

# Country Report: Italy



2020  
Update



## Acknowledgements & Methodology

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

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

The information in this report is up-to-date as of 31 December 2020, unless otherwise stated.

## The Asylum Information Database (AIDA)

The Asylum Information Database (AIDA) is coordinated by the European Council on Refugees and Exiles (ECRE). It aims to provide up-to date information on asylum practice in 23 countries. This includes 19 EU Member States (AT, BE, BG, CY, DE, ES, FR, GR, HR, HU, IE, IT, MT, NL, PL, PT, RO, SE, SI) and 4 non-EU countries (Serbia, Switzerland, Turkey, UK) 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>Decree Law</b>	Regulatory act which provisionally enters into force but requires the enactment of a legislative act in order to have definitive force. This process is described as “implementation by law” ( <i>conversione in legge</i> ), and it is possible for the Decree Law to undergo amendments in the process of enactment of the law.
<b>Foglio Notizie</b>	Form containing the personal details of the person and the possibility of indicating, by ticking the relevant box, the reasons for his/her arrival in Italy, choosing between the existence of family ties, the need for work, the intention to seek asylum or “other”. It is not always translated in all its parts and it is likely to determine the legal status of the person concerned.
<b>Fotosegnalamento</b>	Taking of photographs and fingerprinting upon identification and registration of the asylum application
<b>Nulla osta</b>	Certification of the absence of impediments to contracting a marriage
<b>Questore</b>	Chief of the Immigration Office of the Police
<b>Questura</b>	Police Office
<b>Verbalizzazione</b>	Lodging of the asylum application through an official form entitled “C3”
<b>AMIF</b>	Asylum, Migration and Integration Fund
<b>ANCI</b>	National Association of Italian Municipalities   Associazione Nazionale Comuni Italiani
<b>ASGI</b>	Association for Legal Studies on Immigration   Associazione per gli Studi Giuridici sull’Immigrazione
<b>ASL</b>	Local Health Board   Azienda Sanitaria Locale
<b>CAF</b>	Fiscal Assistance Centre   Centro assistenza fiscale
<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>CSM</b>	High Judicial Council   Consiglio Superiore della Magistratura
<b>EASO</b>	European Asylum Support Office
<b>ECHR</b>	European Convention on Human Rights
<b>ECtHR</b>	European Court of Human Rights
<b>ECRI</b>	European Committee against Racism and Intolerance
<b>EDAL</b>	European Database of Asylum Law
<b>INAIL</b>	National Institute for Insurance against Accidents at Work   Istituto Nazionale Assicurazione Infortuni sul Lavoro
<b>INPS</b>	National Institute of Social Security   Istituto Nazionale di Previdenza Sociale
<b>IOM</b>	International Organisation for Migration
<b>ISEE</b>	Equivalent Economic Situation Indicator   Indicatore della situazione economica equivalente

<b>L</b>	Law   Legge
<b>LD</b>	Legislative Decree   Decreto Legislativo
<b>MEDU</b>	Doctors for Human Rights   Medici per I diritti umani
<b>MRCC</b>	Maritime Rescue Coordination Centre
<b>MSF</b>	Médecins Sans Frontières
<b>PD</b>	Presidential Decree   Decreto del Presidente della Repubblica
<b>RDC</b>	Income support   Reddito di Cittadinanza
<b>SIMM</b>	Society of Migration Medicine   Società Italiana di Medicina delle Migrazioni
<b>SOPs</b>	Standard Operating Procedures
<b>SPRAR</b>	System of protection for asylum seekers and refugees   Sistema di protezione per richiedenti asilo e rifugiati
<b>SIPROIMI</b>	System of protection for beneficiaries of international protection and unaccompanied minors   Sistema di protezione per titolari di protezione internazionale e minori stranieri non accompagnati
<b>SAI</b>	System of Accommodation and Integration – Sistema di accoglienza e integrazione
<b>TEAM</b>	European Health Insurance Card   Tessera europea di assicurazione malattia
<b>TUI</b>	Consolidated Act on Immigration   Testo unico sull'immigrazione
<b>VESTANET</b>	Registration database for asylum applications

## Statistics

### Overview of statistical practice

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

### Applications and granting of protection status at first instance: year 2020

	Applicants in 2020	Pending at end of 2020	Refugee status	Subsidiary protection	Rejection	Refugee rate	Sub. Prot. rate	Rejection rate
<b>Total</b>	26,963	33,636	4,924	4,310	34,949	10%	12%	77%

Breakdown by countries of origin of the total numbers

<b>Pakistan</b>	5,515	:	298	654	5,185	5%	11%	83%
<b>Nigeria</b>	3,199	:	1,317	180	5,235	19%	3%	76%
<b>Bangladesh</b>	2,745	:	70	57	2,831	2%	2%	95%
<b>El Salvador</b>	1,068	:	454	567	745	26%	32%	42%
<b>Tunisia</b>	1,024	:	34	4	906	4%	0%	95%
<b>Venezuela</b>	834	:	167	711	75	17%	74%	8%
<b>Somalia</b>	764	:	130	242	115	27%	49%	23%
<b>Peru</b>	739	:	106	29	1,155	8%	2%	87%
<b>Gambia</b>	699	:	46	31	1,105	4%	3%	92%
<b>Senegal</b>	696	:	68	37	1,663	4%	2%	92%

Source: Ministry of Interior, *I numeri dell'asilo*, available in Italian at: <https://bit.ly/2SBSwbm>. Statistics on decisions cover the decisions taken throughout the year, regardless of whether they concern applications lodged that year or in previous years. "Rejection" also covers inadmissibility decisions. "Applicants" refers to the total number of applicants, and not only to first-time applicants.

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

**Gender/age breakdown of the total number of applicants: 2020**

	Number	Percentage
<b>Total number of applicants</b>	26,963	100%
Men	21,238	
Women	5,725	
Children	3,528	-
Unaccompanied children	520	

Source: Ministry of Interior, available in Italian at: <http://www.libertaciviliimmigrazione.dlci.interno.gov.it/it/documentazione/statistica/i-numeri-dellasilo>

**Comparison between first instance and appeal decision rates: 2020**

Statistics on appeals are not available.

