened (e.g. sport, cultural visits etc).

Each structure is run by different entities, as a consequence the quality of services differ from one to another, even though the minimum standards should be guaranteed in all centres .

The issue of inadequate living conditions of asylum seekers in Italy has gained increasing attention from other EU Member States, due to the rising number of appeals filed by asylum seekers against their transfer to Italy on the basis of the Dublin Regulation.<sup>184</sup> As emphasized by the Commissioner for Human Rights of the Council of Europe in its report on Italy, “a number of judgements by different administrative courts in Germany have suspended such transfers, owing notably to the risk of homelessness and a life below minimum subsistence standards”.<sup>185</sup>

On the contrary, a recent decision on the admissibility of a case of the European Court of Human Rights affirmed that the general condition of asylum seekers in Italy does not present systematic gaps infringing fundamental rights.<sup>186</sup> In the case *Tarakhel v Switzerland* (no 29217/12), pending before the Grand Chamber of the ECHR, the applicants complained against the housing conditions in the centre where they lived, defined as extremely poor, in particular due to the lack of hygienic and health services.<sup>187</sup>

Concerns have been raised also about the shortage of staff working in the reception centres as well as the lack of adequate training, which affect the quality and standards of reception centres.

With regard to CARAs, by virtue of the “Capitolato” (standardised agreement between the Ministry of Interior and the managing entity), “the entity running the centre shall guarantee the employment of competent and trained personnel, whose professional profile is adequate to their tasks to be carried out”<sup>188</sup>; however, this agreement does not explicitly provide a duty for the managing entity to organise trainings and refreshing courses for its personnel. In practice, in CARAs no compulsory and regular training courses are organised. On this point the Commissioner for Human Rights of the Council of Europe has underlined in his report the problem concerning the absence of adequate training of CARAs’ staff<sup>189</sup>.

By contrast, with regard to the SPRAR system, training and adjournment courses are organized by the authority in charge of the management of the entire system (the “*Servizio centrale del sistema di protezione*”) on an annual basis which are addressed to the personnel who operates in all SPRAR

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<sup>183</sup> Ibidem, at. 17.

<sup>184</sup> Report by Nils Muiznieks, Commissioner for Human Rights of the Council of Europe, following his visit to Italy from 3 to 6 July 2012, Comm DH (2012)26, 18 September 2012, at p. 29.

<sup>185</sup> Ibidem, at p. 29. See for instance: administrative tribunal of Frankfurt, n° 7 K 560/11.F.A , 9 July 2013, available in German and in French.

<sup>186</sup> European Court of Human Rights, *Samsam Mohammed Hussein and Others v. the Netherlands and Italy*, Application no. 27725/10, 2 April 2013. See also [here](#).

<sup>187</sup> See the statement of the facts (in French) [here](#)

<sup>188</sup> [Standardized agreement for the management of the reception centres](#) (Capitolato), at p. 7.

<sup>189</sup> Report by Nils Muiznieks, Commissioner for Human Rights of the Council of Europe, following his visit to Italy from 3 to 6 July 2012, Comm DH (2012)26, 18 September 2012, at p. 3.

facilities located on the national territory.<sup>190</sup> SPRAR staff is obliged to attend these training courses. Training provides both basic expertise and refreshment courses. Their content consists in both legislation and integrations paths.

## 5. Reduction or withdrawal of reception conditions

### Indicators:

- Does the legislation provide for the possibility to reduce material reception conditions?  
 Yes       No
- Does the legislation provide for the possibility to withdraw material reception conditions?  
 Yes       No

The current reception system is not able to meet all requests for reception due to the large and growing number of arrivals, even though the Ministry of Interior, (see section on Types of Accommodation, Reception conditions) has established an emergency plan in cooperation with the local Prefectures.

Regarding the reduction or withdrawal of reception conditions, the Prefect of the Province where the accommodation centre is placed, can by law decide on an individual basis with a motivated decision to revoke the material reception on the following grounds:<sup>191</sup>

- a) the asylum seekers did not present themselves at the assigned centre or they left the centre without notifying the competent Prefecture;
- b) the asylum seekers did not present themselves before the determining authorities for the personal interview even though they were notified thereof;
- c) the asylum seeker has previously lodged an asylum application in Italy;
- d) the authorities decide that the asylum seekers possess sufficient financial resources; or
- e) serious violation or continuous violation of the accommodation centre's internal rules or where the asylum seeker's conduct was considered seriously violent. (if guests commit criminal offences they are also processed in criminal proceedings like nationals)

The law doesn't provide for any assessment of destitution risks when revoking accommodation.

According to Legislative Decree No. 140/2005, when asylum seekers fail to present themselves to the assigned centre or leaves the centre without informing the authorities, the centre managers must immediately inform the competent Prefecture.<sup>192</sup> In case the asylum seeker spontaneously present themselves before the police authorities or at the accommodation centre, the Prefect may decide to readmit the asylum seeker to the centre if the reasons provided are due to force majeure or unforeseen circumstances.

By law, asylum seekers may lodge an appeal before the Administrative Regional Tribunal (TAR) against the decision of the Prefect to withdraw material reception conditions.<sup>193</sup> To this end, they can benefit from free legal aid.

In practice, appeals are rarely lodged mainly due to the fact that asylum seekers who do not present themselves at the centres or leave the centres after their arrival, usually left in order to enter other EU countries. In practice, though, material conditions can be re-instated after having been withdrawn or reduced.

<sup>190</sup> SPRAR, Manual for operators, at pp. 9 and 22.

<sup>191</sup> Art. 12 of Legislative Decree 140/2005.

<sup>192</sup> Art. 12(2) of the Legislative Decree No. 140/2005.

<sup>193</sup> Art. 12(4) of the Legislative Decree No. 140/2005.

## 6. Access to reception centres by third parties

### Indicators:

Do family members, legal advisers, UNHCR and/or NGOs have access to reception centres?

Yes       with limitations       No

The law provides that UNHCR, lawyers and experienced refugee assisting NGOs, previously authorised by the Ministry of Interior, are allowed to enter CARAs (Accommodation Centres for Asylum Seekers).<sup>194</sup>

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.<sup>195</sup> The Prefecture notifies these decisions to the managers of the centres.

The law states that the Prefect may refuse the entrance of NGOs to CARA centre for motivated reasons, but those are not laid down by law.<sup>196</sup> In practice it happened that some NGOs and some lawyers were not authorised to enter CARA.

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.

With regard to access to SPRAR centres by virtue of art. 9 of the Reception Decree,<sup>197</sup> lawyers, the staff of the 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. However, as for the CARA centres, the access to the structures requires the prior authorisation from the competent Prefect.<sup>198</sup>

## 7. Addressing special reception needs of vulnerable persons

### Indicators:

- Is there an assessment of special reception needs of vulnerable persons in practice?  Yes  No

Art. 8(1) of the Legislative Decree 140/2005 provides that the accommodation is provided taking into account the special needs of the asylum seekers and their family members, in particular those of vulnerable persons such as 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.

There are no legal provisions on how, when and by whom this assessment should be carried out. However, art. 8(2) of the Legislative Decree 140/2005 provides that the managers of reception centres, where possible, set up special accommodation services, in cooperation with the local public health centres, to provide adequate psychological support in order to address the special needs of asylum seekers.

<sup>194</sup> Art. 9 of Legislative Decree 140/2005 and art 20 (5) of the Procedure Decree.

<sup>195</sup> Art. 8 of the DPR 303/2004.

<sup>196</sup> Art. 11 of the Presidential Decree 303/2004.

<sup>197</sup> Art. 9(4) of Legislative Decree 140/2005.

<sup>198</sup> Art. 8(3) of the Presidential Decree 303/2004.

In addition, in SPRAR (System of protection for asylum seekers and refugees) centres special reception measures should be set up to meet the specific needs of asylum seekers.<sup>199</sup> The assessment of special needs is conducted upon placement of asylum seekers at one of the accommodation centres. This assessment is not carried out systematically and it depends upon the existence and the quality of services provided by the centre, the availability of funds and their use by the managers of the centres.

In practice it may happen that torture victims remain in a CARA (Accommodation centres for Asylum Seekers) without any possibility to be transferred to a SPRAR centre due to lack of availability of places in ad hoc reception centres. It may also happen that unaccompanied children may be initially placed in a CARA because they were wrongly identified as adults after arrival at the borders. Where an age assessment authorised by a competent judge reveals that the person concerned is in fact a child they are transferred to SPRAR centres.

However, if there are no places available in SPRAR centres they are transferred to other shelters for unaccompanied children, which may not provide the same standards ensured by SPRAR centres.

## **8. Provision of information**

By law, upon submitting 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.<sup>200</sup> 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.

This provision, unlike art. 5 of the Reception Directive, does not explicitly foresee that information shall be provided orally. However, in practice the distribution of these leaflets written in 10 languages<sup>201</sup> is actually quite rare at the police stations. 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 concerns 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 of the type of centre (SPRAR facilities or CARAs) and the rules adopted by the managers of the accommodation centres, asylum seekers may benefit from proper information of the asylum procedure, the access to 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.

## **9. Freedom of movement**

Italian legislation does not foresee a general limit to 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.<sup>202</sup> In practice, this provision has never been applied so far. The freedom of movement can be affected however by the fact that it is not possible to leave the reception centre temporarily (e.g. to visit relatives) without prior authorisation. Au authorisation is usually granted with

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<sup>199</sup> Art. 8(2) of the Legislative Decree 140/2005.

<sup>200</sup> Article 10(1) of the Legislative Decree 25/2008 on asylum procedures.

<sup>201</sup> Italian, English, French, Spanish, Arabic, Somali, Kurdish, Amharic, Farsi and Tigrinya.

<sup>202</sup> Art. 7(1) of the Legislative Decree 159/2008, amending Legislative Decree 25/2008 on asylum procedure.

