

# Country Report: Italy



2016  
Update



## Acknowledgements & Methodology

The first report and four subsequent updates were written by Maria de Donato and Daniela di Rado of the Italian Council for Refugees (CIR). This update was written by Caterina Bove of the Association for Legal Studies on Immigration (ASGI), and was edited by ECRE.

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

The information in this report is up-to-date as of 31 December 2016, unless otherwise stated.

## The Asylum Information Database (AIDA)

The Asylum Information Database (AIDA) is coordinated by the European Council on Refugees and Exiles (ECRE). It aims to provide up-to date information on asylum practice in 20 countries. This includes 17 EU Member States (AT, BE, BG, CY, DE, ES, FR, GR, HR, HU, IE, IT, MT, NL, PL, SE, UK) and 3 non-EU countries (Serbia, Switzerland, Turkey) which is accessible to researchers, advocates, legal practitioners and the general public through the dedicated website [www.asylumineurope.org](http://www.asylumineurope.org). The database also seeks to promote the implementation and transposition of EU asylum legislation reflecting the highest possible standards of protection in line with international refugee and human rights law and based on best practice.



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## Glossary & List of Abbreviations

|                             |   |
|-----------------------------|---|
| <b>Mare Nostrum</b>         | Maritime operation running from October 2013 to October 2014 to prevent loss of life in the Mediterranean.  |
| <b>Praesidium</b>           | Project on first screening of persons arriving by sea, coordinated by the Ministry of Interior  |
| <b>Questore</b>             | Chief of the Immigration Office of the Police   |
| <b>Questura</b>             | Immigration Office of the Police  |
| <b>Relocation</b>           | Transfer of an asylum seeker from one Member State to another Member State  |
| <b>Strutture temporanee</b> | Temporary reception centres, formerly known as <i>centri di accoglienza straordinaria</i> (CAS)   |
| <b>Verbalizzazione</b>      | Registration of the asylum application  |
|                             |   |
| <b>AMIF</b>                 | Asylum, Migration and Integration Fund  |
| <b>ANCI</b>                 | Associazione Nazionale Comuni Italiani  |
| <b>ASGI</b>                 | Association for Legal Studies on Immigration   Associazione per gli Studi Giuridici sull'Immigrazione   |
| <b>CARA</b>                 | Centre for the Reception of Asylum Seekers   Centro di accoglienza per richiedenti asilo  |
| <b>CAS</b>                  | Emergency Accommodation Centre   Centro di accoglienza straordinaria  |
| <b>CDA</b>                  | Accommodation Centre for Migrants   Centro di accoglienza   |
| <b>CIE</b>                  | Identification and Expulsion Centre   Centro di identificazione ed espulsione   |
| <b>CIR</b>                  | Italian Council for Refugees   Consiglio Italiano per i Rifugiati   |
| <b>CNDA</b>                 | National Commission for the Right of Asylum   Commissione nazionale per il diritto di asilo   |
| <b>CPSA</b>                 | First Aid and Reception Centre   Centro di primo soccorso e accoglienza   |
| <b>CTRPI</b>                | Territorial Commission for the Recognition of International Protection   Commissione territoriale per il riconoscimento della protezione internazionale |
| <b>EASO</b>                 | European Asylum Support Office  |
| <b>ECHR</b>                 | European Convention on Human Rights   |
| <b>ECtHR</b>                | European Court of Human Rights  |
| <b>ERF</b>                  | European Refugee Fund   |
| <b>GRETA</b>                | Group of Experts on Action against Trafficking  |
| <b>IOM</b>                  | International Organisation for Migration  |
| <b>MEDU</b>                 | Doctors for Human Rights   Medici per I diritti umani   |
| <b>SAR</b>                  | Search and rescue   |
| <b>SIMM</b>                 | Society of Migration Medicine   Società Italiana di Medicina delle Migrazioni   |
| <b>SPRAR</b>                | System of Protection for Asylum Seekers and Refugees   Sistema di protezione per richiedenti asilo e rifugiati  |
| <b>TUI</b>                  | Consolidated Act on Immigration   Testo unico sull'immigrazione   |
| <b>VESTANET</b>             | Registration database   |

## Statistics

### Overview of statistical practice

The Department of Civil Liberties and Immigration of the Ministry of Interior publishes monthly statistical reports on asylum applications and first instance decisions.

### Applications and granting of protection status at first instance: 2016

|              | Applicants<br>in 2016 | Pending<br>applications<br>in 2016 | Refugee<br>status | Subsidiary<br>protection | Humanitarian<br>protection | Rejection | Refugee<br>rate | Subs. Prot.<br>rate | Hum. Prot.<br>rate | Rejection<br>rate |
|--------------|-----------------------|------------------------------------|-------------------|--------------------------|----------------------------|-----------|-----------------|---------------------|--------------------|-------------------|
| <b>Total</b> | 123,370               | 99,920                             | 4,800             | 12,090                   | 18,515                     | 54,470    | 5.3%            | 13.5%               | 20.6%              | 60.6%             |

Breakdown by countries of origin of the total numbers

|             |        |        |       |       |       |        |       |       |       |       |
|-------------|--------|--------|-------|-------|-------|--------|-------|-------|-------|-------|
| Nigeria     | 26,975 | 22,980 | 515   | 910   | 3,165 | 13,795 | 2.8%  | 5%    | 17.2% | 75%   |
| Pakistan    | 13,660 | 11,340 | 460   | 2,160 | 1,670 | 7,330  | 4%    | 18.6% | 14.4% | 63%   |
| Gambia      | 8,930  | 6,300  | 225   | 240   | 2,350 | 5,865  | 2.6%  | 2.8%  | 27.1% | 67.5% |
| Senegal     | 7,615  | 5,685  | 80    | 205   | 1,445 | 4,900  | 1.2%  | 3.1%  | 21.8% | 73.9% |
| Ivory Coast | 7,460  | 5,495  | 110   | 170   | 895   | 2,635  | 2.9%  | 4.5%  | 23.5% | 69.1% |
| Eritrea     | 7,425  | 7,685  | 215   | 170   | 15    | 80     | 44.8% | 35.4% | 3.1%  | 16.7% |
| Bangladesh  | 6,675  | 5,695  | 100   | 70    | 1,440 | 4,615  | 1.6%  | 1.1%  | 23.1% | 74.2% |
| Mali        | 6,355  | 5,020  | 60    | 1,340 | 1,605 | 3,895  | 0.9%  | 19.4% | 23.3% | 56.4% |
| Guinea      | 6,055  | 4,380  | 40    | 45    | 655   | 1,815  | 1.6%  | 1.8%  | 25.6% | 71%   |
| Ghana       | 4,945  | 3,815  | 55    | 50    | 1,190 | 2,695  | 1.4%  | 1.3%  | 29.8% | 67.5% |
| Afghanistan | 2,850  | 1,925  | 380   | 3,580 | 40    | 125    | 9.2%  | 86.8% | 1%    | 3%    |
| Somalia     | 2,395  | 1,500  | 310   | 1,065 | 30    | 45     | 21.4% | 73.4% | 2.1%  | 3.1%  |
| Iraq        | 1,540  | 1,020  | 225   | 615   | 35    | 45     | 24.4% | 66.8% | 3.8%  | 5%    |
| Syria       | 1,380  | 550    | 1,100 | 65    | 5     | 15     | 92.8% | 5.5%  | 0.4%  | 1.3%  |

Source: Eurostat (rounded).

**Gender/age breakdown of the total number of applicants: 2016**

|                                   | Number  | Percentage |
|-----------------------------------|---------|------------|
| <b>Total number of applicants</b> | 123,370 | 100%       |
| Men                               | 104,785 | 84.9%      |
| Women                             | 18,585  | 15.1%      |
| Children                          | 11,240  | 9.1%       |
| Unaccompanied children            | 5,710   | 4.6%       |

Source: Eurostat (rounded); Ministry of Interior.

**Comparison between first instance and appeal decision rates: 2016**

Second instance decisions are not available.



## Overview of the legal framework

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

| Title (EN)   | Original Title (IT)  | Abbreviation                           | Web Link   |
|--|--|--|--|
| 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://bit.ly/1GfWhWZ">http://bit.ly/1GfWhWZ</a> (IT)   |
| Legislative Decree 142/2015 “Implementation of Directive 2013/33/EU on standards for the reception of asylum applicants and the Directive 2013/32/EU on common procedures for the recognition and revocation of the status of international protection.”   | Decreto legislativo 18 agosto 2015, n 142 “Attuazione della direttiva 2013/33/UE recante norme relative all’accoglienza dei richiedenti protezione internazionale, nonché della direttiva 2013/32/UE, recante procedure comuni ai fini del riconoscimento e della revoca dello status di protezione internazionale.”   | LD 142/2015                            | <a href="http://bit.ly/1Mn6i1M">http://bit.ly/1Mn6i1M</a> (IT)   |
| Legislative Decree no. 286/1998 “Consolidated Act on provisions concerning the Immigration regulations and foreign national conditions norms”<br><br><i>Amended by:</i> Law no. 189/2002 “concerning amendments on immigration and asylum laws”  | Decreto Legislativo 25 luglio 1998, n. 286<br>“Testo unico delle disposizioni concernenti la disciplina dell’immigrazione e norme sulla condizione dello straniero”<br><br><i>Modificato:</i> Legge 30 luglio 2002, n. 189 “Modifica alla normativa in materia di immigrazione e di asilo” o “Legge Bossi-Fini”  | TUI<br><br>L 189/2002                  | <a href="http://bit.ly/1PYQbyL">http://bit.ly/1PYQbyL</a> (IT)<br><br><a href="http://bit.ly/1GfWiu7">http://bit.ly/1GfWiu7</a> (IT) |
| Law 94/2009 “norms on public security” (Security Package)  | Legge 15 luglio 2009, n. 94 “Disposizioni in materia di sicurezza pubblica” (Pacchetto Sicurezza)  | L 94/2009                              | <a href="http://bit.ly/1GQKhdk">http://bit.ly/1GQKhdk</a> (IT)   |
| Legislative Decree no. 251/2007 “Implementation of Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted”<br><br><i>Amended by:</i> Legislative Decree no. 18/2014 “Implementation of Directive 2011/95/EU” | Decreto legislativo 19 novembre 2007, n. 251 “Attuazione della direttiva 2004/83/CE recante norme minime sull’attribuzione, a cittadini di Paesi terzi o apolidi, della qualifica del rifugiato o di persona altrimenti bisognosa di protezione internazionale, nonché norme minime sul contenuto della protezione riconosciuta”<br><br><i>Modificato:</i> Decreto Legislativo 21 febbraio 2014, n. 18 “Attuazione della direttiva 2011/95/UE” | Qualification Decree<br><br>LD 18/2014 | <a href="http://bit.ly/1FOscKM">http://bit.ly/1FOscKM</a> (IT)<br><br><a href="http://bit.ly/1I0ioRw">http://bit.ly/1I0ioRw</a> (IT) |
| Legislative Decree no. 25/2008 “Implementation of Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status”  | Decreto Legislativo 28 gennaio 2008, n.25 “Attuazione della direttiva 2005/85/CE recante norme minime per le procedure applicate negli Stati membri ai fini del riconoscimento e della revoca dello status di rifugiato”   | Procedure Decree                       | <a href="http://bit.ly/1PYQjOW">http://bit.ly/1PYQjOW</a> (IT)   |

|   |  |                              |  |
|---|--|------------------------------|--|
| <i>Amended by:</i> Legislative Decree no. 159/2008 "Amendments and integration of the legislative Decree of 28 January 2008 [...]"  | <i>Modificato:</i> Decreto Legislativo 3 ottobre 2008, n. 159 "Modifiche ed integrazioni al decreto legislativo 28 gennaio 2008, n. 25 [...]"  | LD 159/08                    | <a href="http://bit.ly/1KxD3tO">http://bit.ly/1KxD3tO</a> (IT) |
| <i>Amended by:</i> Legislative Decree no. 142/2015  | <i>Modificato:</i> Decreto legislativo n. 142/2015   | LD 142/2015                  | <a href="http://bit.ly/1Mn6i1M">http://bit.ly/1Mn6i1M</a> (IT) |
| Decree-Law no. 89/2011 "Urgent provisions for the full application of the Directive 2004/38/EC on the free movement of EU citizens and for the transposition of the Directive 2008/115/EC on returning illegally staying third-country nationals" | 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://bit.ly/1SPQ4V2">http://bit.ly/1SPQ4V2</a> (IT) |
| <i>Implemented by:</i> Law 129/2011   | <i>Conversione in:</i> Legge 2 agosto 2011, n. 89  | L 129/2011                   | <a href="http://bit.ly/1HGdkfL">http://bit.ly/1HGdkfL</a> (IT) |
| Legislative Decree no. 150/2011 "Additional provisions to the Code of Civil Procedure concerning the reduction and simplification of cognition civil proceedings, under Article 54 of the law 18 June 2009, n. 69"                                | Decreto legislativo 1 Settembre 2011, n. 150, Disposizioni complementari al codice di procedura civile in materia di riduzione e semplificazione dei procedimenti civili di cognizione, ai sensi dell'articolo 54 della legge 18 Giugno 2009, n. 69                                  | LD 150/2011                  | <a href="http://bit.ly/2jXfdog">http://bit.ly/2jXfdog</a> (IT) |
| Legislative Decree no. 24/2014 "Prevention and repression of trafficking in persons and protection of the victims", implementing Directive 2011/36/EU"  | Decreto Legislativo 4 marzo 2014, n. 24 "Prevenzione e repressione della tratta di esseri umani e protezione delle vittime", in attuazione alla direttiva 2011/36/UE, relativa alla prevenzione e alla repressione della tratta di esseri umani e alla protezione delle vittime"     | LD 24/2014                   | <a href="http://bit.ly/1FI2OsN">http://bit.ly/1FI2OsN</a> (IT) |
| Decree-Law no. 119/2014 "[...] for assuring the functionality of the Ministry of Interior (Article 5 to 7)" implemented by Law no. 146/2014   | Decreto-Legge 22 agosto 2014, n. 119 "Disposizioni urgenti in materia di contrasto a fenomeni di illegalità e violenza in occasione di manifestazioni sportive, di riconoscimento della protezione internazionale, nonché per assicurare la funzionalità del Ministero dell'Interno" | Decree-Law 119/2014          | <a href="http://bit.ly/1QjHpWQ">http://bit.ly/1QjHpWQ</a> (IT) |
| <i>Implemented by:</i> Law no. 146/2014   | <i>Conversione in:</i> Legge 17 ottobre 2014, n. 146   | L 146/2014                   | <a href="http://bit.ly/1M330IU">http://bit.ly/1M330IU</a> (IT) |
| Law 154/2014 "European Delegation Law 2013 – second semester"   | Legge 7 ottobre 2014, n. 154 "Delega al Governo per il recepimento delle direttive europee e l'attuazione di altri atti dell'Unione europea - Legge di delegazione europea 2013 - secondo semestre"  | European Delegation Law 2013 | <a href="http://bit.ly/1HGdrYv">http://bit.ly/1HGdrYv</a> (IT) |
| Law no.161/2014 "Provisions for Italy's compliance with the EU obligations – European Law 2013-bis"   | Legge 30 ottobre 2014, n. 161 "Disposizioni per l'adempimento degli obblighi derivanti dall'appartenenza dell'Italia all'Unione europea - Legge europea 2013-bis"  | European Law 2013-bis        | <a href="http://bit.ly/1KH93id">http://bit.ly/1KH93id</a> (IT) |
| Decree-Law n. 113/2016, urgent financial measures for local authorities   | Decreto-legge 24 giugno 2016, n. 113, recante misure finanziarie urgenti per gli enti territoriali e il territorio   | Decree-Law 24/06/2016        | <a href="http://bit.ly/2ljOFL1">http://bit.ly/2ljOFL1</a> (IT) |

|   |  |  |  |
|---|--|--|--|
| <i>Implemented by:</i> Law no. 160/2016   | <i>Conversione in legge:</i> Legge di 7 agosto 2016, n. 160  | Law 160/2016                             |  |
| Law Decree n. 193/2016 Urgent provisions for taxation matters and for financing non-postponable needs (converted into Law n. 225/2016)  | Decreto legge n. 193/2016 recante disposizioni urgenti in materia fiscale e per il finanziamento di esigenze indifferibili. Convertito in Legge n. 225/2016  | Decree Law 22/10/2016<br><br>L- 225/2016 | <a href="http://bit.ly/2kC68OO">http://bit.ly/2kC68OO</a> (IT) |
| Decree 10 November 2016, n. 234 “Regulation for determining the age of unaccompanied minors victims of trafficking, in implementation of Article 4, paragraph 2, of Legislative Decree 4 March 2014, n. 24. | Decreto del Presidente Del Consiglio Dei Ministri del 10 novembre 2016, n. 234 – Regolamento recante definizione dei meccanismi per la determinazione dell'età dei minori non accompagnati vittime di tratta, in attuazione dell'articolo 4, comma 2, del decreto legislativo 4 marzo 2014, n. 24. | DPCM 234/2016                            | <a href="http://bit.ly/2jJ406T">http://bit.ly/2jJ406T</a> (IT) |
| Decree Law 17 February 2017, n. 13 - Urgent measures for accelerating the proceedings related to the international protection, as well as for fighting against illegal immigration                          | Decreto Legge 17 febbraio 2017, n. 13 - Disposizioni urgenti per l'accelerazione dei procedimenti in materia di protezione internazionale, nonché per il contrasto dell'immigrazione illegale.   | Decree Law 13/2017                       | <a href="http://bit.ly/2kZOBQe">http://bit.ly/2kZOBQe</a> (IT) |

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

| Title (EN)  | Original Title (IT)  | Abbreviation       | Web Link   |
|---|--|--------------------|--|
| Presidential Decree no. 394/1999 “Regulation on norms implementing the consolidated act on provisions concerning the immigration regulations and foreign national conditions norms” | Decreto del Presidente della Repubblica del 31 agosto 1999, n. 394 "Regolamento recante norme di attuazione del testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero" | PD 394/1999        | <a href="http://bit.ly/1M33qIX">http://bit.ly/1M33qIX</a> (IT) |
| <i>Amended by:</i> Presidential Decree no. 334/2004 “on immigration”  | <i>Aggiornato con le modifiche apportate dal:</i> Decreto del Presidente della Repubblica 18 ottobre 2004, n. 334 “in materia di immigrazione”   | PD 334/2004        | <a href="http://bit.ly/1KxDnsk">http://bit.ly/1KxDnsk</a> (IT) |
| Decree of the Head of the Civil Liberties and Immigration Department of the Ministry of Interior of 17 September 2013   | Decreto 17 settembre 2013 del capo Dipartimento per le Libertà civili e l'Immigrazione   | D 17/9/2013        | <a href="http://bit.ly/1eLif89">http://bit.ly/1eLif89</a> (IT) |
| Circular of the Ministry of Interior of 20 June 2014 on the “Influx of foreign nationals following further disembarkations on the Italian coasts”                                   | Circolare del Ministero dell’Interno del 20 giugno 2014 “Afflusso di cittadini stranieri a seguito di ulteriori sbarchi sulle coste italiane”  | MoI Cir. 20/6/2014 | <a href="http://bit.ly/1REyzpg">http://bit.ly/1REyzpg</a> (IT) |
| Circular of the Ministry of Interior of 27 June 2014 on the “Distribution of resources in favour of the System  | Circolare del Ministero dell’Interno del 27 giugno 2014 “Ripartizione risorse in favore del Sistema di protezione di richiedenti asilo e rifugiati SPRAR, annualità 2014”  | MoI Cir. 27/6/2014 | <a href="http://bit.ly/1KH9hWH">http://bit.ly/1KH9hWH</a> (IT) |

|  |  |                             |  |
|--|--|-----------------------------|--|
| for Protection of Asylum Seekers and Refugees SPRAR, year 2014”  |  |                             |  |
| Ministry of Interior Decree of 17 October 2014 “National coordinating working group on unplanned migratory flows”  | Decreto del Ministero dell’Interno “Tavolo di coordinamento nazionale sui flussi migratori non programmati di cui all’art. 1 del Decreto Legislativo 18/2014”  | Mol D<br>17/10/2014         | <a href="http://bit.ly/1IOjj4t">http://bit.ly/1IOjj4t</a> (IT) |
| Regulation of the Ministry of Interior of 20 October 2014 “Criteria for the organisation and management of Identification and expulsion centres set by Article 14 of legislative Decree of 25 July 1998 n. 286 and following changes”. | Regolamento recante: “Criteri per l’organizzazione e la gestione dei centri di identificazione ed espulsione previsti dall’articolo 14 del decreto legislativo 25 luglio 1998, n. 286 e successive modificazioni”  | Mol Reg.<br>20/10/2014      | <a href="http://bit.ly/1PpOVmi">http://bit.ly/1PpOVmi</a> (IT) |
| Ministry of Interior Circular of 17 December 2014 on the “Influx of foreign nationals following further disembarkations on the Italian coasts”   | Circolare del Ministero dell’Interno del 17 dicembre 2014 “Afflusso di cittadini stranieri a seguito di ulteriori sbarchi sulle coste italiane”  | Mol Cir.<br>17/12/2014      | <a href="http://bit.ly/1BBN6sJ">http://bit.ly/1BBN6sJ</a> (IT) |
| Presidential Decree no. 21/2015 on “Regulation on the procedures for the recognition and revocation of international protection”   | Decreto del Presidente della Repubblica del 12 gennaio 2015 “Regolamento relativo alle procedure per il riconoscimento e la revoca della protezione internazionale a norma dell’articolo 38, comma 1, del decreto legislativo 28 gennaio 2008, n. 25.”   | PD 21/2015                  | <a href="http://bit.ly/1QjHx8R">http://bit.ly/1QjHx8R</a> (IT) |
| Ministry of Interior Decree of 27 April 2015 on “Modalities for requests for services from local entities for the reception in SPRAR of foreign unaccompanied minors”  | Decreto del Ministero dell’Interno “Modalità di presentazione delle domande di contributo, da parte degli enti locali, per i servizi finalizzati all’accoglienza nella rete SPRAR di minori stranieri non accompagnati”  | Mol D<br>27/4/2015          | <a href="http://bit.ly/1KH9kBF">http://bit.ly/1KH9kBF</a> (IT) |
| Directive of the Minister of Interior on the implementation of activities aimed to control the managing bodies of reception services for non- EU citizens.   | Direttiva del Ministro dell’Interno in materia di implementazione delle attività di controllo sui soggetti affidatari dei servizi di accoglienza dei cittadini extracomunitari.  | Mol Directive<br>04/08/2015 | <a href="http://bit.ly/21VEjkd">http://bit.ly/21VEjkd</a> (IT) |
| Decree of the Minister of Interior of 7 August 2015 on the submission of projects related to the reception with the aim to strengthen the SPRAR system.  | Decreto del Ministro dell’Interno del 7 agosto 2015 per la presentazione di progetti relativi all’accoglienza di richiedenti/titolari di protezione internazionale e dei loro familiari, nonché degli stranieri e dei loro familiari beneficiari di protezione umanitaria per 10.000 posti a valere sul Fondo nazionale per le politiche e i servizi di asilo. | Mol D<br>07/08/2015         | <a href="http://bit.ly/1QjnPyF">http://bit.ly/1QjnPyF</a> (IT) |
| Ministry of Interior Circular of 6 October 2015 on the Decision of the European Council n. 1523 of 14 September 2015 and Decision n.1601 of 22 September 2015 on relocation procedure.   | Circolare del Ministero dell’Interno del 6 ottobre 2015 “Decisioni del Consiglio europeo n. 1523 del 14 settembre 2015 e n. 1601 del 22 settembre 2015 per istituire misure temporanee nel settore della protezione internazionale a beneficio dell’Italia e della Grecia – Avvio della procedura di <i>relocation</i> .                                       | Mol Cir.<br>06/10/2015      | <a href="http://bit.ly/1OmjO6P">http://bit.ly/1OmjO6P</a> (IT) |

|  |  |                         |  |
|--|--|-------------------------|--|
| Ministry of Interior Circular of 30 October 2015 on Legislative Decree 142/2015  | Circolare del Ministero dell'Interno del 30 ottobre 2015 "Decreto legislativo 18 agosto 2015, n. 145"  | Mol Cir.<br>30/10/2015  | <a href="http://bit.ly/1mybXMX">http://bit.ly/1mybXMX</a> (IT) |
| Ministry of Interior Circular of 15 February 2016 on "Dublin Regulation n. 604/2013. Guarantees for vulnerable cases"  | Circolare del Ministero dell'Interno del 15 Febbraio 2016 sul Regolamento Dublino n. 604/2013. Garanzie per casi di vulnerabilità: nuclei familiari con minori.  | Mol Cir.<br>15/02/16    | <a href="http://bit.ly/1QxxRqJ">http://bit.ly/1QxxRqJ</a> (IT) |
| Ministry of Interior Circular of 5 May 2016 Accommodation of asylum seekers and refugees. Access of asylum seekers and beneficiaries of international protection and of their relatives, more than beneficiaries of humanitarian protection and their relatives to Sprar | Circolare del Ministero dell'Interno del 5 maggio 2016. Sistema di accoglienza richiedenti asilo e rifugiati. Inserimento dei richiedenti e titolari della protezione internazionale e dei loro familiari, nonché degli stranieri e dei loro familiari beneficiari della protezione umanitaria, nelle strutture dello Sprar  | Mol Cir.<br>05/05/2016  | <a href="http://bit.ly/2kf48yx">http://bit.ly/2kf48yx</a> (IT) |
| Circular of the Central Service for Sprar: time limits of accommodation in Sprar   | Circolare del Servizio Centrale Sprar: Tempi di accoglienza all'interno dello SPRAR  | 07/07/2016              | <a href="http://bit.ly/2kCeBS2">http://bit.ly/2kCeBS2</a> (IT) |
| Ministry of Interior Decree "Access of municipalities to the National Fund for Asylum (FNSA) for the accommodation of asylum seekers, international and humanitarian protected; guidelines for Sprar   | Decreto del Ministero dell'Interno del 10 agosto 2016 "Modalità di accesso da parte degli enti locali ai finanziamenti del Fondo nazionale per le politiche ed i servizi dell'asilo per la predisposizione dei servizi di accoglienza per i richiedenti e i beneficiari di protezione internazionale e per i titolari del permesso umanitario, nonché approvazione delle linee guida per il funzionamento del Sistema di protezione per richiedenti asilo e rifugiati (SPRAR)" | Mol D.<br>10/08/2016    | <a href="http://bit.ly/2jWE7zI">http://bit.ly/2jWE7zI</a> (IT) |
| Ministry of Interior Circular of 17 August 2016: asylum seekers: accommodation in temporary centers – registry enrolment – identity card request   | Circolare del Ministero dell'Interno del 17/08/2016 – richiedenti protezione internazionale: sistemazione nei centri di accoglienza temporanea –iscrizione anagrafica – richiesta e rilascio carta di identità   | Mol Cir.<br>17/08/2016  | <a href="http://bit.ly/2kf48yx">http://bit.ly/2kf48yx</a> (IT) |
| Mol Decree of 01/09/2016 "Establishment of first reception centers dedicated to unaccompanied minors"  | Decreto del Ministero dell'Interno, del 1° Settembre 2016 Istituzione di centri governativi di prima accoglienza dedicati ai minori stranieri non accompagnati   | Mol D.<br>01/09/2016    | <a href="http://bit.ly/2cOzpmM">http://bit.ly/2cOzpmM</a> (IT) |
| Ministry of Interior Circular of 11 October 2016 on Rules for starting of a gradual and sustainable distribution system for asylum seekers and refugees on the national territory through the SPRAR "  | Circolare del Ministero dell'Interno 11 Ottobre 2016 "Regole per l'avvio di un sistema di ripartizione graduale e sostenibile dei richiedenti asilo e dei rifugiati su territorio nazionale attraverso lo SPRAR"   | Mol Cir.<br>11/10/16    | <a href="http://bit.ly/2jhhf2i">http://bit.ly/2jhhf2i</a> (IT) |
| Ministry of Interior Circular of 30 December 2016 on tracking down of irregular foreign citizens throughout the country for repatriation   | Circolare del Ministero dell'Interno del 30 Dicembre 2016 - Attività di rintraccio dei cittadini stranieri irregolari sul territorio nazionale ai fini del rimpatrio   | Mol Cir.<br>30/12//2016 | <a href="http://bit.ly/2jqbbjk">http://bit.ly/2jqbbjk</a> (IT) |

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

The previous report update was published in **December 2015**.

### *Asylum procedure*

- ❖ **Appeal:** The Decree-Law 13/2017 published on 17 February 2017 has abolished the possibility to appeal the Civil Tribunal decisions on international protection before the Court of Appeal. If the provision is to be transposed into law by Parliament, it will be possible to appeal those decisions issued 180 days from the entry into force of the Decree-Law onwards only before the Court of Cassation within 30 days, no longer within 60. The Decree-Law also foresees limited possibilities for an oral hearing, and states that the request for suspensive effect has to be decided by the judge who rejected the appeal. The reform has sparked strong reactions from NGOs, and even from some magistrates.
- ❖ **Dublin:** During 2016, the administrative courts expressed with several decisions the position that Dublin procedure should be understood as a phase of the asylum procedure and, consequently, should fall within the competence of civil courts. The first significant decision was taken on 18 December 2015 by the Council of State, and subsequently by the Administrative Court of Lazio, including with a decision of 7 February 2017. On the other hand, on 3 February 2017, the Civil Court of Trieste pronounced the lack of jurisdiction of the ordinary judge and referred to the administrative courts. Therefore, at the moment, asylum seekers notified of a Dublin decision lack an actual remedy against the transfer.

### *Reception conditions*

- ❖ **Accommodation:** As of the end of December 2016, temporary reception centres (CAS) hosted over 75% of the population with approximately 137,218 persons, while SPRAR hosted 23,822 and first reception centres 14,694. Conditions in many of these facilities present serious concerns and are not suitable for residence of asylum seekers.

### *Detention of asylum seekers*

- ❖ **Detention capacity:** At the end of December 2016, the Ministry of Interior issued a Circular ("Circular Gabrielli") announcing the reopening of the closed identification and expulsion centres (CIE), as part of a broader plan aimed at repatriation of irregular foreign nationals, also pursued by concluding new bilateral readmission agreements and reforming the rules on asylum.
- ❖ **Nationality-based treatment:** On 26 January 2017, the Ministry of Interior sent to the Questure in Rome, Torino, Brindisi and Caltanissetta a telegram requesting them to make available 90 places, 50 for men and 45 for women, inside the currently operating CIE. These places are to be used to identify self-styled Nigerian nationals illegally present in the country for their immediate repatriation. The Ministry of Interior has also encouraged the Questure to carry out targeted operations aimed at tracing Nigerian citizens in an irregular situation on the territory.

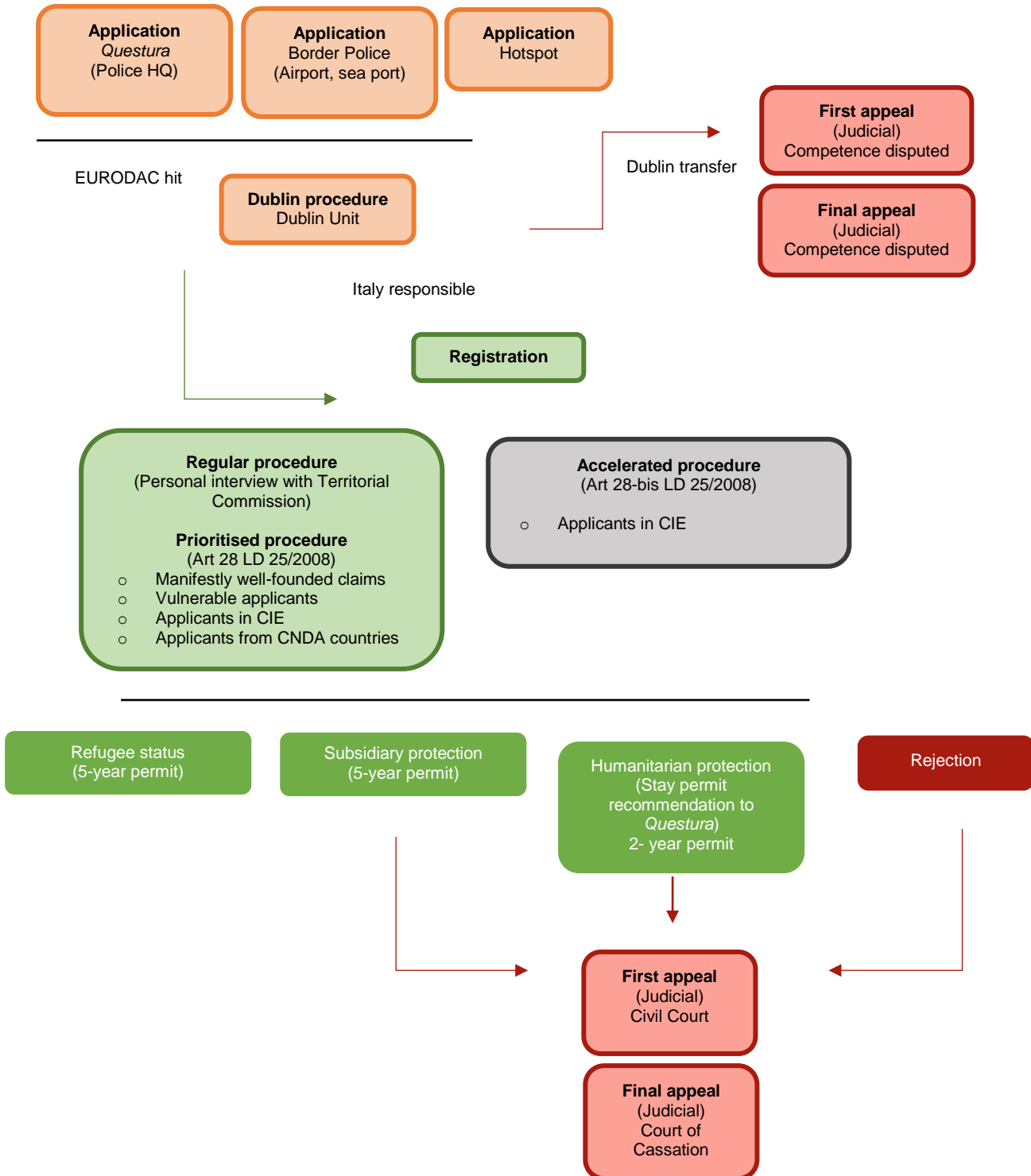
### *Content of international protection*

- ❖ **Stay in reception centres:** Beneficiaries notified of a protection status in CAS are strongly discriminated against compared to those who obtain or who have already obtained a place in SPRAR. Depending on the discretionary decisions of the responsible Prefectures and on bureaucratic delays, they could be allowed to stay in the reception centre a few months (Trieste), a few days (Milan), or even just one day (Padova, Ancona) after the notification.

# Asylum Procedure

## A. General

### 1. Flow chart





## 2. Types of procedures

### Indicators: Types of Procedures

Which types of procedures exist in your country?

- |   |   |  |
|---|---|--|
| ❖ Regular procedure:                    | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ▪ Prioritised examination: <sup>1</sup> | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ▪ Fast-track processing: <sup>2</sup>   | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No |
| ❖ Dublin procedure:                     | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ❖ Admissibility procedure:              | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No |
| ❖ Border procedure:                     | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No |
| ❖ Accelerated procedure: <sup>3</sup>   | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ❖ Other:                                |   |  |

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

| Stage of the procedure  | Competent authority (EN)  | Competent authority (IT)   |
|---|---|--|
| Application <ul style="list-style-type: none"> <li>❖ At the border</li> <li>❖ On the territory</li> </ul> | Border Police<br>Immigration Office, Police                                   | Polizia di Frontiera<br>Questura   |
| Dublin  | Dublin Unit, Ministry of Interior<br>Civil Court                              | Unità Dublino, Ministero dell'Interno<br>Tribunale Civile                            |
| Refugee status determination  | Territorial Commissions for the<br>Recognition of International<br>Protection | Commissioni Territoriali per il<br>Riconoscimento della Protezione<br>Internazionale |
| Appeal <ul style="list-style-type: none"> <li>❖ First appeal</li> <li>❖ Final appeal</li> </ul>           | Civil Court<br>Court of Cassation   | Tribunale Civile<br>Corte di Cassazione  |
| Subsequent application  | Territorial Commissions for the<br>Recognition of International<br>Protection | Commissioni Territoriali per il<br>Riconoscimento della Protezione<br>Internazionale |

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

| Name in English  | Number of staff                                  | Ministry responsible | Is there any political interference possible by the responsible Minister with the decision making in individual cases by the first instance authority? |
|--|--|----------------------|--|
| Territorial Commissions and Sub-commissions for International Protection | 20 Territorial Commissions<br>27 sub-Commissions | Ministry of Interior | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  |

## 5. Short overview of the asylum procedure

The Italian asylum system foresees a single regular procedure, the same for the determination of both refugee status and subsidiary protection status. Within this procedure the Territorial Commissions may decide those cases falling under the prioritised procedure or in the accelerated procedure.<sup>4</sup>

<sup>1</sup> For applications likely to be well-founded or made by vulnerable applicants. See Article 31(7) APD.

<sup>2</sup> Accelerating the processing of specific caseloads as part of the regular procedure.

<sup>3</sup> Labelled as "accelerated procedure" in national law. See Article 31(8) APD.

<sup>4</sup> Article 28(1-bis) LD 25/2008, as amended by LD 142/2015.



According to Italian legislation, there is no formal time-frame for lodging an asylum request. The intention to make an asylum request may be expressed also orally by the applicant in his or her language with the assistance of a linguistic-cultural mediator.<sup>5</sup> However, asylum seekers should present their application as soon as possible. Immigration legislation prescribes, as a general rule, a deadline of 8 days from arrival in Italy for migrants to present themselves to the authorities.<sup>6</sup>

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 formal registration. Police authorities cannot examine the merits of the asylum application.

The police authorities of the *Questura* ask the asylum seeker questions related to the Dublin III Regulation during the formal registration stage and then contact the Dublin Unit of the Ministry of the Interior which then verifies whether Italy is the Member State responsible for the examination of the asylum application.

The police authorities send the registration form and the documents concerning the asylum application to the Territorial Commissions or Sub-commissions for International Protection (*Commissioni territoriali per il riconoscimento della protezione internazionale*) (**CTRPI**) located throughout the national territory, the only authorities competent for the substantive asylum interview.<sup>7</sup> The asylum seeker will then be notified by the *Questura* of the date of the interview with the Territorial Commission.