## Overview of the legal framework

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

Title (EN)	Original Title (IT)	Abbreviation	Web Link
Legislative Decree no. 286/1998 "Consolidated Act on provisions concerning the Immigration regulations and foreign national conditions norms" <i>Amended by:</i> Decree Law no. 13/2017, implemented by Law no. 46/2017 <i>Amended by:</i> Decree Law no. 113/2018, implemented by Law no. 132/2018	Decreto legislativo 25 luglio 1998, n. 286 "Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero" <i>Modificato:</i> Decreto Legge 17 febbraio 2017, n. 13, conversione in Legge di 13 aprile 2017, n. 46 <i>Modificato:</i> Decreto Legge 4 ottobre 2018, n. 113, conversione in Legge di 1 dicembre 2018, n. 132	TUI  Decree Law 13/2017 Decree Law 113/2018	<a href="http://bit.ly/1PYQbyL">http://bit.ly/1PYQbyL</a> (IT)  <a href="https://bit.ly/2ltXe3Y">https://bit.ly/2ltXe3Y</a> (IT) <a href="https://bit.ly/2G8Bh7W">https://bit.ly/2G8Bh7W</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" <i>Amended by:</i> Legislative Decree no. 18/2014	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" <i>Modificato:</i> Decreto Legislativo 21 febbraio 2014, n. 18	Qualification Decree  LD 18/2014	<a href="http://bit.ly/1FOscKM">http://bit.ly/1FOscKM</a> (IT)  <a href="http://bit.ly/1l0ioRw">http://bit.ly/1l0ioRw</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" <i>Amended by:</i> Legislative Decree no. 142/2015  <i>Amended by:</i> Decree Law no. 13/2017, implemented by Law no. 46/2017 <i>Amended by:</i> Decree Law no. 113/2018, implemented by Law no. 132/2018 <i>Amended by:</i> Decree Law no. 130/2020, Implemented by Law no. 173/2020	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" <i>Modificato:</i> Decreto legislativo n. 142/2015  <i>Modificato:</i> Decreto Legge 17 febbraio 2017, n. 13, convertito con modificazioni dalla Legge del 13 aprile 2017, n. 46 <i>Modificato:</i> Decreto Legge 4 ottobre 2018, n. 113, convertito con modificazioni dalla Legge del 1 dicembre 2018, n. 132 <i>Modificato da</i> Decreto Legge n. 130/2020, convertito con modificazioni dalla Legge 173/2020	Procedure Decree  Reception Decree Decree Law 13/2017 Decree Law 113/2018 Decree Law 130/2020 Law 173/2020	<a href="http://bit.ly/1PYQjOW">http://bit.ly/1PYQjOW</a> (IT) <a href="https://bit.ly/2XbAeem">https://bit.ly/2XbAeem</a> (IT)  <a href="http://bit.ly/1Mn6i1M">http://bit.ly/1Mn6i1M</a> (IT) <a href="https://bit.ly/2ltXe3Y">https://bit.ly/2ltXe3Y</a> (IT) <a href="https://bit.ly/2G8Bh7W">https://bit.ly/2G8Bh7W</a> (IT)
Legislative Decree no. 142/2015 "Implementation of Directive 2013/33/EU on standards for the reception of asylum applicants and the Directive 2013/32/EU	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,	Reception Decree	<a href="http://bit.ly/1Mn6i1M">http://bit.ly/1Mn6i1M</a> (IT)

on common procedures for the recognition and revocation of the status of international protection.”	recante procedure comuni ai fini del riconoscimento e della revoca dello <i>status</i> di protezione internazionale.”		
<i>Amended by:</i> Legislative Decree 220/2017 <i>Amended by:</i> Decree Law no. 113/2018, implemented by Law no. 132/2018 <i>Amended by</i> Decree Law no. 130/2020, Implemented by Law no. 173/2020	<i>Modificato:</i> Decreto legislativo 22 dicembre 2017, n. 220 <i>Modificato:</i> Decreto Legge 4 ottobre 2018, n. 113, convertito con modificazioni dalla Legge di 1 dicembre 2018, n. 132 <i>Modificato</i> da Decreto Legge n. 130/2020, convertito con modificazioni dalla Legge 173/2020	LD 220/2017 Decree Law 113/2018 Decree Law 130/2020 Law 173/2020	<a href="http://bit.ly/2CJXJ3s">http://bit.ly/2CJXJ3s</a> (IT) <a href="https://bit.ly/2G8Bh7W">https://bit.ly/2G8Bh7W</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)
Law no. 47/2017 “Provisions on the protection of foreign unaccompanied minors”	Legge di 7 aprile 2017, n. 47 “Disposizioni in materia di misure di protezione dei minori stranieri non accompagnati”	L 47/2017	<a href="http://bit.ly/2sYgFd8">http://bit.ly/2sYgFd8</a> (IT)