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. By virtue of art. 12 of Reception legislative decree 140/2005, the Prefect, on the basis of a communication of the reception centre, revokes the accommodation whether, *inter alia*, “the asylum seeker leaves the facility without a previous motivated communication”, or in case of a “serious or repeated violation of the rules of the reception centre”. However, if the asylum seeker returns to the reception centre, (s)he may be readmitted if the abandonment of the centre has been caused by force majeure or fortuitous event. Rules concerning the entry/exit to/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. In case the accommodation is revoked, the person concerned remains outside the National Reception System. Asylum seekers out of the SPRAR system can resort to accommodation in private centres outside the National Reception System. This accommodation is normally offered by charities.

Asylum seekers, once accommodated in a centre, can be transferred from one CARA to another or from one CARA to a SPRAR centre. In practice it is not so common to be transferred from CARA to CARA, while it is possible to be moved to a SPRAR centre, especially in the case of families and vulnerable categories. The reason of transfer from CARA to a SPRAR centre is in their interest, since the reception conditions and services provided in SPRAR are of better quality.

Asylum seekers can be placed in CARAs all over the territory, depending on the availability of places. What happens in practice is that many asylum seekers prefer to remain in Rome instead of moving to other cities in Italy. In this case they stay outside the CARA system.

## B. Employment and education

### 1. Access to the labour market

#### Indicators:

- Does the legislation allow for access to the labour market for asylum seekers?  Yes  No
- If applicable, what is the time limit after which asylum seekers can access the labour market  
6 months from the asylum request
- Are there restrictions to access employment in practice?  Yes  No

The law provides that asylum seekers have the right to work in case a decision has not been taken by the determining authorities within 6 months from the presentation of the asylum request, unless the delay is due to the conduct of the asylum seeker<sup>203</sup>. To that effect, they are granted a new temporary residence permit that allows them to work. The residence permit is valid for 6 months and is renewed until the end of the asylum procedure.

In addition, the law states that asylum seekers living in accommodation centres may attend vocational training when envisaged in programmes eventually adopted by the public local entities. The same provisions apply to asylum seekers who have lodged an appeal.<sup>204</sup> This stay permit cannot be converted in a work stay permit: their permit of stay continues to be a permit of stay for international protection reasons but allows them to work.

CIR has a collaboration with the COL Office (Centro di Orientamento al Lavoro (*centre for work orientation*)), a bureau under the Municipality of Rome, aiming at providing refugees (or asylum seekers) with vocational training opportunities.

<sup>203</sup> Art 11 of the Legislative Decree 140/2005.

<sup>204</sup> Art. 36(1) of the legislative Decree 25/2008 on asylum procedures.

Once the Social Service Office of CIR identifies an asylum seeker or refugee who fulfils the requirements (knowledge of the Italian language and the possibility to work as prescribed by law), it refers the person concerned to the COL.

COL has, in particular, two main tasks. On the one hand, it elaborates a specific integration path for each person through interviews, examination of their CV, an evaluation of their motivations and competences; on the other hand, it monitors jobs or training vacancies within the territory of Rome so as to create a notice board to collect all information. After these preliminary steps, COL is able to offer refugees the most suitable trainings or jobs for their situation.

With regard to the type of vocational trainings, there are different forms and lengths. The length of the trainings may vary depending on the funds at CIR. Usually these trainings require 20, 25 or 30 hours of attendance per week, for a period of three up to six months; they rarely amount to more than 30 hours per week.

In addition, the SPRAR has implemented standardised integration programmes. Asylum seekers or beneficiaries of International protection, accommodated in the SPRAR system, are generally supported in their integration process, by means of individualised project, which includes vocational training and internships.<sup>205</sup>

SPRAR is the only integrated system that provides this kind of services to the beneficiaries. Vocational training or other integration programmes can be provided also by the means of National public funds (8xmille) or the European Refugee Fund (ERF). In this case, the Ministry of Interior can finance specific projects to NGOs at national level concerning integration and social inclusion (for instance, the Italian Refugee Council (CIR) is currently implementing a project on integration entitled "*Percorsi di Integrazione – Pathways to Integration*"). The projects financed under European Refugee Fund are, however, very limited in terms of period of activity and in number of beneficiaries.

Municipalities can also finance vocational trainings, internships and specific "borse lavoro" (employment scholarship). This fund is available both to Italians and foreigners, including asylum seekers and beneficiaries of international protection. The possibility to attend vocational trainings or internships is considerably limited in the case of those asylum seekers accommodated in CARA centres.

Even though the law makes a generic reference to the right to access to employment without indicating any limitations, and although being entitled to enlist into Provincial Offices for Labour, in practice, asylum seekers face difficulties in obtaining a residence permit, which allows them to work due to the delay in the registration of their asylum claims, on the basis of which the permit of stay will be consequently issued; furthermore, some police headquarters (Questure) do not automatically issue this kind of stay permit. In addition, the objective factors affecting the possibility of asylum seekers to find a job are the current financial crisis affecting Italy, the language barrier, the remote location of the accommodation and the lack of specific support founded on their needs.

In Italy, the main issue is the shortage of integration programmes addressed to both asylum seekers and refugees. Moreover, it must be pointed out that there is a considerable difference of opportunities in accessing integration programmes depending on the services provided by the reception centres where asylum seekers are accommodated.

## 2. Access to education

### Indicators:

- Does the legislation provide for access to education for asylum seeking children?  Yes  No
- Are children able to access education in practice?  Yes  No

<sup>205</sup> Operational Handbook of the SPRAR, at. pp. 34-37.

By law, asylum seeking unaccompanied children and children of asylum seekers have the right and the obligation (until 16 years old) to take part in the national education system within maximum three months from the asylum application.<sup>206</sup>

Art 10 of Legislative Decree 140/2005 makes reference to art. 38 of the Consolidated Act on Immigration No. 286/98 which states that foreign children present in the Italian territory are subject to the 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 of Presidential Decree 394/1999, which gives equal rights to education to foreigner children as to 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 envisage a sort 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 are:

- 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
- insufficient 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.

### C. Health care

#### Indicators:

- Is access to emergency health care for asylum seekers guaranteed in national legislation?  
 Yes       No
- In practice, do asylum seekers have adequate access to health care?  
 Yes       with limitations       No
- Is specialised treatment for victims of torture or traumatised asylum seekers available in practice?       Yes       Yes, to a limited extent       No
- If material reception conditions are reduced/withdrawn are asylum seekers still given access to health care?

By law,<sup>207</sup> asylum seekers and beneficiaries of international protection must enrol in the National Health Service. 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 condition and those who are out of the reception system, since all asylum seekers benefit of the National Health System.

According to article 35 of legislative decree No. 286/98 (Consolidated Text on Immigration), irregular migrants are entitled to treatment in public health care facilities for emergency and essential treatments because of illness or accident. They also benefit from preventive medical treatment programmes aimed

<sup>206</sup> Art. 10(2) of the Legislative Decree No. 140/2005 on reception conditions.

<sup>207</sup> Art. 34 of Legislative Decree No. 286/98 (Consolidated Text on immigration). See also article 27 of the Legislative Decree No. 251/2007, which refers exclusively to beneficiaries of international protection.

at safeguarding individual and collective health.<sup>208</sup> Therefore, they are entitled to the same health care as nationals.<sup>209</sup>

The right to medical assistance is acquired at the moment of the registration of the asylum request and this right remains even in the process of the renewal of the permit of stay.<sup>210</sup> The medical assistance is extended automatically to each family member under the applicant's care regularly resident in Italy and is recognized immediately for new born babies of parents registered with the National Health System.<sup>211</sup>

The law prescribes that asylum seekers are obliged to register with the National Health System in the offices of the local health board (ASL).<sup>212</sup> Asylum seekers housed in accommodation centres are registered directly by the manager of the centre.<sup>213</sup> The documents necessary for registration are the permit of stay, the registration in the civil status registry and the fiscal code.<sup>214</sup> Once registered, a temporary health card (*tessera sanitaria*) is delivered to the asylum seeker.

The registration allows the asylum seeker to be entitled to the following health services:

- the free choice of a general doctor from the list presented by the ASL and the 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 counselling" (*consultorio familiare*) to which access is direct and does not require doctors' request; and
- free hospitalisation in public hospitals and some private subsidised structures.

Asylum seekers and beneficiaries of international protection benefit from free of charge health services on the basis of a self-declaration of destitution. The request of ticket exemption is presented to the competent ASL. Usually asylum seekers are helped by the social assistance of their centre in filling in the request.

The medical ticket exemption is due to the fact that asylum seekers are treated under the same rules as unemployed Italian citizens<sup>215</sup>. With the Legislative Decree No. 140/2005 coming into effect and authorising asylum seekers to work, the ticket exemption is valid at least for sixth month since the asylum request, when a permit of stay valid for work is then issued to the asylum seeker. After that, the asylum seeker need to register in the registry of the job centres (*centri per l'impiego*) attesting their unemployment in order to maintain the ticket exemption.

Asylum seekers suffering mental health problems, including torture survivors, are entitled to the same right to access to health treatment as provided for nationals by the Italian legislation. In practice, they may benefit from specialised services provided by the National Health System and by specialised NGOs or private entities.

In this regard, it is worth noting that in 2007, the National Commission for the Right of Asylum, UNHCR, the Italian Refugee Council and the Centre for the study and the treatment of post-traumatic and stress pathologies of the San Giovanni Hospital in Rome have established NIRAST (Italian Network for Asylum Seekers who Survived Torture), which takes in charge asylum seekers victims of torture and extreme violence providing them with services of rehabilitation and specialised medical and psychological care.

On 1<sup>st</sup> March 2012 the NIRAST had to close because of lack of funds but hopefully will be reopened soon.

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<sup>208</sup> Art. 35 of Legislative Decree No. 286/98 (Consolidated Text on immigration).

<sup>209</sup> Article 34 (1) of the TU 286/98.

<sup>210</sup> SPRAR, *Guida pratica per i titolari di protezione internazionale - Istruzioni per l'uso dei servizi sul territorio (Practical guide for the beneficiaries of international protection – Instruction for the use of services on the territory)*, 2003, page 107.