The National Commission for the Right of Asylum (*Commissione nazionale per il diritto di asilo*) (**CNDA**) not only coordinates and gives guidance to the Territorial Commissions in carrying out their tasks, but is also responsible for the revocation and cessation of international protection.<sup>8</sup>

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 instructions from the Ministry of Interior.

### **First instance procedure**

According to the Procedure Decree,<sup>9</sup> the CTRPI interviews the applicant within 30 days after having received the application and decides in the 3 following working days. When the CTRPI is unable to take a decision in this time limit and needs to acquire new elements, the examination procedure is concluded within six months of the lodging of the application.

However, the CTRPI may extend the time limit for a period not exceeding a further nine months, where: (a) complex issues of fact and/or law are involved; (b) a large number of asylum applications are made simultaneously; (c) the delay can clearly be attributed to the failure of the applicant to comply with his or her obligations of cooperation. By way of exception, the CTRPI, in duly justified circumstances, may further exceed this time limit by three months where necessary in order to ensure an adequate and complete examination of the application for international protection.<sup>10</sup> In the light of the different possibilities of extension, the asylum procedure this may last for a maximum period of 18 months.

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

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<sup>5</sup> Article 3(1) PD 21/2015.

<sup>6</sup> Article 3(2) PD 21/2015.

<sup>7</sup> LD 119/2014, which modifies Article 4 LD 25/2008.

<sup>8</sup> Articles 13 and 14 PD 21/2015.

<sup>9</sup> Article 27 LD 25/2008, as amended by LD 142/2015.

<sup>10</sup> Article 27 LD 25/2008, as amended by LD 142/2015.

LD 142/2015 introduced an accelerated procedure in addition to the existing prioritised procedure. The President of the CTRPI identifies the cases under the prioritised or accelerated procedures.<sup>11</sup>

## Appeal

Asylum seekers can appeal against a negative decision issued by the Territorial Commissions within 30 days before the competent Civil Tribunal, which does not exclusively deal with asylum appeals. Applicants placed in detention facilities and those under the accelerated procedure have only 15 days to lodge an appeal.<sup>12</sup> As the previous law, the LD 142/2015 prescribed that if the appeal was dismissed, it could be appealed to the Court of Appeal within 30 days of the notification of the decision. A final appeal before the highest appellate court (Cassation Court) could be lodged within 60 days of the notification of the dismissal of the previous appeal.

According to Decree-Law 13/2017, the Civil Tribunal decisions cannot be appealed before the Court of Appeal but only before the Court of Cassation within 30 days.<sup>13</sup> The Decree-Law also states that only 14 specialised court sections in Italy will deal with asylum appeals.<sup>14</sup>

## B. Access to the procedure and registration

### 1. Access to the territory and push backs

#### Indicators: Access to the Territory

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

During 2016 the harbour most affected by arrivals was that of **Augusta**, followed by **Pozzallo**, **Catania**, **Messina** and **Palermo**. The disembarkations that took place at fully-fledged hotspots represented less than the 30% of the total. These were 52,000 on a total number of about 181,000 persons.<sup>15</sup>

However, the **Hotspot** approach was applied at least to six additional ports of disembarkation.<sup>16</sup>

Among those disembarked, the number of people seeking asylum has been about 123,370.

According to the law,<sup>17</sup> the border police rejects third-country nationals who present themselves at the border without the conditions required for entry into the territory of the State. The rejection is also ordered towards foreigners:

- a. entering the territory evading border controls, stopped at the entrance or immediately thereafter;
- b. temporarily admitted to the territory for assistance.

The law also provides that such provisions do not apply in the cases provided by the current provisions governing international or humanitarian protection. On the other hand, the law also expressly provides an obligation to provide appropriate information on the asylum procedure,<sup>18</sup> to be discharged even at hotspots<sup>19</sup> and border crossings.<sup>20</sup>

<sup>11</sup> Article 28(c) and (1-bis), LD 25/2008, as amended by LD 142/2015.

<sup>12</sup> Article 19(3) LD 150/2011, as amended by Article 27 LD 142/2015.

<sup>13</sup> Article 35 LD 25/2008, as amended by Article 6(13) DL 13/2017.

<sup>14</sup> This provision will apply to proceedings initiated 180 days after the entry into force of DL 13/2017.

<sup>15</sup> Ministry of Interior, *Cruscoto statistico giornaliero*, 31 December 2016.

<sup>16</sup> European Commission, *8th report on relocation and resettlement*, COM(2016) 791, 8 December 2016.

<sup>17</sup> Article 10 TUI.

<sup>18</sup> Article 3 LD 142/2015.

<sup>19</sup> Decree-Law 13/2017.

<sup>20</sup> Article 10 TUI.

The way the provisions related to the information obligation are applied determines the actual legitimacy of rejections but the limits of the **Hotspot** approach make it clear that people not properly informed and not channelled to the asylum procedure may be refused entry under a determined legal basis.

Particularly between October 2015 and January 2016, in Sicily, as recorded by ASGI lawyers and reported by some NGOs,<sup>21</sup> Questure issued hundreds of deferred rejection orders. The orders had not been preceded by individual interviews and no copy was given to the persons concerned.

In **Taranto** as well, hundreds of people have been notified of such orders. As reported by ASGI,<sup>22</sup> as of 7 December 2015 this happened, after disembarkation, to some 150 people coming from the Maghreb area, while a group of Nigerian people were immediately moved to expulsion centres based in **Bari** and **Restinco**, where they faced lack of defence against detention and many difficulties to formalise their asylum request.

### From Swiss and French borders to expulsion

In August 2016, ASGI interviewed several third-country nationals present in **Como** where some 400-500 were camping in the park in front of the train station, pushed back from Switzerland and awaiting to try again to cross the border.

Almost all the persons reported to ASGI they had never received adequate information, neither on arrival in Italy nor subsequently, on how to apply for international protection, on the criteria for establishing the State responsible for examining a request provided by Dublin Regulation III and the possibility to request relocation, and had not been able to make use of an interpreter who spoke their language. Those who reported to have been informed about relocation at disembarkation said that they were not assisted later to trigger the procedure. ASGI found that very few of them had applied for international protection in Italy, although most of them were in clear need of protection, coming from Eritrea and Ethiopia.<sup>23</sup>

Some of them have been transferred from Chiasso border to the **Taranto** hotspot (see **Detention**).

On 3 August 2016, a Memorandum of Understanding was signed by the Italian and Sudanese police authorities.<sup>24</sup> The agreement provides that, upon request, the Sudanese police collaborates in identifying and repatriating Sudanese nationals who have not applied for asylum. Implementing the agreement, Italy returned 40 Sudanese to Khartoum on 24 August 2016.<sup>25</sup>

According to the information recorded by ASGI, these repatriations are likely to be considered collective expulsions as there has been no individual examination of their cases. The Sudanese nationals were arrested in **Ventimiglia**, where they had moved after being rescued at sea and disembarked a few weeks before. They were detained for some days in a centre, different from a CIE, where a judge swiftly validated their expulsion, and then moved to the **Taranto** hotspot. They told ASGI that neither upon disembarkation nor later did they receive information on the asylum procedure and on the consequences of not applying for asylum.

Other Sudanese nationals, caught in the same police operation but luckily not embarked on the same

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<sup>21</sup> Amnesty International, *Hotspot Italy: How EU's Flagship Approach Leads To Violations Of Refugee And Migrant Rights*, November 2016, available at: <http://bit.ly/2kt1UfC>, 40; Oxfam, *Hotspot: Rights denied*, 19 May 2016, available at: <http://bit.ly/2kMWVCH>, 29.

<sup>22</sup> ASGI, *Il diritto negato: dalle stragi in mare agli hotspot*, 26 January 2016 available in Italian at: <http://bit.ly/2ltPEYD>.

<sup>23</sup> ASGI, 'Le riammissioni di cittadini stranieri alla frontiera di chiasso: profili di illegittimità', 31 August 2016 available in Italian at: <http://bit.ly/2bBpAKe>; 'Migranti : diritti violati al confine italo-svizzero', 31 August 2016, available in Italian at: <http://bit.ly/2l7G2Xt>.

<sup>24</sup> The agreement is available in Italian at: <http://bit.ly/2kuQXam>.

<sup>25</sup> See also ECRE, 'Italy's deportation of 48 Sudanese citizens may amount to collective expulsion', 16 September 2016, available at: <http://bit.ly/2d3blWI>.

flight, as they managed to get assistance and information by NGOs and by specialist lawyers, sought asylum and were granted refugee status.

In the light of such practices, ASGI lawyers lodged an appeal before the European Court of Human Rights (ECtHR) in February 2017.<sup>26</sup> In February 2017, Italy has also signed similar Memoranda of Understanding also with Tunisia and Libya.<sup>27</sup>

## 2. Hotspots

Part of the European Commission's European Agenda on Migration, the “hotspot” approach, is generally described as providing “operational solutions for emergency situations”, through a single place to swiftly process asylum applications, enforce return decisions and prosecute smuggling organisations through a platform of cooperation among the European Asylum Support Office (EASO), Frontex, Europol and Eurojust. Even though there is no precise definition of the “hotspot” approach, it is clear that it has become a fundamental feature of the [Relocation](#) procedures conducted from Italy and Greece in the framework of Council Decisions 2015/1523 and 2015/1601 of 14 and 22 September 2015 respectively. “Hotspots” managed by the competent authority have not required new reception facilities, operating instead from already existing ones. Frontex helps with the identification, registration and fingerprinting of recently arrived people, enforcement of return decisions and collection of information on smuggling routes, while EASO helps with the processing of asylum claims and the eventual relocation procedure. UNHCR officers present in the “hotspot” should monitor the situation.

Currently, four hotspots are operating in **Lampedusa, Pozzallo, Trapani and Taranto**. As of 24 of January 2017, they hosted a total 355 persons.<sup>28</sup>

According to media sources, 5 more hotspots are currently being implemented in **Crotone, Reggio Calabria, Palermo, Messina and Corigliano Calabro**, in the province of Cosenza.<sup>29</sup>

The Italian authorities have adopted the “hotspot” approach to channel the arrivals of mixed migration flows in the mentioned ports and to apply there the pre-identification, registration, photograph and fingerprinting operations. However, already in October 2015, NGOs including ASGI had highlighted that “hotspots” had become a standard procedure applied to migrants, regardless of the existence or not of an *ad hoc* reception centre.<sup>30</sup>

By using this procedure, migrants are detained without any court order, forced to be fingerprinted, and classified as asylum seekers or economic migrants depending on a summary assessment, mainly carried out either by using questionnaires filled in by migrants at disembarkation,<sup>31</sup> or by orally asking questions relating to the reason why they have come to Italy. In both cases, due to the lack of cultural mediators, there are no guarantees as to migrants’ actual understanding of the process.

Following these operations, those identified as economic migrants *tout court* are notified with a rejection / expulsion order and, where places are available in identification and expulsion centres (CIE), are detained in such facilities. Asylum seekers, instead, are channelled to the regional Hubs (see [Relocation](#)). Syrians, Eritreans and Iraqis who may adhere to the relocation process are accommodated in *ad hoc* regional hubs or regional hubs with *ad hoc* places (hotels, barracks, reception centre of Castelnuovo di Porto, in Rome, Taranto, etc.)

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<sup>26</sup> ASGI, ‘Rimpatriati in Sudan presentano ricorso contro l'Italia’, 16 February 2017, available in Italian at: <http://bit.ly/2mzwq54>.

<sup>27</sup> The agreement is available at: <http://bit.ly/2kzCFHg>.

<sup>28</sup> Chamber of Deputies, *Dossier a cura degli Ispettori della Guardia di Finanza addetti all'Archivio della Commissione*, 23 January 2017.

<sup>29</sup> Il Sole 24 Ore, ‘Altri 5 hotspot sulle coste italiane’, 7 February 2017, available in Italian at: <http://bit.ly/2llbYab>.

<sup>30</sup> ASGI, *Garantire i diritti degli stranieri soccorsi in mare e sbarcati*, 21 October 2015, available in Italian at: <http://bit.ly/24EpBjt>.

<sup>31</sup> See the *foglio notizie* at: <http://bit.ly/1LXpUKv>.

People are often classified just solely on the basis of their nationality. Migrants from Nigeria, Gambia, Senegal, Morocco, Algerian and Tunisia are easily classified as economic migrants.

Considering that the vast majority of people arriving in Italy tend to proceed to other countries to present their asylum claim without even registering, to avoid being returned to Italy under the Dublin III Regulation, a large use of force to fingerprint migrants has been reported.<sup>32</sup>

The Standard Operating Procedures (SOPs) adopted in February 2016 and applying at Hotspots have tried to regulate the procedure stating that, “where necessary, the use of force proportionate to overcoming objection, with full respect for the physical integrity and dignity of the person, is appropriate...”<sup>33</sup> The Decree-Law provisionally entering into force on 18 February 2017 also provides that the repeated refusal to undergo fingerprinting constitutes a risk of absconding and legitimises detention in CIE.<sup>34</sup>

According to the European Commission report published on 10 February 2016, since the setting up of the hotspots in Italy, the proportion of migrants whose fingerprints have been stored in Eurodac rose from 36% in September 2015 to 87% in January 2016.<sup>35</sup> By September 2016, according to the European Commission, the progress achieved in implementing the hotspot approach, even beyond the areas nominally designated as hotspots, had resulted in the achievement of close to 100% fingerprinting.<sup>36</sup>

Due to the concerns raised by several NGOs, including ASGI, since October 2015, as of January 2016, the Ministry of Interior stated in a Circular that it is not possible to deny access to asylum procedures and fundamental rights to people arbitrarily considered “not in clear need of international protection”. The Ministry of Interior admitted that all migrants have the right to be protected from *refoulement* and not to receive expulsion orders if they have not previously been correctly informed.<sup>37</sup>

On 20 January 2016, at the hearing held in front of the Parliamentary Commission of inquiry on reception, identification and expulsion centres, the Head of Police, Alessandro Pansa said that the distinction of migrants between asylum seekers and economic migrants had been carried out based on the data collected through the “questionnaire” and with the help of cultural mediators, but had often been too hasty, partly because of large numbers, causing confusion and mistakes, but with no intention of preventing access to asylum applications or of enforcing rejections or mass expulsions. He pointed out that many unlawful rejections were overturned at the judicial level.<sup>38</sup>

According to the Report published by the Commission for the protection and promotion of human rights, of the Senate, that visited the hotspot of Lampedusa in January 2016, the pre-identification procedure was particularly critical. The Commission highlighted that most of the migrants pre-identified were not capable of properly filling the forms: the procedure was taking place when the refugees rescued at sea and just landed were often obviously still in shock following the long and risky journey, and many of them

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<sup>32</sup> See for more information: ECRE et al., *The implementation of the hotspots in Italy and Greece*, December 2016, available at: <http://bit.ly/2hdldXj>; Amnesty International, *Hotspot Italy: How EU's Flagship Approach Leads To Violations Of Refugee And Migrant Rights*, November 2016, available at: <http://bit.ly/2kt1UfC>; Oxfam, *Hotspot: Rights denied*, 19 May 2016, available at: <http://bit.ly/2kMWVCH>.

<sup>33</sup> Ministry of Interior, Standard Operating Procedures applicable to Italian hotspots (hereafter “Hotspot SOP”), available at: <http://bit.ly/2kt9JBX>, para B.7.2.c.

<sup>34</sup> Article 17(3) DL 13/2017.

<sup>35</sup> European Commission, *State of Play of Implementation of the Priority Actions under the European Agenda on Migration*, COM(2016) 85, 10 February 2016, 5.

<sup>36</sup> European Commission, *6<sup>th</sup> report on resettlement and relocation*, COM(2016) 636, 28 September 2016.

<sup>37</sup> Ministry of Interior, Circular addressed to the Head of Police and to Prefectures, 8 January 2016.

<sup>38</sup> Chamber of Deputies, *Parliamentary Commission of inquiry on reception and identification, Hearing of the Head of Police, Alessandro Pansa*, 20 January 2016, available in Italian at: <http://bit.ly/2IS6pgJ>.

were unable to understand what was required, because mediators spoke only four languages and could not cover all the different areas of origin of the migrants.<sup>39</sup>

According to the SOPs, all hotspots should guarantee *inter alia* “provision of information in a comprehensible language on current legislation on immigration and asylum”, as well as “provision of accurate information (on the functioning of procedures for the request of the international protection and on the relocation procedure).”<sup>40</sup>

People interviewed by Amnesty International in July and August 2016 confirmed that the denounced practices were still going on throughout 2016 and, despite the abovementioned Circular of the Ministry of Interior of 8 January 2016 and the criticism of NGOs, expulsion orders were still issued after summary and superficial examinations.<sup>41</sup>

After the report was published by Amnesty International in November 2016, the Government strongly refused such accusations, as well as those concerning illegal detention and the coercive measures to fingerprint the migrants, claiming that they were false (see [Detention of Asylum Seekers](#)).<sup>42</sup>

### 3. Registration of the asylum application

#### Indicators: Registration

1. Are specific time-limits laid down in law for asylum seekers to lodge their application?  
☒ Yes ☐ No
2. If so, what is the time-limit for lodging an application?  
❖ At the border 8 working days

LD 142/2015 clarifies that applications for international protection are made in the territory, including at the border and in transit zones, and in the territorial waters by non-EU citizens.<sup>43</sup> Moreover, the Decree also provides for training for Police authorities appropriate to their tasks and responsibilities.<sup>44</sup>

The LD 142/2015 provides for the issuing of a stay permit for asylum seekers valid for 6 months, renewable.<sup>45</sup>

#### 3.1. Fotosegnalamento

Under the Procedure Decree,<sup>46</sup> the asylum claim can be lodged either at the Border Police upon arrival or at the Immigration Office of the Police (*Questura*) if the applicant is already in the territory. The wish to seek international protection may be expressed orally or in writing by the person concerned in their own language with the help of a mediator.<sup>47</sup>

PD 21/2015, which entered into force in March 2015, provides that asylum seekers who express their wish to apply for international protection before border police authorities are to be requested to approach the competent *Questura* within 8 working days. Failure to comply with the 8 working day time-limit, without justification, results in deeming the persons as illegally staying on the territory.<sup>48</sup> However, there is no

<sup>39</sup> Senate, Extraordinary Commission for the protection and promotion of human rights, *Report on identification and expulsion centres in Italy*, February 2016, available at: <http://bit.ly/1LDALyV>.

<sup>40</sup> Hotspot SOP, 7, para B3.

<sup>41</sup> Amnesty International, *Hotspot Italy*, 34, 41.

<sup>42</sup> Il Fatto Quotidiano, ‘Migranti, Morcone: “Rapporto Amnesty su abusi in Italia? Cretinaggini”. Ue: “Nessuna violazione”’, 3 November 2016, available in Italian at: <http://bit.ly/2fg12W5>.

<sup>43</sup> Article 1 LD 25/2008, as amended by LD 142/2015.

<sup>44</sup> Article 10(1-bis) LD 25/2008, as amended by LD 142/2015.

<sup>45</sup> Article 4(1) LD 142/2015.

<sup>46</sup> Article 6 LD 25/2008.

<sup>47</sup> Article 3(1) PD 21/2015.

<sup>48</sup> Article 3(2) PD 21/2015.



provision for a time limit to lodge an asylum request before the Questura when the applicant is already on the national territory.

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

Before the entry into force of LD 142/2015 at some Questuras, in order to apply for asylum, persons were required to have previously indicated a residence – an address which will be then quoted on the permit of stay. LD 142/2015 has clarified, by th Article 5(1), that the obligation to inform police of the domicile or residence is fulfilled by the applicant by means of a declaration, to be made at the moment of the application for international protection and that the address of the accommodation centres and of the CIE are to be considered the place of residence of asylum applicants who effectively live in these centres.<sup>49</sup> Article 4(4) LD 142/2015 also clarified that access to the reception measures and the issuance of the residence permit are not subject to additional requirements to those expressly required by the Decree itself.<sup>50</sup>

With these two provisions,<sup>51</sup> the Decree has made it clear that the unavailability of a domicile shall not be a barrier to access to international protection. Nevertheless, during 2016 Questuras still denied access to the procedure for lack of domicile. This has been reported to ASGI as occurring for example in **Milan, Treviso, Frosinone and Imperia (Ventimiglia)**.

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

### 3.2. C3 and verbalizzazione

The 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 (“*Modello C/3*”).<sup>52</sup> The form is completed with the basic information regarding the applicant's personal history, the journey he or she has undertaken to reach Italy and the reasons for fleeing from the country of origin. This form is signed by the asylum seeker and then sent to the Territorial Commission, before the interview. Asylum seekers should receive, by law, a copy of the C3 and copies of all other documents submitted to the police authorities. In practice, it has been reported to ASGI that some Questuras, like the one in **Milan**, do not give such copies to the applicants.

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

At the Questura of **Milan**, as denounced by the NGOs ASGI, Naga and Avvocati per Niente with a letter sent to the Ministry of Interior in April 2016, the Police was submitting a questionnaire to asylum seekers

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<sup>49</sup> Article 5(1) LD 142/2015. According to Article 5(2), the address is also valid for the notification of any kind of communication of any act concerning the asylum procedure.

<sup>50</sup> Article 4(4) LD 142/2015.

<sup>51</sup> Article 4(4) LD 142/2015, read together with Article 5(1) LD 142/2015.

<sup>52</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).

pretending to assess, from the answers compiled, whether they were refugees or economic migrants, basically applying the same procedure as that applied at **Hotspots**. Those considered economic migrants were denied to access the asylum procedure and notified of an expulsion order.<sup>53</sup>

The same Questura was also reported to deny access to the applicants' lawyers. Replying to the report, the Questura rejected all accusations, explaining, that lawyers are allowed to intervene on specific mandate of their clients and for specific disputes with the immigration offices.<sup>54</sup>

With the completion of the C3, 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. According to the previous legislation, there was no time limit for the authorities to complete the formal registration of the asylum request. In practice, the formal registration might take place weeks after the date the asylum seeker made the asylum application. This delay created and still creates difficulties for asylum seekers who, in the meantime, might not have access to the reception system and the national health system; with the exception of emergency health care. In this respect, LD 142/2015 provides that the transcription of the statements made by the applicant is carried out within 3 working days from the manifestation of the willingness to seek protection or within 6 working days in case the applicant has manifested such willingness before border police authorities. That time limit is extended to 10 working days in presence of a significant number of asylum applications due to consistent and tight arrivals of asylum seekers.<sup>55</sup>

However, these time limits are generally not respected. During 2016, as recorded by ASGI and Arci, only in a few cases – such as the Questura of **Trapani**, **Taranto** or **Pescara** – could asylum seekers complete the C3 the same day or immediately later the manifestation of the intention to seek protection.

In other cases, on average, to complete the C3 in Questura asylum seekers had to wait:

| Waiting times for completion of C3 per Questura: 2016 |   |
|---|---|
| Average delay   | Questura  |
| 1 week  | Udine, Macerata, Lucca, L'Aquila, Cosenza, Caltanissetta  |
| up to 2 weeks   | Sondrio, Siena, Savona, Prato, Perugia, Messina, Lamezia, Imperia (Ventimiglia), Foggia, Brindisi |
| up to 1 month   | Torino, Rimini, Gorizia, Arezzo   |
| up to 2 months  | Agrigento, Palermo, Rome, Siracusa, Ragusa, Milan   |
| up to 3-4 months                                      | Verona, Trieste, Treviso, Trento, Ascoli Piceno, Livorno, La Spezia                               |
| over 3 months   | Pisa, Piacenza, Pesaro, Cuneo, Catania  |
| over 6 months   | Naples  |

Source: ASGI and Arci members' reports, up-to-date as of November 2016.

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

Some Questura allow people to seek asylum only some days a week; this is 2 days in **Bari** and **Foggia**, and one day in **Naples**. Others pose numerical limits per day. In both cases those Questura do not issue

<sup>53</sup> For more information and the letter, see: <http://bit.ly/2kB5kli>.

<sup>54</sup> The response appeared on the newspaper *Avvenire* on 30 April 2016.

<sup>55</sup> Article 26(2-bis) LD 25/2008, as amended by LD 142/2015.



the persons concerned with any document attesting the intention to seek asylum, therefore exposing them to the risk of being considered irregular and receive an expulsion order.

ASGI has also reported barriers to access to the procedure based on nationality. This concerned people from Morocco, Tunisia, Serbia, Albania, Colombia, El Salvador, and in some cases Nigeria and Pakistan.

Many cases have also been reported to ASGI where asylum seekers were not allowed to enter the building of the Questura and were obliged to wait several hours outside, over a barrier, being exposed to psychological ill-treatment, such as verbal abuse and shouting.

## C. Procedures

### 1. Regular procedure

#### 1.1. General (scope, time limits)

##### Indicators: Regular Procedure: General

- |  |   |
|--|---|
| 1. Time-limit set in law for the determining authority to make a decision on the asylum application at first instance: <sup>56</sup> | 33 days   |
| 2. Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing?           | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 3. Backlog of pending cases as of 31 December 2016:  | 99,920  |

### The Territorial Commissions

The authorities competent to examine the asylum application and to take first instance decisions are the Territorial Commissions for the Recognition of International Protection (CTRPI) and Sub-commissions, which are administrative bodies specialised in the field of asylum, under the Ministry of Interior.

On 23 August 2014, Decree-Law 119/2014 entered into force. It has established the possibility of enlarging the number of the Territorial Commissions from 10 to 20,<sup>57</sup> as well as to create 30 additional sub-Commissions in the entire national territory,<sup>58</sup> in order to boost and improve the management of the increasing number of applications for international protection.

The initial 10 Territorial Commissions are based in: Gorizia, Milan, Rome, Foggia, Syracuse (Sicily), Crotone, Trapani, Bari, Caserta and Torino.

As of 3 of October 2016, the Ministry of Interior referred to 20 Territorial Commissions and 27 sub-Commissions.<sup>59</sup> During 2015 and 2016, new Territorial Commissions started operations in Verona, Ancona, Brescia, Bologna, Cagliari, Catania, Firenze, Lecce, Palermo and Salerno; sub-Commissions were established in Forlì, Campobasso, Enna, Reggio Calabria, Perugia, Frosinone, Caltanissetta, Ragusa, Genova, Agrigento, Novara, Bergamo, Livorno, Monza-Brianza, Padova, Vicenza and Treviso.

Each Territorial Commission is composed by 4 members:<sup>60</sup>

- 2 representatives of the Ministry of Interior, one of which is a senior police officer;

<sup>56</sup> The personal interview must be conducted within 30 days of the registration of the application, and a decision must be taken within 3 *working* days of the interview.

<sup>57</sup> Article 4(2) LD 25/2008, as amended by Article 5(1)(a)(2) Decree-Law 119/2014.

<sup>58</sup> Article 4(2-bis) LD 25/2008, as amended by Article 5(1)(a)(3) Decree-Law 119/2014.

<sup>59</sup> Ministry of Interior, *Distribution of Territorial Commissions for the Recognition of International Protection and related sections*, 3 October 2016, available at: <http://bit.ly/2llc2H0>.

<sup>60</sup> Article 4(3) LD 25/2008.

- 1 representative of the Municipality (or Province or Region); and
- 1 representative of UNHCR.

The members and substitutes of the Territorial Commission have to be skilled or trained in the field of migration, asylum and human rights in order to be nominated,<sup>61</sup> but, according to the experience of ASGI, still too many members of the CTRPI do not reflect these criteria.

According to LD 142/2015, before the appointment of the members of the Territorial Commissions, the absence of incompatibility and conflict of interests must be evaluated. The Decree specifies that, for each member of CTRPI, one or more substitutes are appointed.

Under the Procedure Decree, the decision on the merits of the asylum claim must be taken by at least a majority of 3 members of the Territorial Commission; in the case of a 2:2 tie, the President's vote prevails.<sup>62</sup> However, since a reform of August 2014,<sup>63</sup> only one member is in charge of conducting the personal interview, where possible of the same sex as the applicant. The interviewing officer then presents the case to the other members of the Commission in order for a joint decision to be taken.

As of 15 of November 2016, giving effect to the provision included in the amended Article 5 of the Procedure Decree,<sup>64</sup> the CNDA has adopted a Code of Conduct for the members of the CTRPI, the interpreters and the personnel supporting them.

### Time limits

According to the LD 142/2015 the CTRPI interviews the applicant within 30 days after having received the application and decides in the 3 following working days. When the CTRPI is unable to take a decision in this time limit and needs to acquire new elements, the examination procedure is concluded within six months of the lodging of the application. The CTRPI may extend the time limit for a period not exceeding a further nine months, where:

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

By way of exception, the CTRPI, in duly justified circumstances, may further exceed this time limit by three months where necessary in order to ensure an adequate and complete examination of the application for international protection.<sup>65</sup> In the light of the different possibilities of extension, the asylum procedure may last for a maximum period of 18 months.

In practice, however, the time limits for completing the regular procedure are not complied with. The procedure usually takes much longer, considering on one hand that the competent determining authorities receive the asylum application only after the formal registration and the forwarding of the *Modello C3* form through VESTANET has taken place. On the other hand, the first instance procedure usually lasts several months, while the delays for different determining authorities in issuing a decision vary between Territorial Commissions. In cities such as **Rome**, the entire procedure is generally longer and takes from 6 up to 12 months.

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<sup>61</sup> Article 4(3) LD 25/2008 as amended by LD 142/2015.

<sup>62</sup> Article 4(4) LD 25/2008; Article 2(3) PD 21/2015.

<sup>63</sup> Article 12(1) LD 25/2008, as amended by Article 5(1)(b)(2) Decree-Law 119/2014.

<sup>64</sup> Article 5(1-ter) LD 25/2008 as amended by LD 142/2015.

<sup>65</sup> Article 27(2)(3) LD 25/2008, as amended by LD 142/2015.

## Suspension

LD 142/2015 states that when the applicant leaves the reception centre without any justification or escapes detention measure without having been interviewed, the CTRPI suspends the examination of the application. The applicant, only once, may request the reopening of the suspended procedure within 12 months from the suspension decision. After this deadline, the CTRPI declares the extinction of the procedure. Any application made after the declaration of the extinction of the procedure is submitted to a preliminary examination as a subsequent application (see section on [Subsequent Applications](#)). During the preliminary examination, the grounds supporting the admissibility of the application and the reasons of the moving away from the centres are examined.<sup>66</sup>

## Outcomes of the regular procedure

There are 5 possible outcomes to the regular procedure, as well as a fifth outcome inserted by LD 142/2015. The Territorial Commission may decide to:<sup>67</sup>

- Grant refugee status and issue a 5-year renewable residence permit;
- Grant subsidiary protection and issue a 5-year renewable residence permit;<sup>68</sup>
- Recommend to the Police to issue a 2-year residence permit on humanitarian grounds e.g. for health conditions;
- Reject the asylum application; or
- Reject the application as manifestly unfounded.<sup>69</sup>

### 1.2. Prioritised examination and fast-track processing

The LD 142/2015 provides that the President of the CTRPI identifies the cases under the prioritised procedure, which applies:

- a. Where the application is likely to be well-founded;
- b. Where the applicant is vulnerable, in particular unaccompanied minors or in need of special procedural guarantees;
- c. When the application is made by the applicant placed in an administrative detention centre;
- d. If the applicant comes from one of the countries identified by the CNDA that allow the omission of the personal interview when considering that there are sufficient grounds available to recognise subsidiary protection. The competent CTRPI, before adopting such a decision, informs the applicant of the opportunity, within 3 days from the communication, to be admitted to the personal interview. In absence of such request, the CTRPI takes the decision.<sup>70</sup>

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

The LD 142/2015 has also introduced an [Accelerated Procedure](#).

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<sup>66</sup> Article 23-bis LD 25/2008, as inserted by LD 142/2015.

<sup>67</sup> Article 6(1) PD 21/2015.

<sup>68</sup> The duration of validity of residence permits issued both to refugees and beneficiaries of subsidiary protection has been equalised by Article 23(2) LD 18/2014, which extended the duration of residence permit for subsidiary protection beneficiaries from 3 to 5 years.

<sup>69</sup> Article 32(1)(b-bis) LD 25/2008, as inserted by LD 142/2015.

<sup>70</sup> Article 28 LD 25/2008, as amended by LD 142/2015.

### 1.3. Personal interview

#### Indicators: Regular Procedure: Personal Interview

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

The amended Procedure Decree provides for a personal interview of each applicant, which is not public.<sup>71</sup> The LD 142/2015 has clarified that during the personal interview the applicant can disclose exhaustively all elements supporting his/her asylum request.<sup>72</sup>

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

- (a) Determining authorities have enough elements to grant refugee status under the 1951 Geneva Convention without hearing the applicant; or
- (b) The applicant is recognised as unable or unfit to be interviewed, as certified by a public health unit or by a doctor working with the national health system. In this regard, LD 142/2015 provides that the personal interview can be postponed due to the health conditions of the applicant duly certified by a public health unit or by a doctor working with the national health system or for very serious reasons.<sup>73</sup> The applicant recognised as such is allowed to ask for the postponement of the personal interview through a specific request with the medical certificates.<sup>74</sup>

Moreover, the Decree has also introduced a new provision stating that the CTRPI may also omit the personal interview:

- (c) For applicants coming from those countries identified by the CNDA, when considering that there are sufficient grounds to grant them subsidiary protection.<sup>75</sup>

The competent Territorial Commission, before adopting such a decision, informs the applicant that he or she has the opportunity, within 3 days from the communication, to be admitted to the personal interview. In absence of such request, the Territorial Commission takes the decision to omit the interview. This provision is particularly worrying, considering that it derogates from the general rule on the basis of which the personal interview is also aimed to verify first whether the applicant is a refugee, and if not, the conditions to grant subsidiary protection.

The law provides for the interview to be conducted generally by one member of the CTRPI and, where possible, by an interviewer of the same gender as the applicant.<sup>76</sup>

In the phases concerning the presentation and the examination of the asylum claim, including the personal interview, applicants must receive, where necessary, the services of an interpreter in their language or in

<sup>71</sup> Article 12(1) LD 25/2008; Article 13(1) LD 25/2008.

<sup>72</sup> Article 13(1-bis) LD 25/2008, as amended by LD 142/2015.

<sup>73</sup> Article 12(3) LD 25/2008.

<sup>74</sup> Article 5(4) PD 21/2015.

<sup>75</sup> Article 12(2-bis) LD 25/2008, read in conjunction with Article 5(1-bis), as amended by LD 142/2015.

<sup>76</sup> Article 12(1-bis) LD 25/2008, as amended by Article 5(1)(b)(2) Decree-Law 119/2014.

a language they understand.<sup>77</sup> Moreover, LD 142/2015 specifies that, where necessary, the documents produced by the applicant shall be translated.<sup>78</sup>

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

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

Audio or video recording was not previously foreseen in the law, but according to LD 142/2015 the personal interview may be recorded. The recording is admissible as evidence in judicial appeals against the CTRPI's decision. Where the recording is transcribed, the signature of the transcript is not required by the applicant.<sup>79</sup> During 2016, interviews were still never audio- or video-recorded.

Interviews are transcribed in a report that is given to the applicant at the end of the interview.<sup>80</sup> Applicants are given the opportunity to make further comments and corrections soon after the personal interview before the final official report is handed over to them. The quality of this transcript can vary depending on the interviewer and the Territorial Commission which conducts the interview.

Complaints on the quality of the transcripts are frequent.

Decree-Law 13/2017 states that the interview will be taped by audiovisual means and transcribed in Italian with the aid of automatic voice recognition systems.<sup>81</sup>

#### 1.4. Appeal

##### Indicators: Regular Procedure: Appeal

- |   |  |   |
|---|--|---|
| 1. Does the law provide for an appeal against the first instance decision in the regular procedure? | <input checked="" type="checkbox"/> Yes      | <input type="checkbox"/> No             |
| ❖ If yes, is it   | <input checked="" type="checkbox"/> Judicial | <input type="checkbox"/> Administrative |
| ❖ If yes, is it suspensive  | <input checked="" type="checkbox"/> Yes      | <input type="checkbox"/> No             |
| 2. Average processing time for the appeal body to make a decision:                                  | Not available                                |   |

The Procedure Decree provides for the possibility for the asylum seeker to appeal before the competent Civil Tribunal (a judicial body) against a decision issued by the Territorial Commissions rejecting the application, granting subsidiary protection instead of refugee status or requesting the issuance of a residence permit on humanitarian grounds instead of granting international protection.<sup>82</sup>

The appeal must be lodged within 30 calendar days from the notification of the first instance decision,<sup>83</sup> and must be submitted by a lawyer.<sup>84</sup> Article 35 of the Procedure Decree, as amended by LD 142/2015,

<sup>77</sup> Article 10(4) LD 25/2008.

<sup>78</sup> Article 10(4) LD 25/2008 as amended by LD 142/2015.

<sup>79</sup> Article 14(2-bis) LD 25/2008, as amended by LD 142/2015.

<sup>80</sup> Article 14 LD 25/2008.

<sup>81</sup> Article 14 LD 25/2008, as amended by DL 13/2017.

<sup>82</sup> Article 35(1) LD 25/2008, as amended by LD 150/2011.

<sup>83</sup> Article 35(1) LD 25/2008.

<sup>84</sup> Article 35(1) LD 25/2008.

confirms this timeframe.<sup>85</sup> Applicants placed in CIE and those under the accelerated procedure have only 15 days to lodge an appeal (see section on [Accelerated Procedure](#)).<sup>86</sup>

Moreover, new criteria to establish the competence of the Court have been established. In addition to the competence determined on the basis of the place of the competent CTRPI, now the competence is established also on the basis of the place where the applicant is placed (governmental reception centres, SPRAR and CIE).<sup>87</sup>

The first appeal has automatic suspensive effect.<sup>88</sup> However, there are exceptions to automatic suspensive effect in the following cases:<sup>89</sup>

- (a) The applicant is detained in CIE;
- (b) The claim is deemed inadmissible;
- (c) The claim is deemed “manifestly unfounded”;
- (d) The claim is made by an applicant under the accelerated procedure after having been apprehended for avoiding or attempting to avoid border controls, or immediately after, or for irregular stay, with the sole aim to avoid an expulsion or rejection order.<sup>90</sup>

However, in those cases, the applicant can request individually a suspension of the return order from the competent judge. The court must issue a non-appealable decision granting or refusing suspensive effect within 5 days.<sup>91</sup> Moreover, when the subsequent application has been rejected for the second time, the appeal or the request of suspension do not suspend the effects of the order adopted.<sup>92</sup>

Decree-Law 13/2017 establishes specialised sections of the court responsible for handling complaints related to international protection. According to the Decree-Law, these sections will be created only within 14 Tribunals throughout Italy.<sup>93</sup>

Before these court sections, oral hearings will be only a residual possibility. The Decree-Law states that, as a rule, judges will decide the cases only by consulting the videotaped interview before the Territorial Commission. They will invite the parties for the hearing only if they consider it essential to listen to the applicant, or they need to clarify some aspects or if they provide technical advice or the intake of evidence.<sup>94</sup> A hearing is also to be provided when the videotaping is not available or the appeal is based on elements not relied on during the administrative procedure of first instance.<sup>95</sup>

## Onward appeal

The Tribunal can either reject the appeal or grant international protection to the asylum seeker. The amended Article 35 of the Procedure Decree does not lay down the conditions for appealing against the decision of the Civil Tribunal.