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

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

Title (EN)	Original Title (IT)	Abbreviation	Web Link
Presidential Decree no. 394/1999 "Regulation on norms implementing the consolidated act on provisions concerning the immigration regulations and foreign national conditions norms"	Decreto del Presidente della Repubblica del 31 agosto 1999, n. 394 "Regolamento recante norme di attuazione del testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero"	PD 394/1999	<a href="http://bit.ly/1M33qlX">http://bit.ly/1M33qlX</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)
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)
CNDA Circular no. 6300 of 10 August 2017 on "Notifications of the acts and measures of the Territorial Commissions and of the National Commission for the right to asylum"	Circolare della Commissione Nazionale per il diritto d'asilo n. 6300 del 10 agosto 2017 "Notificazioni degli atti e dei provvedimenti delle commissioni territoriali e della Commissione Nazionale per il diritto d'asilo"	CNDA Circular 6300/2017	<a href="http://bit.ly/2FwCDZj">http://bit.ly/2FwCDZj</a> (IT)
CNDA Circular no. 6425 of 21 August 2017, Request clarifications art. 26, (5) Legislative Decree no. 25/2008, as amended by law n. 47/2017	Circolare della Commissione nazionale per il diritto d'asilo n. 6425 del 21 agosto 2017, Richiesta chiarimenti art. 26, comma 5, d.lgs. n. 25/2008, come modificato dalla legge n. 47/2017.	CNDA Circular 6425/2017	<a href="http://bit.ly/2Fn38Um">http://bit.ly/2Fn38Um</a> (IT)
Ministry of Interior Circular no. 83774 of 18 December 2018 "Decree Law 113/2018 implemented by Law 132/2018"	Circolare del Ministero dell'Interno del 18 dicembre 2018, n. 83774 "Decreto Legge 113/2018, convertito con modificazioni dalla legge 132/2018"	Circular 83774/2018	<a href="http://bit.ly/2XTY3Ze">http://bit.ly/2XTY3Ze</a> (IT)
Ministry of Interior Circular no. 22146 of 27 December 2018 "Decree Law 113/2018 implemented by Law 132/2018"	Circolare del Ministero dell'Interno del 27 dicembre 2018, n. 22146 "Decreto Legge 2018 convertito in L. 132/2018"	Circular 22146/2018	<a href="http://bit.ly/2T0Ws04">http://bit.ly/2T0Ws04</a> (IT)
Ministry of Interior Circular no. 1 of 2 January 2019 "Decree Law 113/2018 implemented by Law 132/2018, applicable profiles"	Circolare del Ministero dell'Interno del 2 gennaio 2019, n. 1 "Decreto Legge 113/2018, convertito con modificazioni dalla legge 132/2018, profili applicativi"	Circular 1/2019	<a href="https://bit.ly/2Ghrloj">https://bit.ly/2Ghrloj</a> (IT)
Ministry of Interior Circular of 14 January 2019 "Decree Law 113/2018 implemented by Law 132/2018, applicable profiles"	Circolare del Ministero dell'Interno del 14 gennaio 2019, "Decreto Legge 113/2018, convertito con modificazioni dalla legge 132/2018, profili applicativi"		<a href="https://bit.ly/2P7G5OZ">https://bit.ly/2P7G5OZ</a> (IT)

Ministry of Interior Circular no. 10380 of 18 January 2019 “Decree Law 113/2018 implemented by Law 132/2018, applicable profiles”	Circolare del Ministero dell'Interno del 18 gennaio 2019, n. 10380 “Decreto Legge 113/2018, convertito con modificazioni dalla legge 132/2018, profili applicativi”	Circular 10380/2019	<a href="https://bit.ly/2VGH7UE">https://bit.ly/2VGH7UE</a> (IT)
“Tender specifications scheme approved by Ministerial Decree of 20 November 2018 to be used for the supply of goods and services for the management and operation of the first reception centres, as per Decree Law no. 451 of 30 October 1995, implemented by Law no. 563 of 29 December 1995 for the reception centres referred to in Articles 9 and 11 of Legislative Decree 142/2015 of 18 August 2015, and for the centres referred to in Article 10-ter and 14 of Legislative Decree 286/1998 of 25 July 1998, and subsequent modifications”	“Schema di capitolato di gara di appalto, approvato con Decreto Ministeriale del 20 novembre 2018, riguardante la fornitura di beni e servizi per la gestione e il funzionamento dei centri di prima accoglienza, di cui al decreto legge 30 ottobre 1995, n.451, convertito dalla legge 29 dicembre 1995 n. 563, dei centri di accoglienza di cui agli articoli 9 e 11 del d.lgs. 18 agosto 2015, n. 142 e dei centri di cui all'articolo 10 – ter e 14 del d.lgs. 25 luglio 1998, n. 286 e successive modificazioni, con relativi allegati”	Capitolato	<a href="http://bit.ly/2F8vXIC">http://bit.ly/2F8vXIC</a> (IT)
Ministry of Interior Decree, 5 August 2019, published on 7 September 2019, Identification of border or transit areas for the implementation of the accelerated procedure for the exam of international protection applications	Decreto del Ministero dell'Interno del 5 Agosto 2019, pubblicato sulla Gazzetta Ufficiale il 7 Settembre 2019, Individuazione delle zone di frontiera o di transito ai fini dell'attuazione della procedura accelerata di esame della richiesta di protezione internazionale.	MOI Decree 5 August 2019	<a href="https://bit.ly/3fzKFIY">https://bit.ly/3fzKFIY</a>
Ministry of Foreign Affairs Decree, 4 October 2019, <i>Identification of Safe Countries of origin, according to Article 2-bis of the Procedure Decree</i> published on 7 ottobre 2019 n. 235.	Ministero Degli Affari Esteri e della Cooperazione Internazionale, <i>4 Ottobre 2019, Individuazione dei Paesi di origine sicuri, ai sensi dell'articolo 2-bis del decreto legislativo 28 gennaio 2008, n. 25, G.U. 7 ottobre 2019 n. 235.</i>	Ministry of Foreign Affairs Decree 4 October 2019	<a href="https://bit.ly/2yv5PB3">https://bit.ly/2yv5PB3</a>
CNDA Circular no. 8864 of 28 October 2019- Safe countries of origin list Article 2 bis LD 25/2008: accelerate procedure Articles 28, 28 bis, 28 ter	Circolare della Commissione Nazionale per il diritto di asilo, Prot. 886 del 28 Ottobre 2019, Lista dei paesi di origine sicuri ex art. 2 bis d.lgs 25/2008; applicazione delle procedure accelerate ex art. 28, 28 bis 28 ter	CNDA Circular, no 8864 of 28 October 2019	<a href="https://bit.ly/3dweqlt">https://bit.ly/3dweqlt</a>
CNDA Circular no. 9004 of 31 October 2019, Safe countries of origin - transmission of country information files - accelerated procedure	Circolare della Commissione Nazionale per il diritto di asilo, Prot. 9004 del 31 ottobre 2019 – Lista dei paesi di origine sicuri- trasmissione “Schede Paesi” – procedura accelerata	CNDA Circular, no. 9004 of 31 October 2019	<a href="https://bit.ly/3cgmQ0b">https://bit.ly/3cgmQ0b</a>