<sup>211</sup> SPRAR, *ibidem*.

<sup>212</sup> Art. 10(1) of the Legislative Decree 140/2005, which makes reference to art 34 (1) of the TU 286/98.

<sup>213</sup> Art. 10(1) of the Legislative Decree No. 140/2005.

<sup>214</sup> SPRAR, *ibidem*.

<sup>215</sup> See Ministry of Health Circular No. 5, 24/03/2000.

Regarding the effective enjoyment of the health services by asylum seekers and refugees, it is worth noting that there is a general disinformation and a lack of specific training on international protection for medical operators.<sup>216</sup> In addition, the medical operators are not specifically trained on the diseases typically affecting asylum seekers and refugees, which are very different from the diseases affecting Italian population.<sup>217</sup>

One of the most relevant obstacles to access health services is the language: usually medical operators speak only Italian and there are no cultural mediators or interpreters who could facilitate the mutual understanding<sup>218</sup>. 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 because of the severe conditions of the accommodation centres and of the informal accommodation in the metropolitan areas.<sup>219</sup>

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<sup>216</sup> See M. Benvenuti, *La protezione internazionale degli stranieri in Italia*, Jovene Editore, Napoli 2011, page 263.

<sup>217</sup> See CIR, *Le strade dell'integrazione – Ricerca sperimentale quali-quantitativa sul livello di integrazione dei titolari di protezione internazionale presenti in Italia da almeno tre anni (The streets of integration - Experimental research on the qualitative and quantitative level of integration of beneficiaries of international protection present in Italy for at least three years)*, June 2012.

<sup>218</sup> See CIR, *ibidem*.

<sup>219</sup> See CIR, *ibidem*.

## Detention of Asylum Seekers

### D. General

#### Indicators:

- Total number of asylum seekers detained in the previous year (including those detained in the course of the asylum procedure and those who applied for asylum from detention)
- In 2013, 150 asylum seekers, have been held in CIEs.
- Number of asylum seekers detained or an estimation at the end of 2013: 150
- Number of detention centres: 13 CIEs in total, 5 CIEs operating as of March 2014
- Total capacity: theoretical 1.791; effective 1828.

Procedural Decree 25/08 prohibits the detention of asylum seekers for the only purpose of examining their asylum request. Asylum seekers can be detained only under particular and limited conditions.

Concerning statistics, in 2013, 6.016 migrants, out of which 150 asylum seekers, have been held in identification and expulsion centres (CIEs).<sup>220</sup> By contrast, in 2012, 7.944 migrants have been detained in the Italian CIEs, out of which 120 were asylum seekers.

#### Migrants detained in CIEs: Comparative Table of 2012 and 2013:

	2012				2013			
	Total	Men	Women	% on Total	Total	Men	Women	% on Total
Asylum seekers	120	95	25	1,5%	150	131	19	2,5%
Returned	4.015	3.666	349	50,5%	2.749	2.499	250	45,7%
Released because unidentified at the end of term of detention	415	330	85	5,2%	300	269	31	5,0%
Released from CIEs for other reasons (e. g. health, pregnancy, appeals, justice issues)	1.274	1.062	212	16%	1.165	1.030	135	19,4%
Arrested within centres	123	123	0	1,6%	96	91	5	1,6%
Died within the centres	0	0	0	0%	1	1	0	0,0%
Total number of people gone through CIEs	7.944	7.012	932		6.016	5.431	585	

Source: Doctors for human rights (MEDU - Medici per i Diritti Umani). Elaboration on Police Authority data.<sup>221</sup>

<sup>220</sup> Doctors for human rights (MEDU), [Centri di identificazione ed espulsione: i dati nazionali del 2013. Strutture sempre più inutili e affollate](#) (Centres for Identification and Expulsion: national data 2013), 12 February 2014.

According to data on the identification and expulsion centres provided by the State Police to CIR on 19 March 2014<sup>222</sup>, in Italy there are 13 identification and expulsion centres located all over the national territory. However, at present 7 facilities have been “temporarily” closed because of management problems and damages caused by detainees’ protests, while the CIE of Modena has been definitely closed<sup>223</sup>. Only 5 CIEs (Turin, Rome, Bari, Trapani Milo and Caltanissetta) are effectively operating, but they hold a much lower number of migrants than their capacity. The total effective capacity of the 5 CIEs is 1,828 places, while there were 367 migrants detained on 19 March 2014.

Name	Theoretical capacity	Effective capacity	Detainees in March 2014
Bari	196	112	79 (partially closed due to damages caused by protests)
Bologna	Temporarily closed		
Brindisi	Temporarily closed		
Caltanissetta	96	96	78
Catanzaro	Temporarily closed on 09/11/2012		
Crotone	Temporarily closed		
Gorizia	Temporarily closed		
Milano	Temporarily closed		
Modena	Definitely closed		
Roma	360	360	107
Torino	210	56	45 (partially closed due to damages caused by protests)
Trapani Milo	204	204	58
Trapani Serraino Vulpitta	Temporarily closed on 25/06/2012		

Source: Ministry of Interior, data provided on 19 March 2014

<sup>221</sup> Doctors for human rights (MEDU), [Comparative table 2012-2013](#).

<sup>222</sup> Data provided by the Ministry of Interior to CIR on 19 March 2014. See also: [Centri di identificazione ed espulsione: i dati nazionali del 2013. Strutture sempre più inutili e afflittive](#), 12 February 2014.

<sup>223</sup> [Centri di identificazione ed espulsione: i dati nazionali del 2013. Strutture sempre più inutili e afflittive](#), 12 February 2014; Alberto Barbieri of *Medici per i diritti umani* (MEDU), Event for the presentation of the Documentary “EU 013 Ultima Frontiera” directed by Raffaella Cosentino and Alessio Genovese, 4 March 2014.

## E. Grounds for detention

### Indicators:

- In practice, are most asylum seekers detained
  - o on the territory:  Yes  No
  - o at the border:  Yes  No
- Are asylum seekers detained in practice during the Dublin procedure?  
 Frequently  Rarely  Never
- Are asylum seekers detained during a regular procedure in practice?  
 Frequently  Rarely  Never
- Are unaccompanied asylum-seeking children detained in practice?  
 Frequently  Rarely  Never
- Are asylum-seeking children in families detained in practice?  Frequently  Rarely  Never
- What is the maximum detention period set in the legislation (incl. extensions): 18 months
- In practice, how long in average are asylum seekers detained?  
In practice, the asylum procedure of those persons detained in CIEs may last between 38 days to several weeks, but varies from one detention centre to another.

The law prohibits the detention of asylum seekers for the only purpose of examining their asylum request.<sup>224</sup> As a general rule, asylum seekers are not detained. The law sets the grounds for the detention of asylum seekers.<sup>225</sup> By virtue of art. 21(1) the chief of the *Questura* (Immigration Office of the Police) can detain an asylum seeker in the following cases:

- a) who falls under the exclusion clauses laid down in art. 1F of the 1951 Geneva Convention;
- b) who has been convicted for one of the crimes listed in article 380 (1) and (2) of the code of penal procedure - for which is a 5 years detention sentence is envisaged - as well as for crimes related to drug trafficking, smuggling of migrants towards Italy and from Italy towards other countries, recruitment of persons into prostitution and sexual exploitation, employment of children in illegal activities; or
- c) who has been notified with an expulsion or expulsion from the borders order.

As general rule, whenever third-country nationals who fall under one of the circumstances listed in art. 21(1) of the Procedure Decree present an asylum application, the Questore (Chief of the local Police), as soon as s/he receives their asylum claim, proceeds to place them in detention in CIE and shall simultaneously transmit their documentation to the competent Territorial Commission.<sup>226</sup> However, the law provides for an exception to the general rule laid down in art. 21(2). In fact, whenever a foreigner files an asylum request, but they have been previously notified with an expulsion order since they either entered the Italian territory evading the border controls or stayed on the territory with no valid permit of stay, they shall be accommodated in a CARA (centre of reception of asylum seekers) and not detained in a CIE.<sup>227</sup>

By contrast, in the situation where a person applies for asylum while already in detention in a CIE, (they will remain in detention during the examination of their claim, as the legislation does not provide for the possibility to be transferred to a reception centre. In this case, the law<sup>228</sup> prescribes that the Questore requests to the competent judicial authority the extension of the period of detention of the person

<sup>224</sup> Article 20(1) of the Legislative Decree 25/2008 on asylum procedures.

<sup>225</sup> Article 21 of the Legislative Decree 25/2008 on asylum procedures.

<sup>226</sup> Art. 28(2) of the Procedures Decree 25/2008.

<sup>227</sup> Article 21(1)(c) read in combination with art. 20(2)(d) of the Legislative Decree 25/2008 on asylum procedures.

<sup>228</sup> Art. 21(2) of the Procedures Decree 25/2008.

concerned for an additional 30 days with a view to complete the asylum procedure and simultaneously transmits their documentation to the competent Territorial Commission.<sup>229</sup>

In these cases, the asylum claims are examined under a prioritised procedure, which implies that the competent Territorial Commission has to schedule the personal interview of the asylum seeker detained in a CIE within 7 days from the date it receives the asylum application and documentation forwarded by the Questore.<sup>230</sup> In addition, the law specifies that the Territorial Commission shall adopt a decision within the 2 days following the personal interview.<sup>231</sup>

The time limits laid down in the law between the formalization of the asylum request and the adoption of the decision by the determining authority are, in practice, “almost never” respected, especially in cases where no Police Immigration Office (Questura) competent to register the asylum demands is present in the detention centres (CIEs).<sup>232</sup> The whole asylum procedure often lasts several weeks. As reported by lawyers assisting asylum seekers in the CIE of Rome (Ponte Galeria), once the Questura receives the asylum request, it usually transmits it to the competent Territorial Commission within one week. By contrast there are bigger delays for the personal interviews: the Territorial Commission often interviews the person concerned more than one month after receiving all the necessary documents, while the law provides for a timeframe of 7 days.<sup>233</sup> Nevertheless, it must be noted that the duration of the asylum procedure for third-country nationals detained in these facilities varies from CIE to CIE.