In this regard, LD 142/2015 amended Article 19(9) LD 150/2011 and generically referred to the document instituting the proceedings for appealing against the decision of the Civil Tribunal, without clarifying, however, which procedure applies.

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<sup>85</sup> Article 19 LD 150/2011, as amended by Article 27 LD 142/2015.

<sup>86</sup> Article 19(3) LD 150/2011 as amended by Article 27 LD 142/2015.

<sup>87</sup> *Ibid.*

<sup>88</sup> Article 35 LD 25/2008, as amended by Article 19(4) LD 150/2011 and Article 27 LD 142/2015.

<sup>89</sup> Article 35 LD 25/2008, as amended by Article 19(4) LD 150/2011 and Article 27 LD 142/2015.

<sup>90</sup> Article 28-bis(c) LD 25/2008, as inserted by LD 142/2015.

<sup>91</sup> Article 35 LD 25/2008, as amended by Article 27 LD 142/2015.

<sup>92</sup> Article 19 LD 150/2011, as amended by Article 27 LD 142/2015.

<sup>93</sup> This provision will apply to the proceedings initiated 180 days from the entry into force of DL 13/2017.

<sup>94</sup> Article 35-bis LD 25/2008, introduced by Article 6(10) DL 13/2017.

<sup>95</sup> Article 6(11) DL 13/2017.

According to some Courts of Appeal, the amendment did not mean to reform the procedure previously applied to the second appeal, whereas according to others it did.

As a result, some Courts of Appeal, such as the one of **Trieste, Perugia, Venice**, declare inadmissible the appeals filed according to the procedure applied before the entry into force of LD 142/2015, while other courts, such as the one of **Cagliari**, declare the appeals inadmissible based on the opposite reasoning.

Different practice has also been recorded by ASGI at Courts of Appeals concerning the suspensive effect of the appeals. In **Brescia, Bologna, Napoli**, and **Venice**, for example, Courts of Appeal consider the suspensive effect over the Territorial Commission decision as automatically extended from the first to the second appeal.

A final appeal before the Cassation Court, the highest appellate court, can be lodged within 60 days of the ruling of the Court of Appeal. According to LD 142/2015, the Tribunal, the Court of Appeal and the Cassation Court issue a judgment within 6 months from the submission of the appeal.<sup>96</sup>

In practice, asylum seekers who file an appeal against the first and second judicial instance decision, in particular those who are held in CIE and those involved in the accelerate procedure, have to face several obstacles. The time limit of 15 days for lodging an appeal in those cases concretely jeopardises the effectiveness of the right to appeal since it is too short for finding a lawyer or requesting free legal assistance, and for preparing the hearing in an adequate manner. This short time-limit for filing an appeal does not take due consideration of other factors that might come into play, such as the linguistic barriers between asylum seekers and lawyers, 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 qualified to draft good quality appeals.

The Decree-Law 13/2017 published on 17 February 2017 has abolished the possibility to appeal the Civil Tribunal decisions on international protection before the Court of Appeal. If the provision is to be transposed into law by Parliament, it will be possible to appeal those decisions issued 180 days from the entry into force of the Decree-Law onwards only before the Court of Cassation within 30 days, no longer within 60.<sup>97</sup>

The Decree-Law also foresees that the request for suspensive effect has to be decided by the judge who rejected the appeal.<sup>98</sup>

The Decree-Law, provisionally into force since 18 February 2017, has sparked strong reactions from NGOs,<sup>99</sup> and even from some magistrates.

Cancelling the possibility to appeal the Civil Tribunal decisions at Court of Appeal, making the hearing of the applicant a mere residual eventuality, further complicating access to free legal aid, and reducing the time for appeal to the Court of Cassation - also giving the possibility of suspending the effectiveness of the rejecting decision of the Civil tribunal to the same judge who decided the rejection – it drastically reduces the judicial protection of asylum seekers.

The choice of legislative instrument – a Decree-Law – raises many concerns since these most important changes would come into force only after 180 days.

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<sup>96</sup> Article 19(9) LD 150/2011, as amended by Article 27 LD 142/2015.

<sup>97</sup> Article 35 LD 25/2008, as amended by Article 6(13) DL 13/2017.

<sup>98</sup> Article 6(13) DL 13/2017.

<sup>99</sup> See ASGI and Magistratura Democratica, 'D.L. 13/2017, sempre più distanza tra giudici e cittadini stranieri', February 2017, available in Italian at: <http://bit.ly/2moJoWVs>; Antigone, 'Il pacchetto Minniti calpesta i diritti', 12 February 2017, available in Italian at: <http://bit.ly/2l7pjUo>.



ASGI claims that the use of video recorded interviews, potentially replacing asylum seekers' hearings by the court, does not comply with the right to an effective remedy provided by Article 46 of the recast Asylum Procedures Directive, as an applicant's statements are often the only elements on which the application is based.

The provision of only 14 specialised sections to deal with international protection proceedings will also make it more difficult for asylum seekers to exercise their right of defence and hinder the activity of their lawyers.

The Magistrates' National Association – Cassation section also highlighted the unreasonableness of the choice to abolish the second degree appeal, which is still provided for civil disputes of much lower value if compared to international protection cases, also considering that the procedure before the Court of Cassation is basically a written procedure. It is therefore desirable that the Parliament will take account these serious issues before translating the Decree into law.

## 1.5. Legal assistance

### Indicators: Regular Procedure: Legal Assistance

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

|                              |  |  |
|------------------------------|--|--|
| <input type="checkbox"/> Yes | <input type="checkbox"/> With difficulty | <input checked="" type="checkbox"/> No |
|------------------------------|--|--|

  - ❖ Does free legal assistance cover:
 

|  |
|--|
| <input type="checkbox"/> Representation in interview |
| <input type="checkbox"/> Legal advice                |
  
2. Do asylum seekers have access to free legal assistance on appeal against a negative decision in practice?
 

|                              |   |                             |
|------------------------------|---|-----------------------------|
| <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> With difficulty | <input type="checkbox"/> No |
|------------------------------|---|-----------------------------|

  - ❖ Does free legal assistance cover
 

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

### Legal assistance at first instance

According to Article 16 of the Procedure Decree, as confirmed by LD 142/2015, asylum seekers may benefit from legal assistance and representation during the first instance of the regular and prioritised procedure at their own expenses.

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

A distinction should be made between national public funds and those which are allocated by private foundations and associations. In particular, the main source of funds provided by the State is the National Fund for Asylum Policies and Services, financed by the Ministry of Interior. With regard to reception facilities belonging to the SPRAR system, each project provides legal assistance for asylum seekers hosted in the centres. In this respect, a new provision introduced by LD 142/2015 provides that the Ministry of Interior can establish specific agreements with UNHCR or other organisations with experience in assisting asylum seekers, with the aim to provide free information services on the asylum procedure as well on the revocation one and on the possibility to make a judicial appeal. These services are provided in addition to those ensured by the manager of the accommodation centres.<sup>100</sup>

National funds are also allocated for providing information and legal counselling at official land, air, sea border points and where migrants arrive by boat.<sup>101</sup> In addition, some funds for financing legal counselling

<sup>100</sup> Article 10(2-bis) LD 25/2008 as amended by LD 142/2015.

<sup>101</sup> Article 11(6) TUI.



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

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

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

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

### **Legal assistance in appeal procedures**

With regard to the appeal phase, free state-funded legal aid ("*gratuito patrocinio*"), is provided by law.<sup>102</sup> Nevertheless, the PD 115/2002 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 €11,369.24 may benefit from free legal aid.<sup>103</sup>

#### *Means test*

The law specifies that in case of income acquired abroad, the foreigner needs a certification issued by the consular authorities of their country of origin.<sup>104</sup> However, the law prescribes that if the person is unable to obtain this documentation, he or she may alternatively provide a self-declaration of income.<sup>105</sup>

In this regard, during the last years there has been a worrying trend developed by the Rome Bar Council which had adopted the practice to systematically require 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 highlighted by UNHCR and several NGOs,<sup>106</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 from having access to free legal aid. In this respect, a complaint presented in November 2014 to the Civil Court of Rome led to a successful result, since the Tribunal finally removed the obstacles to the concrete access to free legal aid also to asylum seekers in the province of Rome, establishing the principle that the asylum seeker cannot be forced to address his or her diplomatic or consular authority to demand certifications. This judgment may

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<sup>102</sup> Article 16(2) LD 25/2008.

<sup>103</sup> Article 76(1) PD 115/2002.

<sup>104</sup> Article 79(2) PD 115/2002.

<sup>105</sup> Article 94(2) PD 115/2002.

<sup>106</sup> UNHCR, *Advisory Opinion to the Rome Bar Council*, January 2013, available at: <http://bit.ly/1Qni6ol>; CIR *et al.*, *Letter to the Ministry of Interior, the Ministry of Justice and the Ministry of Foreign Affairs*, 10 March 2013, available in Italian at: <http://bit.ly/1VPVsGu>.

put an end to the poor practice in the province of Rome in this regard. Moreover, it will not be necessary to present an affidavit authenticated by the Official of the Municipality, for which the possession of an ID document is required; the applicant can instead present a self-declaration without obligation to present an identity document.<sup>107</sup>

Article 8 PD 21/2015 clarified that, in order to be admitted to free legal assistance, the applicant can present a self-declaration instead of the documents prescribed by Article 79 DPR 115/2002. However,, by the end of 2015, the Bar Council of **Florence** and **Genova** were still refusing free legal aid to asylum seekers who did not provide consular certifications about their income.

#### *Merits test*

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>108</sup>

During 2016, the Bar Council of **Milan** started rejecting almost all the requests to access to free legal assistance, generally deeming the claims that the petitioners intended to rely on as manifestly unfounded. A similar situation occurred at the Bar Council of **Trieste** on the basis of Article 126 PD 115/2002.

ASGI sent a letter to the abovementioned Bar Councils, highlighting that any appeal should be assessed individually and not only as regards the possibility of obtaining refugee status, but also subsidiary and humanitarian protection. However, the intervention did not yield the desired results. In **Trieste**, the Bar Council accepted to review its approach to evaluating the applications, but basically decided to accept instances of Pakistanis and Nigerians and continued as before for the other nationalities.

Moreover, it may occur that the applicant is initially granted free legal aid by a Bar Council but, as prescribed by law, the Tribunal revokes the decision if it considers that the admission requirements assessed by the Bar Council are not fulfilled.<sup>109</sup>

The new Decree-Law 13/2017 now states that when the applicant is granted free legal aid, the judge, when fully rejecting the appeal, has to explain why free legal aid is awarded, indicating the reasons why he or she does not consider the applicant's claims as manifestly unfounded.<sup>110</sup>

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

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

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<sup>107</sup> Rome Court (XI Civil Section), Ordinance of 17 November 2014, available in Italian at: <http://bit.ly/1GFwoLz>.

<sup>108</sup> Article 126 PD 115/2002.

<sup>109</sup> Article 136 PD 115/2002.

<sup>110</sup> Article 6(17) DL 13/2017.

## 2. Dublin

### 2.1. General

#### Dublin statistics: 1 January – 30 November 2016

| Outgoing procedure |          |           | Incoming procedure |          |           |
|--------------------|----------|-----------|--------------------|----------|-----------|
|                    | Requests | Transfers |                    | Requests | Transfers |
| <b>Total</b>       | 14,229   | 61        | <b>Total</b>       | 26,116   | 2,086     |
| Hungary            | 935      | 4         | Germany            | 6,385    | 229       |
| Germany            | 746      | 15        | Switzerland        | 5,300    | 817       |
| Austria            | 406      | 5         | France             | 4,357    | 136       |

Source: Dublin Unit, Ministry of Interior

In the first eleven months of 2016, Italy issued 14,229 outgoing requests, while the incoming requests from other Member States were 26,116. The outgoing transfers in 2016 were 61, while the incoming transfers were 2,086.

#### Application of the Dublin criteria

The Italian authorities tend to use circumstantial evidence for the family unity purposes such as photos, reports issued by the caseworkers, UNHCR's opinion in application of the Dublin Implementing Regulation 118/2014, and any relevant information and declarations provided by the concerned persons and family members.

Even where the asylum seeker has not indicated the existence of family members in another Member State from the outset of the application, mainly due to the superficial interview before the Questura, the Italian authorities tend to reconsider the case and take into account the additional information received.

Regrettably, no data on the criteria used for both the incoming and outgoing requests are available. However, in 2016, Italy has mainly applied the Regulation in respect of nationals of Pakistan, Afghanistan and Bangladesh. Out of a total 14,229 outgoing requests as of the end of November 2016, over 60% concerned Pakistani nationals (8,876), 14% concerned Afghanistan (2,001) and 5% Bangladesh (695).<sup>111</sup>

#### The dependent persons and discretionary clauses

The Dublin Unit does not provide data on the application of the discretionary clauses under Article 17 of the Dublin III Regulation. No data are available on the use of the discretionary clauses. However, according to ASGI's experience, it seems that the "sovereignty clause" is more frequently applied than the "humanitarian clause", in particular on vulnerability and health grounds.

### 2.2. Procedure

#### Indicators: Dublin: Procedure

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

All asylum applicants are photographed and fingerprinted by police authorities who systematically store their fingerprints in Eurodac. When there is a Eurodac hit, the police contact the Italian Dublin Unit within the Ministry of Interior. Moreover, after the formal registration of the asylum request, on the basis of the

<sup>111</sup> Data provided by the Dublin Unit, Ministry of Interior.

information gathered and if it considers that the Dublin III Regulation should be applied, the Questura transmits the pertinent documents to the Dublin Unit which examines the criteria set out in the Dublin III Regulation to identify the Member State responsible.

In order to avoid the application of the Dublin Regulation, after disembarkation some asylum seekers, particularly among Eritreans, Somalis and Syrians, refuse or are reluctant to be fingerprinted. However, as already underlined in the [Hotspot](#) section, since Italy has adopted the “hotspot approach”, the proportion of migrants fingerprinted has grown significantly, reportedly through the use of coercive measures by police.

Generally speaking, those who know they have a good chance of obtaining protection in the northern European countries, with expected better living conditions, or those interested in reaching other countries for family reasons, prefer not to stop their travel in Italy. Commonly, they have not been properly informed about their rights to reach their relatives legally or, if they had, they do not have confidence in the length of the process or they are not in possession of the necessary documents to prove family links.

### **Individualised guarantees**

Information on the provision of individualised guarantees in line with *Tarakhel v. Switzerland* are not available. However, in relation to the guarantees for vulnerable cases, in particular to family groups with minors, on 8 June 2015 the Italian Dublin Unit sent to the other Dublin Units a circular letter,<sup>112</sup> together with a list of SPRAR centres for families transferred to Italy which provide “integrated reception” and adequate services. On 15 February 2016, the Italian Dublin Unit sent an updated list, including 85 places reserved in SPRAR projects for families with minors.<sup>113</sup>

Following the *Tarakhel v. Switzerland* ruling, in practice the guarantees requested are ensured mainly to families and vulnerable cases.

There is no information available on the specific stage in the procedure when such guarantees are sought, however, generally speaking it seems that the guarantees are assessed before the taking charge of the “Dublin case”.

### **Transfers**

In case another Member State is considered responsible under the Dublin Regulation, the asylum procedure is declared closed. The Dublin Unit issues a decision that is transmitted to the applicant through the Questura, mentioning the country where the asylum seeker will be returned and the modalities for appealing against the Dublin decision.<sup>114</sup> Afterwards, the Questura arranges the transfer.

The applicants must then present themselves at the place and date indicated by the Questura. 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.

Since the practical organisation of the transfer is up to the Questura, it is difficult to indicate the average time before a transfer is carried out. The length of the Dublin procedure depends on many factors, including the availability of means of transport, the personal condition of the person, whether or not the Police needs to accompany the person concerned etc.

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<sup>112</sup> Ministry of Interior, Circular letter to all Dublin Units on “Dublin Regulation Nr. 604/2013. Guarantees for vulnerable cases: family groups with minors, Rome, 8 June 2015.

<sup>113</sup> Ministry of Interior, Circular letter to all Dublin Units on “Dublin Regulation Nr. 604/2013. Guarantees for vulnerable cases: family groups with minors, Rome, 10 February 2016, available at: <http://bit.ly/1QxxRqJ>.

<sup>114</sup> Presently, even if the Administrative Courts have refused their jurisdiction on appeals submitted against the transfer orders, the decisions still indicate persons to appeal within 60 days before the Administrative Court of Lazio.

However, as the majority of applicants abscond and do not present themselves for the transfer, the Italian authorities often ask the responsible Member State for an extension of the deadline up to 18 months, as envisaged under Article 29(2) of the Dublin III Regulation. The Head of Dublin Unit, Simona Spinelli, stated on 5 July 2016 that transfers to Hungary are *de facto* impossible due to the obstacles set by the Hungarian authorities: the airport is available only one or two days a month and dates are communicated only three days in advance. She affirmed that the majority of asylum seekers who received a transfer decision to the responsible Member State abscond and, as a result, “only persons with special needs are transferred...”<sup>115</sup>

Therefore the length of the procedure for the determination of the state responsible under Dublin Regulation usually exceeds the time-limits foreseen by law. In its latest report published in 2013, UNHCR noted that the procedures may often last up to 24 months, thereby severely affecting the living conditions of asylum seekers, including persons with special needs and unaccompanied and separated children.<sup>116</sup> While waiting for the result of their Dublin procedure, asylum seekers are not detained, however.

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

According to ASGI’s experience, presently the procedure may last over one year and no official measures have been adopted so far. Generally speaking, the Italian authorities tend to consider themselves competent for the examination of the asylum application when the duration of the procedure lasts over 11 months.

### 2.3. Personal interview

#### Indicators: Dublin: Personal Interview

☒ Same as regular procedure

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

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

According to Article 5 of the Dublin III Regulation, the competent authority carrying out the interview, which in the case of Italy is the Police, should also take into consideration the situation of the applicant’s family. Such information is only collected in a superficial manner in practice.

<sup>115</sup> Chamber of Deputies, Parliamentary Commission of Inquiry on the accommodation system, identification and expulsion, conditions of detention of migrants and public resources committed, *Hearing of the Head of the Dublin Unit*, 5 July 2016, available in Italian at: <http://bit.ly/2lz3WtS>.

<sup>116</sup> UNHCR, *UNHCR Recommendations on important aspects of refugee protection in Italy*, July 2013, 7.

## 2.4. Appeal

### Indicators: Dublin: Appeal

☐ Same as regular procedure

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

❖ If yes, is it

❖ If yes, is it suspensive

☒ Yes

☒ Judicial

☐ Yes

☐ No

☐ Administrative

☒ No

Asylum seekers are informed of the determination of the Dublin Unit concerning their “take charge” / “take back” by another Member State at the end of the procedure when they are notified through the Questura of the transfer decision. Asylum seekers may be informed on the possibility to lodge an appeal against this decision generally by specialised NGOs. As the Dublin III Regulation has established an obligation to provide applicants under the Dublin procedure with the right to appeal,<sup>117</sup> in the case of Italy this is now implemented through the possibility of an appeal without automatic suspensive effect before the Administrative Court (TAR). In fact, together with the appeal, a request to suspend the effects of the decision is lodged before TAR.

### Suspensive effect

Since the entry into force of the Dublin III Regulation, the right to an effective remedy against the transfer decisions has been seriously compromised by the fact that many Questuras did not consider the transfer suspended for the time allowed to appeal nor for the time necessary to get the answer from the court on the suspension request.

In March 2015, ASGI sent a letter to the Department of Civil Liberties, claiming that Questuras were organising such transfers well before the deadline for appeals had elapsed, therefore violating the minimum guarantee to an effective remedy provided by the Article 27 of the Regulation. The Dublin Unit did not reply.

In practice, in the absence of a transposition of Article 27 of the Dublin III Regulation, each Questura has applied a different approach, waiting just a few days or exactly 60 days – the time allowed to appeal, not the time to obtain the suspensive decision – or not giving any time frame.

### Competent court

The transfer decrees issued by the Dublin Unit have so far been challenged before the administrative courts: in first instance within 60 calendar days from the notification before the Administrative Court of Lazio and, at the second appeal instance, before the Council of State (*Consiglio di Stato*), which is the central administrative court.

During 2016, however, the administrative courts expressed with several decisions the position that the Dublin procedure should be understood as a phase of the asylum procedure and, consequently, “Dubliner” asylum seekers as holders of an individual right and not a mere legitimate interest. The administrative courts have therefore stated that the judgment should be entrusted to the jurisdiction of ordinary courts, meaning the “natural judge” of individual rights.

In this context, the first significant decision was taken on 18 December 2015 by the Council of State,<sup>118</sup> and subsequently by the Administrative Court of **Lazio**.<sup>119</sup> On 7 February 2017, the Administrative Court

<sup>117</sup> Article 27 Dublin III Regulation.

<sup>118</sup> Council of State, Decision No 5738 of 18 December 2015, available at: <http://bit.ly/2lbkoyn>.

<sup>119</sup> Administrative Court of Lazio, Session I-Ter, Decision No 9909 of 22 September 2016; Decision No 11911 of 28 November 2016, available at: <http://bit.ly/2IOS7AX>.



of Lazio declared the appeals lodged against the transfer decisions of the Dublin Unit as “manifestly inadmissible” because they were lodged before the administrative court, and revoked on this basis the free legal aid previously granted.<sup>120</sup>

On the other side, however, on 3 February 2017, the Civil Court of **Trieste** pronounced the lack of jurisdiction of the ordinary judge and referred to the administrative courts, holding that a third-country national has only a legitimate interest and not a subjective right to the definition of the Member State responsible for his or her international protection application.<sup>121</sup>

Therefore, at the moment, asylum seekers notified of a Dublin decision lack an actual remedy against the transfer. Both the civil and the administrative courts have given time to the applicants to restart the procedure before the competent judge but, in the meantime, the transfer is not suspended, meaning that asylum seekers lack an actual remedy against it.

## 2.5. Legal assistance

### Indicators: Dublin: Legal Assistance

☒ Same as regular procedure

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

|                              |  |  |
|------------------------------|--|--|
| <input type="checkbox"/> Yes | <input type="checkbox"/> With difficulty | <input checked="" type="checkbox"/> No |
|------------------------------|--|--|

  - ❖ Does free legal assistance cover:
 

|  |
|--|
| <input type="checkbox"/> Representation in interview |
| <input type="checkbox"/> Legal advice                |
2. Do asylum seekers have access to free legal assistance on appeal against a Dublin decision in practice?
 

|                              |   |                             |
|------------------------------|---|-----------------------------|
| <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> With difficulty | <input type="checkbox"/> No |
|------------------------------|---|-----------------------------|

  - ❖ Does free legal assistance cover
 

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

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

## 2.6. Suspension of transfers

### Indicators: Dublin: Suspension of Transfers

1. Are Dublin transfers systematically suspended as a matter of policy or jurisprudence to one or more countries?
 

|                              |  |
|------------------------------|--|
| <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
|------------------------------|--|

  - ❖ If yes, to which country or countries?

There is no official policy on systematically suspend the transfer of Dublin cases to other States. However, in practice, following the European Court on Human Rights (ECtHR) *M.S.S. v. Belgium and Greece* judgment the Italian Dublin Unit tends not to transfer these cases to **Greece**. This was confirmed by the Head of the Dublin Unit, Simona Spinelli, in a hearing of 5 July 2016 before the Parliament.

**Hungary:** In late September 2016 the Council of State, cancelled a transfer to Hungary, defining it as an unsafe country for Dublin returns. The Council of State expressed concerns on the situation in Hungary, deduced from measures such as the the planned construction of an “anti-immigrant wall” that represents the cultural and political climate of aversion to immigration and to the protection of refugees, the option of discontinuing an asylum application if the applicants leave their residence designated for more than 48 hours without permission and the extension of the detention period of asylum seekers.<sup>122</sup>

<sup>120</sup> Administrative Court of Lazio, Decision No 2044 of 7 February 2017, available at: <http://bit.ly/2lb9ylz>.

<sup>121</sup> Civil Court of Trieste, Decision of 3 February 2017.

<sup>122</sup> Council of State, Decision No 4004 of 27 September 2016, available at: <http://bit.ly/2kWIO1d>.

**Bulgaria:** In September 2016 the Council of State, also suspended transfers to Bulgaria on the basis that the country is unsafe.<sup>123</sup> The Council of State expressed concerns about the current asylum system in Bulgaria due to the critical condition of shelters, some of which appear as detention centres, and more generally of the cultural climate of intolerance and discrimination that reigns in public opinion and among the leaders in the government towards refugees.<sup>124</sup>

Immediately after the Council of State decisions, some NGOs accommodating asylum seekers asked the Dublin Unit to declare Italy's responsibility for those asylum seekers whose responsible country under Dublin procedure would be Bulgaria or Hungary, but the asylum seekers concerned are still waiting a decision.

## 2.7. The situation of Dublin returnees

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

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>125</sup> Accordingly, the procedure to be applied to the Dublin returnee's case will depend on the category they fall into.

- ❖ Where the person did not apply for asylum during his or her initial transit or stay in Italy before moving on to another European country, he or she can lodge an application under the regular procedure;
- ❖ Where the person had already submitted an asylum applications, the following situations may arise:
  - The Territorial Commission may in the meantime have taken a positive decision and issued a permit of stay;
  - The Territorial Commission may have taken a negative decision. If the applicant has been notified of the decision and lodged no appeal, he or she may be issued an expulsion order and be placed in a CIE. If not, he or she may lodge an appeal when notified.
  - The Territorial Commission has not yet taken a decision and the procedure continues;
  - The person has not presented him or herself for the personal interview and will be issued a negative decision, but may request the Territorial Commission to have a new interview.

The main problem Dublin returnees face when they are transferred back to Italy relates to **Reception Conditions**, which are, however, a problem common to all asylum seekers. In its ruling of 4 November 2014 in *Tarakhel v. Switzerland*,<sup>126</sup> concerning an Afghan family with 6 children who were initially hosted in a CARA in Bari before travelling to Austria and then Switzerland, the ECtHR found that Switzerland would have breached Article 3 ECHR if it had returned the family to Italy without having obtained individual guarantees by the Italian authorities on the adequacy of the specific conditions in which they would receive the applicants. The Court stated that it is "incumbent on the Swiss authorities to obtain assurances from their Italian counterparts that on their arrival in Italy the applicants will be received in facilities and in conditions adapted to the age of the children, and that the family will be kept together."<sup>127</sup> As mentioned in **Dublin: Procedure**, the Dublin Unit has transmitted to the other Member States' Dublin Units a list of SPRAR projects for housing returning families with children.

<sup>123</sup> Council of State, Decisions 3998, 3999, 4000 and 4002 of 27 September 2016, available at: <http://bit.ly/2lJzAR>.

<sup>124</sup> *Ibid.* The Council of State referred in particular to the fifth report on Bulgaria of the European Commission against Racism and Intolerance (ECRI), 16 September 2014.

<sup>125</sup> For more details, see ASGI, *Il sistema Dublino e l'Italia, un rapporto in bilico*, 2015, available in Italian at: <http://bit.ly/2kH0mvX>, 28.

<sup>126</sup> ECtHR, *Tarakhel v. Switzerland*, Application No 29217/12, Judgment of 4 November 2014.

<sup>127</sup> ECtHR, *Tarakhel v Switzerland*, para 120.



On 9 February 2017, the Danish Refugee Council and the Swiss Refugee Council published a report disclosing the results of the monitoring they have carried out during 2016 on the situation of Dublin returnees in Italy.<sup>128</sup> The report mentions that none of the applicants monitored had access to SPRAR centres upon arrival in Italy but were accommodated in facilities not earmarked for families with children. In one case it was not ensured the unity of the family. The Dublin returnees were not provided with enough information on the procedure. Therefore, the authors conclude that the manner in which the families and persons with special reception needs are received by the Italian authorities is very arbitrary, and that “families and persons with specific reception needs who are transferred to Italy under the Dublin III Regulation risk violations of their human rights.”<sup>129</sup>

### 3. Admissibility procedure

Italy does not apply an admissibility procedure.

### 4. Border procedure (border and transit zones)

Italy does not apply a border procedure.

### 5. Accelerated procedure

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

The amended Procedure Decree provides for an accelerated procedure that applies where:

- (a) the asylum request is made by the applicant placed in CIE.<sup>130</sup> In this case the Questura, upon receipt of the application, immediately transmits the necessary documentation to the CTRPI that within 7 days of the receipt of the documentation takes steps for the personal hearing. The decision is taken within the following 2 days.

These time limits are doubled in the other three cases where the procedure is applicable:

- (b) the application is manifestly unfounded;
- (c) the applicant has introduced a subsequent application for international protection;
- (d) when the applicant has lodged his/her application after being stopped for avoiding or attempting to avoid border controls or after being stopped for irregular stay, merely in order to delay or frustrate the adoption or the enforcement of an earlier expulsion or rejection at the border order.<sup>131</sup>

According to Article 28-bis of the Procedure Decree, the CTRPI may exceed the abovementioned time limits where necessary to ensure an adequate and complete examination of the application for international protection, except the (maximum) time limit of 18 months.<sup>132</sup> Where the application is made by the applicant placed in CIE, the above terms are reduced to a third i.e. maximum 6 months.<sup>133</sup>

The law does not clarify whether the procedure can be declared accelerated even if the procedure and the time limit set out in the law have not been respected.

In practice, in some regions, ASGI has reported that asylum seekers whose application has been rejected as “manifestly unfounded” come to know that they have been involved in an accelerated procedure, and that they have half the time available (15 days) to appeal against the decision, only when they are notified of the rejection by the Questura.

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<sup>128</sup> Danish Refugee Council and the Swiss Refugee Council, *Is mutual trust enough? – The situation of persons with special reception needs upon return to Italy*, February 2017, available at: <http://bit.ly/2kWjtTT>.

<sup>129</sup> *Ibid*, 22-23.

<sup>130</sup> Article 28-bis LD 25/2008, as inserted by LD 142/2015.

<sup>131</sup> Article 28-bis LD 25/2008, as amended by LD 142/2015.

<sup>132</sup> Article 27(3)-(3-bis) LD 25/2008, as amended by LD 142/2015.

<sup>133</sup> Article 28-bis(2) LD 25/2008, as inserted by LD 142/2015.

In several cases, even if the law does not provide it, the rejection of an asylum request as “manifestly unfounded” has been automatically connected with the accelerated procedure, therefore applying the shorter appeal time limit for 15 days. During 2016, the **Caserta** Territorial Commission has rejected many asylum requests as “manifestly unfounded”, and most of the appeals were considered inadmissible by the Court of **Naples** because they were not lodged within the ostensible 15-day deadline. The judges, after refusing the suspensive request, give dates for the hearing one year later.

As result, asylum seekers, mostly coming from Gambia, Mali, Senegal, Ghana but even from Pakistan, have been obliged to leave the accommodation centre and, waiting for the definitive court decision, to abscond and avoid being repatriated or sent to a CIE.<sup>134</sup>

## 5.2. Personal interview

### Indicators: Accelerated Procedure: Personal Interview

☒ Same as regular procedure

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

The same guarantees are those applied during the regular procedure are applied.

## 5.3. Appeal

### Indicators: Accelerated Procedure: Appeal

☐ Same as regular procedure

1. Does the law provide for an appeal against the decision in the accelerated procedure?
  - ☒ Yes ☐ No
  - ❖ If yes, is it ☒ Judicial ☐ Administrative
  - ❖ If yes, is it suspensive ☐ Yes ☒ No

Applicants under the accelerated procedure have only 15 days to lodge an appeal.<sup>135</sup> This appeal does not have suspensive effect.<sup>136</sup>

## 5.4. Legal assistance

### Indicators: Accelerated Procedure: Legal Assistance

☒ Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice?
  - ☐ Yes ☐ With difficulty ☒ No
  - ❖ Does free legal assistance cover: ☐ Representation in interview ☐ Legal advice
2. Do asylum seekers have access to free legal assistance on appeal against a negative decision in practice?
  - ☐ Yes ☒ With difficulty ☐ No
  - ❖ Does free legal assistance cover ☒ Representation in courts ☒ Legal advice

<sup>134</sup> Interview with ASGI members.

<sup>135</sup> Article 19(3) LD 150/2011 as amended by Article 27 LD 142/2015.

<sup>136</sup> Article 35 LD 25/2008, as amended by Article 19(4) LD 150/2011 and Article 27 LD 142/2015.

The same rules apply as under the regular procedure.

## D. Guarantees for vulnerable groups

### 1. Identification

#### Indicators: Identification

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

LD 142/2015 describes the following groups as vulnerable: minors, unaccompanied minors, pregnant women, single parents with minor children, victims of trafficking, disabled, elderly people, persons affected by serious illness or mental disorders; persons for whom has been proved they have experienced torture, rape or other serious forms of psychological, physical or sexual violence; victims of genital mutilation.<sup>137</sup>

There is no procedure defined in law for the identification of vulnerable persons. Additionally, there exists no national plan defining the procedures, roles and functions of public and private actors involved in the identification, referral and care of torture survivors, or defining the coordination of services or an effective monitoring system. Consequently, the identification of and assistance provided to torture survivors are often carried out without a common and coordinated framework.<sup>138</sup>

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

Under 2005 CNDA Guidelines,<sup>139</sup> 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 claim. There remains, however, a need 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.

### Children

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

LD 142/2015 provides that the public security authority immediately communicates the presence of an unaccompanied minor to: (i) the judge responsible for the guardianship in order to start the guardianship and appoint the guardian; (ii) the State Attorney to the Juvenile Court; (iii) the Juvenile Court in order to ratify the adopted reception measures; and (iv) the Ministry of Employment and Social Policies, with the

<sup>137</sup> Article 2(1)(h-bis) LD 25/2008, as amended by LD 142/2015.

<sup>138</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, available at: <http://bit.ly/1Gb1PCq>, 55-57.

<sup>139</sup> CNDA, *Linee Guida per la valutazione delle richieste di riconoscimento dello status di rifugiato*, 2005, 83-85.

necessary means to grant the privacy of the minor while providing for the census and the monitoring of unaccompanied minors.<sup>140</sup>

Any action necessary to identify the family members of the unaccompanied minor seeking asylum is promptly started in order to ensure the right to family reunification. The Ministry of Interior shall enter into agreements with international organisations, intergovernmental organisations and humanitarian associations, on the basis of the available resources of the National Fund for asylum policies and services, to implement programs directed to find the family members. The researches and the programs directed to find such family members are conducted in the superior interest of the minor and with the duty to ensure the absolute privacy and, therefore, to guarantee the security of the applicant and of his or her relatives.<sup>141</sup>

A member of the CTRPI, specifically skilled for that purpose, interviews the minor at the presence of the parents or the legal guardian and the supporting personnel providing specific assistance to the minor. For justified reasons, the CTRPI may proceed to interview again the minor at the presence of the supporting personnel even without the presence of the parent or the legal guardian, if considered necessary in relation of the personal situation of the minor concerned, degree of maturity and development, in the sole minor's best interests.<sup>142</sup>

### **Age assessment of unaccompanied children**

The Procedure Decree 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>143</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 his or her legal guardian.<sup>144</sup> The refusal by the applicant to undertake the age assessment has no negative consequences on the examination of the asylum request.

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

According to the Ministry of Interior Cir. No. 17272/7 on age assessment, it is necessary to resort to all kinds of examinations, giving however priority to the medical examinations carried out in public health structures with paediatric departments.<sup>145</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.

In this sense, case-law has established in 2013 that the X-ray examination for age assessment cannot be considered as entirely reliable. Therefore, in case the applicant holds documents proving he or she is underage, such documents should prevail over the medical examination.<sup>146</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>147</sup>

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<sup>140</sup> Article 19(5) LD 142/2015.

<sup>141</sup> Article 19(7) LD 142/2015.

<sup>142</sup> Article 13(3) LD 25/2008, as amended by LD 142/2015.

<sup>143</sup> Article 19(2) LD 25/2008.

<sup>144</sup> *Ibid.*

<sup>145</sup> Circular No. 17272/7 of 9 July 2007 of the Ministry of Interior.

<sup>146</sup> Giudice di Pace di Ravenna, Ordinanza n. 106 of 14 November 2013.

<sup>147</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. This practice is still relevant in 2016.

Often, therefore, the report of the X-ray examination does not indicate the margin of error, which prevents the application of the principle of the “benefit of the doubt”. In cases where the checks are carried out in so gravely inadequate a method, children generally fail to challenge the results of age determination, because the report is almost never given to the person or to his or her guardian. As reported by ASGI lawyers, during 2016, three children in **Verona** were subjected to medical examination for age assessing, whose result showed neither the method used nor the margin of error. One of the children was then prosecuted for the crime of false identification.

Moreover, there are cases where medical examinations are also carried out for individuals in possession of an identification document attesting they are minors. In **Venice**, the Prefecture recognises a person as underage only if there is a passport or an authenticated consular certification attesting their age.

On 6 January 2017, Decree 234/2016 adopted on 10 November 2016 entered into force. The Decree lays down a procedure for determining the age of unaccompanied minors victims of trafficking, in implementation of Article 4 LD 24/2014. The Decree introduces some basic guarantees, providing for example that:

1. Only where there are serious doubts on the age and this cannot be established through identification documents may the Police require the competent court to start the procedure for age assessment;
2. Such investigation has to be conducted from a pediatric multidisciplinary team at a public health facility, identified by the court, and it done through a social dialogue, a pediatric auxologic visit and a psychological evaluation, in the presence of a mediator;
3. The child must be adequately informed about the procedure he or she will be subjected to;
4. The final report must indicate the age estimated, specifying the margin of error;
5. The final decision issued by the competent judge, has to be notified, translated to the individual and may be subject to a complaint.