Ministry Of Interior Department of Civil Liberties and Immigration, Circular n. 8560 16 October 2019, implementation of the accelerated procedure ruled by Article 28 bis Procedure Decree	Circolare del Ministero dell'Interno, Dipartimento delle Dipartimento Libertà Civili e Immigrazione n. 8560 del 16 ottobre 2019, attuazione delle procedure accelerate ex art. 28 bis d.lgs 28 gennaio 2008, n. 25	MOI Circular 16 October 2019	<a href="https://bit.ly/2WbOvtI">https://bit.ly/2WbOvtI</a>
Mol Department of Public Security, Central Directorate of Immigration and Border Police, Circular n. 400/C/II Div. 18 October 2019, implementation of the accelerated procedure ruled by Article 28 bis Procedure Decree	Circolare del Ministero dell'Interno, Dipartimento di Pubblica Sicurezza, Direzione Centrale dell'Immigrazione e della Polizia delle Frontiere n. 400/C/II Div. del 18 ottobre 2019, "attuazione delle procedure accelerate ex art. 28 bis d.lgs 28 gennaio 2008, n. 25	MOI Circular 18 October 2019	<a href="https://bit.ly/2YK3LQ1">https://bit.ly/2YK3LQ1</a>
Decree of the Ministry of Interior, 18 November 2019, Modalities for local authorities to access funding from the National Fund for Asylum Policies and Services and guidelines for the functioning of the Protection System for International Protection Holders and for Unaccompanied Foreign Minors (Siproimi)	Decreto del Ministero dell'Interno del 18 Novembre 2019, Modalita' di accesso degli enti locali ai finanziamenti del Fondo nazionale per le politiche ed i servizi dell'asilo e di funzionamento del Sistema di protezione per titolari di protezione internazionale e per i minori stranieri non accompagnati (Siproimi)	Mol Decree 18 November 2019	<a href="https://bit.ly/35FVtud">https://bit.ly/35FVtud</a>

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

The previous report update was published in **April 2020**.

### *Asylum procedure*

- ❖ **Covid-19:** Due to the outbreak of Covid-19 in Italy, the Government adopted temporary measures, affecting asylum procedures. People arriving in Italy were subject to fiduciary isolation for a period of 10 days, following which they were entitled to access reception facilities for asylum seekers.<sup>2</sup> Following the Decree of the Prime Minister issued on 18 January 2021, the fiduciary isolation is provided for 14 days for people coming from certain countries.<sup>3</sup>

The decree of the Head of the Civil Protection Department of 12 April 2020, allocates the responsibility for the fiduciary isolation and the quarantine of migrants rescued at sea or autonomously disembarked to the Ministry of the Interior. The latter provides accommodation, assistance and health surveillance of these people, with the operational assistance of the Italian Red Cross. The Department can identify areas or facilities to be used as accommodation for the period of health surveillance, after consulting the competent Regions and the local health authorities. In such cases, the Prefectures stipulate contracts for the necessary services. The decree authorized the use of ships for the quarantine and isolation of migrant rescued at sea.<sup>4</sup> Since the beginning of August 2020, all migrants rescued at sea or arrived on the national territory following independent landings are subjected to a Covid-19 test.

### ❖ **Access to the territory:**

- **Ports declared unsafe:** A decree issued on 7 April 2020 declared Italian ports unsafe,<sup>5</sup> aiming at safeguarding the functionality of national health structures and containing the spread of the coronavirus. According to a study published by the Chamber of Deputies, it ceased effects on 30 July 2020.<sup>6</sup>
- **Indirect refoulement to Libya and privatised pushbacks** were still reported in 2020. In February 2020, the Memorandum of Understanding between Italy and Libya<sup>7</sup> was renewed, even though a Criminal Court ruled that it was not conform the Italian Constitution and international law.<sup>8</sup> According to the agreement, Italy undertakes to continue to financially support, with training courses and equipment, the Libyan coast guard of the Ministry of Defence, for search and rescue activities at sea and in the desert, and for the prevention and fight against irregular immigration. For the two-year period 2020-2021, the Ministry of Interior has foreseen an additional 1.2 million euros in supplies. From January 2020 to September 2020, at least 9,000 people were tracked down by the Libyan coastguard and brought back to Libya.<sup>9</sup> According to data collected by IOM

<sup>2</sup> Ministry of Health Circular, 12 October 2020, available in Italian at: <https://bit.ly/2PMEAdB>.

<sup>3</sup> Decree of the President of the Council of Ministers, 18 January 2021, Article 8, available in Italian at: <https://bit.ly/33bLpZm>.

<sup>4</sup> Decree no. 1287 of 12 April 2020, available in Italian at: <https://bit.ly/2QSGmum>

<sup>5</sup> Decree no. 150, 7 April 2020, available in Italian at: <https://bit.ly/3dqzDxg>.

<sup>6</sup> Chamber of Deputies, Emergenza Covid-19: le misure in materia di immigrazione, available in Italian at : <https://bit.ly/33fvtW>

<sup>7</sup> Avvenire, 12 February 2020, Esclusiva. Memorandum Italia-Libia, la bozza integrale: la partita dei fondi a Tripoli, available in Italian at: <https://bit.ly/3bnLOJQ>.

<sup>8</sup> Criminal Court of Trapani, sentence of 23 May 2019, available in Italian at: <https://bit.ly/3dutMHI>; According to article 80 of the Italian Constitution, political agreements can be signed only with Parliament's authorization. Furthermore, it is an agreement concluded with a party, the Libyan coastguard, repeatedly referred to as responsible for crimes against humanity. Therefore, the court found that the agreement violates the principle of non-refoulement.

<sup>9</sup> Report of Fondazione Migrantes, Il diritto d'asilo, 2020.

present at the landing sites in Libya, by the end of 2020, 12,000 people were intercepted and brought back by the Libyan authorities.