In practice, the possibility of accessing the asylum procedure inside the Expulsion and Identification Centres (CIE) appears to be difficult due to the lack or inappropriate legal information and assistance, and to administrative obstacles. Furthermore, the absence of a standard procedure related to asylum claims by persons detained in CIE has created delays in the transmission of asylum applications to the competent Immigration Office, exposing, according to UNHCR’s Recommendations, asylum seekers “to the risk of repatriation prior to consideration of their asylum applications, which could create the risk of refoulement”.<sup>234</sup>

Moreover, as reported by lawyers and stakeholders interviewed,<sup>235</sup> it happens that the personal interview is often carried out inside the CIEs. The NGOs Senza Confine, Asgi and Laboratorio 53 have highlighted that this is often the case in the CIE of Rome (Ponte Galeria) when there is an important number of asylum seekers detained in the facility.<sup>236</sup>

It must be also noted that, as emerged by interviews carried out by CIR with lawyers working in some Italian CIEs, recognition rates for people who applied for asylum in detention are quite low. One reason is that authorities generally consider that the application was filed only to delay the return process. However, it must be emphasized that by virtue of the Italian legislation these asylum requests are not examined under an admissibility or an accelerated procedure.

Article 26(6) of the Legislative Decree explicitly provides that unaccompanied children can never be held in the detention centres (CIEs), whereas the legislation is silent with regard to other vulnerable categories. Vulnerable persons may be detained in CIE and there are no provisions concerning the legal guarantees that should be applied when victims of torture or violence are identified in detention in

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<sup>229</sup> Art. 21(2) of the Procedures Decree 25/2008.

<sup>230</sup> Art. 28(2) of the Procedures Decree 25/2008.

<sup>231</sup> Art. 28(2) of the Procedures Decree 25/2008.

<sup>232</sup> Marco Benvenuti, *La protezione Internazionale degli Stranieri in Italia*, 2011, at pp. 558-559.

<sup>233</sup> Lawyer assisting migrants and asylum seekers in the CIE of Rome (Ponte Galeria) interviewed by CIR on 12 March 2014.

<sup>234</sup> UNHCR, *UNHCR Recommendations on Important Aspects of Refugee Protection in Italy*, July 2013.

<sup>235</sup> Interviews carried out by CIR with lawyers specialised in migration, detention in CIEs and expulsion who assist migrants in the CIEs of Rome and Trapani (11 March 2014) as well as with Raffaella Cosentino, journalist, expert in migration and detention issues, and director of the Documentary filmed in some Italian CIEs “EU 2013: the Last Frontier” (10 March 2014). See also: Raffaella Cosentino, *Cie di Milo, dietro le sbarre anche richiedenti asilo, trans e tossicodipendenti* (“Milo’s CIE, In detention also asylum seekers, trans and drug abusers”), March 2012.

<sup>236</sup> [Associazione SenzaConfine](#), February 2014.

order to transfer them to adequate reception centres and benefit from specific treatments (medical, psychological, etc.).

Detention of children in families is not prohibited: children can be detained together with their parents if they request it and if decided by a Juvenile Judge. In practice very few children are detained.

Even though by law, unaccompanied children shall never be detained<sup>237</sup>, children wrongly assessed as adults after an age assessment procedure can be detained in Identification and Expulsion Centres (CIE).

A striking example of this issue is the case of 3 Bangladeshi children who, as reported by the Association for Legal Studies on Immigration (ASGI) and several media, in March 2013 were taken from the reception centre for unaccompanied children where they were hosted to the CIE of Ponte Galeria following a second age assessment. Their detention was ordered by the Rome municipality in the framework of the so-called operation “false unaccompanied foreign minors”, on the basis of an agreement with the guardianship judge, police authorities and a military hospital (the Celio). The 3 Bangladeshi boys were, then, subjected to a third medical evaluation, which recognised their minority.

Although the third age assessment concluded that they were children although they had passports released by the Bangladeshi embassy in Italy proving their age, the guardianship judge on the request of Rome municipality still declared them as adults, therefore revoking their guardianship. Finally, thanks to the intervention of the NGO Yo Migro who contacted ASGI, an appeal against the decision of the guardianship judge as well as against the order of detention in the CIE was filed to the peace judge (giudice di pace), whose ruling was favourable to the Bangladeshi children.<sup>238</sup>

Another recent episode concerns a 17 years old (S.O.) who arrived by boat from Libya and was rescued at sea on the 15<sup>th</sup> February 2014. The young man was fingerprinted and photographed on the military vessel who rescued him, but since his data were not correctly registered and although he declared several times to be a child the police authorities issued an order of “deferred rejection at the border” (“*respingimento differito*”) and an order of detention with the consequent transfer to the CIE of Ponte Galeria (Rome)<sup>239</sup>, where he is currently held. As soon as the association Senza Confine, Asgi and Laboratorio 53 were informed about this situation they filed an appeal in order to put an end to the unlawful detention of the boy. While in detention, S.O. was subjected to an age assessment (through an X-ray of his wrist) which concluded that he is over 18. However, the medical report did not indicate any margin of error, which by virtue of the Circular of the Ministry of Interior, n. 17272/7 of 9<sup>th</sup> July 2007 must be included in the report since the evaluation cannot precisely establish the age of the young person concerned.<sup>240</sup>

By law, detention can be extended up to 18 months.<sup>241</sup> It used to be limited to 6 months before the amendments of the law in 2011. In practice, according to the Ministry of Interior, the average length of stay is 38 days. However, the actual length of detention may be longer since, for migrants with a return order, it depends on the cooperation to organise their between the Italian Government and the authorities of their country of origin.<sup>242</sup>

Other sources provide for different information concerning the detention time limits. In particular, the Commissioner for Human Rights of the Council of Europe has pointed out that in 2012 the average length of stay in the CIE of Ponte Galeria was three months.<sup>243</sup> The NGO *Medici per i Diritti Umani*

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<sup>237</sup> Art. 26(6) of the Procedure Decree 25/2008.

<sup>238</sup> Interview of a lawyer of ASGI carried out by CIR in July 2013. On the situation of the 3 Bangladeshi unaccompanied children.; [Testimony collected by the organization Yo Migro; also here.](#)

<sup>239</sup> [Associazione SenzaConfine](#), February 2014.

<sup>240</sup> Circular of the Ministry of Interior, n. 17272/7 of 9th July 2007.

<sup>241</sup> According to Art. 21(2) of the legislative Decree n. 25/2008, the chief of the Questura orders the detention of asylum seekers in line with the rules set out in the TU 286/98 modified by the Law 129/2011.

<sup>242</sup> Ministry of Interior in the Programmatic Document on the Centres for Identification and Expulsion issued in April 2013, at p. 14.

<sup>243</sup> Report by Nils Muižnieks, 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.

(MEDU) reports that the length of stay depends on several factors such as the nationality of the migrants to be expelled, the effective collaboration of the countries of origin concerned in identifying and returning their citizens, and the existence of readmission agreements between Italy and third countries.<sup>244</sup> Moreover, the duration of the administrative detention also differs from one CIE to another. For instance, according to an assessment of the management body of the CIE of Ponte Galeria the length of stay in this centre varies between 4 months for Moroccan migrants and 8 days for Romanian citizens.<sup>245</sup>

Detention of asylum seekers is rather rare in the regular procedure. The provision for the detention of asylum seekers is set out in article 21 of the Procedure Decree and there is no provision concerning the assessment of the risk of absconding.

Since the Italian legislation does not provide for a systematic detention of asylum seekers, information below is mostly relevant for third country nationals tout court.

The law 129/2011, which transposed into domestic legislation the Return Directive<sup>246</sup>, has introduced the concept of “voluntary departure” for third-country nationals who have an obligation to leave the Italian territory as a consequence of an expulsion order (art. 13.5 of the T.U. Immigration).

In this regard, the law provides that a foreign national, who has received an expulsion order, may request to the Prefect a certain period of time for voluntary departure (i.e. 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:<sup>247</sup>

- no expulsion order for state security and public order grounds should have been issued against the person concerned;
- there should be no risk of absconding;
- the request of permit of stay should not have been rejected because it was manifestly unfounded or fraudulent.

In case the foreign national obtains to benefit from the period of voluntary departure,<sup>248</sup> this departure can be implemented also by the means of the assisted repatriation as laid down in art 13 (5) combined with art. 14-ter.

In case the Prefect grants a voluntary departure period, then by virtue of art. 13(5)(2) of the T.U. Immigration the chief of the Questura asks the person concerned to prove that they have sufficient economic resources obtained through lawful incomes available , and also resorts to one or more alternative measures to detention such as:

1. the migrant has to hand over to the police their passport that will be given back at their departure;
2. the migrant must indicate the domicile where they can be contacted; or
3. the migrant has to report before the police authorities following the police instructions;

MEDU (Doctors for Human Rights) emphasises that, even though the Return Directive foresees detention only at last resort unless other sufficient but less coercive measures can be applied, , in transposing the EU Directive the Italian legislation envisages forced return as a rule and voluntary departure as an exception.<sup>249</sup>

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<sup>244</sup> Medici per i Diritti umani, *ARCIPELAGO CIE: indagine sui centri di identificazione ed espulsione italiani (Archipelgo CIE: survey of Italians identification and expulsion centres)*, May 2013, at p. 29.

<sup>245</sup> Medici per i Diritti umani, *op cit*, at p. 29.

<sup>246</sup> Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals

<sup>247</sup> Art. 13 (5.2) and art. 14 ter of the TU 286/98 amended by Law 129/2011,

<sup>248</sup> In case a person receives an expulsion decree, this expulsion may be implemented either through the physical transportation by law enforcement personnel out of the national territory (removal), or through voluntary departure. In case of removal, in the specific circumstances mentioned in the paragraph, the person may be placed in detention since expulsion may not me immediately carried out. Voluntary departure is therefore a measure alternative to detention.