ASGI has called for these guarantees to apply to all unaccompanied children.<sup>148</sup>

Important rules on the assessment of age of all unaccompanied minors are provided by the bill S. 2583, amending the Consolidated Act on Immigration (TUI). The bill has been approved by the Chamber of Deputies and is now before the Senate.<sup>149</sup>

## Survivors of torture

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

Since April 2016, Médecins Sans Frontières (MSF) started a project in **Rome** in collaboration with ASGI and opened a centre specialising in the rehabilitation of victims of torture.<sup>150</sup> The project is intended to protect but also to assist in the identification of victims of torture who, without proper legal support, are unlikely to be treated as vulnerable people.

LD 142/2015 provides that persons for whom has been proved they have experienced torture, rape or other serious forms of violence shall have access to appropriate medical and psychological assistance

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<sup>148</sup> ASGI, ‘Norme chiare sull’accertamento dell’età dei minori stranieri non accompagnati’, 23 January 2017, available in Italian at: <http://bit.ly/2mGNs08>.

<sup>149</sup> Senate, Draft Law S. 2583 “Disposizioni in materia di misure di protezione dei minori stranieri non accompagnati”, available at: <http://bit.ly/2kC1xKY>.

<sup>150</sup> See Redattore Sociale, ‘Migranti, apre a Roma il centro di riabilitazione per le vittime di tortura’, 4 April 2016, available in Italian at: <http://bit.ly/1ShpCGG>.

and care on the basis of Guidelines that will be issued by the Ministry of Health, as mentioned above. To this end, health personnel shall receive appropriate training and must ensure privacy.<sup>151</sup>

## Victims of trafficking

Where during the examination procedure, well-founded reasons arise to believe the applicant has been a victim of trafficking, the Territorial Commissions may suspend the procedure and inform the Questura, the Prosecutor's office or NGOs providing assistance to victims of human trafficking thereof.<sup>152</sup> LD 24/2014, adopted in March 2014 for the transposition of the Anti-Trafficking Directive, foresees that a referral mechanism should be put in place in order to coordinate the two protection mechanisms established for victims of trafficking, namely the protection systems for asylum seekers and beneficiaries of international protection, coordinated at a central level, and the protection system for victims of trafficking established at a territorial level.<sup>153</sup>

Giving effect to the legal provision, by the end of December 2016, together with UNHCR, the National Commission (CNDA) has announced to have developed detailed guidelines for the Local Commissions on the identification of victims of trafficking among applicants for international protection and the referral mechanism.

However, as highlighted by the Group of Experts on Action against Trafficking in Human Beings of the Council of Europe (GRETA), there is neither a coherent national identification process nor a referral mechanism in place for victims of trafficking. GRETA raises concerns about the failure in identifying victims of trafficking at an early stage, with particular reference to Nigerian women, about the disappearance of unaccompanied minors from reception centres, and about the way in which the victims of trafficking are forcibly repatriated to their countries of origin.<sup>154</sup> Italy has been encouraged to develop increased attention to detecting victims of trafficking among unaccompanied children, irregular migrants and asylum seekers. To this end, GRETA has suggested that Italy establish binding procedures to be followed and training to be provided to immigration police officers and staff working in first aid and reception centres (CPSA and hotspots), reception centres for migrants and asylum seekers, and detention centres (CIE).

In this regard, it should be underlined that some good practices have been put in place with regard to children and potential victims of trafficking. In **Torino**, the Territorial Commission signed an agreement in 2014 with the Municipality – department of social policies and health care for migrants.<sup>155</sup> In **Rome**, the Territorial Commission has involved the NGO BeFree in asylum interviews of Nigerian women,<sup>156</sup> and according to ASGI's experience, the Territorial Commission in **Gorizia** is used to suspending asylum interviews of women revealing experiences of trafficking and exploitation, and to asking support from the regional network of NGOs against trafficking.

The LD 142/2015 clarifies that trafficked asylum seekers shall be channelled into a special programme of social assistance and integration.<sup>157</sup>

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<sup>151</sup> Article 17(8) LD 142/2015.

<sup>152</sup> Article 32(3-bis) LD 25/2008, as amended by LD 24/2014.

<sup>153</sup> Article 13 L 228/2003; Article 18 TUI.

<sup>154</sup> GRETA, *Report on Italy under Rule 7 of the Rules of Procedure for evaluating implementation of the Council of Europe Convention on Action against Trafficking in Human Beings*, January 2017, GRETA(2016)29, available at: <http://bit.ly/2kC1XB4>.

<sup>155</sup> ANCI et al., *Rapporto sulla Protezione Internazionale in Italia 2014*, 169.

<sup>156</sup> GRETA, *Report on Italy*, January 2017, 19.

<sup>157</sup> Article 17(2) LD 142/2015 in conjunction with Article 18(3-bis) LD 286/1998 and LD 24/2014.

## 2. Special procedural guarantees

### Indicators: Special Procedural Guarantees

1. Are there special procedural arrangements/guarantees for vulnerable people?

☒ Yes

☐ For certain categories ☐ No

❖ If for certain categories, specify which:

Vulnerable persons are admitted to the prioritised procedure.<sup>158</sup> Following the PD 21/2015, the Territorial Commission must schedule the applicant's interview "in the first available seat" when that applicant is deemed vulnerable.<sup>159</sup> 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.

LD 142/2015 has introduced a provision allowing the minors to directly present an asylum application through their parents.<sup>160</sup>

Moreover, the law requires the CNDA to ensure training and refresher courses to its members and Territorial Commissions' staff. Training is supposed to ensure that those who will consider and decide on asylum claims will take into account an asylum seeker's personal and general circumstances, including the applicant's cultural origin or vulnerability. Since 2014, the National Commission has organised training courses on the EASO modules, in particular on "Inclusion", "Country of Origin Information" and "Interview Techniques". These training courses provide both an online study session and a two-day advanced analysis conducted at central level in Rome. In addition to these permanent trainings, courses on specific topics are also organised at the local level. The CNDA has agreed that 20 EASO experts should help the Territorial Commissions in drafting the COI. Furthermore, the National Commission in collaboration with EASO organised, at local level, a vocational training workshop in order to explain the know-how to make a COI research.<sup>161</sup>

In May 2015, the National Commission, in collaboration with UNHCR, introduced a project for monitoring the skills of the Territorial Commissions through specific inspections to evaluate the local situation.<sup>162</sup> 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.<sup>163</sup> 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.

In this context, it is also 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>164</sup> During the personal interview, the applicant may be accompanied by social workers, medical doctors and/or psychologists.

<sup>158</sup> Article 28(1)(b) LD 25/2008.

<sup>159</sup> Article 7(2) PD 21/2015.

<sup>160</sup> Article 6(2) PD 21/2015.

<sup>161</sup> Parliamentary Commission on the reception and identification system, Debate, 14 May 2015, available at: <http://bit.ly/1Gb3xDX>, 14.

<sup>162</sup> *Ibid.*

<sup>163</sup> Article 15 LD 25/2008, as amended by LD 119/2014.

<sup>164</sup> Article 13(2) LD 25/2008.



### 3. Use of medical reports

#### Indicators: Use of medical reports

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

Italian legislation contains no specific provision on the use of medical reports in support of the applicant's statements regarding past persecutions or serious harm. Nevertheless, the Qualification Decree states that the assessment of an application for international protection is to be carried out taking into account all the relevant documentation presented by the applicant, including information on whether the applicant has been or may be subject to persecution or serious harm.<sup>165</sup>

Moreover, a medico-legal report may attest the applicant's inability or unfitness to attend a personal interview. According to the Procedure Decree, the Territorial Commissions may omit the personal interview when the applicant is unable or unfit to face the interview as certified by a public health unit or a doctor working with the National Health System.<sup>166</sup> Moreover, the applicant can ask for the postponement of the personal interview providing the CTRPI with pertinent medical documentation.<sup>167</sup>

Moreover, the 2005 CNDA Guidelines underscore the usefulness of medical reports to corroborate the declarations made by the torture survivors who have difficulties disclosing elements of their claim.

LD 142/2015 has introduced a new provision allowing the CTRPI to seek advice, whenever necessary, from experts on particular issues, such as medical, cultural, religious, child-related or gender issues. Where the CTRPI deems it relevant for the assessment of the application, it may, subject to the applicant's consent, arrange for a medical examination of the applicant concerning signs that might indicate past persecution or serious harm according to the Guidelines that will be issued by the Ministry of Health.<sup>168</sup> When no medical examination is not provided by the Territorial Commission, the applicants may, on their own initiative and at their own cost, arrange for such a medical examination and submit the results to the Territorial Commission for the examination of their applications.<sup>169</sup>

In practice, medico-legal reports are generally submitted to the Territorial Commissions by specialised NGOs, legal representatives and personnel working in the reception centres before, or sometimes during or after, the substantive interview at first instance. They may also be submitted to the judicial authorities during the appeal stage.<sup>170</sup>

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>171</sup>

<sup>165</sup> Article 3 LD 251/2007.

<sup>166</sup> Article 12(2) LD 25/2008.

<sup>167</sup> Article 5(4) PD 21/2015.

<sup>168</sup> Article 27(1-bis) LD 251/2007, as amended by LD 18/2014.

<sup>169</sup> Article 8(3-bis) LD 25/2008, as amended by LD142/2015.

<sup>170</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, 61.

<sup>171</sup> See in this regard: CIR, *Maieutics*; B Van der Kolk *et al.*, *Disorders of Extreme Stress: The Empirical Foundation of a Complex Adaptation to Trauma* (2005) 18:5 Journal of Traumatic Stress 389–399; B Van der Kolk *et al.*, *Traumatic Stress*, Guilford Press, 1996; P Bromberg, *Standing in the spaces: Essays on clinical process, trauma, and dissociation*, New Jersey: Analytic Press, 1998; R Mears, *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.

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 was illustrated in 2012 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) Roma A (Public Health Unit).<sup>172</sup> This service, which is still operating, also assists asylum seekers and victims of torture offering legal medical-psychological and psychiatric assistance.<sup>173</sup>

#### 4. Legal representation of unaccompanied children

##### Indicators: Unaccompanied Children

1. Does the law provide for the appointment of a representative to all unaccompanied children?

☒ Yes

☐ No

LD 142/2015 provides that the unaccompanied minor can make an asylum application in person or through his or her legal guardian on the basis of the evaluation of the situation of the minor concerned.<sup>174</sup>

The Procedure Decree states that, when an asylum request is made by an unaccompanied child, the competent authority suspends the asylum procedure and immediately informs both the Juvenile Court ("*Tribunale per i minorenni*") and the Judge for guardianship (*Giudice tutelare*).<sup>175</sup> The Judge for guardianship has to appoint a legal guardian within 48 hours following the communication by the Questura. The law foresees no exception to this rule.

The legal guardian, when appointed, immediately takes 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 Procedure Decree, the legal guardian has the responsibility to assist the unaccompanied child during the entire asylum procedure, and even afterwards, in case the child receives a negative decision on the claim.<sup>176</sup> For this reason, the legal guardian accompanies the child to the police, where he or she is fingerprinted if he or she is over 14, and assists the child in filling the form and formalise the asylum claim. The legal guardian also has a relevant role during the personal interview before the determining authorities, who cannot start the interview without his or her presence. The legal guardian must be authorised by the Judge for guardianship to make an appeal against a negative decision.

Italian legislation does not foresee any specific provision concerning the possibility for unaccompanied children to lodge an appeal themselves, even though in theory the same provisions foreseen for all asylum seekers are also applicable to them.

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>177</sup> The guardian is responsible for the protection and the well-being of the child. Usually, the Mayor of the Municipality where the child is residing is appointed as guardian. In practice, the Mayor delegates this duty to individuals who provide social assistance or other services for the Municipality. These persons have to deal with a high number of other vulnerable persons such as elderly, handicapped persons and so forth, and have no time to accomplish properly their mandate.

<sup>172</sup> See CIR, *Maieutics*, 61.

<sup>173</sup> According to a Centro Astalli, in 2012, 267 medico-legal reports were issued by SA.Mi.FO. For further information, see Centro Astalli, *Rapporto annuale 2013*, March 2013, available in Italian at: <http://bit.ly/1R8QKCt>, 30-31.

<sup>174</sup> Article 6(3) LD 25/2008, as amended by LD 142/2015.

<sup>175</sup> Article 26 LD 25/2008.

<sup>176</sup> Article 19(1) LD 25/2008.

<sup>177</sup> Article 343 et seq. Civil Code.

Guardianship may 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 “volunteer guardians”, and they are appointed within 2 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, 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. However, the legal guardian shall have the proper skills to perform his or her functions and duties pursuant to the principle of the superior interest of the minor. Individuals or organisations whose interests may be even potentially in contrast to the ones of the minor cannot be appointed as guardians. The guardian can be substituted only in case of necessity.<sup>178</sup>

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 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 is not allowed to reactivate the asylum procedure because he or she has no legal capacity.

The delay in the appointment of a guardian, common throughout the country, inevitably affects family reunification, relocation, and, in some cases, the issuance of a residence permit for children. In the meantime, many children prefer to abscond and to rely on illegal smuggling networks.

In some regions, it also affects the possibility to seek asylum as some Questure do not proceed to the formalisation of the application in the absence of guardian. According to the law,<sup>179</sup> the legal representative of the reception facility acts as temporary guardian but not all the Questure allow him or her to confirm, on the basis of such interim role, the application for international protection made by the unaccompanied children. In addition, the managers of shelters often do not know the legal provisions relating to their role as temporary guardians. As a result, in many cases recorded by ASGI, unaccompanied children can access to the asylum procedure much later than adults.

LD 142/2015 provides that a member of the CTRPI, specifically skilled for that purpose, interviews the minor in the presence of his or her parents or the legal guardian and the supporting personnel providing specific assistance to the minor. For justified reasons, the CTRPI may proceed to interview again the minor, even without the presence of the parent or the legal guardian, at the presence of supporting personnel, if considered necessary in relation of the personal situation of the minor, degree of maturity and development, in the sole minor's best interests.<sup>180</sup>

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<sup>178</sup> Article 19(6) LD 142/2015.

<sup>179</sup> Article 3 L 184/83 and Article 402 Civil Code.

<sup>180</sup> Article 13(3) LD 25/2008, as amended by LD 142/2015.

## E. Subsequent applications

### Indicators: Subsequent Applications

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

There is no clear definition of a “subsequent application” in the law. However, 2 provisions make reference to the possibility of filing a new asylum application.

The first is related to the possibility for the asylum seeker to present new elements before the Territorial Commission takes the final decision. According to the Procedure Decree, the applicant has the right to submit new elements and documents to the competent Territorial Commission at any stage of the asylum procedure, even after his or her personal interview.<sup>181</sup> In addition, in case the asylum seeker makes a subsequent application before the determining authorities have taken the decision on the initial asylum request, the new elements of the request are examined in the framework of the previous request leading to a single decision issued by the Territorial Commission. In the decision, the competent authorities specify if the applicant made more than one asylum requests 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 must 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 his or her country of origin.<sup>182</sup> In case of a subsequent application after a decision has been issued, the Territorial Commission 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 merits of the asylum application or conducting a personal interview.<sup>183</sup> No time-limits are foreseen by law for such preliminary assessment.

The law also does not specify what can be considered as “new elements” in a subsequent application. In this regard, LD 142/2015 has introduced a new provision, stating that when the applicant has reiterated the same application after the CTRPI has taken a decision without presenting new elements regarding his or her personal conditions and situation in his or her country of origin, the President of the CTRPI makes a preliminary examination of the application to verify whether new elements considered relevant for the purpose of the recognition of international protection have emerged or been raised. The CTRPI, before adopting the decision on the inadmissibility of the subsequent application, notifies the applicant the opportunity to make comments, within 3 days from the notification, in order to support the admissibility of his or her application and that, in absence of observations, the CTRPI will take the decision.<sup>184</sup>

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

Italian legislation does not foresee a specific procedure to appeal against a decision on inadmissibility for subsequent applications. The Procedure Decree provides, however, that an appeal against an

<sup>181</sup> Article 31(1) LD 25/2008.

<sup>182</sup> Article 29(1)(b) LD 25/2008.

<sup>183</sup> Article 29(1)(b) LD 25/2008.

<sup>184</sup> Article 29(1-bis) LD 25/2015, as amended by LD 142/2015.

inadmissibility decision does *not* have automatic suspensive effect.<sup>185</sup> However, the appellant can request a suspension of the decision of inadmissibility, based on serious and well-founded reasons, to the competent court. For the rest of the appeal procedure, the same provisions as for the appeal in the regular procedure apply (see section on [Regular Procedure: Appeal](#)).

Asylum seekers who lodge a subsequent application benefit from the same legal guarantees provided for asylum seekers in general and can be accommodated in reception centres, if places are available. However, according to the law, when asylum seekers accommodated submit a subsequent application, the accommodation can be revoked.<sup>186</sup>

Considering that subsequent applications are examined under the regular procedure, subsequent applicants can be assisted by a lawyer, as any other asylum seeker, at their own expense during the first instance procedure whereas they benefit from the free legal assistance during the appeal phase (see section on [Regular Procedure: Legal Assistance](#)).

## F. The safe country concepts

### Indicators: Safe Country Concepts

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

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

## G. Relocation

### Relocation statistics: 13 February 2017

| Relocation from Italy |               |             |
|-----------------------|---------------|-------------|
|                       | Sent requests | Relocations |
| <b>Total</b>          | 5,936         | 3,204       |
| Germany               | 2,379         | 700         |
| Netherlands           | 509           | 423         |
| Norway                | 535           | 395         |
| Finland               | 563           | 359         |
| Switzerland           | 668           | 340         |
| France                | 334           | 281         |
| Portugal              | 315           | 270         |
| Spain                 | 150           | 144         |
| Luxembourg            | 61            | 61          |
| Malta                 | 47            | 46          |
| Sweden                | 39            | 39          |
| Romania               | 45            | 45          |
| Belgium               | 136           | 29          |

<sup>185</sup> Article 19(4) LD 150/2011, as amended by Article 27 LD 142/2015.

<sup>186</sup> Article 23 LD 142/2015.

|           |    |    |
|-----------|----|----|
| Slovenia  | 37 | 23 |
| Cyprus    | 40 | 10 |
| Latvia    | 39 | 9  |
| Croatia   | 29 | 9  |
| Lithuania | 10 | 0  |

Source: Ministry of Interior: <http://bit.ly/2l00LIL>.

Following the Commission proposal on relocation, the Council has adopted Decisions 2015/1523 and 2015/1601 on 14 and 22 September 2015,<sup>187</sup> establishing provisional measures in the area of international protection for the benefit of Italy and of Greece, in view of supporting them in better coping with an emergency situation characterised by a sudden inflow of nationals of third countries in these countries. The Decisions provide that 39,600 asylum seekers will be relocated from Italy until September 2017.

Under the relocation scheme, individuals in clear need of international protection, belonging to a nationality (or stateless persons) with an EU-wide average recognition rate of 75% or higher, are transferred, after the formalisation of their asylum request, to other EU Member States where their application will be processed, according to the quotas established in the context of the two abovementioned Decisions.

The organisational measures put in place by Italy responding to the obligation set out by the Council Decisions,<sup>188</sup> in order to facilitate the functioning of the programme, included the designation of specific Hotspots where, after receiving medical assistance and first aid, people are identified by the Italian police authorities together with Frontex personnel.

In order to register and process the applications, the European Commission has called on the need for Italy to increase the capacity of the Italian authorities, including of the Dublin Unit. By the end of December 2016, the Italian Dublin Unit has issued a notice for the recruitment of 20 new positions. The selection procedure is currently ongoing.

## 1. The relocation procedure in practice

According to the Standard Operating Procedures (SOPs) issued on 8 February 2016 to detail the operations carried out at hotspots, asylum seekers entitled to relocation are channelled into the dedicated procedure and receive accurate information about the relocation programme, in particular accurate and targeted information from EASO experts, Italian cultural mediators and a UNHCR team in each hotspot. Persons who express the intention to submit an application for international protection or relocation undergo *fotosegnalamento* and are recorded into the VESTANET database under Eurodac “Category 1”, and are then transferred to a regional “hub” in the shortest possible time.<sup>189</sup>

As per the Council Decisions, the relocation process should be completed within two months up to to three and a half months maximum.<sup>190</sup>

### 1.1. The regional hubs

On 5 July 2016, Simona Spinelli, the Head of Italian Dublin Unit, stated in a hearing before the Parliament that, in order to facilitate the procedure, persons to be relocated were moved to the reception centres

<sup>187</sup> OJ 2015 L239/146 and OJ 2015 L248/80.

<sup>188</sup> Article 8(1) Relocation Decision. The Council obliges Italy and Greece to provide structural solutions to address exceptional pressures on their asylum and migration systems, by establishing a solid and strategic framework for responding to the crisis situation.

<sup>189</sup> Hotspots SOPs, para. B.8.2.

<sup>190</sup> Article 5(10) Relocation Decision.

where the Immigration Offices are operational: **Bari, Crotone, Villa Sikania** and Rome (**Castelnuovo di Porto**).

In these specific hubs, 5 EASO experts and 3 cultural mediators provide information on relocation. Asylum seekers' requests are formalised through the C3 model in English and used for the following matchmaking process conducted at the Dublin Unit office in Rome. The matchmaking is conducted with the support of 10 EASO experts and liaison officers and consists of examining the profiles of people to be relocated (in terms of academic qualifications, professional qualifications, languages spoken, etc.) and of combining such information with the offers made available from the various Member States.

The subsequent approval by the receiving Member State is notified to the parties concerned at the specific regional hub. The Italian police and EASO experts assigned to the Dublin Unit conduct the transfer operations.

For the persons eligible for relocation coming from the Eastern border and accommodated in reception centers in **Friuli Venezia Giulia** region, the Ministry of Interior has entrusted Prefectures to deal with the relocation procedure, managing interviews with those who claim they belong to eligible nationalities, and testing their willingness to be relocated.

In **Trieste**, as reported to ASGI, 3 Iraqi asylum seekers were asked to relocate to Germany in January 2016 but they refused. Other Eritreans are waiting from about one year to be relocated. At formalisation they were asked in which countries they would be relocated and the Prefecture agreed to give priority to those countries. They have been informed on the progress of the procedure through the managing body of the centre where they were accommodated, but the delay was only motivated based on technical problems. In February 2016, they were asked to fill in the vulnerability form and to deliver the certificates of good health.

## 1.2. Relocation of unaccompanied children

Since the beginning of the relocation programme, and though during 2016 about 4,000 unaccompanied children have disembarked in Italy, most coming from Eritrea, no unaccompanied child has been relocated from Italy.

In the absence of a specific procedure to be implemented by the Ministry of Interior, the Questure did not trust to apply *mutatis mutandis* the procedure for transfers of children under Dublin Regulation. In fact, it was not clear who would assess whether relocation was in the best interests of the child and who should accompany the child in the destination country.

The procedure has been suspended for so long that Eritrean children, potentially eligible, eventually absconded. That is why the first pilot relocation transfer from Italy which was referred to in the European Commission's 6<sup>th</sup> report on relocation did not take place.<sup>191</sup> In the next report, the Commission reiterated the need and urgency on the part of Italy to take all necessary steps to render possible the relocation of unaccompanied children.<sup>192</sup>

As reported to ASGI, the Ministry of Interior is currently in the process of sending precise information to all the Questure in that regard.

## 2. Refusal to relocate and security checks

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<sup>191</sup> European Commission, 6<sup>th</sup> report on relocation and resettlement, COM(2016) 636, 28 September 2016.

<sup>192</sup> European Commission, 7<sup>th</sup> report on relocation and resettlement, COM(2016) 720, 9 November 2016.



According to the Head of the Dublin Unit in a hearing of 5 July 2016, the reticence of migrants towards countries that have not commonly recognised host systems and attractive welfare is one of the main obstacles to the development of the programme.

Obstacles have also been encountered in relation to the performance of security checks prior to relocation. According to the 4<sup>th</sup> report on relocation of the European Commission, until June 2016 Member States were not relocating any applicants from Italy because the authorities were not allowing additional security interviews by the Member State of relocation.<sup>193</sup>

Immediately after the meeting of the National Contact Points on relocation that took place in Rome on 15 September 2016, attended by UNHCR, EASO, IOM, Europol and Frontex in addition to Member States, the European Commission pointed out the significant progress made with solving the bottlenecks identified linked to security issues.<sup>194</sup> In its next reports, the Commission has underlined that the involvement of Europol and the implementation of the hotspots approach in all the disembarkation places in Italy have played a key role in accelerating the procedure from Italy, paving the way for more Member States to participate in relocation and for meeting the monthly expected targets of pledges and relocation transfers per month.

The arrangements with Europol to facilitate exceptional additional security interviews were discussed at a meeting in Rome on 25 November 2016 and became operational on 1 December 2016. For the first time they have been put in practice in January 2017 upon request from **Norway**. On the basis of the Relocation Protocol for Italy, a first joint security interview by Europol, Norwegian and Italian officers is scheduled to take place in Italy in February 2017.

According to the European Commission, this should serve to draw lessons from the procedure and to increase the necessary trust in the system by all Member States relocating from Italy.<sup>195</sup>

### 3. Information and consequences of non-compliance

The Department for Civil Liberties and Immigration has clarified in a meeting with NGOs, held on 2 February 2017, that where the first Member State denies the relocation transfer citing security reasons, Italy does not make further attempts with other Member States and declares itself responsible for the application, without notifying the measure to the applicant. The applicant is also never informed about the status of the relocation process, nor of the reasons for refusal put forward by the Member State to his or her transfer.<sup>196</sup>

This is regrettable, considering that it often happens that Member States refuse transfers on the basis of generic and non-motivated security concerns, as indicated by the European Commission reports.<sup>197</sup>

The aforementioned situation of complete lack of awareness of the state of play of the procedure by the persons concerned was also reported by LasciateCIEntrare after their visit to **Castelnuovo di Porto** on 20 June 2016. They reported that EASO officials, working directly from inside the centre, informed the applicants about the relocation programme but communications on transfers could be given even only a few hours before the trip itself. They also reported that in the corridors of the centre were posted some warnings stating: "it is not possible to choose the country to which you are relocated".<sup>198</sup>

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<sup>193</sup> European Commission, *4<sup>th</sup> report on relocation and resettlement*, COM(2016) 416, 15 June 2016.

<sup>194</sup> European Commission, *6<sup>th</sup> report on relocation and resettlement*, COM(2016) 636, 28 September 2016.

<sup>195</sup> European Commission, *9<sup>th</sup> report on relocation and resettlement*, COM(2017) 74, 8 February 2017.

<sup>196</sup> Information provided by Prefect Morcone, former Head of the Department for Civil Liberties and Immigration, meeting with NGOs at the Ministry of Interior, 2 February 2017.

<sup>197</sup> European Commission, *8<sup>th</sup> report on relocation and resettlement*, COM(2016) 791, 8 December 2016, 7.

<sup>198</sup> See for more information Lunaria, *Il mondo di dentro*, 14.

Currently, many people who have become exhausted from waiting and have moved to **Rome** in the belief to speed up the procedure have lost their accommodation place and are living in the streets, facing more obstacles than before to be made aware of the state of the procedure. At a meeting held on 2 February 2017 with NGOs, the former Head of the Department for Civil Liberties and Immigration has announced the implementation in Rome, probably in the **Fiumicino** area, of a Hub capable of hosting up to 2,000 or 2,500 applicants awaiting relocation, and the probable issue of a Circular to guarantee to the relocation candidates the possibility of returning in the shelters from which they had departed on their own decision.

According to ASGI, asylum seekers should be involved in the decision process, being informed about the state of procedure and about the reasons of refusal eventually taken from the country requested, having the possibility to submit observations and to integrate the application. However, NGOs and refugee communities are not involved in the relocation process, even though they could highly contribute in “confidence building”, in information campaigns, in interviewing people to be relocated and in gathering useful information and documents to be sent to the Italian authorities and to EASO and liaison officers for the matchmaking procedure. An independent and qualified monitoring system should be put in place.

In her hearing before the Parliament on 5 July 2016, the Head of the Dublin Unit also mentioned that people who, after receiving the relocation decision, refuse to be transferred, remain in Italy submitting there their asylum request. They are no longer involved in the relocation procedure and they are not sanctioned.

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

### Indicators: Information and Access to NGOs and UNHCR

1. Is sufficient information provided to asylum seekers on the procedures, their rights and obligations in practice? ☐ Yes ☒ With difficulty ☐ No  
 ❖ Is tailored information provided to unaccompanied children? ☐ Yes ☒ No
2. Do asylum seekers located at the border have effective access to NGOs and UNHCR if they wish so in practice? ☐ Yes ☒ With difficulty ☐ No
3. Do asylum seekers in detention centres have effective access to NGOs and UNHCR if they wish so in practice? ☐ Yes ☒ With difficulty ☐ No
4. Do asylum seekers accommodated in remote locations on the territory (excluding borders) have effective access to NGOs and UNHCR if they wish so in practice? ☐ Yes ☒ With difficulty ☐ No

According to Article 10 of the Procedure Decree,<sup>199</sup> when a person claims asylum, police authorities must inform the applicant about the asylum procedure and his or her rights and obligations, and of time-limits and any means (i.e. relevant documentation) at his or her disposal to support the application. In this regard, police authorities should hand over an information leaflet. In addition, the Reception Decree provides that police authorities, within a maximum of 15 days from the presentation of the asylum request, should provide information related to reception conditions for asylum seekers and hand over information leaflets accordingly.<sup>200</sup> The brochures distributed also contain the contact details of UNHCR and other refugee-assisting NGOs. However, the practice of distribution of these brochures by police authorities is actually quite rare. Moreover, although Italian legislation does not explicitly state that the information must also be provided orally, this happens in practice but not in a systematic manner and at the discretion of police authorities. Therefore, adequate information is not constantly and regularly ensured, mainly due to the insufficient number of police staff dealing with the number of asylum requests, as well as to the shortage of professional interpreters and linguistic mediators.

<sup>199</sup> Article 10(1) LD 25/2008.

<sup>200</sup> Article 3 LD 142/2015.

PD 21/2015 provides that unaccompanied minors shall receive information on the specific procedural guarantees specifically provided for them by law.<sup>201</sup>

### **Information on the Dublin Regulation**

More specifically, 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 Questura explains the Dublin procedure in a superficial manner. Furthermore, when asylum seekers in a Dublin procedure receive some explanations from the authorities, these are very often not adapted to their education level, which makes them very difficult for them to understand. Having information in writing can be more helpful, but it is not always understandable due to language barriers, the use of legal terms or because it also happens that some asylum seekers are illiterate.

### **Information in reception and detention centres**

Depending on the type of accommodation centres where asylum seekers are placed, they will receive different quality level of information and interpretation services.

LD 142/2015 introduces a norm providing that foreigners detained in CIE shall be provided by the manager of the facility with relevant information on the possibility of applying for international protection. The asylum applicants detained in such facilities are provided with the relevant information set out by Article 10(1) of the Procedure Decree, by means of an informative leaflet.<sup>202</sup>

The Procedure Decree expressly requires the competent authorities to guarantee asylum seekers the possibility to contact UNHCR and NGOs during all phases of the asylum procedure.<sup>203</sup> Moreover, the previous norm, specifying that access to detention centres (CIE) shall be ensured to the representatives of UNHCR, to lawyers and to entities working for the protection of refugees, which are authorised by the Ministry of the Interior, has been abolished.<sup>204</sup> For more detailed information on access to CIE, see the section on [Access to Detention Facilities](#).

However, due to insufficient funds or due to the fact that NGOs are located mainly in big cities, not all asylum seekers have access to them.

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

### **Information at the border**

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<sup>201</sup> Article 3(3) PD 21/2015.

<sup>202</sup> Article 6(4) LD 142/2015.

<sup>203</sup> Article 10(3) LD 25/2008.

<sup>204</sup> Article 21(3) LD 25/2008 has been repealed by LD 142/2015.

According to the law,<sup>205</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 provisions 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>206</sup> With regard to legal counseling, LD 142/2015 also clarifies that the information on the asylum procedure, the rights and obligations of applicants, on the timeframes and means to accompany the asylum application, are provided to foreigners who show their intention to seek asylum at border crossing points and in transit areas in the frame of the information and reception services set by Article 11(6) TUI. Access to the border points from representatives of UNHCR and other refugee-assisting organisations with experience is ensured. For security and public order grounds or, in any case, for any reasons connected to the administrative management, the access can be limited on condition that is not totally denied.<sup>207</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 provided due to the reduction of resources invested, in contrast with the legislative provisions which aim to provide at least immediate assistance to potential asylum seekers.

UNHCR and IOM continue to monitor the access of foreigners to the relevant procedures and the initial reception of asylum seekers and migrants in the framework of their mandates. The activities are funded under the AMIF (Access and Reception).

## I. Differential treatment of specific nationalities in the procedure

### Indicators: Treatment of Specific Nationalities

1. Are applications from specific nationalities considered manifestly well-founded? ☒ Yes ☐ No  
❖ If yes, specify which: Syria, Eritrea (relocation)
2. Are applications from specific nationalities considered manifestly unfounded? ☐ Yes ☒ No  
❖ If yes, specify which:

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

In practice, as already underlined in [Hotspots](#) and [Registration](#), some nationalities face more difficulties to access the asylum procedure, both at hotspots and at Questure. In the hotspots, it has been reported to ASGI that people from **Senegal, Gambia, Nigeria, Morocco, Algeria** and **Tunisia** are easily classified as economic migrants and notified of orders to leave the country.

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

<sup>205</sup> Article 11(6) TUI, read in conjunction with Article 4 MoI Decree of 22 December 2000.

<sup>206</sup> CIR, S.A.B. *Project, Services at Borders: a practical cooperation*, 2008, 21.

<sup>207</sup> Article 10-bis(1)-(2) LD 25/2008, as amended by LD 142/2015.

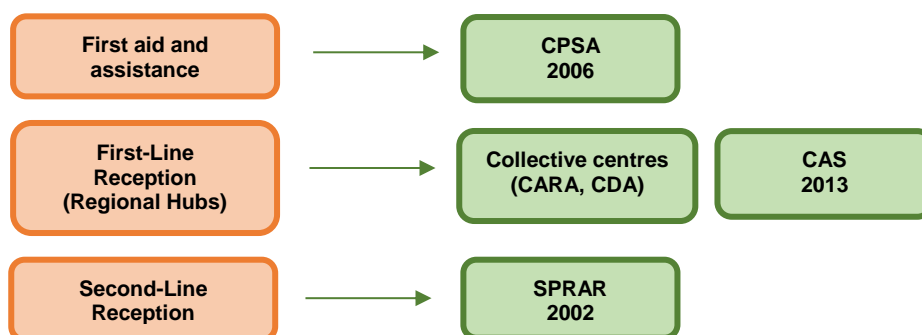
## Reception Conditions

### Short overview of the Italian reception system

In Italy, there is no uniform reception system. LD 142/2015 has amended the Procedure Decree 25/2008 and has repealed the previous Reception Decree 140/2005 (with the exception of the financial provisions), without substantially modifying the previous reception system. Articles 20 and 21 of the Procedure Decree, respectively on reception and administrative detention, have also been repealed by LD 142/2015.

LD 142/2015 articulates the reception system in phases, distinguishing between

1. Phase of first aid and assistance, operations that continue to take place in the centres set up in the principal places of disembarkation;
2. First reception phase, to be implemented in existing collective centres or in centres to be established by specific Ministerial Decrees or, in case of unavailability of places, in “temporary” structures; and
3. Second reception phase, carried out in the structures of the SPRAR system.<sup>208</sup>



Upon arrival, asylum seekers and migrants may be placed in the following first reception centres:

- ❖ First Aid and Reception Centres (**CPSA**), created in 2006 for the purposes of first aid and identification before persons are transferred to other centres;<sup>209</sup> or
- ❖ Collective centres: This includes the existing governmental centres for accommodation of asylum seekers (**CARA**) and accommodation centres (**CDA**);<sup>210</sup>
- ❖ Temporary Reception Centres (**CAS**), implemented by Prefectures in case of unavailability of places in the first or second accommodation centres.<sup>211</sup>

According to LD 142/2015, first reception is guaranteed in the governmental accommodation centres in order to carry out the necessary operations to define the legal position of the foreigner concerned.<sup>212</sup> It is also guaranteed in the temporary facilities, specifically set up by the Prefect upon the arrival of a great influx of refugees, due to unavailability of places in the first and second level accommodation centres.<sup>213</sup> Indeed, accommodation in temporary reception structures is limited to the time strictly necessary for the transfer of the applicant in the first or second reception centres.<sup>214</sup> LD 142/2015 provides also first aid and accommodation structures<sup>215</sup> and clarifies that the current governmental reception centres (former CARA) have the same functions of first reception centres.<sup>216</sup>

<sup>208</sup> Article 8(1) LD 142/2015.

<sup>209</sup> L 563/1995.

<sup>210</sup> Article 9 LD 142/2015.

<sup>211</sup> Their legal basis is now provided in Article 11 LD 142/2015.

<sup>212</sup> Article 9(1) LD 142/2015.

<sup>213</sup> Article 11(1) LD 142/2015.

<sup>214</sup> Article 11(3) LD 142/2015.

<sup>215</sup> Article 8(2) LD 142/2015.

<sup>216</sup> Article 9(3) LD 142/2015.

The law does not specify any time limit for the stay of asylum seekers in these centres, and only provides that applicants stay “as long as necessary” to complete procedures related to their identification,<sup>217</sup> or for the “time strictly necessary” to be transferred to SPRAR structures.<sup>218</sup> The extensive use of these provisions and the lack of places in second-line reception cast doubt on the functioning of the entire mechanism, intended to follow different phases.

Second-line reception is provided under the System for the Protection of Asylum Seekers and Refugees (**SPRAR**). The SPRAR, established in 2002 by L 189/2002, is a publicly funded network of local authorities and NGOs which accommodates asylum seekers and beneficiaries of international protection. It is formed by small reception structures where assistance and integration services are provided. In contrast to the large-scale buildings provided in CARA, CDA, CPSA and CAS, SPRAR is composed of over 649 smaller-scale decentralised projects as of January 2017.<sup>219</sup>

SPRAR accommodates those destitute asylum seekers that have already formalised their applications. Therefore, asylum applicants already present in the territory may have access directly to the SPRAR centres.<sup>220</sup>

### Coordination and monitoring

The overall activities concerning the first reception and the definition of the legal condition of the asylum applicant are conducted under the programming and criteria established by both National and regional Working Groups (*Tavolo di coordinamento nazionale e tavoli regionali*).<sup>221</sup>

Without prejudice to the activities conducted by the Central Service of the SPRAR, the Civil Liberties Department of the Ministry of Interior conducts, also through the Prefectures, control and monitoring activity in the first and second reception facilities. To this end, the Prefectures may make use of the municipality’s social services.<sup>222</sup>

Moreover, the LD 142 has introduced a more protective norm concerning the trafficked asylum seekers who can now be channelled to a special programme of social assistance and integration under Article 18(3-bis) of LD 286/1998.<sup>223</sup>

On 10 August 2016, the Ministry of Interior issued a Decree to facilitate the accession of municipalities to SPRAR system, making it possible at any time without deadlines.