- **Readmission to Slovenia:** Since May 2020 readmissions to Slovenia prevented over 1,300 people from the Balkan Route to access the territory. The Civil Court of Rome recognised the informal readmissions as illegal and ordered the issue of a visa for a Pakistani man who did not have access to the asylum procedure due to the readmission to Slovenia in July 2020.<sup>10</sup> Two Directives on the age assessment sent on 31 August and 21 December 2020 by a Public Prosecutor of the Juvenile Court of Trieste authorized authorities responsible for controls at the borders and on the territory in Friuli Venezia Giulia not to consider as minors those who declare themselves as minors if *de visu* they do not appear as such. This aims to facilitate the informal readmission procedure to Slovenia.
- **Pushbacks at Adriatic ports:** As monitored by ASGI, No Name Kitchen, Ambasciata dei Diritti di Ancona and Associazione SOS Diritti, refoulements continue to be carried out from Italy to Greece at Adriatic maritime borders. In 2021, readmissions and refoulements were recorded to Albania and Croatia.<sup>11</sup>
- ❖ **Access to the asylum procedure:** The closure of the Questure – in light of the pandemic - ordered in March 2020, by the Ministry of Interior's (Moi) Circulars caused difficulties, delays and in many cases the impossibility of accessing the asylum procedure at all. Nevertheless, some Civil Courts, such as the one of Rome, ordered the Questura to register the asylum application.
- ❖ **Examination of applications for international protection:** Territorial Commissions suspended interviews from 13 April 2020 up to June 2020. Territorial Commissions restarted auditions but with a very limited number per day, which resulted in further delays and postponements of many auditions. Notifications on the outcome of the asylum applications were not suspended. Terms for appeals, including those to lodge against the Territorial Commissions decisions, were suspended until 11 May 2020.<sup>12</sup>
- ❖ **Dublin procedure:** Through a Circular Letter of 25 February 2020, the Italian Dublin Unit informed the Dublin Units that due to the ongoing health emergency all incoming and outgoing Dublin transfers were suspended. Without any official communication transfers resumed after summer, but, with low numbers for outgoing transfers. In many cases they were complicated by Covid-19 related health measures and by the unavailability of tests before departure.
- ❖ **Manifestly unfounded decisions:** A disproportionate and incorrect use of the manifestly unfounded grounds within accelerated procedures have been reported. This compromised the rights of defence and protection of asylum seekers. In particular, Territorial Commissions consider to be obliged to issue such decision in case of rejection of asylum application from people coming from safe countries.

#### *Reception conditions*

- ❖ **Reception in relation to COVID-19:** Access to reception facilities for people disembarked has been preceded by a period of quarantine on ships or in facilities located at the border. In some cases the quarantine was extended due to contacts with COVID-19 positive cases accommodated in the same buildings or ships. Access to reception facilities for those who landed autonomously or for those who asked for reception directly on the territory was in some cases limited due to problems with covid

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<sup>10</sup> Civil Court of Rome, 18 January 2021, decision available in Italian at: <https://bit.ly/3xNnIEU>; see also ASGI, Readmissions Italy-Slovenia are illegitimate, 22 January 2021, available at: <https://bit.ly/3eYDNiy>

<sup>11</sup> See ASGI, Network Porti adriatici: continuano i respingimenti e le riammissioni, April 2021, available at: <https://bit.ly/2Rsfofy>

<sup>12</sup> Article 36, (1) DL 23/2020 of 8 April 2020, available in Italian at: <https://bit.ly/3gczuQt>.

tests. In some cases, access was conditional on a negative test, and in others it depended on a period of quarantine, but the public facilities to do it were not always available. The practices varied across national territory.

In a first phase, material reception conditions were extended until “the end of the measures in place for the health emergency”,<sup>13</sup> even for those who would no longer be entitled to them.<sup>14</sup> As of 14 August 2020, even though the law had temporarily extended the state of emergency to 15 October 2020, the Ministry of Interior communicated that accommodation measures for those not entitled to be longer accommodated were not included in the extension and invited Prefectures to conclude the relevant reception measures.<sup>15</sup> Due to the lack of places in Emergency Accommodation Centres (CAS) the law stated that, until 31 January 2021, asylum seekers could be accommodated in Siproimi facilities only benefiting from the services as provided in governmental centres and CAS.<sup>16</sup>

- ❖ **Reception system:** Following legislative changes, the reception system for asylum seekers has significantly changed, at least in theory. The changes partially restore the reception model that had been outlined by the Reception decree of 2015, which intended a single system for asylum seekers and beneficiaries of international protection, albeit divided into different phases. The accommodation system (former SPRAR, then Siproimi) is now called S.A.I.: System of accommodation and integration, and allows asylum seekers to be accommodated in the SAI, although with a different level of services provided. The unclarity of the actual passage from first reception centers to S.A.I. centers remains, however. The law, as amended by Decree Law 130/2020, also ensures access to these centers only “within the limits of the available places”. The Decree Law also changed the level of services to be guaranteed in first reception centers and CAS. The changes remain – so far – mainly theoretical. New tender specification schemes published on 24 February 2021 do not guarantee effectiveness to those legal provisions, as only a very low level of such services have been included in the tender.
- ❖ **Reception capacity:** At the end of 2020, the number of asylum seekers and beneficiaries of international protection in the reception system decreased to 79,938, compared to 91,424 at the end of 2019. Out of them, 54,343 were in first reception facilities (CAS and first governmental centers) and 25,574 in SAI (former Siproimi).
- ❖ **Civil registration:** On 31 July 2020 the Constitutional Court declared the denial of the civil registration for asylum seekers introduced by the legislative Decree 113/2018 contrary to the principle of equality enshrined in the Italian Constitution<sup>17</sup> Later, the Decree Law 130/2020, amended by L. 173/2020, repealed the law introduced by the legislative Decree 113/2018. After registration, asylum seekers get an identity card valid for three years.