<sup>249</sup> Medici per i Diritti umani, *op.cit.*, at p. 32.

In practice, Italian authorities rarely resort to alternatives to detention in CIEs.<sup>250</sup> In addition, the decree issued by the Questore usually does not indicate the concrete and specific reasons for the detention in a CIE and for the impossibility to resort to less coercive measures<sup>251</sup>.

As pointed out by Borderline-Europe<sup>252</sup>, the voluntary departure foreseen in Art. 13(5) is difficult to apply due to “the lack of clarity in art. 13.5.1 and 5.2 and because its limits of application are highly restricted by the wide interpretation of the risk of absconding which the legislator decided to use and that excludes the application of the voluntary departure”<sup>253</sup>. In fact, by virtue of the Consolidated Immigration Act<sup>254</sup>, the risk of absconding subsists whenever the Prefect, on the basis of a case-by-case evaluation, ascertains that one of the following circumstances occurs: “a) the third-country national lacks the passport or any equivalent document; b) the third-country national lacks documentation proving the availability of a housing/accommodation where (s)he may be reached; c) the third-country national has previously presented false information or documents; d) the third-country national has not respected the terms for the voluntary departure (art. 13.5 of the T.U. Imm.) or the entry ban (art. 13.13 of the T.U. Imm.).

On this point, the Commissioner for Human Rights of the Council of Europe in his report drafted following his visit to Italy from 3 to 6 July 2012 has encouraged the Italian authorities “to phase out administrative detention of irregular migrants in prison-like settings in favour of suitable alternatives and to promote the use of voluntary return programmes.”<sup>255</sup> The UN Special Rapporteur on the human rights of migrants, has also noted that “Italy appears not to have developed any meaningful alternatives to detention for migrants. Detention should only be considered for migrants who present a danger to themselves or to others, or where there is an established risk that they may abscond from future judicial or administrative proceedings”. Mr. Crépeau, accordingly, urges Italian authorities “to undertake an individual assessment of the necessity of detention in all cases”<sup>256</sup>.

With regard to the categories of individuals detained in CIEs, the Ministry of Interior does not make a distinction among the categories of detainees, but in its Programmatic Document on CIEs issued on April 2013 it refers broadly to the category of migrants.<sup>257</sup>

On this point the Council of Europe’s Commissioner for Human Rights reported that, on the basis of the data provided by the CIE personnel, about 70% of the men detained were former convicts having already served their sentence. The NGO *Medici per i Diritti Umani* has declared in its report issued on 13 May 2013<sup>258</sup> that, according to the data provided by the CIEs management bodies, the percentage of migrants previously detained for criminal charges vary from the 15-20% (in the CIEs of Bologna and Modena) up to 80-95% (in the CIEs of Trapani Milo, Lamezia Terme, and Milan)<sup>259</sup>. This is mainly due to the fact that migrants detained for criminal conviction who are in a situation of irregular stay in the Italian

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<sup>250</sup> ASGI, *Il Documento programmatico sui C.I.E. del Ministero dell'interno: un pessimo programma di legislatura (The Programmatic document of the Ministry of Interior: a bad legislative programme)*, 23 April 2013, p. 3

<sup>251</sup> This has been acknowledged by the Tribunal of Crotone in the judgment 1410 of 12 December 2012.

<sup>252</sup> Borderline-Europe, in cooperation with KISA of Cipro, Borderline Sicily of Italy and Mugak and Andalucía Acoge of Spain, *At the Limen. The case of Italy, Spain and Cyprus*, February 2014, p. 15.

<sup>253</sup> For a more in-depth analyses in this regard, see: G. Savio, [La nuova disciplina delle espulsioni risultante dalla legge 129/2011](#), August 2011.

<sup>254</sup> Art. 13(4-bis) of the Consolidated Immigration Act 286/98 as amended by Law 129/2011 which transposes the Return Directive into domestic legislation.

<sup>255</sup> Report by Nils Muižnieks, *op.cit.*

<sup>256</sup> UN Special Rapporteur on the human rights of migrants, François Crépeau, Mission to Italy (29 September–8 October 2012), Report 20 April 2013, at p. 19.

<sup>257</sup> Ministry of Interior, *Programmatic Document on the Centres for Identification and Expulsion*, April 2013, at p. 14.

<sup>258</sup> *Medici per i Diritti umani, op.cit.*, p. 18.

<sup>259</sup> Data refer to the report issued in 2013. Currently, CIEs in Bologna, Modena, Lamezia Terme and Milna are temporarily closed for renovation.

territory are often not identified in prison and thus not expelled after serving their term of imprisonment but they are transferred to the CIEs.<sup>260</sup>

Moreover, the administrative detainees generally also include irregular migrants, some having lived in Italy for considerable periods.<sup>261</sup> This has been also emphasized by ASGI,<sup>262</sup> which has stated that several migrants who are detained in the centres since they found themselves in an irregular condition after having lost their job.<sup>263</sup> For these migrants the Questura rarely provides a time limit for the voluntary departure<sup>264</sup> and no alternative measures<sup>265</sup> are provided.

## F. Detention conditions

### Indicators:

- Does the law allow to detain asylum seekers in prisons for the purpose of the asylum procedure (i.e. not as a result of criminal charges)?  Yes  No
- Do detainees have access to health care in practice?  Yes  No
- If yes, is it limited to emergency health care?  Yes  No
- Is access to detention centres allowed to
  - o Lawyers:  Yes  Yes, but with some limitations  No
  - o NGOs:  Yes  Yes, but with some limitations  No
  - o UNHCR:  Yes  Yes, but with some limitations  No
  - o Family members:  Yes  Yes, but with some limitations  No

By law, asylum seekers can be detained in administrative closed structures (Identification and Expulsion Centres – CIEs) where third-country nationals who have received an expulsion order are generally held. Among them there are also former detainees previously held in ordinary prisons.<sup>266</sup>

The conditions of administrative detention of migrants are very poor and vary considerably from centre to centre. This is mainly due to the fact that the management of each CIE is assigned to private entities, through public procurement contracts, exclusively based on a ‘value for money criterion’<sup>267</sup>. Thus, the basic services provided and their quality varies from centre to centre but is generally very low and inadequate.<sup>268</sup> In addition, it must be recalled that during Mario Monti’s government, the public spending review<sup>269</sup> levelled the maximum daily provided by State *pro capite* for all centres at 30 euro (it was previously, for instance, 72 euro for the CIE of Modena and 26 euro for the facility in Lamezia Terme).

<sup>260</sup> Medici per i Diritti umani, *op.cit.*, p. 22.

<sup>261</sup> Report by Nils Muižnieks *op.cit.*

<sup>262</sup> Associazione per gli Studi Giuridici sull’Immigrazione (ASGI), *op.cit.*

<sup>263</sup> They find themselves in an irregular condition since they lost the permit of stay.

<sup>264</sup> Art. 13.5.2 and art. 14ter of the TU 286/1998 amended by law 129/2011.

<sup>265</sup> Art. 14.1 bis of the TU.

<sup>266</sup> In this category are included those who have been convicted for one of the crimes listed in article 380 (1) and (2) of the code of penal procedure - for which is a 5 years detention sentence is envisaged - as well as for crimes related to drug trafficking, smuggling of migrants towards Italy and from Italy towards other countries, recruitment of persons into prostitution and sexual exploitation, employment of children in illegal activities. But also all third-country nationals who served a sentence and then received an expulsion order.

<sup>267</sup> As provided by art. 22(1) of the Presidential Decree 394/99 implementing the Consolidated Immigration Act, and the Ministerial Decree of 21 November 2008 concerning the procurement for the management of the CIEs, CIEs are managed by a variety of private entities, including private companies and non-governmental associations on the basis of an agreement concluded with the local Prefecture.

<sup>268</sup> LasciateCIEEntrare Campaign, Mai più CIE (“Never ever CIE”), 2013, p. 9, available [here](#).

<sup>269</sup> The spending review procedure is as a tool to improve the efficiency and effectiveness of public expenditure. It can be used to reduce the deficit and/or to make fiscal space for higher priority programmes either through restructuring or cutting activities. In Italy, during 2012 Mario Monti’s government has cut the public expenditure through the adoption of two laws: law 94/2012 and law 135/2012.

With this measure which in many cases reduced the funds provided, services offered are even more insufficient and poor than ever, due to a strong reduction in the number of employees and to the degradation of their quality.<sup>270</sup>

Furthermore, it is worth noting that there is a lack of independent monitoring system/body in charge of the assessment of the work of the entities managing the CIEs. In fact, internal controls and evaluations concerning the management of these structures and the services provided are carried out by the same entities in charge of the centre.<sup>271</sup>

Various reports show that in some cases, detention conditions are not in conformity with the CPT standards.<sup>272</sup> Accommodation provided is not always adequately-furnished, clean and in good state of repair. Reports indicate cases of centres characterised by serious structural deficiencies (CIE in Trapani and Lamezia Terme) or in a state of deterioration (CIE in Roma). In the majority of cases, the CIEs look like confinement centres or prisons, and are inadequate to guarantee acceptable living conditions to detained migrants.<sup>273</sup> For instance, the detention centres of Modena, Roma, Trapani, Caltanissetta and Bari are usually surrounded by a double wall: inside the first wall there is a yard and the administrative buildings, which house the offices of the non-profit cooperative<sup>274</sup> which runs the centre and immigration office of the *Questura*, plus the infirmary, the rooms of the psychologists and social workers; while, after this first wall “there are the accommodation blocks (in Turin they call them “islands”), containing what can be described as small cages in which there are rooms for detainees” .<sup>275</sup>

As reported by Borderline-Europe, two of the CIEs visited (Trapani Milo and Modena), run by the same company – the Oasi cooperative, “were extremely lacking in services offered to the detained immigrants, often compromising their fundamental rights”. This situation is mainly caused by the managing entity which does not pay its own staff.<sup>276</sup> Moreover, BorderEU has also pointed out that police working in the CIE of Trapani complained that the “extremely bad quality of the services provided by the cooperative to the detained migrants (from the distribution of food to social and health care) was causing a very tense and violent atmosphere in the camp.”<sup>277</sup>.