Later, on 11 October 2016, the Ministry issued a Decree concerning a plan to improve the accommodation system in order to obtain a gradual and sustainable distribution of asylum seekers and refugees across the country. The plan, also presented at the annual meeting with the National Association of Italian Municipalities (*Anci*) held on 14 October 2016 in Bari, envisages the phasing out of the CAS, with a view to the consolidation of a uniform reception system obtained through an expansion of the SPRAR system. The Ministry of Interior aims to encourage municipalities to host asylum seekers in their territories, inviting Prefectures not to open new CAS or to gradually close the existing ones in those territories where the municipalities participate in SPRAR.

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<sup>217</sup> Article 9(4) LD 142/2015.

<sup>218</sup> Article 9(5) LD 142/2015.

<sup>219</sup> Chamber of Deputies, *Dossier a cura degli Ispettori della Guardia di Finanza addetti all'Archivio della Commissione*, 23 January 2017.

<sup>220</sup> Article 14 LD 142/2015.

<sup>221</sup> Article 9(1) LD 142/2015.

<sup>222</sup> Article 20(1) LD 142/2015.

<sup>223</sup> Article 17(2) LD 142/2015.



Then, Decree-Law 193/2016 (converted into L 225/2016) provided financial incentives for municipalities involved in the reception system, allocating €500 to each municipality for each asylum seeker hosted in its territory, not distinguishing between accommodation in SPRAR and CAS or governmental centres.<sup>224</sup>

However, according to ASGI, such prospects will not easily convince municipalities to participate in SPRAR and, until SPRAR projects are sufficient in number, it will be not possible to close existing or not to open new temporary shelters. According to ASGI, the solution should be examined from the mainstreaming of reception into the obligations of municipalities in the context of social services, in line with the Italian constitutional settlement.<sup>225</sup>

## A. Access and forms of reception conditions

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

#### Indicators: Criteria and Restrictions to Reception Conditions

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

|                          |   |   |                             |
|--------------------------|---|---|-----------------------------|
| ❖ Regular procedure      | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Reduced material conditions            | <input type="checkbox"/> No |
| ❖ Dublin procedure       | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Reduced material conditions            | <input type="checkbox"/> No |
| ❖ First appeal           | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Reduced material conditions            | <input type="checkbox"/> No |
| ❖ Onward appeal          | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> Reduced material conditions | <input type="checkbox"/> No |
| ❖ Subsequent application | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> Reduced material conditions | <input type="checkbox"/> No |
2. Is there a requirement in the law that only asylum seekers who lack resources are entitled to material reception conditions?
 

|  |   |  |                             |
|--|---|--|-----------------------------|
|  | <input checked="" type="checkbox"/> Yes |  | <input type="checkbox"/> No |
|--|---|--|-----------------------------|

LD 142/2015 sets out the reception standards for third-country nationals making an application for international protection on the territory, including at the borders and in their transit zones or in the territorial waters of Italy.<sup>226</sup>

On the basis of the previous Reception Decree, asylum seekers, provided they lack financial resources to ensure an adequate standard of living for their and their family members' health and subsistence,<sup>227</sup> could present a reception request when they lodged their asylum claim.<sup>228</sup> Access to reception centres had to be provided at the moment of the presentation of the asylum request.<sup>229</sup> In other words, in order to benefit from reception conditions, when filing an asylum application at the Questura, an asylum seeker also had to fill in an *ad hoc* declaration of destitution. The reception request was transmitted by the Questura to the Prefecture in charge of carrying out the assessment of financial resources.

The LD 142/2015 clarifies that the reception measures apply from the moment applicants have manifested their willingness to make an application for international protection,<sup>230</sup> and that access to the reception measures is not conditioned upon additional requirements.<sup>231</sup> However, access to SPRAR centres is only granted to destitute applicants. Destitution is evaluated by the Prefecture on the basis of the annual social income (*assegno sociale annuo*).<sup>232</sup>

<sup>224</sup> Article 12 Decree-Law n. 193/2013 Urgent provisions for taxation matters and for financing non-postponable needs, converted into Law n. 225/2016.

<sup>225</sup> According to the Article 118 of Italian Constitution administrative functions are attributed to the Municipalities. For a more detailed analysis see: Gianfranco Schiavone, 'Le Prospettive Di Evoluzione Del Sistema Unico Di Asilo Nell'unione Europea E Il Sistema Di Accoglienza Italiano. Riflessioni Sui Possibili Scenari' in Fondazione Migrantes, *Il diritto d'asilo, minori rifugati e vulnerabili senza voce*, Report 2017, February 2017.

<sup>226</sup> Article 1(1) LD 142/2015.

<sup>227</sup> Article 5(2) LD 140/2005.

<sup>228</sup> Article 6(1) LD 140/2005.

<sup>229</sup> Article 5(5) LD 140/2005.

<sup>230</sup> Article 1(2) LD 142/2015.

<sup>231</sup> Article 4(4) LD 142/2015.

<sup>232</sup> Article 14(3) LD 142/2015.



In practice, the assessment of financial resources is not carried out by the Prefectures, which consider the self-declarations made by the asylum seekers as valid.<sup>233</sup>

### 1.1. Reception and obstacles to access to the procedure

According to the practice recorded in 2015 and 2016, 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 their formal registration (“*verbalizzazione*”). This implies that, since the *verbalizzazione* can take place even months after the presentation of the asylum application, asylum seekers can face obstacles in finding alternative temporary accommodation solutions. Due to this issue, some asylum seekers lacking economic resources are obliged to either resort to friends or to emergency facilities, or to sleep on the streets.<sup>234</sup>

Médecins Sans Frontières (MSF) has reported that in 2015 at least in four cities, **Crotone**, **Udine**, **Catania** and **Bari**, there were unaccompanied minors out of reception centres waiting for access to the asylum procedure.<sup>235</sup> They found people waiting up to three months in Porta Palatina gardens in **Torino**, and, in almost all the cities, asylum seekers were unlawfully denied entry in the *Questura* because they were not in possession of a medical certificate attesting their good health.

During 2016, as reported to ASGI, people who entered Italy from the Eastern border faced lack of accommodation and, in some cases, obstacles to accessing the asylum procedure. In **Gorizia**, as of 19 December 2015, MSF opened an emergency reception centre for 70 asylum seekers. The project, closed in June 2016, allowed to give assistance to more than 598 asylum seekers excluded from the accommodation system.<sup>236</sup> In **Udine**, people facing obstacles to accessing the procedure had to take shelter in the train station subway.<sup>237</sup> In **Pordenone**, waiting for a place, asylum seekers wandered around the city for several days and slept in the central garden of the city. In **Trieste**, even though the Prefecture provided for opening new shelters (CAS), people had to spend several days in the abandoned buildings near the train station.

Both in **Pordenone** and in **Trieste**, the mayors issued orders prohibiting bivouac and to sleeping on the streets. Applying the order, the city police has imposed fines to some asylum seekers sleeping on the streets but an appeal brought by ASGI lawyers to the Administrative Court of Friuli Venezia Giulia resulted in cancelling the order and consequently annulling the fines in December 2016.<sup>238</sup>

In **Rome**, after the eviction of the **Baobab** centre happened on 24 November of 2015 and later in June and September 2016, asylum seekers have been assisted by volunteers in the streets close to **Tiburtina** station.<sup>239</sup> As reported by Lunaria and MSF, by the end of 2015 there were 105 informal settlements of asylum seekers in Rome.<sup>240</sup>

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<sup>233</sup> See for more information M Benvenuti, *La protezione internazionale degli stranieri in Italia*, Jovene Editore, Napoli 2011.

<sup>234</sup> For more information, see MSF, *Fuoricampo: Richiedenti asilo i rifugiati in Italia: insediamenti informali e marginalità sociale*, March 2016, available at: <http://bit.ly/2letTQd>, 11; ANCI et al., *Rapporto sulla protezione internazionale in Italia*, 2014, available at: <http://bit.ly/15k6twe>, 124.

<sup>235</sup> MSF, *Fuoricampo*, March 2016, 11.

<sup>236</sup> For more information, see MSF, ‘MSF conclude il progetto di primissima accoglienza a Gorizia’, 26 July 2016, available in Italian at: <http://bit.ly/2kNsWxn>.

<sup>237</sup> ANSA, ‘Migranti: sgomberato nella notte sottopasso stazione Udine’, 31 March 2016, available in Italian at: <http://bit.ly/2kHTUqD>.

<sup>238</sup> Administrative Court of Friuli Venezia Giulia, Decision No 551/2016, 9 December 2016, available at: <http://bit.ly/2kgQXd3>.

<sup>239</sup> Il Fatto Quotidiano, ‘Migranti, a Roma buchi nell’accoglienza. E gli sgomberi si scaricano sui cittadini’, 23 January 2017, available in Italian at: <http://bit.ly/2jnJgRY>.

<sup>240</sup> Lunaria, *Il mondo di dentro, il sistema di accoglienza di richiedenti asilo e rifugiati a Roma*, October 2016, available in Italian at: <http://bit.ly/2fl7WXX>, 11.

However, the full extent of this phenomenon is not known, since no statistics are available on the number of asylum seekers who have no immediate access to a reception centre immediately after the *fotosegnalamento*. Moreover, the waiting times between the *fotosegnalamento* and *verbalizzazione* differ between Questure, depending *inter alia* on the number of asylum applications handled by each Questura. In this regard, it must be also pointed out that since 2014, thanks to the enlargement of the SPRAR system and the establishment of the Temporary Reception Centres (CAS), the situation described above concerns those asylum seekers who enter Italian territory and who file their asylum application *in loco* to police headquarters. In fact, those asylum seekers rescued at sea are immediately transferred to CAS after disembarkation, regardless of the registration of their applications.<sup>241</sup>

## 1.2. Reception at second instance

With regard to appellants, LD 142/2015 provides that accommodation is ensured until a decision is taken by the CTRPI and, in case of rejection of the asylum application, until the expiration of the timeframe to lodge an appeal before the judicial court. When the appeal has an automatic suspensive effect, accommodation is guaranteed to the appellant until the first instance decision taken by the Court.

However, when the appeals have no automatic suspensive effect, the applicant remains in the same accommodation centre until a decision on the suspensive request is taken by the competent judge. If this request is positive, the applicant remains in the accommodation centre where he or she already lives.<sup>242</sup> The applicant detained in a CIE who makes an appeal and a request of suspensive effect of the order, if accepted by the judge, remains in the CIE. Where the detention grounds are no more valid, the appellant is transferred to governmental reception centres.<sup>243</sup>

Concerning possibility of remaining in accommodation in SPRAR projects after a second appeal, on 7 July 2016 the SPRAR Central Service issued a Circular stating that accommodation is ensured until the decision on the suspensive request is taken from the Court of Appeal.<sup>244</sup>

According to ASGI, the laws concerning the duration of reception – Article 14(4) LD 142/2015 and Article 19(4) and (5) LD 150/2011 – should be read as also covering the second appeal phase where the suspensive request is accepted.

In this regard, it must be also pointed out that the Italian Courts of Appeal have different orientations on the suspensive effect of the second appeal: in **Brescia**, **Bologna**, **Napoli**, and **Venezia**, for example, as recorded by ASGI members, Courts of Appeal consider the suspensive effect of the Territorial Commission decision as automatically extended from the first to the second appeal.

Currently, according to ASGI experience, in many CAS asylum seekers also remain during the second appeal, while in SPRAR the cases are individually evaluated.

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<sup>241</sup> ANCI *et al.*, *Rapporto sulla protezione internazionale in Italia*, 2014, 124.

<sup>242</sup> Article 14(4) LD 142/2015.

<sup>243</sup> Article 14(5) LD 142/2015.

<sup>244</sup> Circular of the SPRAR Central Service, 7 July 2016, available at: <http://bit.ly/2kCeBS2>.

### 1.3. Reception in the Dublin procedure

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>245</sup> In addition, LD 142/2015 has clarified that it applies also to the applicants subject to the Dublin procedure.<sup>246</sup> Two scenarios should be distinguished:

#### ❖ Outgoing transfers from Italy

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 III Regulation have to be detained, international protection seekers who have received transfer orders are accommodated within the reception centres under the same conditions as other asylum seekers.<sup>247</sup>

#### ❖ Incoming transfers to Italy

Within the broader category of returnees, a further distinction is deemed necessary depending on whether the returnee had already enjoyed the reception system while he or she was in Italy or not.

- If returnees had not been placed in reception facilities while they were in Italy, they may still enter reception centres (CAS, collective centres, or SPRAR). However, once arrived in the airports they face a severe lack of legal information on how to access again to the asylum procedure and then, 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 those persons transferred to Italy on the basis of the Dublin III 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 (ERF). During 2014 11 centres for the reception of Dublin returnees were operating, out of which seven were specifically addressed to vulnerable persons. There were 3 centres in Rome, 3 in the province of Milan, 2 in Venice, 2 in Bologna and 1 in Bari. They could accommodate a total of 443 Dublin Returnees, who were accommodated for a short/medium period on a turnover basis.<sup>248</sup> Until 30 June 2014, CIR managed an accommodation facility - the "Locanda Dublino" - in Venice, with a capacity of 40 places. The aforementioned projects providing accommodation centres for Dublin returnees funded under ERF ended at the end of June 2015 and it is expected that they will be funded again.

However, it happens that Dublin returnees are not accommodated and find alternative forms of accommodation such as self-organised settlements.<sup>249</sup>

- If returnees had been placed in reception facilities and they had moved away, they could encounter problems on their return to Italy for their new accommodation request. Due to their first departure, in fact, and according to the rules provided for the withdrawal of accommodation (see

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<sup>245</sup> ASGI, *Il sistema Dublino e l'Italia: Un rapporto in bilico*, March 2015, available in Italian at: <http://bit.ly/2kH0mvX>.

<sup>246</sup> Article 1(3) LD 142/2015.

<sup>247</sup> *Ibid.*

<sup>248</sup> ASGI, *Il sistema Dublino e l'Italia: Un rapporto in bilico*, March 2015, 28.

<sup>249</sup> See ASGI, *Il sistema Dublino e l'Italia, un rapporto in bilico*, March 2015. For observations from previous years, Pro Asyl, *The living conditions of refugees in Italy*, 2011, 23.

Withdrawal of Reception Conditions), the Prefect could deny them new access to the reception system.<sup>250</sup>

Dublin returnees who have already been granted a form of protection face the same lack of accommodation as beneficiaries of international protection in Italy (see [Content of Protection: Housing](#)).

## 2. Forms and levels of material reception conditions

### Indicators: Forms and Levels of Material Reception Conditions

1. Amount of the monthly financial allowance/vouchers granted to asylum seekers as of 31 December 2016 (in original currency and in €):
  - ❖ Governmental centres €75
  - ❖ SPRAR €60-€75
  - ❖ CAS €75
  - ❖ Not accommodated -

According to the law,<sup>251</sup> governmental first reception centres generally offer basic services compared to those provided by second-line reception structures (SPRAR or other structures). First reception centres are in fact big buildings where high numbers of migrants and asylum applicants are accommodated. These centres offer basic services such as food, accommodation, clothing, basic information services including legal services, first aid and emergency treatments. 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.

According to Article 10(1) LD 142/2015 these centres ensure respect for private life, including gender differences, age-related needs, protection of physical and mental health of the applicants, family unit of spouses and first degree relatives, specific measures for vulnerable persons, prevention of forms of violence and safety of the accommodated.

In practice, first accommodation centres do not all offer the same reception services. Currently, as already reported in the past years, their quality of assistance varies between facilities and sometimes fails to meet adequate standards, especially regarding the provision of legal and psycho-social assistance.<sup>252</sup> 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>253</sup> Finally, the monitoring of reception conditions by the relevant authorities is generally not systematic and complaints often remain unaddressed.<sup>254</sup>

LD 142/2015 provides for a monitoring system in reception centres by the Prefecture through the social services of Municipalities.<sup>255</sup>

**(1) Governmental reception centres:** Asylum seekers hosted in first reception centres receive €2.50 per day per person as pocket money, although according to a report, at least in the **Cavarzerani** centre in Udine, asylum seekers do not receive pocket money.<sup>256</sup> This amount is issued for personal needs.

<sup>250</sup> According to Articles 13 and 23(1) LD 142/2015, the withdrawal of reception conditions can be decided when the asylum seeker leaves the centre without notifying the competent Prefecture. See also ASGI, *Il sistema Dublin e l'Italia, un rapporto in bilico*, March 2015.

<sup>251</sup> Article 10(1) LD 142/2015.

<sup>252</sup> UNHCR, *UNHCR Recommendations on important aspects on refugee protection in Italy*, July 2013, 12.

<sup>253</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.

<sup>254</sup> UNHCR, *UNHCR Recommendations on important aspects on refugee protection in Italy*, July 2013, 12.

<sup>255</sup> Article 20(1) LD 142/2015.

<sup>256</sup> LasciateCIEntrare, *Report20giugno LasciateciEntrare*, October 2016, available in Italian at: <http://bit.ly/2dJO5RM>, 25.

**(2) CAS:** Pocket money in CAS is agreed with the competent Prefecture but according to the Ministry of Interior Circular issued on 20 of March 2014, the amount received by applicants hosted in CAS should be €2.50 per day per person and up to € 7.50 for families.<sup>257</sup>

**(3) SPRAR:** On the other hand, the SPRAR centres are run by local authorities and together with civil society actors such as NGOs. According to the Ministry of Interior Decree of 10 of August 2016, the accommodation centres ensure interpretation and linguistic-cultural mediation services, legal counselling, teaching of the Italian language and access to schools for minors, health assistance, socio-psychological support in particular to vulnerable persons, training and re-training, support at providing employment, counselling on the services available at local level to allow integration locally, information on (assisted) voluntary return programmes, as well as information on recreational, sport and cultural activities.<sup>258</sup>

Persons hosted in a SPRAR centre receive a pocket money, which varies depending on the individual project from €1.50 to €3 with up to 20% reduction for families exceeding two people.<sup>259</sup>

According to the previous Reception Decree, for the period needed until a place is found in one of the accommodation centres, the Prefecture had to grant the applicant a financial allowance.<sup>260</sup> Nevertheless, this provision has never been applied in practice. LD 142/2015 does not provide any financial allowance for asylum applicants needing accommodation and often where there are no places available in neither SPRAR nor CAS or governmental centers, the Prefecture sends asylum seekers to one of those structures, thereby exceeding their maximum reception capacity. As a result, this causes overcrowding and a deterioration of material reception conditions (see the section on [Conditions in Reception Facilities](#)).

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 is not possible to say that the treatment of asylum seekers concerning social benefits is less favourable than that of nationals, since the Qualification Decree establishes only a comparison between nationals and international protection beneficiaries and not with asylum seekers.<sup>261</sup>

### 3. Reduction or withdrawal of reception conditions

#### Indicators: Reduction or Withdrawal of Reception Conditions

1. Does the law provide for the possibility to reduce material reception conditions?  
☐ Yes ☒ No
2. Does the legislation provide for the possibility to withdraw material reception conditions?  
☒ Yes ☐ No

According to Article 23(1) LD 142/2015, the Prefect of the Province where the asylum seeker's accommodation centre is placed may decide on an individual basis with a motivated decision to revoke material reception conditions on the following grounds:<sup>262</sup>

- (a) The asylum seeker did not present him or herself at the assigned centre or left the centre without notifying the competent Prefecture;
- (b) The asylum seeker did not present him or herself before the determining authorities for the personal interview even though he or she was notified thereof;
- (c) The asylum seeker has previously lodged an asylum application in Italy;
- (d) The authorities decide that the asylum seeker possesses sufficient financial resources; or

<sup>257</sup> Ministry of Interior Circular of 20 March 2014, 8.

<sup>258</sup> Article 30 Ministry of Interior Decree of 10 August 2016.

<sup>259</sup> See SPRAR, *Manuale unico per la rendicontazione Sprar*, 9.

<sup>260</sup> Article 6(7) LD140/2005.

<sup>261</sup> LD 251/2007 of 19 November 2007, as amended by LD 18/2014.

<sup>262</sup> See also Article 13 LD 142/2015.

- (e) The asylum seeker has committed a serious violation or continuous violation of the accommodation centre's internal rules or the asylum seeker's conduct was considered seriously violent.

Neither the previous nor the present law provide for any assessment of destitution risks when revoking accommodation.

According to the Reception Decree, when asylum seekers fail to present themselves to the assigned centre or leave the centre without informing the authorities, the centre managers must immediately inform the competent Prefecture.<sup>263</sup> In case the asylum seeker spontaneously presents him or herself before the police authorities or at the accommodation centre, the Prefect could decide to readmit the asylum seeker to the centre if the reasons provided are due to *force majeure*, unforeseen circumstances or serious personal reasons as the ground to be readmitted to the centre.<sup>264</sup> Moreover, while assessing the withdrawal of reception conditions, the Prefect must take into account the specific conditions of vulnerability of the applicant.<sup>265</sup>

According to the LD 142/2015, asylum seekers may lodge an appeal before the Regional Administrative Tribunal (TAR) against the decision of the Prefect to withdraw material reception conditions.<sup>266</sup> To this end, they can benefit from free legal aid.

As the abovementioned Article 23(1) specifically refers to second-line reception, it is not clear if it correctly applies to asylum seekers accommodated in first reception centres.<sup>267</sup> Currently, however, Prefectures are revoking reception conditions in **CAS** on that legal basis.

Moreover, the law does not clarify what is meant by "serious violations" of the accommodation centre's internal rules and, according to ASGI, this has allowed Prefectures to misuse the provision revoking reception measures on ill-founded grounds.

During 2016, and also in the first months of 2017, the provision has been used in several cases towards asylum seekers who had participated in protests against the conditions of the centre they were accommodated in. This happened among others in **Vicenza** in January 2017 concerning two asylum seekers,<sup>268</sup> in Fondi, **Latina** in October 2016 towards 5 Nigerians,<sup>269</sup> in **Caserta** in October 2016 towards 15 asylum seekers,<sup>270</sup> and in Valderice, **Trapani** in April 2016.<sup>271</sup>

According to ASGI, this misuse of the provision represents a violation of the Article 20 of the recast Reception Conditions Directive according to which the withdrawal of reception conditions should be an exceptional measure.

Where detention grounds apply to asylum seekers placed in the first and second-line reception centres or in a CAS, the Prefect orders the withdrawal of the reception conditions and refers the case to the *Questore* for the adoption of the relevant measures.<sup>272</sup>

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<sup>263</sup> Article 23(3) LD 142/2015.

<sup>264</sup> Article 23(3) LD 142/2015.

<sup>265</sup> Article 23(2) LD 142/2015.

<sup>266</sup> Article 23(5) LD 142/2015.

<sup>267</sup> Article 23(1) LD142/2015 refers to the Article 14 of the same Decree which governs reception in SPRAR.

<sup>268</sup> Corriere del Veneto, 'Proteste a Vicenza: Stop all'accoglienza per due migranti', 5 January 2017, available in Italian at: <http://bit.ly/2ljimv6>.

<sup>269</sup> Latina Quotidiano, 'Protesta alla Coop La Ginestra di Fondi, revoca delle misure di accoglienza per 5 nigeriani', 27 October 2016, available in Italian at: <http://bit.ly/2lj53uj>.

<sup>270</sup> Il Mattino, 'Migranti, dopo le loro proteste il prefetto revoca l'accoglienza', 25 October 2016, available in Italian at: <http://bit.ly/2jXt0qf>.

<sup>271</sup> Trapani Oggi, 'Revocata accoglienza a migranti, scoppia la protesta al centro "Villa Sant'Andrea"', 28 April 2016, available in Italian at: <http://bit.ly/2jXowzS>.

<sup>272</sup> Article 23(7) LD 142/2015.



#### 4. Freedom of movement

##### Indicators: Freedom of Movement

1. Is there a mechanism for the dispersal of applicants across the territory of the country?  
☐ Yes ☒ No
2. Does the law provide for restrictions on freedom of movement? ☒ Yes ☐ No

Italian legislation does not foresee a general limitation on the freedom of movement of asylum seekers. Nevertheless, the law specifies that the competent Prefect may limit the freedom of movement of asylum seekers, delimiting a specific place of residence or a geographic area where asylum seekers may circulate freely.<sup>273</sup> In practice, this provision has never been applied so far.

Applicants' 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. Authorisation is usually granted with permission to leave for some days. In case a person leaves the centre without permission and they do not return to the structure within a brief period of time (usually agreed with the management body), that person cannot be readmitted to the same structure and material reception conditions can be withdrawn (see [Reduction or Withdrawal of Material Reception Conditions](#)).

According to Article 10(2) LD 142/2015, in the first reception centres asylum seekers are allowed to leave the facilities during the day with the obligation to return in the evening hours. The law does not provide such a limitation for people accommodated in CAS or in SPRAR but rules concerning the entry to / exit from the centre are also laid down in an agreement signed between the body running the structure and the asylum seeker at the beginning of the accommodation period. 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 can be placed in centres all over the territory, depending on the availability of places and, as the accommodation system is thought for phases, may be moved from one centre to another, passing from: (1) first aid and accommodation centres (CPSA); to (2) first reception centres (governmental centres) or to temporary centres (CAS); and finally (3) to second accommodation centers (SPRAR structures) even if, in practice, due to the limited places in SPRAR, asylum seekers can spend all the asylum procedure in governmental centres or CAS.

Asylum seekers are often moved from one CAS to another CAS, in order to try to balance their presence on the territories. These transfers are decided by Prefectures with criteria of choice of people to move variables from place to place. Transfers cannot be appealed.

In some regions, during 2016, asylum seekers and beneficiaries of international protection had to be moved because of the discontent of the local population. In some cases, the protest of the inhabitants entirely prevented their reception, as it happened in **Gorino**, Ferrara where, on 24 October 2016, 20 asylum seekers, including 12 women and 8 children, were blocked on arrival, obliging the Prefecture to find temporary accommodation in a nearby town.

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<sup>273</sup> Article 5(4) LD 142/2015.



## B. Housing

### 1. Types of accommodation

#### Indicators: Types of Accommodation

1. Number of reception centres:<sup>274</sup>
  - ❖ First reception centres 15
  - ❖ CAS 7,005
  - ❖ SPRAR 649 projects
2. Total number of places in the reception centres:<sup>275</sup>
  - ❖ First reception centres 14,694
  - ❖ CAS 137,218
  - ❖ SPRAR 23,822
3. Total number of places in private accommodation: Not available
4. Type of accommodation most frequently used in a regular procedure:  
☒ Reception centre ☐ Hotel or hostel ☐ Emergency shelter ☐ Private housing ☐ Other
5. Type of accommodation most frequently used in an accelerated procedure:  
☐ Reception centre ☐ Hotel or hostel ☐ Emergency shelter ☐ Private housing ☒ CIE

#### 1.1. First reception: CPSA / Hotspots

LD 142/2015 states that the first rescue and assistance operations take place in the centres regulated by the L 563/1995 – the so called Apulia Law - which, though improperly, is considered to govern the first aid and reception centres (CPSA) present at the main places of disembarkation. During 2016, in addition to the existing centres placed in **Lampedusa** (Agrigento) and **Pozzallo** (Ragusa), procedures were implemented the centres in **Taranto** and **Trapani**. The law does not provide a legal framework to the operations carried out in the CPSA.

During 2016, the Government clarified that such centres served as **Hotspots** (see also **Detention**). According to the SOPs, persons should stay in these centers “as short as possible”,<sup>276</sup> but in practice they are accommodated for days or weeks. As these few centres constantly face emergency situations with arrivals, as reported by several actors, reception conditions are very poor.

#### 1.2. Governmental first reception centres

LD 142/2015 provides that the governmental first reception centres are managed by public local entities, consortia of municipalities and other public or private bodies specialised in the assistance of asylum applicants through public tender.<sup>277</sup> Moreover, the Minister of the Interior adopts a decree on the call for tender for the supply of services for the functioning of the first reception centres and of temporary accommodation structures (CAS), more than of CIE and CPSA, in order to ensure uniform reception levels in the whole national territory.<sup>278</sup>

#### Occupancy of first reception centres: 24 January 2017

| First accommodation centres | Occupancy |
|-----------------------------|-----------|
|-----------------------------|-----------|

<sup>274</sup> Both permanent and for first arrivals.

<sup>275</sup> Data are up-to-date as of 31 December 2016: Ministry of Interior, *Cruscotto statistico giornaliero*, available at: <http://bit.ly/1Wz6QeQ>. More up-to-date data as of 24 January 2017 at: Chamber of Deputies, *Dossier a cura degli Ispettori della Guardia di Finanza*, 23 January 2017.

<sup>276</sup> Hotspot SOPs, para B4.

<sup>277</sup> Article 9(2) LD 142/2015.

<sup>278</sup> Article 12(1) LD 142/2015.

|                              |               |
|------------------------------|---------------|
| Gorizia                      | 516           |
| Udine (Caserma Cavarzerani)  | 693           |
| Bologna (Mattei centre)      | 626           |
| Rome, Castelnuovo di Porto   | 845           |
| Foggia                       | 1,353         |
| Bari                         | 1,622         |
| Brindisi                     | 221           |
| Crotone                      | 1,085         |
| Catania, Mineo               | 3650          |
| Caltanissetta                | 499           |
| Agrigento, Villa Sikanìa     | 1,353         |
| Messina, ex Caserma Gasparro | 180           |
| Padova, Bagnoli di Sopra     | 828           |
| Treviso, ex Caserma Serena   | 708           |
| Venezia, Conetta di Cona     | 1,234         |
| <b>Total</b>                 | <b>14,290</b> |

Source: Chamber of Deputies, *Dossier a cura degli Ispettori della Guardia di Finanza*, 23 January 2017.

Accordingly to the Italian Roadmap, during 2016, the first reception centres have been implemented,<sup>279</sup> and as of the beginning of 2017, first reception centres hosted approximately 14,000 asylum seekers. The situation of some of these centres is particularly critical due to overcrowding. This is the case for:

- ❖ **Bari**, which can accommodate a maximum of 1,216 persons, but hosts 1,622 asylum seekers;
- ❖ **Catania Mineo**, with a maximum capacity of 3,000 persons, which hosts 3,650 asylum seekers;
- ❖ **Gorizia**, with a maximum capacity of 138, which hosts 516 asylum seekers, including places previously reserved for CIE.

### 1.3. Second-line reception: SPRAR

The structures available to host asylum seekers and refugees mainly consist of flats (82% of the total number of facilities), small reception centres (12%), and community homes (6%). The community homes are mainly addressed to unaccompanied minors.<sup>280</sup>

Funding is provided by the Interior Ministry to the municipalities selected among those participating in the national competition, published at least once every three years; the presentation of the project by the municipalities is purely voluntary and foresees a cost-sharing mechanism.

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 to reach up to 16,000 places in the period 2014-2016.<sup>281</sup> Moreover, to face the 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>282</sup> With specific regard to the increased funds for reception conditions, Decree-Law 119/2014 established an additional €50.8 million to the National Funds for policies and services of asylum, aimed at enlarging the SPRAR system, and created a new provisional fund to face the exceptional migratory flows to Italy, allocating €62.7 million. Through a Decree of 27 April 2015, the Ministry of Interior established specific reception capacity for unaccompanied

<sup>279</sup> See Italian Roadmap, 28 September 2015, 4.

<sup>280</sup> Anci et al., *Rapporto sulla protezione internazionale in Italia*, 2016, available at: <http://bit.ly/2ljoIKF>, 152.

<sup>281</sup> Decree of the Head of Department for Civil Liberties and Immigration, 17 September 2013.

<sup>282</sup> Article 1(2) LD 120/2013.

children, with 1,000 places in SPRAR accommodation to be provided by the end of 2016.<sup>283</sup> Thanks to the Decree of 7 August 2015 of the Minister of the Interior, an additional 10,000 places have become available within the SPRAR system through a public notice addressed to local authorities published on 7 October 2015.<sup>284</sup>

In order to promote accession to the SPRAR system by a larger number of local authorities, LD 142/2015 has introduced the possibility of derogating from the limit established by law, under which the state funding cannot exceed the quota of 80% of the total cost of each project.

On 10 August 2016, the Ministry of Interior issued a Decree to facilitate the accession of municipalities to SPRAR system, making it possible at any time without deadlines. On 11 October 2016, the Ministry has issued a Decree to promote the expansion of the SPRAR system. The Ministry aims to encourage municipalities to host asylum seekers in their territories, inviting Prefectures not to open new CAS or to gradually close the existing ones in those territories where the municipalities participate in SPRAR.

In the last five years, funding for the SPRAR reception capacity has grown exponentially: from 3,979 places financed in 2011 to 9,356 places between 2012 and 2013, and then to 20,965 places financed for 2014-2016, in addition to another 10,000 places planned for the 2016-2017 period.

At present, 649 reception projects have been adopted, hosting a total of 23,107 persons. Out of these, 99 reception projects are dedicated to unaccompanied children and host 2,039 minors, while 45 reception projects are destined to persons with mental disorders and disabilities, with 574 persons accommodated. The total number of accommodation places in the 649 SPRAR projects financed as of 24 January 2017 amounted to around 25,934.<sup>285</sup>

Though considerable, the growth of SPRAR is not sufficient to meet the accommodation needs, as SPRAR places cover only the 20% of the effective reception demand.

#### 1.4. Temporary reception: CAS

In case of temporary unavailability of places in the first and second reception centres, LD 142/2015 provides the use of emergency centres (*centri di accoglienza straordinaria*), identified and activated by the Prefectures, in cooperation with the Interior Ministry, and notified to the local authority in whose territory the structures will be set up.<sup>286</sup>

Activation is reserved for emergency cases of substantial arrivals but applies in practice to all situations in which, like the current one, the places in ordinary centres are not sufficient to meet the reception demand.

The CAS are specifically designed not only for the first accommodation phase but also to provide second-line reception for the time “strictly necessary” until the transfer of asylum seekers to a SPRAR structure.<sup>287</sup> The services guaranteed are merely essential as in the first reception centres.<sup>288</sup>

The CAS system, designed as temporary and preparatory to SPRAR, has expanded to the point of being absorbed in the ordinary system, if not entailing a total reorganisation of the reception system. LD 142/2015 missed the opportunity to actually change the system and simply named these centres no longer as extraordinary but as “temporary centres” (*strutture temporanee*).

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<sup>283</sup> Article 4 MoI D 27/4/2015.

<sup>284</sup> Decree of the Ministry of Interior, 7 August 2015, available at: <http://bit.ly/1QjnPyF>.

<sup>285</sup> Chamber of Deputies, *Dossier a cura degli Ispettori della Guardia di Finanza*, 23 January 2017.

<sup>286</sup> Article 11 LD 142/2015.

<sup>287</sup> LD 142/2015: Article 11(1) and (3) refers both to Article 9 (first reception centres) and to Article 14 (second reception in SPRAR).

<sup>288</sup> Article 11(2) and Article 10(1) LD 142/2015.

As of the end of December 2016, CAS hosted over 75% of the population with approximately 137,218 persons, while SPRAR hosted 23,822 and first reception centres 14,694.<sup>289</sup>

### 1.5. Other types of accommodation

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 ascertain the number of available places. The function of these structures is relevant especially in emergency cases or as integration pathways after or in place of SPRAR. Some of these experiences are ongoing for example in **Bologna**,<sup>290</sup> and **Trieste**.<sup>291</sup>

Apart from churches and families involved in the reception system, several churches have already accommodated refugees and many others have decided to do so following the Pope's call of 6 September 2015. As recorded in the report curated by Anci, as of 1 June, there were 2016 almost 5,000 asylum seekers and refugees accommodated in parishes and families connected to the Church.<sup>292</sup>

## 2. Conditions in reception facilities

### Indicators: Conditions in Reception Facilities

1. Are there instances of asylum seekers not having access to reception accommodation because of a shortage of places? ☒ Yes ☐ No
2. What is the average length of stay of asylum seekers in the reception centres? Not available
3. Are unaccompanied children ever accommodated with adults in practice? ☒ Yes ☐ No

By law, reception conditions have only to satisfy a basic level in first reception centres and in temporary centres (CAS), while SPRAR projects have to develop so-called "integrated accommodation", centred on the individual paths and aimed at providing the person hosted all the tools to regain individual autonomy.

LD 142/2015 clarifies that in the first reception centres and in the temporary ones the respect of private life, gender and age specific concerns, physical and mental health, family unit and the situation of vulnerable persons shall be ensured. Measures to prevent any form of violence and to ensure the safety and security of applicants shall be adopted.<sup>293</sup>

SPRAR projects, instead, ensure interpretation and linguistic-cultural mediation services, legal counselling, teaching of the Italian language and access to schools for minors, health assistance, socio-psychological support in particular to vulnerable persons, training and re-training, support at providing employment, counselling on the services available at local level to allow integration locally, information on (assisted) voluntary return programmes, as well as information on recreational, sport and cultural activities.<sup>294</sup>

LD 142/2015 also clarifies that asylum applicants are free to exit from the reception centres during the daytime but they have the duty to re-enter during the night time. The applicant can ask the Prefect a temporary permit to leave the centre in different hours for relevant personal reasons or for those related

<sup>289</sup> Ministry of Interior, *Cruscotto statistico giornaliero*, 31 December 2016, available at: <http://bit.ly/1Wz6QeQ>.

<sup>290</sup> In Bologna, the project is coordinated by the cooperative Camelot, that also created in April 2016 a website to connect the families involved: <http://bit.ly/2lkoEv0>.

<sup>291</sup> In Trieste, the project started by the end of 2015 and is coordinated by the NGO Ics-Ufficio Rifugiati.

<sup>292</sup> Anci et al., *Rapporto sulla protezione internazionale in Italia*, 2016, available at: <http://bit.ly/2ljoIKF>, 133.

<sup>293</sup> Article 10(1) LD 142/2015.

<sup>294</sup> Article 30 Mol Decree 10 August 2016.

to the asylum procedure.<sup>295</sup> Such limits are not provided by law for the SPRAR structures and are eventually applied by the bodies managing the projects.