#### *Detention of asylum seekers*

- ❖ **De facto detention:** Prefectures did not establish dedicated detention facilities for identification purpose. De facto detention of asylum seekers continued to be reported in hotspots.
- ❖ **Detention:** Despite appeals from many organisations, detention in pre-removal detention centres (CPR) has not been suspended following the Covid-19 outbreak. Through a circular of 2 April 2020, the Ministry of Interior ordered Covid-19 tampon tests for newly admitted persons and, in any case, their isolation for the first 14 days.

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<sup>13</sup> Mol Circular, 1 April 2020.

<sup>14</sup> Article 86 bis LD 18/2020 introduced by L. 27/2020.

<sup>15</sup> Mol Circular of 14 August 2020.

<sup>16</sup> Article 16 Decree Law 34/2020 of 19 May 2020, available in Gazzetta Ufficiale at (in Italian): <https://bit.ly/2X1fcS6>.

<sup>17</sup> Decision no. 186/2020 of 31 July 2020, available in Italian at: <https://bit.ly/3tcKKkY>

- ❖ **Detention after quarantine:** For some nationalities, mainly for Tunisians, it has become the common practice that they are not allowed to express their intention to seek asylum. If they manage to express their intent after being sent to a CPR, their request is considered as a request to avoid expulsion, therefore they are detained for the entire asylum procedure.

#### *Content of international protection*

- ❖ **Special protection:** Decree Law 130/2020 enlarged the content of the special protection, allowing beneficiaries to convert this protection title and taking into account the integration in the territory as element to recognise it.
- ❖ **Health cards** with expiration date prior to 30 June 2020 have been extended to 30 June 2020.<sup>18</sup> Residence permits, including those for asylum seekers and beneficiaries of international protection, with expiration date between 31 January and 15 April 2020, have been extended until 15 June 2020.<sup>19</sup> The amendments to the decree law provided for a further extension of the validity of the permits to 31 August 2020.<sup>20</sup> The validity of permits to stay has been further extended to 30 December 2020<sup>21</sup>, later, to 30 April 2021<sup>22</sup> and then to 31 July 2021,<sup>23</sup> resulting in an extension to 31 July 2021 of all permits expired in 2020.

#### *Regularisation of foreign workers*

From June to August 2020 - in order to ensure adequate levels of individual and collective health protection - the Government allowed the regularization of foreign workers who arrived in Italy prior to 8 March 2020, in specific sectors (agricultural work, assistance to people with pathologies or handicap, domestic work).<sup>24</sup> The procedure was opened to asylum seekers allowing the applicants to change their permit into a work permit.

According to the decree (Art. 110-bis), migrants who have previously worked in the agriculture, fishing, care and domestic work sectors can ask to regularise their status through two different procedures:

- In the first track, employers could apply to regularise their foreign and Italian workers without a regular contract by putting in place proper employment contracts. This could thus only be activated by the employer;
- In the second track<sup>25</sup>, third-country nationals who have been in Italian territory without a valid residence permit since October 2019 can apply for a six-month residence permit to look for a job.

In the first case the worker obtained a work permit to stay, in the second case the worker obtained a permit to stay of six months, convertible into a work permit only if, in those six months, he or she found an employment contract in one of the three abovementioned sectors.

Asylum seekers could access both type of procedures. However, the Mol Circulars provided that access to the second procedure was subject to the renunciation of the asylum application.<sup>26</sup> Through the renunciation, to be formalized at the Questura, the asylum seeker could be admitted to the procedure as an irregular foreign citizen present in the national territory and obtain a residence permit for awaiting employment.

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<sup>18</sup> Article 12 of Legislative Decree 9/2020.

<sup>19</sup> Decree Law 18/2020, Article 103 (3).

<sup>20</sup> Article 103 (2 quater) Decree Law 18/2020 as amended by L. 27/2020.

<sup>21</sup> Decree Law 125/2020, Article 3 bis (3).

<sup>22</sup> Decree Law 2/2021, Article 5, amending Decree Law 125/2020.

<sup>23</sup> Decree Law 56/2021, Article 2

<sup>24</sup> Article 103 DL 34/2020 converted with amendments by L. 77/2020.

<sup>25</sup> Article 103 (2) DL 34/2020.

<sup>26</sup> Moi Circular of 19 June 2020; Moi Circular of 7 July 2020.

The Civil Court of Florence observed that it was necessary to ascertain that the applicant had received correct information on the withdrawal of the application and its consequences, before accepting the renunciation of the asylum application and the closure of the court proceedings.<sup>27</sup>

The Regional Administrative Court of Marche stated that the responsible Questura could not declare the application inadmissible due to the applicant's failure to renounce international protection.<sup>28</sup>

Only 220,000 persons applied for this regularization.<sup>29</sup> The limited number of applications is due to the strict requirements, the limitation of employment sectors and the fact that, for the first option, the application for regularization depended on the employer's initiative.

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<sup>27</sup> Civil Court of Florence, intermim decision of 25 September 2020, available at : <https://bit.ly/3up8TX6>