On 24 January 2014, some doctors of the NGO Medici per i diritti umani (MEDU) visited the CIE of Trapani Milo, where they found appalling conditions. The entity managing the CIE is not able to provide services and basic necessities: inside the centre there is a lack of pens, paper and detergents. The kit for entering detainees, containing basic necessities and underwear, are dramatically reduced or absent<sup>278</sup>.

The UN Special Rapporteur on the human rights of migrants has summarised the detention conditions defining CIEs as “poor facilities, lacking of adequate structures for exercise, characterized by intermittent hot water, poor hygiene, limitations on soap and laundry, jail-like conditions in which detainees are locked in cells, and lack of privacy, coupled with a lack of a clear framework on how specific requests by detainees are handled by staff”.<sup>279</sup>

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<sup>270</sup> LasciateCIEntrare Campaign, [Mai più CIE](#) (“Never ever CIE”), 2013, p. 9.

<sup>271</sup> LasciateCIEntrare, [Mai più CIE](#) (“Never ever CIE”), 2013, p. 9.

<sup>272</sup> Doctors without borders (Medici Senza Frontiere) “*Al di là del muro (Beyond the Wall)*”, January 2010; Medici per i Diritti Umani, “*Behind Higher Fences. Report on the identification and deportation centre of Ponte Galeria in Rome*”, 2012; Medici per i Diritti umani, *ARCIPELAGO CIE*, May 2013.

<sup>273</sup> Medici per i Diritti umani, *op.cit.*, p. 21.

<sup>274</sup> A cooperative is a type of non profit association, founded and run by its members.

<sup>275</sup> Borderline-Europe KISA, Borderline Sicily Mugak and Andalucía Acoge, *At the Limen. The implementation of the return directive in Italy, Cyprus and Spain*, February 2014, at pp. 25-26.

<sup>276</sup> Borderline-Europe, *Ibidem*, at p. 23.

<sup>277</sup> Borderline-Europe, *Ibidem*, at p. 23.

<sup>278</sup> MEDU, [Centri di identificazione ed espulsione: da Trapani Milo a Ponte Galeria, chiudere delle strutture gravemente inadeguate](#) (Identification and expulsion centres: from Trapani Milo to Ponte Galeria, close the structures highly inadequate), 28 January 2014.

<sup>279</sup> UN Special Rapporteur on the human rights of migrants, François Crépeau, Mission to Italy (29 September–8 October 2012), Report 20 April 2013, p. 16.

With regard to sports and recreational/leisure activities, CIEs are usually conceived as structures which temporarily detain migrants awaiting deportation. Therefore, since these facilities were designed to detain people for maximum 60 days and not for longer periods, they do not dispose of specific areas/rooms for recreational and sport activities.<sup>280</sup> In this regard, the Council of Europe's Commissioner for Human Rights expressed "deep concern" about the fact that the CIEs "*have not been adapted to the extension of the maximum detention period from 2 to 18 months*", making particular reference to the lack of recreational activities. Accordingly he "warned" the Italian authorities against a "further degradation of standards due to budgetary cuts".<sup>281</sup>

In Italian CIEs the access to open-air spaces seems to be guaranteed, although in some cases with some limitations. However, foreigners detained spend a lot of their time in their cells since no "large common spaces [are] equipped for recreational activities – with the exception of the football fields in Roma, Bari and Caltanissetta – due to the potential security threat that these kind of activities could cause".<sup>282</sup> On this point the 2010 CPT emphasized that even though the outdoor spaces should be appropriately equipped for sport activities, "the yard [in the CIE of Milano] only offered partial protection against inclement weather" and "no sports or other activities were organized".<sup>283</sup> Such situation is common to all CIE.

The Human Rights and Migration Law Clinic also highlighted that "there are activities that sporadically occur and offer detainees a couple of hours of distraction. However on the whole, the twenty-four hours a day of monotonous immigration detention is perhaps best summed up in the following short quotations "*detainees' days are empty*" (Interview 1); "*I'm forced to take medication because otherwise time does not pass*" (Interview 25); "*you never know what to do. Nothing is certain and nothing to do*" (Interview 23)"<sup>284</sup>. In this regard, the CPT noted that "*the activities organized/on offer were minimal*" and recommended "*that the Italian authorities offer foreign nationals a greater number and broader range of activities (sports in particular)*".<sup>285</sup>

In few CIEs, such as those in Bari, Rome and Caltanissetta, migrants may organize some football matches. However, the members of the Union of Italian Criminal Chambers reported that during their visit in the mentioned facility they have not met anyone who benefited from the football field<sup>286</sup>. Also the Human Rights and Migration Law Clinic emphasized that even though in Turin's detention centre there is a football field, migrants reported they were not allowed to use it."<sup>287</sup>

With regard to the possibility for detainees to have access to reading materials, the personnel of the body running CIEs maintain that a library or books are available in these structures, but the representatives of the Union of Italian Criminal Chambers did not find the library in any of the CIEs visited.<sup>288</sup> In addition, access to internet and to newspapers is often not guaranteed.

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<sup>280</sup> Borderline-Europe, *opus cite*, February 2014, at pp. 25-26.

<sup>281</sup> Report by Nils Muižnieks, *op.cit*,

<sup>282</sup> Borderline-Europe, *At the Limen. The case of Italy, Spain and Cyprus*, February 2014, at p. 26.

<sup>283</sup> Report to the Italian Government on the visit to Italy carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 14 to 26 September 2008, CPT/Inf (2010)12; at point. 3.

<sup>284</sup> Human Rights and Migration Law Clinic, International University College of Turin, *Between and Between: Turin's CIE. A Human Rights Investigation into Turin's Immigration Detention Centre*, Turin, September 2012, at pp. 39-40.

<sup>285</sup> CPT, Report addressed to the Italian Government by a delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, following its visit carried out in September 2008 at the Identification and Expulsion Centre located in Milan, CPT/Inf (2010) 12, at point 33

<sup>286</sup> Union of Italian Criminal Chambers, "[Visit at the CIE of Bari](#)", 16 July 2013.

This was confirmed by Raffaella Cosentino, journalist expert in migration and detention issues and director of the documentary on Italian CIEs "EU 013: The last Frontier", in an interview with CIR on 10 March 2014.

<sup>287</sup> Human Rights and Migration Law Clinic, International University College of Turin, *Between and Between: Turin's CIE. A Human Rights Investigation into Turin's Immigration Detention Centre*, Turin, September 2012, at pp. 39-40.

<sup>288</sup> Union of Italian Criminal Chambers, [report of the visit at the CIE of Bari \(16 July 2013\)](#), [report of the visit at the CIE of Turin \(8 July 2013\)](#), [report of the visit at the CIE of Rome \(9 April 2013\)](#), [report of the visit to the CIE of Milan \(3 April 2013\)](#); Interview with Raffaella Cosentino, journalist expert in migration and detention

It has been underlined that the shortage of recreational activities has an increased negative impact on living conditions of people staying in the CIE 24 hours a day especially after the extension of the maximum detention period up to 18 months, and it is one of the main factors entailing distress in detained migrants.<sup>289</sup>

With regard to the hygienic-sanitary conditions, the Union of Italian Criminal Chambers reported that in several CIEs, such as in the structure of Ponte Galeria in Rome, bathrooms are crumbling, there are squat toilets, and in some cases doors do not close.<sup>290</sup> MEDU emphasized that hygienic services (showers, toilets, etc.) appear to be in insufficient and inadequate clean conditions<sup>291</sup>.

By law access to health care is guaranteed to all detainees. The law provides as a general rule that full necessary assistance and respect of dignity shall be guaranteed to the detainees.<sup>292</sup> The legislation further states that the fundamental rights of the detainees must be guaranteed, and that inside detention centres essential health services are provided.<sup>293</sup>

The Directive of 14 April 2000 of the Ministry of the Interior on Centres of Temporary Permanence and Assistance states that, during detention, the protection of physical and mental health must be ensured and that health services shall be provided by the centre's managing body.

The competent Prefecture signs *ad hoc* agreements (*Capitolato di appalto*) with the entity in charge of ensuring the management of the centre, that are elaborated on the basis of a general model of rules<sup>294</sup> related to the functioning of the CIE and to the services that must be provided by the managing body. This general model of rules was adopted on the 21st November 2008 through a Ministerial Decree in order to harmonise the typology and the quality of services provided within all the CIEs.

According to the *Capitolato*, the following services must be guaranteed by the managing entity of the CIE, also through the contribution of NGOs or other agencies: interpretation, cultural mediation, social assistance, legal orientation, psychological support, health care.

The health care services provided must consist of:

- Medical screening carried out upon entrance of the migrants in CIEs, aiming at checking general health conditions and at identifying vulnerable cases (unaccompanied children, disabled people, victims of physical and psychological violence);
- Medical service ensured on a daily basis by a doctor assisted by nurses, present in the centre for an adequate number of hours established in consideration of the number of persons detained;
- Moreover, in case the detained person needs urgent health care, on the basis of the explicit request of the responsible doctor or, in their absence, of supervisory staff, they are conducted to the nearest public health unit.

MEDU in its recent report issued on May 2013 pointed out that the comprehensive level and quality of health services provided by the management bodies within the CIEs “do not seem to ensure adequately the right to health to the persons detained”.<sup>295</sup>

In practice, migrants detained in CIEs have to face several obstacles in accessing effective health care.

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issues and director of the documentary set in Italian CIEs “EU 013: The last Frontier”, carried out by CIR on 10 March 2014.

<sup>289</sup> Medici per i Diritti umani, *op.cit.*, p. 24.

<sup>290</sup> Union of Italian Criminal Chambers, [report of the visit at the CIE of Bari \(16 July 2013\)](#), [report of the visit at the CIE of Milan \(3 April 2013\)](#), [report of the visit at the CIE of Rome \(9 April 2013\)](#).