In practice, reception conditions vary considerably among different accommodation centres and also between the same type of centres. While the services provided are the same, the quality can differ depending on the management bodies running the centres.

While the SPRAR publishes annual report on its reception system, no comprehensive and updated reports on reception conditions in all the Italian territory are available.

It is not possible to determine an overall average of duration of stay. However, asylum seekers remain in reception centres throughout the whole asylum procedure, which may last several months, as well as during the appeal procedure. LD 142/2015 does not provide any timeframe on the reception, since this has to be provided since the manifestation of the intention to make an asylum request and during the asylum procedure.

## 2.1. Conditions in governmental first reception centres

After the entry into force of LD 142/2015, all the former CARA have been converted into first reception centres, but nothing has substantially changed compared to the past. The purpose of these reception centres is to offer hospitality to asylum seekers when justified by needs of identification,<sup>296</sup> and of medical tests for the detection of vulnerabilities, to take into account for a later and more focused placement.<sup>297</sup>

However, the law does not specify any maximum time limit for the stay of asylum seekers in these centres. The whole mechanism of reception designed phases is therefore bypassed through the extensive use of ambiguous wording in the law: applicants stay in such centres for the time “necessary” to carry out the necessary operations, but, once concluded, they may still remain there for the time “strictly necessary” before the transfer into SPRAR structures.<sup>298</sup>

The designated facilities to accommodate asylum seekers in this stage are collective reception centres, facilities until now connoted by large structures, isolation from urban centres and poor or otherwise difficult contacts with the external world.

Generally speaking, all governmental centres, as the former CARA, 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 systematically 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>299</sup>

Nevertheless, it must be pointed out that the material conditions also vary from one centre to another 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 centre.

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<sup>295</sup> Article 10(2) LD 142/2015.

<sup>296</sup> Article 9(1) LD 142/2015.

<sup>297</sup> Article 9(4) LD 142/2015.

<sup>298</sup> Article 9(5) LD 142/2015.

<sup>299</sup> Council of Europe Commissioner for Human Rights, *Report by Nils Muiznieks, Commissioner for Human Rights of the Council of Europe, following his visit to Italy from 3 to 6 July 2012*, CommDH(2012)26, 18 September 2012, 36.

More detailed information on specific centres are provided in the reports published by the NGOs belonging to the campaign [LasciateCIEntrare](#). In June 2016, the NGOs visited the centre based in Castelnuovo di Porto (Rome), former CARA,

### **First reception centre of Castelnuovo di Porto, Rome**

The centre based in Castelnuovo di Porto, 30 km from Rome, is established in the compound of a former multifunctional centre of the Civil Protection Department. It is a huge fenced complex in cement, surrounded by an open area with no services.

According to the Roadmap and as confirmed by Vice-Prefect Leone during the visit performed, it is destined to become one of the 4 Italian Hubs for the accommodation of people waiting to be relocated. The staff of the centre was represented by a total of 117 workers.

The maximum capacity should be 650 places but at the moment of the visit the persons accommodated were 844, including international protection beneficiaries, asylum seekers and people waiting for relocation. Asylum seekers are separated by gender. The NGOs records that the rooms are generally unadorned, without tents, and with mildew. People do not receive information about their relocation procedure and can be notified about the transfers only a few hours before the travel.

Pocket money of €2.50 per day per person is bestowed on goods that can be purchased inside the small store inside the centre. Among the goods purchased there are biscuits, toothpaste, cigarettes, phone cards, as well as train and subway tickets.

The average time of stay in the centre is 3-4 months according to the managing body, but the NGOs detected the presence of people staying there for one year and eight months.

Source: Lunaria, *Il mondo di dentro, il sistema di accoglienza per richiedenti asilo e rifugiati a Roma*, October 2016, 13; LasciateCIEntrare, *Report20giugno*, October 2016.

In July 2016, LasciateCIEntrare tried to access the former military barracks of Cavarzerani, based in Udine, but the visit was allowed only to the MEP Elly Schlein. A follow up visit was held in January 2017.

### **First reception centre of Cavarzerani, Udine**

The centre is divided into two buildings and a tent area. In the first building there were six big rooms, with 20/25 beds. In the bathrooms, they found that five showers were broken, the sinks had leaks of water and hot water was continuously interrupted. In the second building there were 9 rooms with about 165 beds.

The tent area had more critical conditions. There were 38 tents, with 9-12 persons each. Inside the tents there was no light and no heating, despite critical temperatures in the winter. Bathrooms and showers were too few: about 10 bathrooms and 14 showers for at least 400 persons, with inadequate hygienic conditions.

The MEP Elly Schlein, who visited the centre on 29 July 2016 reported that the persons accommodated at the moment of the visit were 789, almost exclusively Pakistani asylum seekers. In January 2017, there were 644 people accommodated, out of whom 400 in the buildings and the rest in the tent area. Most persons were Pakistani nationals.

People could make the first access to the centre only from 19:30 to 20:30 every day and could leave the centre during the day but they could return only when the gates were open. In all the centre, there was no access to a legal support service. No form of pocket money was planned for people who were in the centre. The management body explained that the Ministry was in debt of at least €3 million and that the last payment had been made in September 2015.



The average duration of stay was reported at 6-8 months, although this fluctuates given that the majority of asylum seekers hosted there are Dublin cases.

Sources: LasciateCIEntrare, *Report20giugno*, October 2016; *Report dell' ingresso alla ex caserma Cavarzerani*, 26 January 2017: <http://bit.ly/2jXFSwi>.

In the centre of **Cona**, Veneto, on 2 January 2017, overcrowding and the lack of adequate staff in number have prevented the authorities' ability to assist an Ivorian woman, who later died.<sup>300</sup>

## 2.2. Conditions in SPRAR centres

The accommodation conditions in the facilities of the SPRAR system differ considerably from those in first reception centres. In bigger facilities of the SPRAR, 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 recreational activities should be guaranteed. SPRAR structures have to provide hygienic services which are adequate and proportionate to the number of asylum seekers hosted, that is 1 bathroom per 6 individuals. With regard to the cleaning service of the facility, asylum seekers are more or less involved depending on the type of SPRAR centre.

In some SPRAR structures, it is possible to cook autonomously, using either pocket money given by the managing entity to buy food – the amount of which varies mainly depending on the typology of beneficiaries, as more is provided to vulnerable individuals – 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>301</sup>

The abovementioned 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.

Training and adjournment courses are organised by the authority in charge of the management of the entire system (*Servizio centrale del sistema di protezione*) on an annual basis, which are addressed to the personnel who operates in all SPRAR facilities located on the national territory.<sup>302</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 integration paths.

## 2.3. Conditions in CAS

According to LD 142/2015, services guaranteed in temporary centres (CAS) are the same guaranteed in first reception centres.<sup>303</sup> As already highlighted, the insufficient expansion of the SPRAR has been at the origin of the creation of a permanent state of emergency and of the proliferation of temporary structures where asylum seekers can spend all of the asylum procedure. With this, they also risk being immediately thrown out of the reception system when receiving a positive decision (see [Content of Protection: Housing](#)).

<sup>300</sup> Corriere de la Sera, 'Muore una ragazza, rivolta nel centro di accoglienza di Cona: i migranti assediano per ore 25 operatori', 3 January 2017, available in Italian at: <http://bit.ly/2hIFbWU>.

<sup>301</sup> ANCI et al., *Rapporto sulla protezione internazionale in Italia 2014*, October 2014, 17.

<sup>302</sup> SPRAR, *Manual for operators*, 9 and 22.

<sup>303</sup> Article 11(2) and Article 10(1) LD 142/2015.



The chronic emergency has forced the improvisation of interventions and favoured the entry into the accommodation network of bodies lacking the necessary skills and, in the worst cases, only interested in profits.

Reports published throughout 2016 by organisations such as Doctors for Human Rights (MEDU),<sup>304</sup> NAGA,<sup>305</sup> Lunaria,<sup>306</sup> and LasciateCIEntrare together with Libera and Cittalia,<sup>307</sup> clearly show the serious problems and deficiencies of many of such structures: unsuitable structures reception; lack of hygiene and lack of safety conditions minimally adequate for both guests and workers; lack of preparation of the staff and staff shortages. A few recent observations from late 2016 and early 2017 are recounted below by way of example:

**Cona, Veneto:** Several organisations, including ASGI, requested Rule 39 interim measures from the ECtHR on 11 January 2017 due to the inhuman and degrading conditions in the centre facing three children and an adult. While the Court has requested information from the Italian authorities, the Prefecture has transferred the children concerned out of the centre, so as to prevent the Court from granting interim measures.<sup>308</sup>

**Piano Torre di Isnello, Palermo:** The centre is located far away from the town of Isnello. During a visit by LasciateCIEntrare on 29 December 2016, the centre hosted 90 persons. Heating is available, although residents reported that it is underused by the management of the centre, and the clothes provided are insufficient for all guests and inadequate for cold weather. Rooms, on average the size of a double room, were reported to be overcrowded, as each room is occupied on average by 6 people, with the exception of a room hosting 10 people.<sup>309</sup>

**Telese, Campania:** On 19 November 2016, LasciateCIEntrare activists met some asylum seekers accommodated in the centre for more than six months. They had no knowledge of the Italian language and they had no basic legal information about the asylum procedure they were involved in. They lacked adequate winter clothing and they complained about weak relations with the social operators of the CAS. They also reported they had no interaction with the local community. After some weeks, the situation recorded was even worse because of the intermittent availability of hot water and electricity.<sup>310</sup>

**Montalto Uffugo, Calabria:** The centre, located far away from the town, consists of two areas, a two storey house and a smaller house: The first one has 4 large bedrooms, each with 5 beds, but a single toilet and two showers on the floor and two more bathrooms at the lower level. The second one has two bedrooms for seven guests and one bathroom. LasciateCIEntrare visited the centre on 29 August 2016 and found satisfactory formal compliance with standards but difficult relations with the manager of the structure and lack of real paths of inclusion for the residents.<sup>311</sup>

However, as the functioning of CAS depends on agreements by the management bodies with the Prefectures and on the professionalism of the bodies involved, there are notable cases in which the reception conditions are equal to those of SPRAR, such as the CAS of **Trieste**.<sup>312</sup>

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<sup>304</sup> MEDU, *Asilo Precario*, April 2016, available in Italian at: <http://bit.ly/2ljmx6>.

<sup>305</sup> NAGA, *(Ben)venuti! Indagine sul sistema di accoglienza dei richiedenti asilo a Milano e provincia*, April 2016, available in Italian at: <http://bit.ly/2kDbCZT>.

<sup>306</sup> Lunaria, *Il mondo di dentro. Il sistema di accoglienza di richiedenti asilo e rifugiati a Roma*, October 2016, available in Italian at: <http://bit.ly/2fy1cac>.

<sup>307</sup> LasciateCIEntrare et al., *InCAsStrati*, February 2016, available in Italian at: <http://bit.ly/2ljAFQI>.

<sup>308</sup> ASGI, 'Cona(VE): minorenni nel centro di accoglienza. La CEDU chiede chiarimenti all'Italia', 15 January 2017, available in Italian at: <http://bit.ly/2jY3uWl>.

<sup>309</sup> LasciateCIEntrare, *Migranti, visita al CAS di Piano Torre di Isnello (PA): il report*, 10 January 2017, available in Italian at: <http://bit.ly/2lfgQhq>.

<sup>310</sup> LasciateCIEntrare, *Migranti, LasciateCIEntrare visita al Centro di Accoglienza Straordinaria di Telese (BN)*, 10 January 2017, available in Italian at: <http://bit.ly/2jY2xsp>.

<sup>311</sup> LasciateCIEntrare, *Migranti, LasciateCIEntrare visita il Centro di Accoglienza Straordinaria di Montalto Uffugo (CS)*, 29 December 2016, available in Italian at: <http://bit.ly/2khklua>.

<sup>312</sup> ASGI, *Il diritto d'asilo tra accoglienza ed esclusione* (Dell'Asino, 2015).

## C. Employment and education

### 1. Access to the labour market

#### Indicators: Access to the Labour Market

- |  |   |
|--|---|
| 1. Does the law allow for access to the labour market for asylum seekers?<br>❖ If yes, when do asylum seekers have access the labour market? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No<br>2 months |
| 2. Does the law allow access to employment only following a labour market test?  | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No             |
| 3. Does the law only allow asylum seekers to work in specific sectors?<br>❖ If yes, specify which sectors                                    | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No             |
| 4. Does the law limit asylum seekers' employment to a maximum working time?<br>❖ If yes, specify the number of days per year                 | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No             |
| 5. Are there restrictions to accessing employment in practice?   | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No             |

According to the previous Reception Decree, asylum seekers had the right to work after 6 months from the moment they filed the asylum application, if the procedure was still ongoing and the delay was not due to the conduct of the asylum seeker.<sup>313</sup> According to LD 142/2015, an asylum applicant can start to work within 60 days from the moment he or she lodged the asylum application.<sup>314</sup> Even if they start working, however, their stay permit cannot be converted in a work stay permit.<sup>315</sup>

In addition, LD 142/2015 states that asylum applicants living in the SPRAR centres may attend vocational training when envisaged in programmes eventually adopted by the public local entities.<sup>316</sup>

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 projects which include vocational training and internships.<sup>317</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 Asylum, Migration and Integration Fund (AMIF). In this case, the Ministry of Interior can finance specific projects to NGOs at national level concerning integration and social inclusion. The projects financed under AMIF are, however, very limited in terms of period of activity and in number of beneficiaries.

Municipalities can also finance vocational trainings, internships and specific employment bursaries (*"borse lavoro"*). 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 governmental centres.

Even though the law makes a generic reference to the right to access to employment without indicating any limitations, and albeit 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.

<sup>313</sup> Article 11(1) and (3) LD 140/2005.

<sup>314</sup> Article 22(1) LD 142/2015.

<sup>315</sup> Article 22(2) LD 142/2015.

<sup>316</sup> Article 22(3) LD 142/2015.

<sup>317</sup> SPRAR, *Manual for operators*, 34-37.

Moreover, as reported to ASGI, many Employment Centres do not allow asylum seekers under the Dublin procedure to enroll in the lists of unemployed persons. This happens for examples in **Veneto** region and in **Friuli Venezia Giulia** region.

In addition, the objective factors affecting the possibility of asylum seekers to find a job are the current financial crisis affecting Italy, language barriers, the remote location of the accommodation and the lack of specific support founded on their needs.

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: Access to Education

- |  |   |
|--|---|
| 1. Does the law provide for access to education for asylum-seeking children? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 2. Are children able to access education in practice?                        | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |

Italian legislation provides that all minors, both Italian and foreigners, have the right and the obligation until the age of 16 to take part in the national education system. Under LD 142/2015, unaccompanied asylum seeking children and children of asylum seekers exercise these rights and are also admitted to the courses of the Italian language.<sup>318</sup> LD 142/2015 makes reference to Article 38 of the Consolidated Act on Immigration, which states that foreign children present on Italian territory are subject to compulsory education, emphasising that all provisions concerning the right to education and the access to education services apply to foreign children as well.

This principle has been further clarified by Article 45 PD 394/1999 which gives foreign children equal rights to education as for Italian children, even when they are in an irregular situation,. Asylum seeking children have access to the same public schools as Italian citizens and are entitled to the same assistance and arrangements in case they have special needs. They are automatically integrated in the obligatory National Educational System. No preparatory classes are foreseen at National level, but since the Italian education system envisages some degree of autonomy in the organisation of the study courses, it is possible that some institutions organise additional courses in order to assist the integration of foreign children.

In practice, the main issues concerning school enrolment lie in: the reluctance of some schools to enrol a high number of foreign students; the refusal from the family members and/or the child to attend classes; and the insufficiency of places available in schools located near the accommodation centres and the consequent difficulty to reach the schools if the centres are placed in remote areas.

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<sup>318</sup> Article 21(2) LD 142/2015.

## D. Health care

### Indicators: Health Care

1. Is access to emergency healthcare for asylum seekers guaranteed in national legislation?  
☒ Yes ☐ No
2. Do asylum seekers have adequate access to health care in practice?  
☒ Yes ☐ Limited ☐ No
3. Is specialised treatment for victims of torture or traumatised asylum seekers available in practice?  
☐ Yes ☒ Limited ☐ No
4. If material conditions are reduced or withdrawn, are asylum seekers still given access to health care?  
☒ Yes ☐ Limited ☐ No

Asylum seekers and beneficiaries of international protection must enrol in the National Health Service.<sup>319</sup> They enjoy equal treatment and full equality of rights and obligations with Italian citizens regarding the mandatory contributory assistance provided by the National Health Service in Italy.

There is no distinction between asylum seekers benefitting from material reception conditions and those who are out of the reception system, since all asylum seekers benefit of the National Health System.

The right to medical assistance is acquired at the moment of the registration of the asylum request but very often the exercise of this fundamental right is hindered and severely delayed, depending upon the attribution of the tax code, assigned by *Questuras* when formalising the asylum application. This means that it reflects the delay in proceeding to “C3”, in some territories corresponding even to several months (see section on [Registration](#)).

Pending enrollment, asylum seekers only have access to sanitary treatments ensured by Article 35 of the Consolidated Act on Immigration (TUI) to irregular migrants: they have access to emergency care and essential treatments and they benefit from preventive medical treatment programmes aimed at safeguarding individual and collective health.<sup>320</sup>

During the 2016 the delay has been accentuated because of the attribution to asylum seekers of special tax codes other than the ones attributed to other people, consisting in numerical and not alphanumeric codes.<sup>321</sup> Insufficient information provided for public offices and the failure to update the computer systems has effectively prevented access to this as to other fundamental rights.

Asylum seekers have to register with the national sanitary service in the offices of the health board (ASL) competent for the place they declare to have a domicile.<sup>322</sup> Once registered, they are provided with the European Health Insurance Card, *tessera sanitaria* (TEAM), whose validity is related to the one of the permit of stay. Registration entitles the asylum seeker to the following health services:

- Free choice of a general doctor from the list presented by the ASL and choice of a paediatrician for children (free medical visits, home visits, prescriptions, certification for access to nursery and maternal schools, obligatory primary, media and secondary schools);
- Special medical assistance through a general doctor or paediatrician's request and on presentation of the health card;
- Midwifery and gynaecological visits at the “family 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.

<sup>319</sup> Article 34 TUI; Article 16 PD 21/2015; Article 21 LD 142/2015.

<sup>320</sup> Article 21 LD 142/2015; Article 16 PD 21/2015.

<sup>321</sup> Mol Circular of 1 September 2016; Revenue Agency Circular n. 8/2016.

<sup>322</sup> Article 21(1) LD 142/2015, citing Article 34(1) LD 286/1998; Accordo della Conferenza Stato-Regioni del 20 dicembre 2012 “Indicazioni per la corretta applicazione della normativa per l'assistenza sanitaria alla popolazione straniera da parte delle Regioni e Province Autonome italiane”.

The right to medical assistance should not expire in the process of the renewal of the permit of stay,<sup>323</sup> however in practice, asylum seekers with an expired permit of stay have no guarantee of access to non-urgent sanitary treatments for a significant length of time due to the bureaucratic delays in the renewal procedure. This also means that where asylum seekers do not have a domicile to renew their permit of stay, for example because their accommodation right has been revoked, they cannot renew the health card.

Medical assistance is extended to each regularly resident family member under the applicant's care in Italy and is recognised for new-born babies of parents registered with the National Health System.<sup>324</sup>

Regarding the effective enjoyment of health services by asylum seekers and refugees, it is worth noting that there is a general misinformation and a lack of specific training on international protection among medical operators.<sup>325</sup> In addition, medical operators are not specifically trained on the diseases typically affecting asylum seekers and refugees, which may be very different from the diseases affecting Italian population.<sup>326</sup>

One of the most relevant obstacles to access health services is the language barrier. Usually medical operators only speak Italian and there are no cultural mediators or interpreters who could facilitate the mutual understanding between operator and patient.<sup>327</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, as highlighted by MSF in the report *Fuoricampo* published on March 2016 of the informal accommodation in the metropolitan areas.<sup>328</sup>

### Contribution to health care costs

Asylum seekers benefit from free of charge health services on the basis of a self-declaration of destitution submitted to the competent ASL. The medical ticket exemption is due to the fact that asylum seekers are treated under the same rules as unemployed Italian citizens,<sup>329</sup> but the practice is very different throughout the country.

In all regions, the exemption is valid for the period of time in which applicants are unable to work, corresponding by law to 2 months from the submission of the asylum application (see [Access to the Labour Market](#)). During this period they are assimilated to unemployed people and granted with the same exemption code.

For the next period, in some regions such as **Lazio**, **Veneto** and **Toscana**,<sup>330</sup> asylum seekers are no longer exempted from the sanitary ticket because they are considered inactive and not unemployed. In other regions such as **Piemonte** and **Lombardia**, the exemption is extended until asylum seekers do not actually find a job. In order to maintain the ticket exemption, asylum seekers need to register in the registry of the job centres ("*centri per l'impiego*") attesting their unemployment.

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<sup>323</sup> Article 42 PD 394/1999.

<sup>324</sup> Article 22 Qualification Decree.

<sup>325</sup> See M Benvenuti, *La protezione internazionale degli stranieri in Italia*, Jovene Editore, Napoli 2011, 263.

<sup>326</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>327</sup> *Ibid.*

<sup>328</sup> MSF, *Fuoricampo: Richiedenti asilo e rifugiati in Italia: insediamenti informali e marginalità sociale*, March 2016, available in Italian at: <http://bit.ly/1S5IHGh>.

<sup>329</sup> Ministry of Health Circular No. 5 of 24 March 2000.

<sup>330</sup> Information provided to ASGI by the Italian Society of Migration Medicine (SIMM), In **Lazio**, the exemption is valid for 6 months, in **Toscana** for 2 months and another 6 in case of unemployment, and in **Veneto** for 2 months.

On 18 April 2016, ASGI together with other NGOs sent a letter to the Ministry of Health requesting that effect be given to Article 17(4) of the recast Reception Conditions Directive, according to which asylum seekers may be required to contribute to the costs for health care only if they have sufficient resources, for example if they have been working for a reasonable period of time. ASGI also asked to consider that from the approval of LD 150/2015 on granting the right to the exemption from participation in health spending, there can no longer be a distinction between the unemployed and the inactive.<sup>331</sup> As of 9 of May 2016, the Ministry of Health replied to have involved the Ministry of Economy and the Ministry of Labour and Social Policy in order to achieve a uniform interpretation of the aforementioned rules.

### Specialised treatment for vulnerable groups

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

In order to ensure the protection of the health of foreign citizens in Italy, ASGI has collaborated with the Italian Society of Migration Medicine (SIMM) since 2014, monitoring and reporting cases of violation of the constitutional right to health.

From 2015, ASGI also collaborates with MSF, providing legal support for migrants victims of violence. As of April 2016, the two organisations have started a project in **Rome** opening a centre specialising in the rehabilitation of victims of torture.<sup>332</sup> The project is intended to protect but also to assist in the identification of victims of torture who, without proper legal support, are unlikely to be treated as vulnerable people.

## E. Special reception needs of vulnerable groups

### Indicators: Special Reception Needs

1. Is there an assessment of special reception needs of vulnerable persons in practice?  
☐ Yes ☒ No

Article 17 LD 142/2015 provides that accommodation is provided taking into account the special needs of the asylum seekers, in particular those of vulnerable persons such as children, unaccompanied minors, disabled persons, elderly people, pregnant women, single parents with children under 18, persons who have been subjected to torture, rape or other forms of psychological, physical or sexual violence, victims of trafficking and genital mutilation as well as persons affected by serious illness or mental disorders (see section on [Identification](#)).

There are no legal provisions on how, when and by whom this assessment should be carried out. LD 142/2015 provides that asylum applicants undergo a health check since they enter the first reception centres and in temporary reception structures to assess their health condition and special reception needs.<sup>333</sup> The Decree has introduced a more protective norm providing that special services addressed to vulnerable people with special needs shall be ensured in first reception centres and SPRAR structures.<sup>334</sup>

PD 21/2015 clarifies the need to set up specific spaces within CARA (now “governmental first reception centres”) where services related to the information, legal counseling, psychological support, and receiving

<sup>331</sup> Article 19 LD 150/2015 states that “unemployed” are workers who declare, in electronic form, their immediate availability to exercise work activities.

<sup>332</sup> See Redattore Sociale, ‘Migranti, apre a Roma il centro di riabilitazione per le vittime di tortura’, 4 April 2016, available in Italian at: <http://bit.ly/1ShpCGG>.

<sup>333</sup> Articles 9(4) and 11(1) LD 142/2015.

<sup>334</sup> Article 17(3)(4) LD 142/2015.

visitors are ensured.<sup>335</sup> Where possible, adult vulnerable people are placed together with other adult family members already present in the reception centres.<sup>336</sup> The manager of reception centres shall inform the Prefecture on the presence of vulnerable applicants for the possible activation of procedural safeguards allowing the presence of supporting personnel during the personal interview.<sup>337</sup>

With regard to reception in SPRAR centres, the Minister of Interior shall issue Guidelines for the implementation of services, including those addressed to persons with special needs.<sup>338</sup> Also in SPRAR centres, special reception measures should be set up to meet the specific needs of asylum seekers.<sup>339</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.

### Survivors of torture

In practice, it may happen that torture victims remain in a governmental or temporary centre without any possibility to be transferred to a SPRAR centre due to lack of availability of places.

### Families and children

LD 142/2015 specifies that asylum seekers are accommodated in structures which ensure the protection of family unity comprising of spouses and first-degree relatives.<sup>340</sup>

Both in SPRAR centres and in first line reception centres, the management body of the accommodation centres should respect the family unity principle.<sup>341</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 in governmental centres that families are divided in case the accommodation conditions are deemed not adequate and suitable for children. In these situations mothers and children are hosted in a facility, and men in another. The centre of **Gorizia** is an example where families are usually divided. By contrast, in some other centres, former CARA, families are accommodated together, like for instance in **Castelnuovo di Porto** near Rome, **Mineo** close to Catania and **Crotone**, Calabria region.

In some circumstances, it may occur that families accommodated in governmental or temporary centres 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 the composition of the family, its vulnerability and/or health problems and the number of asylum seekers waiting 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 of the rise of tensions and violence.

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<sup>335</sup> Article 9(3) PD 21/2015.

<sup>336</sup> Article 17(5) LD 142/2015.

<sup>337</sup> Article 17(7) LD 142/2015.

<sup>338</sup> Article 14(2) LD 142/2015.

<sup>339</sup> Article 17 LD 142/2015.

<sup>340</sup> Article 10(1) LD 142/2015.

<sup>341</sup> SPRAR, *Manual for operators*, 7 and 13.



Based on NGOs' experience, no specific or standardised mechanisms are put in place to prevent gender-based violence in reception centres. As a general rule, permanent law enforcement personnel is present outside governmental centres with the task of preventing problems and maintaining public order. Generally speaking, the management body of governmental centres divides each family from the others hosted in the centre. Women and men are always separated.

### **Unaccompanied children**

The LD 142/2015 clarifies that while applying the reception measures set out in this decree, the best interests of the child have a character of priority, in order to ensure life conditions suitable for a minor, with regard to protection, well-being and development, including social development, in accordance with Article 3 of the Convention on the Rights of the Child.<sup>342</sup>

In order to evaluate the best interests of the child, the minor shall be heard, taking into account his or her age, the extent of his or her maturity and personal development, also for the purpose of understanding his or her past experiences and to assess the risk of being a victim of trafficking, and the possibility of family reunion pursuant to Article 8(2) of the Dublin III Regulation as long as it corresponds to the best interests.<sup>343</sup>

By law the reception of unaccompanied children is ensured by the local public entities (municipalities) on the basis of a decision taken by the Juvenile Court. The individuals working with the minors shall be properly skilled or shall in any case receive a specific training and have the duty to respect the privacy rights in relation to the personal information and data of the minors.<sup>344</sup>

Article 19(1) LD 142/2015 provides that, for immediate relief and protection purposes, unaccompanied minors are accommodated in governmental first reception facilities for the strictly necessary time, in any case not exceeding 60 days, to identify and assess the age of the minor and to receive any information on the rights recognised to the minor and on the modalities of exercise of such rights, including the right to apply for international protection. Throughout the time in which the minor is accommodated in the first relief facility, one or more meetings with a developing age psychologist are provided, when necessary, in presence of a cultural mediator, in order to understand the personal condition of the minor, the reasons and circumstances of the departure from his or her home country and his or her travel, and also his or her future expectations.<sup>345</sup>

The Ministry of Interior Decree issued on 1 September 2016 has identified the structural requirements and the services ensured in such centres.<sup>346</sup> The Decree states that these centres are located in easily accessible places in order to ensure access to services and social life of the territory and that each structure can accommodate up to a maximum of 30 minors.<sup>347</sup>

The continuation of the reception of the minor is ensured when unaccompanied minors apply for international protection. These minors have access to the SPRAR centres.<sup>348</sup> In case of temporary unavailability of the SPRAR centres, the assistance and reception of the minor is temporarily granted by the public authority of the Municipality where the minor is accommodated.<sup>349</sup>

With regard to the reception of unaccompanied children *not* seeking asylum, L 190/2014 establishes that the National Asylum Fund, previously funding only projects for children seeking asylum, is now available

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<sup>342</sup> Article 18 (1) LD 142/2015.

<sup>343</sup> Article 18(2) LD 142/2015.

<sup>344</sup> Article 18(5) LD 142/2015.

<sup>345</sup> Article 19(1) LD 142/2015.

<sup>346</sup> Ministry of Interior Decree of 1 September 2016 on "Establishment of first reception centres dedicated to unaccompanied minors".

<sup>347</sup> Article 3 Ministry of Interior Decree of 1 September 2016.

<sup>348</sup> Article 19(2) LD 142/2015.

<sup>349</sup> Article 19(3) LD 142/2015.

also for reception projects for unaccompanied children not seeking asylum. On 27 April 2015, the Ministry of Interior issued a Decree on the modalities of funding for such projects. In addition, according to the Stability Law 2015, the difference between unaccompanied minors seeking or not seeking asylum is eliminated only with regard to reception, therefore the number of minors accommodated in SPRAR centres will increase.

Unaccompanied minors cannot be held or detained in governmental reception centres for adults and CIE.<sup>350</sup> However, during 2016, both due to the problems related to age assessment (see [Identification](#)) and to the unavailability of places in dedicated shelters, there have been reported cases of minors accommodated in adults' reception centres.

In January 2017, at least 30 minors have been reported to be in the CAS of **Cona**, Venice, which is not authorised to host unaccompanied minors. This was the subject of appeals by ASGI and other NGOs to the ECtHR on overcrowding and the degrading conditions in which people are accommodated (see [Conditions in CAS](#)).

More generally, ASGI has reported cases of children accommodated in inadequate structures in 2016. This happened in in **Como**, where from 14 July to 23 August 2016, 454 unaccompanied minors readmitted in Italy from Switzerland were entrusted by the Italian police to the Head of Caritas in Como and then placed in a structure at the Parish of **Rebbio**, not authorised for the reception of minors. Costs incurred for the reception of these children they were not covered by any institution.<sup>351</sup>

Decree-Law 113/2016, implemented by L 160/2016, has amended Article 19 LD 142/2015 by introducing the paragraph 3-bis, according to which in case of huge arrivals of unaccompanied minors and unavailability of the dedicated reception centres, the use of temporary shelters (CAS) to accommodate minors is permitted.<sup>352</sup>

Similar to the temporary shelters for adults, these CAS are implemented by Prefectures. The law states that each structure may have a maximum capacity of 50 places and may ensure the same services as governmental first reception facilities dedicated to minors.<sup>353</sup> Also in this case, no time limit is actually provided for the staying in these centres; according to the law, accommodation is limited to the time "strictly necessary" until the transfer to adequate structures.<sup>354</sup> In any case, these temporary centres cannot host children under 14.

Many NGOs such as Save the Children and ASGI have raised strong concerns about this provision. In a letter sent to the Senate on 29 July 2016,<sup>355</sup> ASGI highlighted that the law represents a strong disincentive for municipalities to participate in SPRAR projects and that it strongly discriminate minors accommodated in such centres compared to those accommodated in SPRAR and other facilities. According to ASGI, the use of temporary shelters for minors should be forbidden and there should be a fair distribution among the Italian regions and municipalities under the ordinary reception system.

Presently, in the absence of a distribution mechanism between the regions as provided for adults, the reception of unaccompanied minors not transferred in the governmental centres or in SPRAR facilities remains under the responsibility of the city of arrival. This results in unaccompanied minors highly

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<sup>350</sup> Article 19(4) LD 142/2015.

<sup>351</sup> ASGI, *Le riammissioni di cittadini stranieri alla frontiera di chiasso: profili di illegittimità*, August 2016, available in Italian at: <http://bit.ly/2bBpAKe>, 8-9.

<sup>352</sup> Article 19(3-bis) LD 142/2015, amended by L 160/2016. The Article refers to Article 11 LD 142/2015 on CAS.

<sup>353</sup> Article 19(1) LD 142/2015.

<sup>354</sup> Article 19(3-bis) LD 142/2015, citing Article 19(2)-(3).

<sup>355</sup> ASGI, *Letter to the Senate: 'Misure straordinarie di accoglienza per i minori stranieri non accompagnati previste dal disegno di legge di conversione in legge del decreto legge 24 giugno 2016, n. 113'*, 28 July 2016, available at: <http://bit.ly/2bjh9D0>.

concentrated in some border regions. By the end of November 2016, for example, **Sicily** was hosting the 40% of unaccompanied children and **Calabria** 8%.<sup>356</sup>

Throughout 2016, a total 25,772 unaccompanied minors arrived in Italy,<sup>357</sup> and 2,039 were accommodated in SPRAR structures as of the end of January 2017.<sup>358</sup>

## F. Information for asylum seekers and access to reception centres

### 1. Provision of information on reception

According to the Procedure Decree, upon submission of an asylum application, police authorities have to inform applicants through a written brochure about their rights and obligations and the relevant timeframes applicable during asylum procedures (see section on [Information and Access to UNHCR and NGOs](#) above).<sup>359</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. LD 142/2015 contains a provision on the right to information, confirming the obligation to hand over the brochure, as stated above, and states that these information are provided in reception centres within 15 days from the presentation of the asylum application. These information are ensured through the assistance of an interpreter.<sup>360</sup>

This provision, unlike Article 5 of the recast Reception Conditions Directive, does not explicitly foresee that information shall be provided orally.

However, in practice the distribution of these leaflets, written in 10 languages,<sup>361</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 and the rules adopted by the managers of the accommodation centres, asylum seekers may benefit from proper information of the asylum procedure, access to the labour market or any other information on their integration rights and opportunities. Generally speaking, leaflets are distributed in the accommodation centres and asylum seekers are informed orally through the assistance of interpreters.

### 2. Access to reception centres by third parties

#### Indicators: Access to Reception Centres

1. Do family members, legal advisers, UNHCR and/or NGOs have access to reception centres?
- ☐ Yes ☒ With limitations ☐ No

According to LD 142/2015, applicants have the opportunity to communicate with UNHCR, NGOs with experience in the field of asylum, religious entities, lawyers and family members.<sup>362</sup> The representatives

<sup>356</sup> Ministry of Labour, *Report mensile minori stranieri non accompagnati in Italia*, 30 November 2016, available at: <http://bit.ly/2khCGge>.

<sup>357</sup> Ministry of Interior, *Cruscotto statistico giornaliero*, 31 December 2016.

<sup>358</sup> Chamber of Deputies, *Dossier a cura degli Ispettori della Guardia di Finanza*, 23 January 2017.

<sup>359</sup> Article 10(1) LD 25/2008.

<sup>360</sup> Article 3 LD 142/2015 and Article 10 PD 21/2015.

<sup>361</sup> Italian, English, French, Spanish, Arabic, Somali, Kurdish, Amharic, Farsi and Tigrinya.

<sup>362</sup> Article 10(3) LD 142/2015.

of the aforementioned bodies are allowed to enter in these centres, except for security reasons and for the protection of the structures and of the asylum seekers.<sup>363</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. The Prefecture notifies these decisions to the managers of the centres.

During 2016 the Prefectures have denied the entry to some centres to the NGOs belonging to the Campaign *LasciateCIEntrare*. In many cases, they have not even responded to the request for authorisation of access.<sup>364</sup>

It is worth noting that these centres are open, therefore asylum seekers are free to contact NGOs, lawyers and UNHCR offices outside of the centres.

Concerning the governmental first reception centres for unaccompanied minors, the law allows the entry into the centres to the members of the national and European Parliament, as well as to UNHCR, IOM, EASO and to the Authority for children and adolescents, to the Mayor or a person delegated by him or her. Access is also allowed to persons who have a motivated interest, because of their institutional engagement within the region or the local authority where the centres is based, to child protection agencies with long experience, to representatives of the media, and to other persons who present a justified request.<sup>365</sup>

With regard to access to SPRAR centres by virtue of Article 15(5) LD 142/2015, lawyers and legal counsellors indicated by the applicant, UNHCR as well as other entities and NGOs working in the field of asylum and refugees protection have access to these facilities in order to provide assistance to hosted asylum seekers.

## G. Differential treatment of specific nationalities in reception

Once in reception, there are no recorded differences among asylum seekers on the basis of their nationalities. However, problems have been reported as regards the possibility to access the asylum procedure and the reception system at hotspots (see [Access to the Territory](#)).

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<sup>363</sup> Article 10(4) LD 142/2015.

<sup>364</sup> *LasciateCIEntrare, Report20giugno*, October 2016, 15-17.

<sup>365</sup> Article 7 MoI Decree of 1 September 2016 on "Establishment of first reception centres dedicated to unaccompanied minors", available at: <http://bit.ly/2cOzpmmm>.

## Detention of Asylum Seekers

### A. General

#### Indicators: General Information on Detention

|   |       |
|---|-------|
| 1. Total number of persons detained in CIE in 2016 (1 Jan – 15 Sep): <sup>366</sup> | 1,968 |
| 2. Number of persons in detention in CIE at the end of 2016:                        | 288   |
| 3. Number of detention centres:   | 4     |
| 4. Total capacity of detention centres:   | 359   |

The Procedure Decree prohibits the detention of asylum seekers for the sole purpose of examining their asylum request as reiterated in Article 6(1) of LD 142/2015. Asylum seekers can be detained only under particular and limited conditions (see section on [Grounds for Detention](#)).