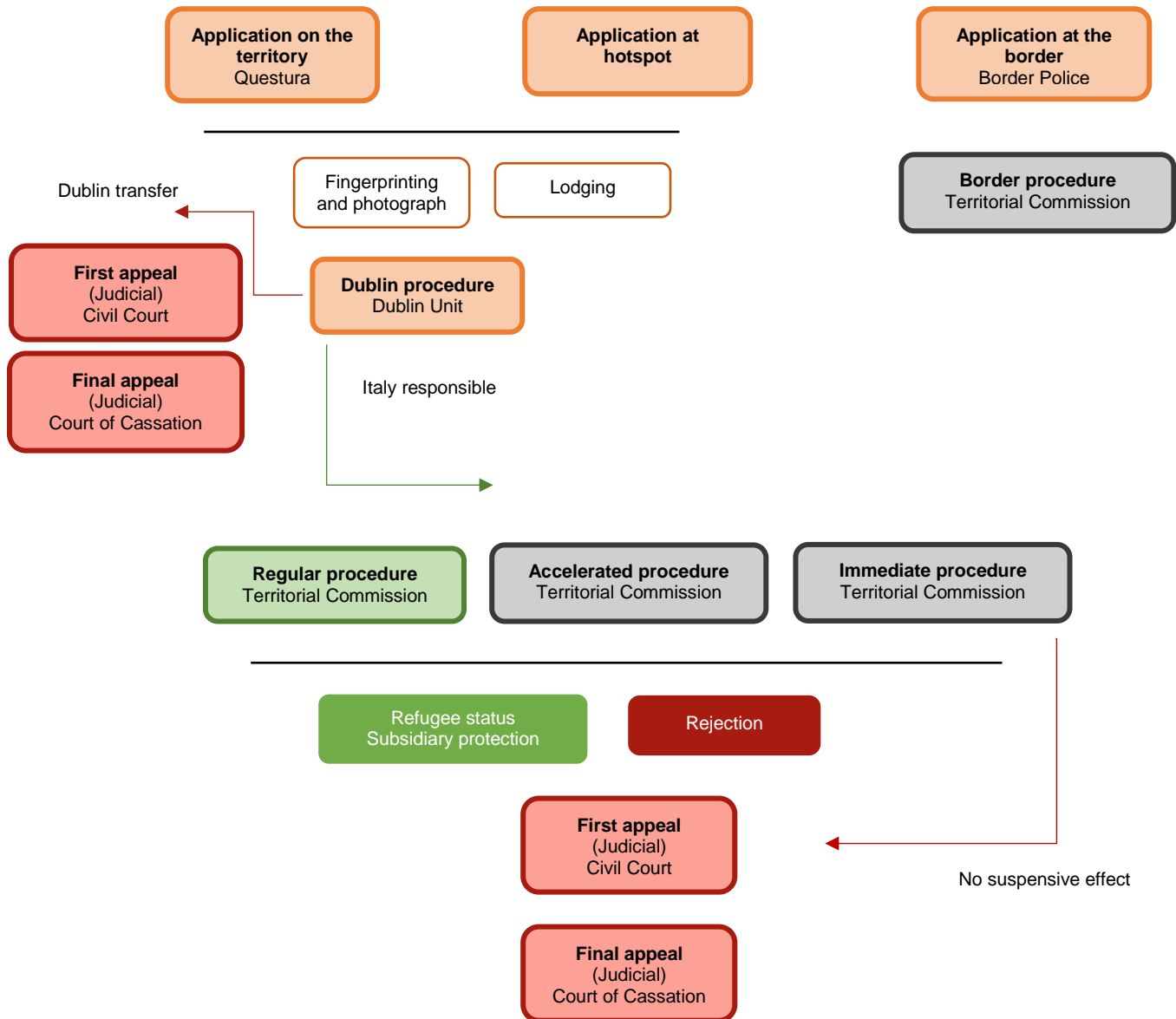
<sup>28</sup> Administrative Regional Court of Marche, interim measure no. 274 of 17 September 2020, available at : <https://bit.ly/2Rjft2x>

<sup>29</sup> See report from Ero Straniero, based on data provided by the Ministry of Interior, 4 March 2021, available at: <https://bit.ly/3nJtnao>

# 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>30</sup> | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ▪ Fast-track processing: <sup>31</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 checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ❖ Accelerated procedure: <sup>32</sup>   | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ❖ Other:                                 |   |  |

With the 2018 reform, the border procedure was established for applicants making an asylum application directly at the border or in transit areas after having been apprehended for having evaded or attempting to evade border controls. The border procedure also applies to asylum seekers who come from a designated [Safe Country of Origin](#). In these cases the entire procedure can be carried out directly at the border or in the transit area.<sup>33</sup> The border procedure has been applied since the issuance of the Ministry of Foreign Affairs Decree of 5 August 2019, published on 7 September 2019, which identifies the border and transit areas covered by the accelerated procedure.

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

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

## 4. Determining authority

Name in English	Number of Commissions	Ministry responsible	Is there any political interference possible by the responsible Minister with the decision making in individual cases by the determining authority?
Territorial Commissions for International Protection	20 + 21 sub commissions	Ministry of Interior	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

<sup>30</sup> For applications likely to be well-founded or made by vulnerable applicants. See Article 31(7) recast Asylum Procedures Directive.

<sup>31</sup> Accelerating the processing of specific caseloads as part of the regular procedure.

<sup>32</sup> Labelled as "accelerated procedure" in national law. See Article 31(8) recast Asylum Procedures Directive.

<sup>33</sup> Article 28-bis(1-ter) Procedure Decree, as amended by Article 9(1) Decree Law 113/2018.

The competent authorities to examine asylum applications and to take first instance decisions are the Territorial Commissions for the Recognition of International Protection (*Commissioni Territoriali per il Riconoscimento della Protezione Internazionale*), which are administrative bodies specialised in the field of asylum, under the Ministry of Interior. The Territorial Commissions are established under the responsibility of Prefectures.<sup>34</sup> LD 220/2017, entering into force on 31 January 2018, reformed the functioning and composition of the Territorial Commissions.

#### 4.1. Composition of Territorial Commissions

The law foresees the creation of 20 Territorial Commissions<sup>35</sup> and up to 30 sub-Commissions across the national territory, in order to boost and improve the management of the increasing number of applications for international protection.<sup>36</sup> As of December 2019, there were 20 Territorial Commissions and 21 sub-Commissions across Italy.<sup>37</sup> There is no updated number available for 2020.

As amended by LD 220/2017, each Territorial Commission is composed at least by 6 members, in compliance with gender balance. These include:<sup>38</sup>

- 1 President, with prefectural experience, appointed by the Ministry of Interior;
- 1 expert in international protection and human rights, designated by UNHCR;
- 4 or more highly qualified administrative officials of the Ministry of Interior, appointed by public tender.<sup>39</sup>

In 2018, 250 specialized members were appointed by public tender and another 162 were added during 2019.<sup>40</sup>

The Territorial Commissions may be supplemented, upon request of the President of the National Commission for the Right to Asylum (CNDA), by an official of the Ministry of Foreign Affairs when, in relation to particular asylum seekers, it is necessary to acquire specific assessments of competence regarding the situation in the country of origin.<sup>41</sup>

Before the appointment of the members of the Territorial Commissions, the absence of conflict of interests must be evaluated.<sup>42</sup> For the President and the UNHCR representative, one or more substitutes are appointed. The assignment is valid for 3 years, renewable.<sup>43</sup>

Following the 2017 reform, interviews are conducted by officials of the Ministry of Interior and no longer by UNHCR. The decision-making sessions of the Commission consist of panel discussions composed by the President, the UNHCR-appointed expert and two of the administrative officers, including the one conducting the interview.<sup>44</sup> Under the Procedure Decree, the decision on the merits of the asylum claim must be taken at least by a simple majority of the Territorial Commission, namely 3 members; in the case of a tie, the President's vote prevails.<sup>45</sup>

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<sup>34</sup> Article 4(1) Procedure Decree, as amended by LD 220/2017.