<sup>291</sup> Medici per i Diritti umani, *op.cit.*, p. 21.

<sup>292</sup> Article 14(2) of the TU n. 286/1998.

<sup>293</sup> Article 21(1) and 21(2) of the Presidential Decree 394/1999.

<sup>294</sup> Schema di capitolato di appalto per la gestione dei centri di accoglienza per immigrati.

<sup>295</sup> Medici per i Diritti umani, *ARCIPELAGO CIE*, May 2013, p. 24.

Doctors without Borders's 2010 report, and *Medici per i Diritti Umani's* 2012 report and 2013 report have emphasised some critical aspects that in practice limit the access to health services and that compromise its quality. In particular:

- the access to the health unit within the CIEs, is filtered by operators working in the centre and it is rarely done with the support of a cultural mediator;
- managing entities can only ensure first level health care assistance and the infirmaries inside the centres are provided with basic drugs and medicines. MEDU found, in particular in the CIE of Trapani Milo, a “grave lack of medicines and health tools, such as insulin syringes”<sup>296</sup>. The UN Special Rapporteur on the human rights of migrants expressed serious concerns with regard to the medical care provided within the centres. He reported that “while each of the centres visited had medical personnel, detainees commented that they did not always receive adequate treatment, with many reporting the same painkiller being handed out for a wide range of ailments”. Furthermore, the Special Rapporteur pointed out that in CIEs psychotropic medications are easily and in high quantity prescribed “by doctors who are not necessarily experts in mental health”<sup>297</sup>.
- For other screening and diagnostic tests, detainees are conducted to external healthcare facilities. However, access to external health care is often difficult due to: the impossibility for the personnel of the local public health unit to access the detention centre; the necessity of a police escort available for transportation; difficulties due to lack/insufficiency of cooperation between the health unit inside the CIE and the external public health unit, when CIEs do not stipulate formal protocols with the external public healthcare facilities. MEDU reported an episode where a migrant detained in the CIE of Trapani Milo, who needed emergency care in a public hospital, was required to pay the ambulance.<sup>298</sup>
- In addition, it must be highlighted that medical personnel of local health unit (ASL) cannot enter in CIE, and in some circumstances, when doctors have been authorized to enter, they could not meet their patients but were obliged to “visit” them through a glass which divided them. <sup>299</sup>
- quality of health services vary considerably from one centre to another and it depends exclusively upon methods and resources used by different managing entities;
- psychological support services are present within CIEs but they are poorly structured. The chief of the health unit inside the CIE of Bari has underlined that one of the main critical aspects concerns the disproportionate and huge workload of psychologists in the structure compared to the number of detainees and their needs to be satisfied.<sup>300</sup> In this regard it must be noted that when they enter a CIE, the medical staff carry out “a preliminary screening of his/her health to be sure that he/she is fit for life inside the CIE”.<sup>301</sup> Usually, this kind of health assessment analyses the physical and not the psychological conditions of the detainee.
- there is a lack of parameters for evaluation, indicators of quality, external checks; and the managing institution is accountable only to the Prefecture, which lacks specific expertise in health and psychological area.

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<sup>296</sup> MEDU, [Centri di identificazione ed espulsione: da Trapani Milo a Ponte Galeria, chiudere delle strutture gravemente inadeguate](#), 28 January 2014.

<sup>297</sup> UN Special Rapporteur on the human rights of migrants, François Crépeau, Mission to Italy (29 September–8 October 2012), Report 20 April 2013, p. 16.

<sup>298</sup> MEDU, [Centri di identificazione ed espulsione: da Trapani Milo a Ponte Galeria, chiudere delle strutture gravemente inadeguate](#), 28 January 2014.

<sup>299</sup> Alberto Barbieri of *Medici per i diritti umani* (MEDU), Presentation of the Documentary “EU 013 Ultima Frontiera”, 5 March 2014; Raffaella Cosentino during its interview with CIR on 10th March 2014.

<sup>300</sup> *Medici per I Diritti umani*, Arcipelago CIE: indagine sui centri di identificazione ed espulsione italiani (Arcipelago CIE: survey of Italians identification and expulsion centres), May 2013, p. 9.

<sup>301</sup> Borderline-Europe, *opus cite*, February 2014, at pp. 26-27.

With regard to the detention facilities for families and vulnerable persons, the Directive of 14 April 2000 of the Ministry of the Interior regulates the structural characteristics of the centres and establishes that separated rooms or wings should be available for women, men and families (with or without children). Family unity must be guaranteed, therefore family members should remain in the same centre and when such an arrangement is not possible in a short time, they will be transferred to another centre.

According to Doctors without Borders<sup>302</sup>, and a report issued by the *ad hoc* commission for the protection and promotion of human rights of the Senate<sup>303</sup> (hereafter "Senate report"), separate rooms or wings for vulnerable persons, asylum seekers or others groups are not always provided in detention facilities. These reports have denounced the fact that there is in practice little attention for vulnerable persons and that migrants and asylum seekers are obliged to share the same rooms and wings with former prisoners who have committed different types of crimes. This promiscuity among detainees with heterogeneous social, legal and psychophysical conditions (ex-prisoners, asylum seekers, victims of trafficking, foreigners who lived irregularly for many years in Italy , foreigners just arrived ...) can potentially expose vulnerable persons to further abuses and makes more difficult their identification and proper assistance.

Concerning the access to education in CIEs, foreigner children should have access to education at the same conditions foreseen for nationals. The presence of children in detention centres has been reported in very few cases. According to Doctors without Borders, following 17 visits in CIEs in 2010, found no children in the centres.<sup>304</sup> Because of few cases of children in CIEs, no information is available regarding the obstacles to the access to education and recreational facilities in practice.

Access to detention centres is guaranteed by law, in any case, to UNHCR's representatives, lawyers and specialised refugee assisting organisations that have been previously authorised by the Ministry of the Interior.<sup>305</sup>

In April 2011, the former Minister of Interior issued a circular letter prohibiting the access to CIEs to the media, independent organisations (with some exceptions mentioned in the letter) and of civil society to the CIEs.<sup>306</sup> This caused a strong mobilisation of NGOs and the media that led to the *LasciateCIEntrare* (Open Access Now) campaign. In December 2011, the Directive n. 11050 issued by the Ministry of Interior revoked the circular letter, specifying, nevertheless, that Prefectures can prohibit the access to CIEs not only for public order reasons, but also for safety reasons, in cases of facility's renovation. According to the Senate's report, in practice, difficulties concerning the authorisation to access CIEs still remain due to the excessive discretion of the Ministry of the Interior.

Within the frame of the Presidium Project IOM, UNHCR, the Red Cross and Save the Children benefit from access to CIES. Nevertheless, these organisations are still not given full and continuous access to these centres. Moreover, other organisations find it difficult to access the centres at will.

Access to Identification and expulsion centres of journalists and politicians is quite difficult. They have to pass through two different stages before gaining authorization to visit the CIEs. 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.

As pointed out by Borderline-Europe "it is a very long and arbitrary procedure which leaves a lot of rooms for the authorities to limit access to the camps"<sup>307</sup>.

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<sup>302</sup> Doctors without Borders, *opus cite*.

<sup>303</sup> Commissione straordinaria per la tutela e la promozione dei diritti umani del Senato " *Rapporto sullo stato dei diritti umani negli istituti penitenziari e nei centri di accoglienza e trattenimento per migranti in Italia*", February 2012 (Extraordinary Commission for the protection and promotion of human rights of the Senate, *Report on the status of human rights in the penitentiary institutions and in the reception and detention centres for migrants in Italy*).

<sup>304</sup> Doctors without Borders, *opus cite*.

<sup>305</sup> Art. 21(3) of the Legislative Decree n. 25/2008.

<sup>306</sup> Circular Letter n. 1305 by the Ministry of Interior, April 2011.

<sup>307</sup> Borderline-Europe, *opus cite*, February 2014, at p. 22.

It is often hard to obtain a reply from the *Prefecture*. Moreover, authorities have a high discretion in allowing or not the entrance of external actors in CIEs since legislation does not foresee precise and clear criteria for the access.<sup>308</sup>

On this point the UN Special Rapporteur on the human rights of migrants underlines the need to “establish a nationwide institutional framework in which NGOs, intergovernmental organizations, journalists and lawyers can freely access and monitor the facilities”<sup>309</sup>.

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 CIEs with journalists, lawyers, members of Parliament and NGOs<sup>310</sup>.

The issue of maintaining regular contacts/communicating with people outside the centre is particularly crucial. The procedure for the authorisation of visits changes from centre to centre and, as reported by several sources<sup>311</sup>, it is very difficult to obtain the possibility to meet relatives and friends. Usually detainees have to make a formal request, but “the answer can come too late and sometimes only relatives are allowed to visit people inside the CIE. This can cause big problems for common law-couples and in general to the social life of the detainees (particularly when they are detained in a centre far from their city)”<sup>312</sup>.

Since, it is hard and it takes long the access to CIE to people outside the detention centres, thus “a mobile phone is the only possibility to maintain contacts with families and friends”.

As reported by Raffaella Consentino during her interview with CIR as well as pointed out by the Union of Italian Criminal Chambers after its visit to several CIEs during 2013, in some detention centres some public telephone are installed in the facilities, such as in the the CIE of Bari<sup>313</sup>.

In most CIEs the use of mobile phones is allowed but only if they do not have a camera. People who have mobile phones with camera must break it or not use that phone.<sup>314</sup>

Inside CIEs access to neither internet nor media information is guaranteed .

## G. Procedural safeguards and judicial review of the detention order

### Indicators:

- Is there an automatic review of the lawfulness of detention?  Yes  No

The law regulates the modalities and the time frame of detention in Centres for identifications and Expulsions (CIEs) of the asylum seekers<sup>315</sup>. According to art. 21(2) of Law 25/2008 read in conjunction

<sup>308</sup> Borderline-Europe, *Ibidem*, at p. 22.