At the end of 2016, 288 persons were in detention. On 23 January 2017, 285 persons were held in detention.<sup>367</sup>

In the first months of 2016, in just over two weeks, two Centres for Identification and Expulsion (CIE) – renamed Return Detention Centres (*Centri di permanenza per i rimpatri*, CPR) by Decree-Law 13/2017 – were closed because of riots by the inmates. In **Bari**, the CIE has caught fire twice, between 24 and 29 February 2016,<sup>368</sup> and in **Crotone**, according to press reports, an uprising took place in the night between 5 and 6 March 2016 and led to a part of the structure becoming unusable.<sup>369</sup>

Currently, only 4 CIE of the existing 9 are operating: **Restinco** in Brindisi, **Caltanissetta**, **Ponte Galeria** in Rome, only for women, and **Torino**. The former CIE of **Trapani** was converted into a hotspot on 23 of December 2015.<sup>370</sup>

By the end of December 2016, the Ministry of Interior issued a Circular (“Circular Gabrielli”) announcing the reopening of the closed CIE, as part of a broader plan aimed at repatriation of irregular foreign nationals, also pursued by concluding new bilateral readmission agreements and reforming the rules on asylum.<sup>371</sup>

On 26 January 2017, the Ministry of Interior sent to the Questure in **Rome**, **Torino**, **Brindisi** and **Caltanissetta** a telegram requesting them to make available 90 places, 50 for men and 45 for women, inside the currently operating CIE. These places are to be used to identify self-styled Nigerian nationals illegally present in the country for their immediate repatriation. The Ministry of Interior has also encouraged the Questure to carry out targeted operations aimed at tracing Nigerian citizens in an irregular situation on the territory. ASGI immediately expressed its strong concern against risks that such repressive operations will lead to the removal of asylum seekers or women victims of trafficking.<sup>372</sup>

Persons detained in CIE are now admitted to the accelerated procedure (for more details see section on [Accelerated Procedure](#)). In practice, however, the possibility of accessing the asylum procedure inside the CIE appears to be difficult due to the lack of appropriate legal information and assistance, and to

<sup>366</sup> Senate Human Rights Commission, *Report on identification and expulsion centres* (“CIE Report”), January 2017, available at: <http://bit.ly/2mFIDEg>.

<sup>367</sup> Chamber of Deputies, Dossier a cura degli Ispettori della Guardia di Finanza addetti all'Archivio della Commissione, 23 January 2017.

<sup>368</sup> Repubblica Bari, ‘Bari, materassi in fiamme al Cie: inagibile un'ala del dormitorio, nessun ferito’, 1 March 2016, available in Italian at: <http://bit.ly/21z08bX>.

<sup>369</sup> Vita, ‘Un giorno dentro il più grande centro per migranti d'Europa’, 10 May 2016, available in Italian at: <http://bit.ly/2m4Mrj7>.

<sup>370</sup> The other CIE, temporarily unfit or closed, are in **Gorizia**, **Bologna** and **Milan**.

<sup>371</sup> Circular of the Ministry of Interior, 30 December 2016, available at: <http://bit.ly/2lnpVCf>.

<sup>372</sup> ASGI: Salto di qualità nelle politiche repressive, 2 February 2017, available at: <http://bit.ly/2leDgOQ>.

administrative obstacles. In fact, according to LD 142/2015, people are informed about the possibility to seek international protection by the managing body of the centre.<sup>373</sup>

## B. Legal framework of detention

### 1. Grounds for detention

#### Indicators: Grounds for Detention

- |   |  |  |
|---|--|--|
| 1. In practice, are most asylum seekers detained                        |  |  |
| ❖ on the territory:   | <input type="checkbox"/> Yes               | <input checked="" type="checkbox"/> No |
| ❖ at the border:  | <input type="checkbox"/> Yes               | <input checked="" type="checkbox"/> No |
| 2. Are asylum seekers detained in practice during the Dublin procedure? | <input type="checkbox"/> Frequently        |  |
|   | <input type="checkbox"/> Rarely            |  |
|   | <input checked="" type="checkbox"/> Never  |  |
| 3. Are asylum seekers detained during a regular procedure in practice?  | <input type="checkbox"/> Frequently        |  |
|   | <input checked="" type="checkbox"/> Rarely |  |
|   | <input type="checkbox"/> Never             |  |

According to the SOPs applying at [Hotspots](#), irregular migrants who have not expressed the intention to seek international protection or who do not intend to apply for international protection may be transferred, in cases where this is possible under the current legislation, to CIE.<sup>374</sup>

Asylum seekers, according to LD 142/2015, shall not be detained for the sole reason of the examination of their application.<sup>375</sup> An applicant shall be detained in CIE, on the basis of a case by case evaluation, when he or she:<sup>376</sup>

- (a) Falls under the exclusion clauses laid down in Article 1F of the 1951 Convention;
- (b) Is issued with an expulsion order as a danger to public order or state security,<sup>377</sup> or as suspected of being affiliated to a mafia-related organisation, has conducted or financed terrorist activities, has cooperated in selling or smuggling weapons or habitually conducts any form of criminal activity,<sup>378</sup> including with the intention of committing acts of terrorism;<sup>379</sup>
- (c) May represent a danger for public order and security.  
According to the law, to assess such a danger, it is possible to take into account previous convictions, final or non-final, including the conviction adopted following the enforcement of the penalty at the request of the party pursuant to Article 444 of the Italian Criminal Procedure Code, in relation to certain serious crimes,<sup>380</sup> and also to drug crimes, sexual crimes, facilitation of illegal immigration, recruiting of persons for prostitution, exploitation of prostitution and of minors to be used in illegal activities;
- (d) Presents a risk of absconding

<sup>373</sup> Article 6(4) LD 142/2015.

<sup>374</sup> Hotspot SOPs, para C.2.b. "Transfer to CIEs".

<sup>375</sup> Article 6(1) LD 142/2015.

<sup>376</sup> Article 6(2) LD 142/2015.

<sup>377</sup> Article 13(1) TUI.

<sup>378</sup> Article 13(2)(c) TUI.

<sup>379</sup> Article 3(1) LD 144/2005, as supplemented by L 155/2005.

<sup>380</sup> Article 380(1)-(2) Italian Criminal Procedure Code is cited, which refers to individuals who have participated in, among others, the following criminal activities: (a) child prostitution; (b) child pornography; (c) slavery; (d) looting and vandalism; (e) crimes against the community or the state authorities.

The assessment of such risk is made on a case by case basis, when the applicant has previously and systematically provided false declarations or documents on his or her personal data in order to avoid the adoption or the enforcement of an expulsion order, or when the applicant has not complied alternatives to detention, stay in an assigned place of residence determined by the competent authority or report at given times to the competent authority.<sup>381</sup>

The Decree-Law 13/2017 provisionally entering into force on 18 February 2017 provides that the repeated refusal to undergo fingerprinting at Hotspots or on the national territory constitutes a risk of absconding and justifies detention in CIE.<sup>382</sup>

The law also covers the case of third-country nationals who apply for asylum when they are already held in CIE awaiting for the enforcement of a refoulement order pursuant to Article 10 TUI or an expulsion order pursuant to Articles 13 and 14 TUI. After the application, they shall remain in such facility when, in addition to the abovementioned reasons, there are reasonable grounds to consider that the application has been submitted with the sole reason of delaying or obstructing the enforcement of the expulsion order.<sup>383</sup>

Given that the reasons for the asylum request are not made explicit, the decision to detain the person takes the form of an arbitrary decision.

## 2. Alternatives to detention

### Indicators: Alternatives to Detention

1. Which alternatives to detention have been laid down in the law?  
☒ Reporting duties  
☒ Surrendering documents  
☐ Financial guarantee  
☒ Residence restrictions  
☐ Other
2. Are alternatives to detention used in practice? ☐ Yes ☐ No

Article 6(5) LD 142/2015 makes reference to the alternatives to detention provided in the Consolidated Act on Immigration (TUI). To this end, authorities should apply Article 14 TUI to the compatible extent, including the provisions on alternative detention measures provided by Article 14(1-bis).

The Consolidated Act on Immigration provides that a foreign national who has received an expulsion order may request to the Prefect a certain period of time for voluntary departure. In that case the person will not be detained and will not be forcibly removed from the territory. However, in order to benefit from this measure, some strict requirements must be fulfilled:<sup>384</sup>

- ❖ No expulsion order for state security and public order grounds has been issued against the person concerned;
- ❖ There is no risk of absconding; and
- ❖ The request of permit of stay has not been rejected as manifestly unfounded or fraudulent.

In case the Prefect grants a voluntary departure period, then by virtue of Article 13(5.2) of the Consolidated Act on Immigration, the chief of the Questura resorts to one or more alternative measures to detention such as:

- (a) The obligation to hand over passport to the police until departure;
- (b) The obligation to reside in a specific domicile where the person can be contacted;

<sup>381</sup> Article 13(5), (5.2) and (13) and Article 14 TUI. Article 13 TUI, to which Article 6 LD 142/2015 refers, also includes the obligation to surrender a passport but this should not be applied to asylum seekers because of their particular condition.

<sup>382</sup> Article 17(3) DL 13/2017.

<sup>383</sup> Article 6(3) LD 142/2015.

<sup>384</sup> Article 13(5.2) and Article 14-ter TUI, as amended by L 129/2011.



- (c) The obligation to report to police authorities following police instructions.

However, Doctors for Human Rights (MEDU) emphasise that, even though the Return Directive foresees detention only as a last resort where less coercive measures cannot be applied, in transposing the Return Directive, Italian legislation envisages forced return as a rule and voluntary departure as an exception.<sup>385</sup> In practice, Italian authorities still in 2015 rarely resort to alternatives to detention in CIE.<sup>386</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>387</sup>

During 2016, due to the small number of available places in the operating CIE, in many territories asylum seekers whose stay had become irregular were only notified of the order to leave the country within 7 days, as provided by Article 14(5-bis) TUI.

The LD 142/2015 provides that when the detained applicant requests to be repatriated in his Country of origin or in the Country from which he came from, the removal order<sup>388</sup> shall be immediately adopted or executed. The repatriation request corresponds to a withdrawal of the application for international protection.<sup>389</sup>

In case the applicant is the recipient of an expulsion order,<sup>390</sup> the deadline for the voluntary departure set out by Article 13(5) shall be suspended for the time necessary for the examination of his/her asylum application. In this case the applicant has access to reception centres.<sup>391</sup>

### 3. Detention of vulnerable applicants

#### Indicators: Detention of Vulnerable Applicants

1. Are unaccompanied asylum-seeking children detained in practice? ☐ Frequently  
☐ Rarely  
☒ Never
- ❖ If frequently or rarely, are they only detained in border/transit zones? ☐ Yes ☐ No
2. Are asylum seeking children in families detained in practice? ☐ Frequently  
☐ Rarely  
☒ Never

Article 19(4) LD 142/2015 explicitly provides that unaccompanied children can *never* be held in CIE, whereas the law is silent with regard to other vulnerable categories.

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.

Moreover, other 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 order to transfer them to adequate reception centres and benefit from specific medical, psychological and other treatment. In this regard, asylum applicants whose health problems are incompatible with detention cannot be held in CIE.

<sup>385</sup> MEDU, *ARCIPELAGO CIE: indagine sui centri di identificazione ed espulsione italiani (Archipelago CIE: survey of Italians identification and expulsion centres)*, May 2013, 32.

<sup>386</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, 3. See also CIR, 'UN Special Rapporteur on the Human Rights of Migrants', 5 December 2014, available at: <http://bit.ly/1Fcym3Y>.

<sup>387</sup> This has been acknowledged by the Tribunal of Crotone in the Sentenza 1410 of 12 December 2012.

<sup>388</sup> Pursuant to Article 13(4) and (5-bis) TUI.

<sup>389</sup> Article 6(9) LD 142/2015.

<sup>390</sup> The expulsion order to be executed according to the procedures set out in Article 13(5)-(5.2) TUI.

<sup>391</sup> Article 6(10) LD 142/2015.

According to the law, in the framework of the social and health services guaranteed in CIE, an assessment of vulnerability situations requiring specific assistance should be periodically provided.<sup>392</sup>

In CIE, however, legal assistance and psychological support is not systematically provided. 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. In this respect, LD 142/2015 provides that, where possible, a specific place should be reserved to asylum seekers,<sup>393</sup> and Article 4(e) of the Regulation of 20 October 2014 of the Minister of Interior provides the same for persons with special reception needs.

#### 4. Duration of detention

##### Indicators: Duration of Detention

- |  |               |
|--|---------------|
| 1. What is the maximum detention period set in the law (incl. extensions): | 12 months     |
| 2. In practice, how long in average are asylum seekers detained?           | Not available |

As of November 2014, with the entry into force of the European Law 2013-bis, the maximum duration of detention of third-country nationals in CIE had been reduced from 18 months to 90 days.<sup>394</sup>

LD 142/2015 has increased the maximum duration of asylum seekers' detention: according to the law asylum seekers can be detained up to 12 months.<sup>395</sup>

When detention is already taking place at the time of the submission of the application, the terms provided by Article 14(5) TUI i.e. 90 days, are suspended and the *Questore* shall transmit the relevant files to the competent judicial authority to validate the detention for a maximum period of 60 days, in order to allow the completion of procedure related to the examination of the asylum application.<sup>396</sup> However, the detention or the extension of the detention shall not last beyond the time necessary for the examination of the asylum application under accelerated procedure,<sup>397</sup> unless additional detention grounds subsist pursuant to Article 14 TUI. Any delays in the completion of the administrative procedures required for the examination of the asylum application, if not caused by the applicant, do not constitute valid ground for the extension of the detention.<sup>398</sup>

According to LD 142/2015, the applicant detained in CIE who appeals against the rejection decision issued by the Territorial Commission remains in the detention facility until the adoption of the decision on the suspension of the order by the judge,<sup>399</sup> and also as long as the applicant is authorised to remain in the national territory as a consequence of the lodged appeal: the way the law was worded did not make it clear whether, when the suspensive request was upheld, asylum seekers could leave the CIE, and in practice they did not. Decree-Law 13/2017, governing the same situation, has retained the same ambiguity.<sup>400</sup>

<sup>392</sup> Article 7(5) LD 142/2015.

<sup>393</sup> Article 6(1) LD 142/2015.

<sup>394</sup> Article 14(5) TUI, as amended by Article 3 L 161/2014.

<sup>395</sup> Article 6(8) LD 142/2015.

<sup>396</sup> Article 6(5) LD 142/2015.

<sup>397</sup> Pursuant to Article 28-bis(1) and (3) LD 25/2008, as inserted by LD 142/2015.

<sup>398</sup> Article 6(6) LD 142/2015.

<sup>399</sup> Articles 5 and 19(5) LD150/ 2011.

<sup>400</sup> Article 6 (7) LD 142/2015 as amended by DL 13/2017.

In this respect the *Questore* shall request the extension of the ongoing detention for additional periods no longer than 60 days, which can be extended by the judicial authority from time to time, until the above conditions persist. In any case, the maximum detention period cannot last more than twelve months.<sup>401</sup>

According to ASGI, the disproportion between the maximum duration of ordinary detention for third-country nationals (90 days) and the maximum duration of detention of asylum seekers (12 months) appears as an unreasonable violation of the principle of equality provided for by Article 3 of the Italian Constitution, resulting in a discriminatory treatment of the latter category.

## C. Detention conditions

### 1. Place of detention

#### Indicators: Place of Detention

1. Does the law allow for asylum seekers to be detained in prisons for the purpose of the asylum procedure (i.e. not as a result of criminal charges)? ☐ Yes ☒ No
2. If so, are asylum seekers ever detained in practice in prisons for the purpose of the asylum procedure? ☐ Yes ☒ No

#### 1.1. Detention at hotspots

LD 142/2015 states that the first rescue and assistance operations take place in the centres regulated by the L 563/1995 – the so called Apulia Law - which, though improperly, is considered to govern the first aid and reception centres (CPSA) present at the main places of disembarkation. During 2016, in addition to the existing centres set up in **Lampedusa** (Agrigento) and **Pozzallo** (Ragusa), these operations were implemented the centres in **Taranto** and **Trapani**.

As of 24 of January 2017, the CPSA and hotspots in Italy hosted the following numbers of persons:

| Occupancy of CPSA / hotspots: 24 January 2017 |            |
|---|------------|
| CPSA / Hotspots                               | Occupancy  |
| Agrigento, Lampedusa                          | 186        |
| Taranto                                       | 149        |
| Trapani                                       | 14         |
| Ragusa, Pozzallo                              | 6          |
| <b>Total</b>                                  | <b>355</b> |

Source: Chamber of Deputies, *Dossier a cura degli Ispettori della Guardia di Finanza*, 23 January 2017.

LD 142/2015 does not provide a legal framework to the operations carried out in the CPSA. Both in the past and recently in the CPSA, in the absence of a legislative framework and in the name of unspecified identification needs, asylum seekers have been unlawfully deprived of their liberty and held for weeks in conditions detrimental to their personal dignity. The legal vacuum, the lack of places in the reception system and the bureaucratic chaos have legitimated in these places a real detention of asylum seekers carried out without adopting any formal decision or judicial validation.

In the recent case of *Khlaifia v. Italy*, the European Court of Human Rights (ECtHR) has strongly condemned Italy for the detention of some Tunisians in Lampedusa CPSA in 2011, noting the breach, to them, of various rights protected by ECHR. In particular, the Court found that the detention was unlawful, and that the conditions in which the Tunisians were accommodated – in a situation of overcrowding, poor

<sup>401</sup> Article 6(8) LD 142/2015.

hygienic conditions, prohibition of contacts with the outside and continuous surveillance by law enforcement, lack of information on their legal status and about the duration and the reasons for detention – had determined the violation of Article 3 ECHR, namely the right to freedom from inhuman and degrading treatment, and of Article 5 ECHR, besides the violation of Article 13 ECHR due to the lack of an effective remedy against these violations.<sup>402</sup> The Grand Chamber judgment of 15 December 2016 confirmed the violation of such fundamental rights.<sup>403</sup>

During 2016, the Government clarified that the CPSA served as hotspots, in order to manage the mixed flow of migrants and to meet the targets included in the European Agenda on Migration and those of relocation fixed by the Council Decisions. According to the SOPs applying at hotspots, from the moment of entry, the period of stay in the facility should be as short as possible, compatibly with the national legal framework.<sup>404</sup>

In practice, in 2016 in too many cases, reported by ASGI and other NGOs, the period of stay in such centres has been much longer than the 48 or 72 hours allowed by law.<sup>405</sup>

Moreover, people interviewed by Amnesty International reported being subjected to coercive measures to give their fingerprints, including beatings, infliction of electric shocks by means of electrical batons and sexual humiliation and infliction of pain to the genitals.<sup>406</sup> Similar information was recorded by ASGI interviews with third-country nationals present in **Como** after being readmitted from Switzerland.<sup>407</sup>

**Pozzallo hotspot:** According to several NGOs, as of February 2016, the centre presented the same critical issues as reported by MSF in November 2015:<sup>408</sup> people were still detained in critical health conditions, they lacked legal assistance and were not allowed to leave the centre for days or weeks.<sup>409</sup>

On 13 May 2016, ASGI, together with Arci, Caritas and Acli, visited the centre and found about 180 unaccompanied minors with a dozen of adults. The minors had all been fingerprinted and provided with identification papers, many with a bracelet with an identification number. The NGOs could verify that many children were detained in the hotspot for 2 or 3 weeks, others for a month or more. The children had not been informed about the procedure and were never allowed to exit the centre.<sup>410</sup>

In June 2016, the hotspot was visited by Human Rights Watch and the situation was not changed. Human Rights Watch reported that on the day of the visit the centre held 365 people, over double its capacity, of whom 185 were unaccompanied children. A significant number of the unaccompanied children had been in the centre for two weeks. Human Rights Watch also reported that only registered adults and children over 15 were allowed to leave the centre between 8 am and 8 pm, while younger unaccompanied children had to stay inside the building.<sup>411</sup>

At the visit performed by GRETA on 23 September 2016, there were some 170 unaccompanied children present at the hotspot and they were reported to have been in the hotspot for around 4 weeks.

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<sup>402</sup> ECtHR, *Khlaifia and Others v Italy*, Application No 16483/12, Judgment of 1 September 2015.

<sup>403</sup> ECtHR, *Khlaifia and Others v Italy*, Grand Chamber, Judgment of 15 December 2016.

<sup>404</sup> Hotspot SOPs, para B4.

<sup>405</sup> Article 13 Italian Constitution.

<sup>406</sup> Amnesty, *Hotspot Italy*, October 2016, 17.

<sup>407</sup> ASGI, *Riammissioni di cittadini stranieri alla frontiera di Chiasso*, August 2016, 6.

<sup>408</sup> MSF, *Report on reception conditions in the CPSA Pozzallo presented to the attention of the Parliamentary Commission of Inquiry on the accommodation system, identification and detention of migrants*, 17 November 2015, available at: <http://bit.ly/1THaK01>.

<sup>409</sup> See LasciateCIEntrare, *Accogliere: la vera emergenza*, 25 February 2016, available in Italian at: <http://bit.ly/217spru>.

<sup>410</sup> Redattore Sociale, 'Pozzallo, nell'hotspot quasi tutti minori. "Gravissima violazione"', 13 May 2016, available in Italian at: <http://bit.ly/2moJnls>.

<sup>411</sup> Human Rights Watch, 'Italy: Children Stuck in Unsafe Migrant Hotspot', 23 June 2016, available at: <http://bit.ly/28YqfmR>.

Different NGOs raised concern about children staying together with unrelated adults and being exposed to the actual risk of sexual abuse and violence.<sup>412</sup>

**Taranto hotspot:** On 10 November 2016 the hotspot based in Taranto was visited by the Human Rights Commission of the Senate. As detailed in its final report,<sup>413</sup> on the day of the visit there were about 50 unaccompanied minors, accommodated in tents and unable to leave the centre,<sup>414</sup> on the basis of a decision by the management of the centre. Some of them had arrived in the centre on 25 October 2016 and were thus detained for more than 2 weeks there.

According to the information gathered by the Senate, many minors transiting from Taranto hotspot have asked to change their age, successfully requesting to be registered as adults just to leave the centre.

Therefore, from the opening of the hotspot in March to October 2016, as recorded by the Human Rights Commission, among the 14,576 people transiting through the hotspot, only 5,048 came from disembarkations while the majority (9,528) were traced on Italian territory, mainly at border places in **Ventimiglia**, **Como** and **Milan**, and forcibly taken to Taranto to be identified. Some of them were asylum seekers accommodated in reception centre in the place they were apprehended and who, after being again identified, were just released out of the hotspot without any ticket or money to go back to their reception centres.

According to the Commission, in none of the other hotspots was such a questionable practice reported.

As reported to ASGI, among those people taken to Taranto from the North of Italy, there were also beneficiaries of international protection and unaccompanied minors, forced to stand on the bus with no document screening at departure. Some asylum seekers and beneficiaries of protection have lost their accommodation place because they could not justify their absence from the shelter, since they were released without any documentation proving their stay in the Taranto hotspot. In one case, it has been reported that a person was transferred to Taranto five times.

The “tracing” areas would especially be train stations, trains and meeting places in **Como** and **Ventimiglia** where, particularly during the summer but still to date thousands of persons pushed back by France and Switzerland were readmitted in Italy. Buses arrive around 8 am, the identification (*fotosegnalamento*) procedures are completed in about two hours and the results are communicated in the afternoon. It is not clear, however, why these people have been taken to Taranto and not identified at Questura *sur place*.

As a result, people have been and are *de facto* detained during the travel and until the outcome of the *fotosegnalamento*.

**Trapani hotspot:** This is reported to be the only hotspot where the procedure works better and where the duration of stay of people is close to the spirit of the law. LasciateCIEntrare visited the centre on 20 July 2016 and found that people were staying inside the hotspot on an average 5 days, up to 13 days in case of unavailability of places in governmental reception centres. Nevertheless, as in the other hotspots, the freedom of movement of persons was limited without any judicial order or validation.<sup>415</sup>

**Lampedusa hotspot:** the structure consists of prefabricated pavilions, in bad conditions. LasciateCIEntrare visited the hotspot on 21 July 2016 and reported that the pavilions were not thermally insulated and not supplied with an adequate ventilation system. The facility lacked an eating hall so asylum seekers had to take their meals in bed or outdoors, and it also lacked an adequate cleaning

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<sup>412</sup> GRETA, *Report on Italy*, January 2017, 13; Associazione Diritti e Frontiere, *Minori stranieri non accompagnati tra dispersione e criminalizzazione*, 20 May 2016, available in Italian at: <http://bit.ly/2tLPTC>; Human Rights Watch, ‘Italy: Children Stuck in Unsafe Migrant Hotspot’, 23 June 2016.

<sup>413</sup> Human Rights Commission of the Senate, *CIE Report*, January 2017.

<sup>414</sup> *Ibid.*, 24. Adults were instead allowed to leave during the day.

<sup>415</sup> LasciateCIEntrare, *Report 20 giugno*, October 2016, 21.

service. Among those present there were people detained for almost a month, but, as reported to the delegation by the operators, some had been detained for up to three and a half months. Unaccompanied minors were reported to remain in the centre for 25 days on average and in conditions of promiscuity with adults. The pocket money of €2.50 per person per day was often not provided and replaced by a packet of biscuits.<sup>416</sup>

The Decree-Law 13/2017, currently provisionally in force, provides a legal framework for hotspots but only stating that third-country nationals found irregularly present on the national territory or rescued at sea are led for aid needs and primary care at special “points of crisis” implemented in the CPSA and in the governmental first reception centres. There they will be fingerprinted and informed about the relocation programme, the possibility to seek international protection and about Assisted Voluntary Return.<sup>417</sup>

## 1.2. Detention at CIE

Under the Procedure Decree, asylum seekers can be detained in CIE 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.

4 CIE are currently functioning:

| CIE           | Official capacity | Occupancy 24 Jan 2017 |
|---------------|-------------------|-----------------------|
| Brindisi      | 48                | 43                    |
| Caltanissetta | 96                | 94                    |
| Roma          | 125               | 58                    |
| Torino        | 90                | 90                    |
| <b>Total</b>  | <b>359</b>        | <b>285</b>            |

Source: Chamber of Deputies, *Dossier a cura degli Ispettori della Guardia di Finanza*, 23 January 2017.

## 2. Conditions in detention facilities

### Indicators: Conditions in Detention Facilities

1. Do detainees have access to health care in practice? ☒ Yes ☐ No  
 ❖ If yes, is it limited to emergency health care? ☐ Yes ☒ No

In relation to detention conditions, the LD 142/2015 provides, as a general rule, that full necessary assistance and respect of dignity shall be guaranteed to the detainees. Separation of persons in respect of gender differences, maintaining, where possible, the family unity and the access to open-air spaces must be ensured.<sup>418</sup> According to Article 2 of the CIE Regulation the detainee is informed of his or her rights and duties in a language he or she understands and is provided with the list of lawyers.

The LD 142/2015 introduces a norm providing that foreigners detained in CIE shall be provided by the manager of the facility with relevant information on the possibility of applying for international protection. The asylum applicants detained in such facilities are provided with the relevant information set out by Article 10(1) LD 25/2008, by means of an informative leaflet.<sup>419</sup>

Moreover, the LD 142/2015 provides that asylum seekers with health problems incompatible with the detention conditions cannot be detained. Within the socio-health services provided in the CIE a periodical

<sup>416</sup> *Ibid*, 24.

<sup>417</sup> Article 10-ter TUI, inserted by Article 17(1) DL 13/2017. The article refers to the centres governed by L 563/1995 and Article 9 LD 142/2015.

<sup>418</sup> Article 7(1) LD 142/2015.

<sup>419</sup> Article 6(4) LD 142/2015.



assessment of the conditions of vulnerability requiring special reception measures is ensured.<sup>420</sup> In this regard, Article 3 of the CIE Regulation describes in details the health services provided to detainees and the possibility for the Prefecture to stipulate specific agreements with the public health units.

Persons held in these centres vary significantly in terms of social origin, psychological condition, health condition, legal status.<sup>421</sup> This heterogeneity of persons kept in CIEs together with inadequate services provided inside these centres and the shortage of economic means for their management have caused a number of protests during last months in CIEs all over the national territory.<sup>422</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>423</sup> Thus, the basic services provided and their quality varies from centre to centre but is generally very low and inadequate.<sup>424</sup> In this regard, the Human Rights Commission of Senate has underlined in its report the fact that the lack of common house rules for all CIEs leads to a great difference among centres with regard to the degree of flexibility in activities and services provided for detainees, also based on a different interpretation of the rules concerning security inside CIEs.<sup>425</sup> In fact, these rules are interpreted in some CIEs in a very restricted manner. For instance, as reported by the Human Rights Commission of the Senate, there are considerable difficulties/hurdles in obtaining authorisation to bring inside some CIEs pens, books, newspapers and ping-pong rackets.<sup>426</sup>

Furthermore, it is worth noting that there is a lack of an independent monitoring 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>427</sup>

In order to overcome these flaws and shortcomings, the Human Rights Commission of the Senate issued a resolution approved in March 2014<sup>428</sup> asking the Government to review the mechanisms for the outsourcing of the management of all CIEs. To this aim, the Commission recommended a single public entity be appointed for the management of all centres at a national level.<sup>429</sup>

Moreover, the Commission asked for the establishment of a monitoring mechanism to be established within the Prefectures, thus verifying the compliance of the services provided with *ad hoc* agreements. In this respect it should be pointed out that Article 8 of the Regulation issued on 20 October 2014 by the Minister of Interior on the criteria for the organisation of the CIE provides that the Prefect shall identify the modalities to ensure control and monitoring activities on the management of such structures by the managing body. Frequent visits from the Prefecture can be conducted without alerting the manager. The Regulation provides a complaint service safeguarding the anonymity of detainees.<sup>430</sup>

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<sup>420</sup> Article 7(5) LD 142/2015.

<sup>421</sup> Extraordinary Human Rights Commission of the Senate, *Rapporto sui centri di identificazione e di espulsione in Italia*, September 2014, 14.

<sup>422</sup> Extraordinary Human Rights Commission of the Senate, *Rapporto sui centri di identificazione e di espulsione in Italia*, September 2014, 14.

<sup>423</sup> As provided by Article 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>424</sup> LasciateCIEntrare Campaign, *Mai più CIE* ("Never ever CIE"), 2013, available at: <http://bit.ly/1THdv1z>, 9.

<sup>425</sup> Extraordinary Human Rights Commission of the Senate, *Rapporto sui centri di identificazione e di espulsione in Italia*, September 2014, 33.

<sup>426</sup> *Ibid.*

<sup>427</sup> LasciateCIEntrare, *Mai più CIE* ("No more CIE"), 2013, available at: <http://bit.ly/1THdv1z>, 9.

<sup>428</sup> Extraordinary Human Rights Commission of the Senate, *Rapporto sui centri di identificazione e di espulsione in Italia*, September 2014, 143.

<sup>429</sup> *Ibid.*, 32 and 147-153.

<sup>430</sup> Regulation of 20 October 2014, available at: <http://bit.ly/1PpOVmi>.



On 17 November 2014 the Chamber of Deputies established an “Inquiry Commission” in charge of monitoring and assessing the Italian reception system and the detention conditions of migrants held in CIEs.<sup>431</sup> The Commission has *inter alia* the mandate to detect structural critical aspects of accommodation and detention facilities as well as to investigate the outsourcing mechanisms for the management of these centres, often lacking transparency.<sup>432</sup>

**CIE Ponte Galeria:** With regard to the CIE of Ponte Galeria in Rome, as reported by LasciateCIEntrare Campaign, on 23 July 2015, 66 Nigerian women arrived in Sicily and, soon after disembarkation were immediately transferred to the CIE of Ponte Galeria (Roma). At the point of disembarkation they didn't receive any information about the opportunity to apply for asylum, even though on their bodies there were permanent burns caused by the violence they suffered from. When they arrived in the CIE an official of Nigerian Consulate for their “identification” to repatriate them was already present there. However, they applied for asylum and were admitted to the asylum procedure. On 3 September 2015, four of them were released and obtained the humanitarian protection. After the revolt of December 2015, part of the structure has become unusable and only the women's section is now open.

The centre was visited by Senator Manconi on 7 January 2017. As reported by media,<sup>433</sup> the women could eat in the hall, they could use the library and they had access to health assistance. 22 of the 48 women present were Nigerian. All of them had asked for asylum but only after they had been sent to the CIE.

**CIE Brindisi:** LasciateCIEntrare visited the centre on 29 June 2016 and reported that, inside the centre, taking pictures and filming was forbidden. The delegation met some Nigerian asylum seekers, awaiting for the result of their appeal. Inside the building there were lists with names and phone numbers of some lawyers. It seems that they were the only lawyers the people detained could contact.<sup>434</sup>

Concerning the asylum seekers detained in the Italian administrative detention centres, the Special Rapporteur on the human rights of migrants, François Crépeau, remains concerned about lack of access to justice for migrants who apply for asylum while they are in CIE. As reported, although under the Italian law the order of expulsion is suspended during the examination of the application, he learned that some migrants had been deported in spite of they had already expressed their desire to make an asylum application.<sup>435</sup>

According to LasciateCIEntrare, in 2016 the cases of expulsions occurring despite the grant of suspensive effect was reduced, but it considers it highly probable that they occur again, especially against Nigerians.<sup>436</sup>

### Activities and time management of the detainees

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>437</sup>

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<sup>431</sup> Chamber of Deputies, Resolution 17 November 2014, “Istituzione di una Commissione parlamentare di inchiesta sul sistema di accoglienza e di identificazione, nonché sulle condizioni di trattenimento dei migranti nei centri di accoglienza, nei centri di accoglienza per richiedenti asilo e nei centri di identificazione ed espulsione”, Official Journal Serie Generale n.275 of 26 November 2014, available at: <http://bit.ly/21X7dRq>.

<sup>432</sup> Delibera 17 novembre 2014. More information is available at: <http://bit.ly/1VU9uJ>.

<sup>433</sup> Corriere della Sera, ‘La mensa, le telefonate e i panni stesi alle inferriate Tra le donne senza nome rinchiusa a Ponte Galeria’, 7 January 2017, available in Italian at: <http://bit.ly/2l7safL>.

<sup>434</sup> LasciateCIEntrare, *Report20giugno*, October 2016, 29.

<sup>435</sup> Human Rights Council Twenty-ninth session. Report by the Special Rapporteur on the human rights of migrants, François Crépeau. Follow-up mission to Italy (2-6 December 2014). 1 May 2015, 18.

<sup>436</sup> LasciateCIEntrare, *Report20giugno*, October 2016, 35.

<sup>437</sup> Borderline-Europe, *op. cit.*, February 2014, 25-26.

The extraordinary Human Rights Commission of the Senate underlines in its report that third-country nationals detained in CIE have been deprived of “the possibility to carry on any kind of recreational or educational activity, living in precarious conditions from both material and human point of view”.<sup>438</sup> This body specifies that the main criticism of CIEs is the “empty time”.<sup>439</sup> This “empty time” has been identified as one of the most critical aspects of detention conditions.

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>440</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>441</sup> In addition, access to internet and to newspapers is often not guaranteed.

It has been underlined that the shortage of recreational activities especially had a negative impact on living conditions of people staying in the CIE 24 hours a day and whose detention, according to the previous law, could last up to 18 months, thus making it one of the main factors entailing distress in detained migrants.<sup>442</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>443</sup> MEDU emphasised that hygienic services (showers, toilets, etc.) appear to be in insufficient and inadequate clean conditions.<sup>444</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>445</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>446</sup>

The Directive of 14 April 2000 of the Ministry of the Interior on Centres of Temporary Permanence and Assistance (former name of CIE) 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>447</sup> related to the functioning of the CIE and to the services that must be provided by the managing body.

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<sup>438</sup> Extraordinary Human Rights Commission of the Senate, *Rapporto sui centri di identificazione e di espulsione in Italia*, September 2014, 30.

<sup>439</sup> *Ibid.*

<sup>440</sup> Borderline-Europe, *At the Limen. The case of Italy, Spain and Cyprus*, February 2014, 26.

<sup>441</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 Torino (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 issues and director of the documentary set in Italian CIEs “EU 013: The last Frontier”, carried out by CIR on 10 March 2014.

<sup>442</sup> Medici per i Diritti umani, *op.cit.*, 24.

<sup>443</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>444</sup> Medici per i Diritti umani, *op.cit.*, p. 21.

<sup>445</sup> Article 14(2) TUI.

<sup>446</sup> Article 21(1) and 21(2) PD 394/1999.

<sup>447</sup> Schema di capitolato di appalto per la gestione dei centri di accoglienza per immigrati.

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 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>448</sup>

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.

As highlighted in its reports,<sup>449</sup> during its missions the Human Rights Commission of the Senate met a number of detainees held in CIE showing psychological and physical vulnerability. The detention of such persons, other than worsening their condition, proves to be useless for their identification. The Commission accordingly urges Government to define homogenous health standards, assuring the adoption of operational protocols and agreements with the Local Health Units (ASL). Moreover, it requests the adoption of increased measures supporting vulnerable persons.<sup>450</sup>

### 3. Access to detention facilities

#### Indicators: Access to Detention Facilities

##### 1. Is access to detention centres allowed to

- |                   |                              |   |                             |
|-------------------|------------------------------|---|-----------------------------|
| ❖ Lawyers:        | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> Limited | <input type="checkbox"/> No |
| ❖ NGOs:           | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> Limited | <input type="checkbox"/> No |
| ❖ UNHCR:          | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> Limited | <input type="checkbox"/> No |
| ❖ Family members: | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> Limited | <input type="checkbox"/> No |

The LD 142/2015 has introduced a norm on the detention conditions confirming the access to the CIE and to the freedom to meet detainees by the UNHCR or organisations working on behalf of UNHCR, by family members, lawyers assisting the applicants, organisations with consolidated experience in the field of asylum, representatives of religious entities.<sup>451</sup> In this respect, Article 6 the Regulation of CIE issued on 20 October 2014 by the Minister of Interior, provides that access to the CIE without asking the authorisation is allowed any time to governmental representatives, members of the Italian and European Parliament, judges, Office of the National Ombudsman for the rights of detained persons, UNHCR or Organisations working on behalf of UNHCR. However, an authorisation from the competent Prefecture is necessary for family members, Organisations with consolidated experience in the field of asylum,

<sup>448</sup> Medici per i Diritti umani, *ARCIPELAGO CIE*, May 2013, 24.

<sup>449</sup> Extraordinary Human Rights Commission of the Senate, *Rapporto sui centri di identificazione e di espulsione in Italia*, September 2014, 28; *Rapporto sui centri di identificazione e di espulsione in Italia*, January 2017, 36.