<sup>309</sup> UN Special Rapporteur on the human rights of migrants, François Crépeau, Mission to Italy (29 September–8 October 2012), Report 20 April 2013, pp. 15-16.

<sup>310</sup> *LasciateCIEntrare*, *Mai più CIE*, 2013, at p. 9.

<sup>311</sup> Borderline-Europe, *opus cite*, February 2014, at p. 26; interview with Raffaella Cosentino, journalist expert in migration and detention issues and director of the documentary set in Italian CIEs “EU 013: The last Frontier”, carried out by CIR on 10 March 2014; European Alternatives and Lasciateci entrare Campaign, *La detenzione amministrativa dei migranti e la violazione dei diritti umani*, December 2012, at p. 23.

<sup>312</sup> Borderline-Europe, *opus cite*, February 2014, at p. 26.

<sup>313</sup> Union of Italian Criminal Chambers, [visit at the CIE of Bari](#), 16 July 2013; Interview with Raffaella Cosentino, journalist expert in migration and detention issues and director of the documentary set in Italian CIEs “EU 013: The last Frontier”, carried out by CIR on 10 March 2014.

<sup>314</sup> European Alternatives and Lasciateci entrare Campaign, *La detenzione amministrativa dei migranti e la violazione dei diritti umani*, December 2012, at p. 23; Interview with Raffaella Cosentino, journalist expert in migration and detention issues and director of the documentary set in Italian CIEs “EU 013: The last Frontier”, carried out by CIR on 10 March 2014.

<sup>315</sup> Article 14 (5)(6)(7) of the TU 286/1998 modified by the Law 129/2011.

with art. 14.3 of the TU 286/1998, the chief of the Questura (Immigration Office of the Police) orders the detention and the decision must be validated within 48 hours by the competent judge of peace. In practice, as reported by lawyers (in Trapani and Roma), these time limits are usually respected.

The judicial review of the lawfulness of detention is carried out with the presence of a lawyer, assisting the person concerned, and an interpreter. In general, detainees appear before the judge of peace both for the judicial review of the detention order issued by the Questura and for the extension of the detention period.

The judge should verify both procedural and substantive elements of the complaint and in theory they have the possibility to proceed with an independent and rigorous scrutiny.

The European Court on Human Rights (ECtHR) actually specifies in the *Suso Musa v. Malta* ruling that “under Article 5(4), an arrested or detained person is entitled to bring proceedings for a review by a court bearing upon the procedural and substantive conditions which are essential for the lawfulness of his or her detention”.<sup>316</sup> This review should be wide enough to rule on those conditions that are essential for the lawful detention of a person according to Article 5 § 1. Moreover, the ECtHR added that the right of *habeas corpus* encompasses the right to a speedy judicial decision concerning the lawfulness of the detention.<sup>317</sup>

In practice, some legal experts have argued that the validation hearings before the lay judge (*giudici di pace*) are deeply flawed and are really a mere formality.<sup>318</sup> as reported by lawyers working in the CIE of Rome (Ponte Galeria) and Trapani (Milo)<sup>319</sup> the judicial review of the detention order issued by the Questore ( Chief of the local police) should be motivated by law, but in practice it is based on the expulsion order and on the detention order. Therefore, the decision by the *giudice di pace* (*judge of peace*) to confirm the detention does not take into consideration the personal circumstance of the case.. The judicial review is usually a procedural assessment, since it is quite rare that the judge evaluates the merit of the case and personal circumstances that could prevent the detention. Moreover, the hearing before the judge of peace is always carried out in a hurried and superficial manner and an adversarial procedure is often not guaranteed.<sup>320</sup> Moreover, contrary to similar proceedings for EU citizens, the judge deciding the expulsion and detention of non-EU migrants is a lay judge (*giudici di pace*) without any particular expertise on immigration issues.<sup>321</sup>

Another critical aspect consists in the fact that often lawyers do not have enough time to provide adequate documentation against the decision of expulsion and detention. lawyers have to collect all the necessary documentation within the 48 hours foreseen by law before the judge takes a decision to validate the detention. In addition, a lawyer who assists migrants detained in the CIE of Trapani stated that on the basis of his (long) professional experience, lawyers are usually informed about the judicial review of the lawfulness of detention only few hours (2 h) before the adoption of the decision.

After the initial period of detention of 30 days, if the verification of the identity and of the nationality of the migrant or the release of travel documents are particularly difficult to carry out, the judge of peace, upon the request by the Chief of the Questura, may prolong the detention in CIE for another 30 days. In case the mentioned difficulties persist, the detention can be prolonged for 60 days. The judicial review

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<sup>316</sup> European Court of Human Rights, Forth Chamber, *Suso Musa v. Malta* case, application 42337/12, 23 July 2013, at para. 50.

<sup>317</sup> European Court of Human Rights, Forth Chamber, *Suso Musa v. Malta* case, application 42337/12, 23 July 2013, at para. 51.

<sup>318</sup> Iyengar et al., [A Legal Guide to Immigration Detention in Italy: an English overview of the Italian, European and international legal framework that governs immigration detention in Italy](#), April 2013.

<sup>319</sup> Interviewed by CIR on 11 March 2014.

<sup>320</sup> LasciateCIEntrare, Mai più CIE, 2013, at p. 34.

<sup>321</sup> UN Special Rapporteur on the human rights of migrants, [Report drafted following his third country visit in Italy during his regional study on the human rights of migrants at the borders of the European Union](#), 8 October 2012.

of the lawfulness of detention is carried out every 60 days until the end of the detention that can last maximum up to 18 months<sup>322</sup>.

The migrant has the right to challenge the detention. The Consolidated Immigration Act, in fact, provides the right to appeal a detention order or an order extending detention.<sup>323</sup> According to one source, in many cases the appeals are done inside CIEs and statistics on the number of appeals are not available.<sup>324</sup>

In practice, as reported by lawyers assisting migrants detained in the CIEs of Rome and Trapani, third-country nationals are informed on the modalities to challenge the expulsion, deferred rejection, and detention through the written notification of these acts, which are drafted in Italian and also contain a translation in English, French, Spanish, The law indicates these languages “as those that should be understood” by persons concerned, although in reality this is not the case.

## H. Legal assistance

### Indicators:

- Does the law provide for access to free legal assistance for the review of detention?  Yes  No
- Do asylum seekers have effective access to free legal assistance in practice?  Yes  No

As described above, migrants detained in CIEs have the right to challenge their detention. The Consolidated Immigration Act, in fact, provides the right to appeal a detention order or an order extending detention.<sup>325</sup>

The detainee is free to appoint a lawyer of their choice.

In practice, as reported by lawyers working in the CIEs of Rome (Ponte Galeria) and Trapani (Milo)<sup>326</sup>, there are no difficulties in contacting lawyers, because those migrants who live in Italy for many years usually know a lawyer of reference, while third-country nationals after their arrival are informed by other detainees in the CIE of the possibility to contact a lawyer and are provided with their number.

As reported by lawyers interviewed by CIR on the basis of their experience, migrants and asylum seekers detained in the CIEs of Rome (Ponte Galeria) and of Trapani (Milo) may always contact their lawyers/legal advisors in order to schedule meetings, as prescribed by law<sup>327</sup>. These meetings are held in private rooms inside the CIE and their frequency is decided by the lawyer together with their client depending on the needs of the specific case concerned. However, in the centre of Ponte Galeria migrants can only meet their lawyers/legal advisors from 3 to 6 p.m.

In some circumstances, due to the high discretion of each prefecture (local governmental office) in authorising access to CIEs, even lawyers may have problems in entering these detention structures.<sup>328</sup>

By law, free legal aid must be provided in case of appeal against the person’s expulsion order, on the basis of which the asylum seekers can be detained.<sup>329</sup> In this case the asylum seeker concerned can also request a court-appointed lawyer. In practice lawyers appointed by the State have no specific expertise in the field of refugee laws and they may not offer effective legal assistance due to lack of

<sup>322</sup> Article 14(3)-(5) of the TU 286/1998 modified by the Law 129/2011.

<sup>323</sup> Article 14(6) of the TU n. 286/1998.

<sup>324</sup> Global Detention Project, [Italy Detention Profile](#), November 2012.

<sup>325</sup> Article 14(6) of the TU n. 286/1998.

<sup>326</sup> Interviewed by CIR on 11 March 2014.

<sup>327</sup> Art. 13(5-bis) Consolidated Immigration Act 286/98.

<sup>328</sup> LasciateCIEntrare, Mai più CIE, 2013, at p. 7.

<sup>329</sup> Art. 13(5-bis) Consolidated Immigration Act 286/98.

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.<sup>330</sup>

Legal assistance inside the CIE should be provided by the body running the centre, which however do not often guarantee this service and usually provide a low quality legal counselling.<sup>331</sup> In this regard, according to a report of the "European Alternative" and "LasciateCIEntrare,"<sup>332</sup> it emerges that there is a lack of sufficient and qualified legal assistance inside CIEs.

Another relevant obstacle which hampers migrants detained in CIEs to obtain information on their rights and thus to enjoy 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.

According to UNHCR "in cases of detainees awaiting deportation in Identification and Expulsion Centres (CIEs) there have also been reports of difficulties in lodging asylum applications, either because of a lack of adequate information or legal assistance, or due to bureaucratic obstacles".<sup>333</sup>

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<sup>330</sup> Iyengar et al., *op.cit.*

<sup>331</sup> Lawyers working in the CIE of Rome (Ponte Galeria) and Trapani (Milo) Interviewed by CIR on 11 March 2014.

<sup>332</sup> European Alternative and LasciateCIEntrare, [La detenzione amministrativa dei migranti e la violazione dei diritti umani](#) (The Administrative Detention of Migrants and the Violation of Human Rights), August 2012, p. 8.

<sup>333</sup> See UN High Commissioner for Refugees, UNHCR Recommendations on Important Aspects of Refugee Protection in Italy, July 2012, p. 12.