<sup>450</sup> *Ibid*, 35.

<sup>451</sup> Article 7(2) LD 142/2015.

representatives of religious entities, journalists and any other person who make the request to enter CIE. However, for public order and security reasons or for reasons related to the administrative management of CIE the access can be limited but not fully impeded.<sup>452</sup>

Access to CIEs for journalists and politicians is quite difficult. They have to pass through two different stages before gaining authorisation 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>453</sup>

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>454</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>455</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>456</sup>

Moreover, in compliance with the Optional Protocol to the UN Convention Against Torture (OPCAT), Italy established the Office of the National Ombudsman for the rights of detained persons and persons deprived of their liberty (*Garante Nazionale per i detenuti*) under Law no. 10/2014.<sup>457</sup> The Ombudsman can, *inter alia*, have unrestricted access to any facility inside the CIEs.<sup>458</sup> Moreover, he or she is in charge of verifying the respect of the national law with regard to the rights provided by Article 20 (detention in CIEs), Article 21 (forms of detention), Article 22 (functioning of the centres) and Article 23 (activities of first assistance and rescue) of ruling adopted through Presidential Decree no. 394/1999.

The Extraordinary Commission for Human Rights of the Italian Senate underlines in its January 2017 report that it has often welcomed in its delegations visiting CIE the mayors or the municipal and provincial counsellors of the cities that host CIE. They are unable to enter themselves in those facilities unless authorised by the Prefectures but, as highlighted in the report, easier access could establish closer links to the concerned local populations.<sup>459</sup>

The Commission also highlighted the fact that in those CIEs that are more open towards the external world, namely where associations can provide information and support on a regular basis, the environment is less tense and migrants detained have a less aggressive attitude towards the personnel of the managing body of the centre and Police.<sup>460</sup>

The issue of maintaining regular contacts and communicating with people outside the centre is particularly crucial. The procedure for the authorisation of visits varies from centre to centre and, as reported by

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<sup>452</sup> Article 7(3) LD 142/2015.

<sup>453</sup> Borderline-Europe, *opus cite*, February 2014, 22.

<sup>454</sup> *Ibid*, 22.

<sup>455</sup> UN Special Rapporteur on the human rights of migrants, François Crépeau, Mission to Italy (29 September–8 October 2012), Report 20 April 2013, 15-16.

<sup>456</sup> LasciateCIEntrare, *Mai più CIE*, 2013, 9.

<sup>457</sup> Article 7 Law Decree no. 146/2013.

<sup>458</sup> Article 7(5)(e) Law Decree no. 146/2013.

<sup>459</sup> Senate Human Rights Commission, *CIE Report*, January 2017, 36

<sup>460</sup> Senate Human Rights Commission, *CIE Report*, September 2014, 29.

several sources,<sup>461</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>462</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”.

## D. Procedural safeguards

### 1. Judicial review of the detention order

#### Indicators: Judicial Review of Detention

- |   |   |                             |
|---|---|-----------------------------|
| 1. Is there an automatic review of the lawfulness of detention? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| 2. If yes, at what interval is the detention order reviewed?    | 30 days                                 |                             |

Asylum seekers could be sent to CIE before they have had the possibility to seek asylum, due to lack of proper information on the asylum procedure or because they are denied access to the procedure.<sup>463</sup>

In this case they are subject to the procedure for irregular migrants provided by the Consolidated Act on Immigration (TUI). The detention decision must be validated within 48 hours by the competent judge of peace (*guidice di pace*). After the initial period of detention of 30 days, the judge, upon the request by the Chief of the Questura, may prolong the detention in CIE for an additional 30 days.<sup>464</sup> After this first extension, the Questore may request one or more extensions to a lower civil court, where it is decided by a judge of the peace, in case there are concrete elements to believe that the identification of the concerned third-country national is likely to be carried out or that such delay is necessary to implement the return operations. The assessment concerning the duration of such an extension lies with the judge of the peace who decides on a case-by-case basis. The third-country national has the right to challenge the detention. The TUI, in fact, provides the right to appeal a detention order or an order extending detention.<sup>465</sup>

If, after they have been sent to CIE, third-country nationals apply for asylum, they will be subject to the procedure provided by Article 6 LD 142/2015.

The *Questore's* order related to the detention or the extension thereof shall be issued in writing, accompanied by an explanatory statement, and shall indicate that the applicant may submit to the Tribunal responsible to validate the order, personally or with the aid of a lawyer, statements of defence. Such order shall be communicated to the applicant in the first language that the applicant has indicated or in a language that the applicant can reasonably understand.<sup>466</sup>

The *Questore* shall transmit the relevant files to the competent judicial authority to validate the detention for a maximum period of 60 days, in order to allow the completion of procedure related to the examination

<sup>461</sup> Borderline-Europe, *opus cite*, February 2014, 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 LasciateCIEntrare Campaign, *La detenzione amministrativa dei migranti e la violazione dei diritti umani*, December 2012, 23.

<sup>462</sup> Borderline-Europe, *opus cite*, February 2014, 26.

<sup>463</sup> As highlighted in [Registration](#) and according to the information recorded by ASGI, this has happened to Nigerian nationals and to migrants from Maghreb area.

<sup>464</sup> Article 14(5) TUI, as amended by Article 3 L 161/2014.

<sup>465</sup> Article 14(6) TUI.

<sup>466</sup> Article 6(5) LD 142/2015. Nevertheless, as reported to Asgi, some Questore, when issuing the detention order, do not provide asylum seekers with copy of such orders nor explanations of the reasons for detention.

of the asylum application.<sup>467</sup> However, the detention or the prolongation of detention shall not last beyond the time necessary for the examination of the asylum application under accelerated procedure,<sup>468</sup> unless additional detention grounds are present pursuant to Article 14 TUI. Any delays in the completion of the administrative procedures required for the examination of the asylum application, if not caused by the applicant, do not constitute valid ground for the extension of the detention.<sup>469</sup>

In case the applicant detained in CIE appeals against the rejection decision issued by the Territorial Commission he or she remains in the detention facility until the adoption of the decision on the suspension of the order by the judge,<sup>470</sup> and also as long as the applicant is authorised to remain in the national territory as a consequence of the lodged appeal. In this respect the *Questore* shall request the extension of the ongoing detention for additional periods no longer than 60 days, which can be extended by the judicial authority from time to time, until the above conditions persist.

The same procedure applies to asylum seekers sent to CIE occurring one of the reasons provided by the Article 6(2) LD 142/2015 (see [Grounds for Detention](#)).

On 6 October 2016, in the case *Richmond Yaw and others v. Italy*, the European Court of Human Rights condemned Italy for the violation of Article 5 ECHR regarding the detention in CIE of some Ghanese asylum seekers, whose detention had been extended without a validation hearing as to ensure the debate between the parties.<sup>471</sup>

Decree-Law 13/2017 states that the applicant should take part in the hearing for validation of detention by means of an audiovisual connection, allowing the defence lawyer to be present at the place where the applicant is located. The presence of a police officer should ensure that there are no impediments or limitations on the exercise of the asylum seekers' rights.<sup>472</sup>

## 2. Legal assistance for review of detention

### Indicators: Legal Assistance for Review of Detention

- |  |   |                             |
|--|---|-----------------------------|
| 1. Does the law provide for access to free legal assistance for the review of detention? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| 2. Do asylum seekers have effective access to free legal assistance in practice?         | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |

The detainee is free to appoint a lawyer of his or her choice.

In some circumstances, due to the broad discretion of each Prefecture in authorising access to CIE (see section on [Access to Detention Facilities](#)), even lawyers may have problems in entering these detention structures.<sup>473</sup>

Under the Consolidated Act on Immigration (TUI), free legal aid must be provided in case of appeal against the person's expulsion order, on the basis of which third-country nationals who have not formalised their asylum request can be detained.<sup>474</sup>

Free legal aid is provided for the validation of detention of asylum seekers, as well. In this case, the asylum seeker concerned can also request a court-appointed lawyer. Lawyers appointed by the State have no

<sup>467</sup> Article 6(5) LD 142/2015.

<sup>468</sup> Pursuant to Article 28-bis(1) and (3) LD 25/2008, as inserted by LD 142/2015.

<sup>469</sup> Article 6(6) LD 142/2015.

<sup>470</sup> Articles 5 and 19(5) LD 150/2011.

<sup>471</sup> ECtHR, *Richmond Yaw and others v. Italy*, Application No 3342/11, Judgment of 6 October 2016.

<sup>472</sup> Article 6(5) LD 142/2015, as amended by DL 13/2017. These changes apply to the proceedings started one 180 days after the date of entry into force of DL 13/2017, provisionally entering into force on 18 February 2017.

<sup>473</sup> *LasciateCIEntrare, Mai più CIE*, 2013, 7.

<sup>474</sup> Article 13(5-bis) TUI.

specific expertise in the field of refugee law and they may not offer effective legal assistance due to lack of interest in preparing the case. In addition, according to some legal experts, assigned attorneys may not have enough time to prepare the case as they are usually appointed in the morning of the hearing.<sup>475</sup>

Some Bar Councils such as those in **Torino** and **Bari** set up specific lists of court-appointed lawyers specialised in immigration law.

As for legal assistance inside the CIE, it should be provided by the body managing the centre, which however does not often guarantee this service and usually provides low-quality legal counselling. In this regard, it emerges that there is a lack of sufficient and qualified legal assistance inside CIE.<sup>476</sup>

Another relevant obstacle which hampers persons detained in CIE from obtaining information on their rights and thus enjoying their right to legal assistance is the shortage of interpreters available in the detention centres, who should be provided by the specific body running the structure.

### E. Differential treatment of specific nationalities in detention

Following the Circular of January 2017, encouraging Questure to trace **Nigerians**, and in light of the readmission agreements signed by Italy with countries such as Sudan, Libya or Egypt, it is likely to imagine that these people will be more easily channelled into CIE. As reported to ASGI from people working inside the **Taranto** hotspot, by the end of February 2017 this had not yet happened.

In **CIE Ponte Galeria**, as of January 2017, about half of the 48 women detained were Nigerian.<sup>477</sup>

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<sup>475</sup> S 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*.

<sup>476</sup> Senate Human Rights Commission, *CIE Report*, September 2014, 30.

<sup>477</sup> Corriere della Sera, 'La mensa, le telefonate e i panni stesi alle inferriate Tra le donne senza nome rinchiusi a Ponte Galeria', 7 January 2017



### A. Status and residence

#### 1. Residence permit

##### Indicators: Residence Permit

1. What is the duration of residence permits granted to beneficiaries of protection?
  - ❖ Refugee status 5 years
  - ❖ Subsidiary protection 5 years
  - ❖ Humanitarian protection 2 years

International protection permits (refugee status and subsidiary protection) are both granted for 5 years.<sup>478</sup> Humanitarian protection permits are granted for 2 years.<sup>479</sup>

The application is submitted to the territorially competent *Questura* of the place where the person resides.

The main problem in the issuance of these permits is, often, the lack of a domicile (registered address) to provide to the police. Domicile has to be attached to the application submitted to the *Questura*, but some beneficiaries of international protection do not have a fixed address to provide.

Even if it is possible to have a registered address at organisations' address – a legal and not real domicile – the organisations not always allow beneficiaries of protection to use their address.

The renewal of the residence permit for asylum is done by filling out the appropriate form and sending it through the post office. After the application for renewal has been submitted, people have to wait a long time up to several months to know the outcome of the request and to obtain the new permit.

According to the law, the residence permit for **subsidiary protection** can be renewed after verification that the conditions imposed in Article 14 of the Qualification Decree are still satisfied.<sup>480</sup> The application is sent back to the administrative Territorial Commission that decided on the original asylum application and the Commission uses information provided by the police station, about any crimes committed during the person's stay in Italy, to deal with the case. In practice, these permits are usually renewed and the main reason why renewal may not happen is the commission of serious crimes. For humanitarian protection beneficiaries, even the commission of 'light' crimes can affect the renewal of the permit.

Another frequent reason why these permits are not renewed is evidence that the refugee has had contacts with his or her embassy or has returned to the country of origin, even for a short period. Sometimes, on this basis, the non-renewal procedure has been initiated even for **subsidiary protection** beneficiaries but thanks to the legal defense the refusal has been cancelled.

#### 2. Long-term residence

##### Indicators: Long-Term Residence

1. Number of long-term residence permits issued to beneficiaries in 2016: Not available

According to Article 9(1-bis) of the Consolidated Act on Immigration (TUI), refugees and subsidiary protection beneficiaries residing in Italy for at least 5 years can obtain a long-term resident status if they have an income equal or higher than the minimum income guaranteed by the State. The starting point to

<sup>478</sup> Article 23(1) and (2) Qualification Decree.

<sup>479</sup> Article 14(4) PD 21/2015.

<sup>480</sup> Article 23(2) Qualification Decree.

count the period of stay for beneficiaries of international protection is the date of submission of the application for international protection.<sup>481</sup>

In case of vulnerabilities, the availability of a free dwelling granted by recognised charities and aid organisations, contributes figuratively toward the income to the extent of 15% of the amount.

Contrary to other third-country nationals, international protection beneficiaries do not have to prove the availability of adequate accommodation responding to hygiene and health conditions, nor to pass the Italian language test, before obtaining long-term residence.<sup>482</sup>

The application to obtain the long term residence permit is submitted to *Questura* and must be issued within 90 days.<sup>483</sup> The contribution of €200 previously required in the TUI is no longer due as a result of a judgment of the Council of State of 26 of October 2016.<sup>484</sup>

### 3. Naturalisation

#### Indicators: Naturalisation

- |   |               |
|---|---------------|
| 1. What is the waiting period for obtaining citizenship?  |               |
| ❖ Refugee status  | 5 years       |
| ❖ Subsidiary protection                                   | 10 years      |
| 2. Number of citizenship grants to beneficiaries in 2016: | Not available |

Italian citizenship can be granted to **refugees** legally resident in Italy for at least 5 years.<sup>485</sup> **Beneficiaries of subsidiary protection** are instead subject to the general rule applied to third-country nationals: they can apply for naturalisation after 10 years of legal residence.<sup>486</sup>

In both cases, the beneficiary's registration at the registry office must be uninterrupted. This is particularly challenging for beneficiaries of international protection, as the law does not ensure to them an accommodation after getting a protection status and, due to the precarious situation they come to face, they will be hardly able to maintain a residence.

#### Naturalisation procedure

The application is submitted online through the website of the Ministry of Interior, by attaching the extract of the original birth certificate and the criminal records certificate, issued in the country of origin and duly translated and legalised. The originals are submitted to the Prefecture of the place of residence.

**Refugees** can replace the documentation requested to prove their exact personal data and their legal position in the country of origin with a declaration (affidavit), signed before the Court and certified by two witnesses. This possibility is not provided for **beneficiaries of subsidiary protection**.

The application is subject to the payment of a €200 contribution.

The evaluation of the citizenship application is largely discretionary. As consistently confirmed by the case law of the Administrative Courts,<sup>487</sup> the denial may be motivated by the lack of knowledge of Italian language and insufficient social inclusion in the national context. Even if not provided by law, as evidence

<sup>481</sup> Article 9(5-bis) TUI.

<sup>482</sup> Article 9(1-ter) and (2-ter) TUI.

<sup>483</sup> Article 9(2) TUI.

<sup>484</sup> Council of State, Decision N. 04487/2016REG.PROV.COLL. and N.07047/2016REG.RIC., 26 October 2016, available at: <http://bit.ly/2jK4IGj>. See also ASGI, 'Il Consiglio di Stato cancella definitivamente la "supertassa" per i cittadini extra UE per il rilascio e il rinnovo del permesso di soggiorno', 1 November 2016, available in Italian at: <http://bit.ly/2kH7map>.

<sup>485</sup> Articles 9 and 16 L 91/1992 (Citizenship Act).

<sup>486</sup> Article 9(1)(f) Citizenship Act.

<sup>487</sup> Most recently, Administrative Court of Lazio, Section II- Quater, Decision No 8967, 2 August 2016.

of social inclusion, it is usually requested that the income of the last 3 years be equal or higher than the minimum income guaranteed by the State.

The time limit for the completion of the procedure is 730 days (2 years) from the date of application,<sup>488</sup> but this is a non-mandatory time limit and is almost never respected.

The person concerned is notified about the conclusion of the procedure by the Prefecture. In case of approval, he or she is invited to give, within 6 months, the oath to be faithful to the Italian Republic and to observe the Constitution and the laws of the State. In case of denial, he or she can appeal to the Administrative Court.

#### 4. Cessation and review of protection status

##### Indicators: Cessation

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the cessation procedure? ☒ Yes ☐ No
2. Does the law provide for an appeal against the first instance decision in the cessation procedure? ☒ Yes ☐ No
3. Do beneficiaries have access to free legal assistance at first instance in practice? ☐ Yes ☐ With difficulty ☒ No

According to Article 9 of the Qualification Decree, a third-country national shall cease to be a **refugee** if he or she:

- (a) Has voluntarily re-availed himself or herself of the protection of the country of nationality;
- (b) Having lost his nationality, has voluntarily re-acquired it;
- (c) Has acquired Italian nationality, or other nationality, and enjoys the protection of the country of his or her new nationality;
- (d) Has voluntarily re-established him or herself in the country which he or she left or outside which he or she remained owing to fear of persecution;
- (e) Can no longer, because the circumstances in connection with which he has been recognised as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of nationality; or
- (f) In the case of a stateless person, he or she is able, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, to return to the country of former habitual residence.

The change of circumstances which led to the recognition of protection is also a reason for the cessation of **subsidiary protection**.<sup>489</sup>

In both cases, the change must be of non-temporary nature and there must not exist serious humanitarian reasons preventing return to the country of origin.<sup>490</sup> Although the law provides that protection may cease in these cases, this does not happen in practice. Then, a legislative amendment to the Qualification Decree approved in 2014 stated that, even when the situation in the country of origin has changed, the beneficiary of international protection can invoke compelling reasons arising out of previous persecution for refusing to avail him or herself of the protection of the country of nationality not to be returned.<sup>491</sup>

According to the law, cessation cases of **refugees** have to be dealt individually.<sup>492</sup> No specific groups of beneficiaries in Italy specifically face cessation of international protection.

<sup>488</sup> Article 3 PD 362/1994.

<sup>489</sup> Article 15(1) Qualification Decree.

<sup>490</sup> Articles 9(2) and 15(2) Qualification Decree.

<sup>491</sup> Articles 9(2-bis) and 15(2-bis) Qualification Decree, as amended by LD 18/2014.

<sup>492</sup> Article 9(1) Qualification Decree.

The National Commission for the Right of Asylum (CNDA) is responsible for deciding on cessation.<sup>493</sup>

The person concerned must be informed in writing of the specific reasons why the Commission considers whether to review of his or her legal status. The person has the right to take part in the proceedings, to request to be heard and to produce written documentation, but has not access to free legal assistance. The CNDA sets a hearing only if it is deemed as necessary. If the person, duly notified, fails to appear, the decision is made on the basis of the available documentation.

The Commission should decide within 30 days after the interview or after the expiration of time allowed for sending documents.

An appeal against the decision can be lodged before the competent Civil Court, within 30 days from notification.

The person who has lost refugee status or subsidiary protection may be granted a residence permit on other grounds, according to the TUI. The CNDA can approve an international protection status different from the status ceased or, if it considers that there are serious humanitarian reasons, it can transmit the documents to the *Questura* for the issuance of a residence permit of humanitarian protection. If the permit of stay for refugee status or subsidiary protection expires in the course of proceedings before the CNDA, it is renewed until the Commission's decision.<sup>494</sup>

## 5. Withdrawal of protection status

### Indicators: Withdrawal

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the withdrawal procedure? ☒ Yes ☐ No
2. Does the law provide for an appeal against the withdrawal decision? ☒ Yes ☐ No
3. Do beneficiaries have access to free legal assistance at first instance in practice?  
☐ Yes ☐ With difficulty ☒ No

Cases of withdrawal of international protection are provided by Article 13 of the Qualification Decree for **refugee status** and by Article 18 of the same Decree for **subsidiary protection**.

Both provisions state that protection status can be revoked when it is found that its recognition was based, exclusively, on facts presented incorrectly or on their omission, or on facts proved by false documentation.

Withdrawal is also imposed when, after the recognition, it is ascertained that the status should have been refused to the person concerned because:

- (a) He or she falls within the exclusion clauses;
- (b) There are reasonable grounds for regarding him or her as a danger to the security of Italy or, having been convicted by a final judgment of a particularly serious crime, he or she constitutes a danger for the public order and public security.

The withdrawal of a protection status,<sup>495</sup> and the appeals against it,<sup>496</sup> are subject to the same procedure foreseen for **Cessation** decisions. A total 180 protection statuses were withdrawn in 2016.<sup>497</sup>

<sup>493</sup> Article 5 Procedure Decree; Article 13 PD 21/2015.

<sup>494</sup> Article 33 Procedure Decree; Article 14 PD 21/2015.

<sup>495</sup> *Ibid.*

<sup>496</sup> Article 19(2) LD 150/2011.

<sup>497</sup> Eurostat, migr\_asywifsta.

## B. Family reunification

### 1. Criteria and conditions

#### Indicators: Family Reunification

1. Is there a waiting period before a beneficiary can apply for family reunification?  
☐ Yes ☒ No  
❖ If yes, what is the waiting period?
2. Does the law set a maximum time limit for submitting a family reunification application?  
☐ Yes ☒ No  
❖ If yes, what is the time limit?
3. Does the law set a minimum income requirement?  
☐ Yes ☒ No

Since the entry into force of LD 18/2014, the family reunification procedure governed by Article 29bis TUI, previously issued only for refugees, is applied to both **refugees** and beneficiaries of **subsidiary protection**.

Beneficiaries can apply as soon as they obtain the electronic **Residence Permit** – that means several months in some regions – and there is no maximum time limit for applying for family reunification.

Contrary to what is provided for other third-country nationals,<sup>498</sup> beneficiaries of international protection do not need to demonstrate the availability of adequate accommodation and a minimum income. They are also exempted from subscribing a health insurance for parents aged 65 and over.

Beneficiaries may apply for reunification with:<sup>499</sup>

- (a) Spouses aged 18 or over, that are not legally separated;
- (b) Minor children, including unmarried children of the spouse or born out of wedlock, provided that the other parent has given his or her consent;
- (c) Adult dependent children, if on the basis of objective reasons, they are not able to provide for their health or essential needs due to health condition or complete disability;
- (d) Dependent parents, if they have no other children in the country of origin, or parents over the age of 60 if other children are unable to support them for serious health reasons.

Where a beneficiary cannot provide official documentary evidence of the family relationship, the necessary documents are issued by the Italian diplomatic or consular representations in his or her country of origin, which makes the necessary checks at the expense of the person concerned. The family relationship can also be proved by other means and through UNHCR involvement. The application cannot be rejected solely for lack of documentation.

### 2. Status and rights of family members

According to the law,<sup>500</sup> family members who do not have an individual right to international protection, have the same rights recognised to the sponsor. Once in Italy, they get a residence permit for family reasons,<sup>501</sup> notwithstanding whether they were previously irregularly present.<sup>502</sup> These provisions do not apply to family members who should be excluded from the international protection.<sup>503</sup>

<sup>498</sup> Article 29bis TUI, citing Article 29(3) TUI.

<sup>499</sup> Article 29(1) TUI.

<sup>500</sup> Article 22 Qualification Decree.

<sup>501</sup> Article 30 TUI.

<sup>502</sup> Article 30 TUI.

<sup>503</sup> Occurring cases governed by Articles 10 and 16 Qualification Decree.

Minor children, present with the parent at the moment of the asylum application, also obtain the same status recognised to the parent.<sup>504</sup>

## C. Movement and mobility

### 1. Freedom of movement

Refugees and beneficiaries of subsidiary protection, like asylum seekers, can freely circulate within the Italian territory, without prejudice to the limits established by Article 6(6) TUI, for the stay in municipalities or localities affecting the military defence of the State. They can also settle in any city if they can provide for themselves.

If accommodated in a government reception centre (see [Overview of the Reception System](#)), they could be requested to return to the structure by a certain time, in the early evening. More generally, in order not to lose their accommodation place, they are not allowed to spend days out of the structures without authorisation.

In some areas, during 2016, asylum seekers and beneficiaries of international protection had to be moved due to the discontent of the local population. In some cases, the protest of the inhabitants entirely prevented their reception as it happened in **Gorino**, Ferrara where, on 24 October 2016, 20 asylum seekers, including 12 women and 8 children, were blocked on arrival, obliging the Prefecture to find an emergency accommodation in a nearby town.

Once obtained a place in a SPRAR project, beneficiaries have to accept it even if it implies to be moved to a different city. If they refuse the transfer, they have to leave the reception system definitively.

### 2. Travel documents

Travel documents for beneficiaries of international protection are governed by Article 24 Qualification Decree.

For **refugees**, the provision refers to the 1951 Refugee Convention and states that travel documents (*documenti di viaggio*) issued for refugees are valid for 5 years, renewable. They could be refused for serious reasons related to public order and national security. These are usually automatically given to refugees.

**Beneficiaries of subsidiary protection** can get a “travel permit” (*titolo di viaggio*), as opposed to a travel document (*document di viaggio*), explaining in a note to the *Questura* the reasons why they cannot ask or obtain a passport from their country's embassy. They can get a travel document if they have no representative authorities of their country in Italy.

Therefore, they can invoke reasons linked to their status and to their asylum stories. However, the Council of State has clarified in a case on travel permits for **beneficiaries of humanitarian protection** that the reasons to be adduced are not implicit in the reasons why the protection has been recognised and that it is not enough to generally declare that, because of the problems faced in the country of origin, it is impossible to contact the diplomatic authorities of that country in Italy.<sup>505</sup>

Beneficiaries can also invoke reasons linked to the procedures applied by their embassies or to the lack of documentation requested, such as original identity cards or birth certificates. The *Questura* verifies whether the person in fact is not in possession of these documents, looking at the documents he or she

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<sup>504</sup> Article 6(2) Procedure Decree; Article 31 TUI.

<sup>505</sup> Council of State, Section III, Decision No 451, 4 February 2016, available at: <http://bit.ly/2k5xcFS>.

provided during the asylum procedure. In some cases, immigration offices contact the embassies asking confirmation of the reported procedure.

The applicant assumes responsibility, under criminal law, for his or her statements. Evidence, such as a written note from the embassy refusing a passport, is not required but helpful if provided.

The *Questura* can reject the application if the reasons adduced are deemed unfounded or not confirmed by embassies. According to the law, rejection can also be decided in case of doubts on the person's identity, but administrative case law has affirmed that it is contradictory to deny, on this basis, the travel document to someone who has obtained a residence permit on international protection grounds.<sup>506</sup>

In case of rejection, the beneficiary concerned can appeal to the Administrative Court.

Italian law does not prohibit **beneficiaries of subsidiary protection** from using the Italian travel permit to go back to their country of origin.

## D. Housing

### Indicators: Housing

- |  |               |
|--|---------------|
| 1. For how long are beneficiaries entitled to stay in reception centres?       | Not regulated |
| 2. Number of beneficiaries staying in reception centres as of 31 December 2016 | Not available |

In Italy, beneficiaries of international protection face a severe lack of protection concerning accommodation.

LD 142/2015, implementing the recast Reception Conditions Directive, ensures accommodation for asylum seekers for all the asylum procedure, and, in case of appeal, during the judicial procedure (see chapter on [Reception Conditions](#)), but does not expressly provide rules on the accommodation of beneficiaries of international protection.

On the basis of a strictly literal interpretation of this Decree and the related Ministry of Interior Circular,<sup>507</sup> some public administration offices consider that material conditions may immediately cease after the status recognition for those beneficiaries accommodated in government centres or in emergency reception centres (CAS), and that only beneficiaries of international protection who are accommodated in SPRAR or those who, immediately after being notified of the protection, get a place in a SPRAR project, can benefit from an additional accommodation period.

According to the SPRAR guidelines, as amended by the Ministry of Interior Decree of 10 August 2016, beneficiaries of international protection accommodated in SPRAR keep their right to accommodation for 6 additional months after the notification of the protection status and, if they move to a SPRAR project after obtaining protection, for 6 months from the entry into that project. A further extension can be authorised by Mol for another 6 months or more, based on duly motivated health problems or specific integration targets.

Unaccompanied minors are, in any case, accommodated for 6 months after their coming of age.

However, as already underlined in the section on [Types of Accommodation](#), SPRAR represents only a small part of the accommodation system and, even if the law provides that asylum seekers be moved to

<sup>506</sup> Administrative Court of Lazio, Decision 11465/2015, 30 September 2015, available at: <http://bit.ly/2kgkOFB>.

<sup>507</sup> Ministry of Interior Circular n. 2255 of 30 October 2015.



it as soon as possible, the majority of asylum seekers spend all the asylum procedure in government centres or CAS.

In practice, beneficiaries notified of a protection status in CAS are strongly discriminated against compared to those who obtain or who have already obtained a place in SPRAR. Depending on the discretionary decisions of the responsible Prefectures and on bureaucratic delays, they could be allowed to stay in the reception centre a few months, a few days, or even just one day after the notification. Examples of this divergent practice have been reported across different regions:

- ❖ **Padova:** As of 25 of January 2016, the Prefecture of Padova has instructed CAS operators to allow persons obtaining international or humanitarian protection to remain in the reception centre only for the next 24 hours after the notification of the decision. It has been reported that across the entire **Veneto** region, the cessation of reception measures in CAS is imposed immediately after the recognition of one of the forms of protection.
- ❖ **Ancona:** As of 28 September 2016, the Prefecture of Ancona has given indications to CAS operators to immediately communicate the names of accommodated persons who have been granted protection, in order to place them out of the centre.
- ❖ **Milan:** The Prefecture allows beneficiaries to stay in the centres for 5 days after notification of a positive decision on their asylum application.
- ❖ **Salerno:** CAS allow people to wait for the receipt of the electronic residence permit before requesting them to leave the centre.
- ❖ **Trieste:** after a meeting with the organisations involved in managing accommodation centres, the Prefecture accepted to conform to the policy of the SPRAR system, ensuring an additional 6 months of accommodation after the status notification.

In order to offer the same prospects to beneficiaries of international protection, the Ministry of Interior issued a Circular on 5 May 2016, informing that the responsible national authority for SPRAR should give priority for the admission in SPRAR projects to beneficiaries of international protection rather than to asylum seekers. Given the limited number of persons hosted in SPRAR, however, according to ASGI, the measure will not solve the lack of protection of beneficiaries of international protection.

At least, thanks to amendment of the Qualification Decree by LD 18/2014, refugees and beneficiaries of subsidiary protection have now a right to access public housing units under the same conditions as nationals.<sup>508</sup>

## E. Employment and education

### 1. Access to the labour market

The residence permit issued to refugees and to subsidiary protection beneficiaries allows access to work and even to public employment, with the only permissible limit of positions involving the exercise of public authority or responsibility for safeguarding the general interests of the State.<sup>509</sup>

Beneficiaries are entitled to the same treatment as Italian citizens in matters of employment, self-employment, subscription to professional bodies, vocational training, including refresher courses, for training in the workplace and for services rendered by employment centres.

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<sup>508</sup> Article 29 Qualification Decree; Article 40(6) LD TUI.

<sup>509</sup> Article 25 Qualification Decree.

## 2. Access to education

According to the law, minors present in Italy have the right to education regardless of their legal status. They are subject to compulsory education and they are enrolled in Italian schools under the conditions provided for Italian minors. The enrollment can be requested at any time of the school year.<sup>510</sup>

The law distinguishes between minors under the age of 16 and over 16.

- Minors under 16 are subject to compulsory education and they are enrolled in a grade corresponding to their actual age. Taking into account the curriculum followed by the pupil in the country of origin and his or her skills, the Teachers' Board can decide otherwise, providing the assignment to the class immediately below or above the one corresponding to the minor's age.<sup>511</sup>
- Minors over 16 and no longer subject to compulsory education are enrolled if they prove proper self-preparation on the entire prescribed programme for the class they wish to follow.<sup>512</sup>

Current legislation does not allow the establishment of special classes for foreign students and the Circular of the Ministry of Education of 8 January 2010 maintains that the number of non-nationals in school classes should be limited to 30%.

Schools are not obliged to provide specific language support for non-national students but, according to the law, the Teachers' Board defines, in relation to the level of competence of foreign students, the necessary adaptation of curricula and can adopt specific individualised or group interventions to facilitate learning of the Italian language.

As underlined by the Ministry of Education in guidelines issued on February 2014, special attention should be paid to Italian language labs. The Ministry observes that an effective intervention should provide about 8-10 hours per week dedicated to Italian language labs (about 2 hours per day) for a duration of 3-4 months.<sup>513</sup>

The Qualification Decree also specifies that minors holding refugee status or subsidiary protection status have access to education of all levels, under the same procedures provided for Italian citizens,<sup>514</sup> while adult beneficiaries have the right of access to education under the conditions provided for the other third-country nationals.

International protection beneficiaries can require the recognition of the equivalence of the education qualifications.

## F. Health care

Like asylum seekers, beneficiaries of international protection have to register with the national health service.<sup>515</sup> They have equal treatment and full equality of rights and duties as Italian nationals concerning the obligation to pay contributions and the assistance provided in Italy by the national health service.

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<sup>510</sup> Article 38 TUI; Article 45 PD 394/1999.

<sup>511</sup> Article 45(2) PD 394/1999.

<sup>512</sup> Article 192(3) LD 297/1994.

<sup>513</sup> For more information, see ASGI, *Minori stranieri e diritto all'istruzione e alla formazione professionale. Sintesi della normativa vigente e delle indicazioni ministeriali*, ASGI, March 2014, available at <http://bit.ly/2kHi5Sf>.

<sup>514</sup> Article 26 Qualification Decree.

<sup>515</sup> Article 34 LD TUI; Article 16 PD 21/2015; Article 21 LD 142/2015.

Registration is valid for the duration of the residence permit and it does not expire in the renewal phase of the residence permit.<sup>516</sup> As highlighted by MSF in March 2016, problems related to the lack of accommodation and to the lack of a domicile for beneficiaries of international protection also affect the exercise of their right to medical assistance, as the renewal of the health card depends on the renewal of the permit of stay and many health services (such as the choice of a general doctor) are connected with the place of domicile given for the renewal the residence permit.<sup>517</sup>

Similar to asylum seekers after their right to work is provided, in some regions – such as **Lazio** and **Toscana**, beneficiaries of international protection are no longer exempted from the sanitary ticket because they are considered inactive and not unemployed. In other regions such as **Piemonte** and **Lombardia**,<sup>518</sup> the exemption is extended until asylum seekers do actually find a job. However, only a few regions such as **Friuli Venezia Giulia** and **Puglia** apply the same principle to beneficiaries.

On 18 April 2016, ASGI and other NGOs sent a letter to the Ministry of Health, asking it to give effect to Article 17(4) of the recast Reception Conditions Directive, according to which asylum seekers may be required to contribute to the costs for health care only if they have sufficient resources, for example if they have been working for a reasonable period of time. ASGI also asked the Ministry to consider that, following the adoption of the LD 150/2015 for granting the right to exemption from participation in health spending, distinctions can no longer be drawn between unemployed and inactive persons.<sup>519</sup> On 9 May 2016, the Ministry of Health replied to have involved the Ministry of Economy and the Ministry of Labour and Social Policy in order to achieve a uniform interpretation of the aforementioned rules.

Article 27 of the Qualification Decree specifies that beneficiaries of international protection are entitled to equal treatment with Italian citizens in the area of health care and social security. LD 18/2014 amended the abovementioned article, providing that the Ministry of Health has to adopt guidelines for the programming of assistance and rehabilitation of refugees and subsidiary protection beneficiaries victims of torture, rape or other serious forms of psychological, physical or sexual violence, including specific training programmes and refresher courses to health personnel.

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<sup>516</sup> Article 42 PD 394/1999.

<sup>517</sup> MSF, *Fuoricampo. Richiedenti asilo e rifugiati in Italia: insediamenti informali e marginalità sociale*, March 2016, available in Italian at: <http://bit.ly/1S5IHGh>.

<sup>518</sup> See Note of Piemonte Region, Health Office, 4 March 2016.

<sup>519</sup> Article 19 LD 150/2015 states that “unemployed” are workers who declare, in electronic form, their immediate availability to exercise work activities.

## ANNEX I – Transposition of the CEAS in national legislation

### Directives and other CEAS measures transposed into national legislation

| Directive  | Deadline for transposition   | Date of transposition | Official title of corresponding act   | Web Link   |
|--|--|-----------------------|---|--|
| <b>Directive 2011/95/EU</b><br>Recast Qualification Directive        | 21 December 2013   | 21 February 2014      | Decreto Legislativo 21 febbraio 2014, n. 18 “Attuazione della direttiva 2011/95/UE recante norme sull'attribuzione, a cittadini di paesi terzi o apolidi, della qualifica di beneficiario di protezione internazionale, su uno status uniforme per i rifugiati o per le persone aventi titolo a beneficiare della protezione sussidiaria, nonché sul contenuto della protezione riconosciuta” | <a href="http://bit.ly/1LEIVBj">http://bit.ly/1LEIVBj</a> (IT) |
| <b>Directive 2013/32/EU</b><br>Recast Asylum Procedures Directive    | 20 July 2015<br>Article 31(3)-(5) to be transposed by 20 July 2018 | 15 September 2015     | Decreto legislativo 18 agosto 2015, n. 142 “Attuazione della direttiva 2013/33/UE recante norme relative all'accoglienza dei richiedenti protezione internazionale, nonché della direttiva 2013/32/UE, recante procedure comuni ai fini del riconoscimento e della revoca dello status di protezione internazionale”  | <a href="http://bit.ly/1Mn6i1M">http://bit.ly/1Mn6i1M</a> (IT) |
| <b>Directive 2013/33/EU</b><br>Recast Reception Conditions Directive | 20 July 2015   | 15 September 2015     | Decreto legislativo 18 agosto 2015, n. 142 “Attuazione della direttiva 2013/33/UE recante norme relative all'accoglienza dei richiedenti protezione internazionale, nonché della direttiva 2013/32/UE, recante procedure comuni ai fini del riconoscimento e della revoca dello status di protezione internazionale”  | <a href="http://bit.ly/1Mn6i1M">http://bit.ly/1Mn6i1M</a> (IT) |
| <b>Regulation (EU) No 604/2013</b><br>Dublin III Regulation          | Directly applicable<br>20 July 2013                                |                       | N/A   |  |