<sup>35</sup> Article 4(2) Procedure Decree.

<sup>36</sup> Article 4(2-bis) Procedure Decree.

<sup>37</sup> Ministry of Interior, *Quaderno statistico per gli anni 1990-2018*, available in Italian at: <http://bit.ly/2u3FIR5>.

<sup>38</sup> Article 4(3) Procedure Decree, as amended by LD 220/2017.

<sup>39</sup> Article 4(1-bis) Procedure Decree, inserted by LD 220/2017, citing Article 13 Decree Law 13/2017, followed by the appointment of 250 persons through public tender.

<sup>40</sup> Ministry of Interior, audition at Parliament, 7 November 2019.

<sup>41</sup> Article 4(3) Procedure Decree, as amended by LD 220/2017.

<sup>42</sup> *Ibid.*

<sup>43</sup> *Ibid.*

<sup>44</sup> *Ibid.*

<sup>45</sup> Article 4(4) Procedure Decree.

The CNDA has adopted a Code of Conduct for the members of the Territorial Commissions, the interpreters and the personnel supporting them.<sup>46</sup> The CNDA not only coordinates and gives guidance to the Territorial Commissions in carrying out their tasks, but is also responsible for the revocation and cessation of international protection.<sup>47</sup>

These bodies should be independent in taking individual decisions on asylum applications but, due to their belonging to the Department of Civil Liberties and Immigration of the Ministry of Interior, in more cases, they received instructions from the Ministry of Interior. Some examples are the instructions given for the grounds of inadmissibility, manifestly unfoundedness, border procedure.

Throughout 2020, EASO deployed 208 different experts in Italy. The majority of them were research officers (67), caseworkers (28), project officers (17) and administrative assistants (14), followed by other support staff (e.g. project assistants, Dublin staff, operational staff, registration staff etc.). As of 14 December 2020, there were still 174 EASO experts present in Italy, mostly research officers (61), caseworkers (19), project officers (14) and registration support officers (10). EASO moved its main support to the second instance, with file preparation, support with Country of Origin Information, research, supporting all the Tribunals in Italy.<sup>48</sup>

## 4.2. Training and quality assurance

The law requires the CNDA to ensure training and refresher courses to its members and Territorial Commissions' staff. Training is supposed to ensure that those who will consider and decide on asylum claims will take into account asylum seeker's personal and general circumstances, including the applicant's culture of origin or vulnerability. Since 2014, the CNDA has organised training courses based on the EASO modules, in particular on "Inclusion", "Country of Origin Information" and "Interview Techniques". These training courses provide both an online study session and a two-day advanced analysis conducted at central level in Rome. In addition to these permanent trainings, courses on specific topics are also organised at the local level. EASO continues to support the CNDA and Questure with design of trainings.<sup>49</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>50</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.

## 5. Short overview of the asylum procedure

### Application

According to Italian law, there is no formal timeframe for making an asylum application. The intention to make an asylum application may be expressed orally by the applicant in his or her language with the assistance of a linguistic-cultural mediator.<sup>51</sup> However, asylum seekers should make their application as soon as possible. Immigration legislation prescribes, as a general rule, a deadline of 8 days from arrival in Italy for migrants to present themselves to the authorities.<sup>52</sup>

The asylum application can be made either at the border police office or within the territory at the provincial Immigration Office (*Ufficio immigrazione*) of the Police (*Questura*), where fingerprinting and

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<sup>46</sup> Article 5(1-ter) Procedure Decree.

<sup>47</sup> Articles 13 and 14 PD 21/2015.

<sup>48</sup> Information provided by EASO, 26 February 2021.

<sup>49</sup> EASO, *Operating Plan to Italy 2019*, December 2018, available at: <https://bit.ly/2GmqdW3>.

<sup>50</sup> Article 15 Procedure Decree.

<sup>51</sup> Article 3(1) PD 21/2015.

<sup>52</sup> Article 3(2) PD 21/2015.

photographing (*fotosegnalamento*) are carried out. In case the asylum application is made at the border, the Border Police invites asylum seekers to present themselves at the Questura for formal registration. Police authorities cannot examine the merits of the asylum application. However, following the 2018 reform, the Questura declare under certain circumstances the [Subsequent Application](#) automatically inadmissible.

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

After the lodging (*verbalizzazione*) of the application, the Questura sends the formal registration form and the documents concerning the asylum application to the Territorial Commissions or sub-Commissions for International Protection located throughout the national territory, the only authorities competent for the substantive asylum interview.<sup>53</sup> The asylum seeker is then notified of the interview date in front of the Territorial Commission by the Questura.

### **Regular procedure**

According to the Procedure Decree,<sup>54</sup> a member of the Territorial Commission interviews the applicant within 30 days after having received the application and the Commission decides in the 3 following working days. The decision is taken following a panel discussion between all members of the Commission. When the Territorial Commission is unable to take a decision in the time limit and needs to acquire new elements, the examination procedure is concluded within six months of the lodging of the application.

However, the Territorial Commission may extend the time limit for a period not exceeding a further nine months, where:

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

By way of exception, in duly justified circumstances, the Territorial Commission 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>55</sup> In the light of the different possibilities of extension, the asylum procedure may last for a maximum period of 18 months.

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

### **Prioritised and accelerated procedures**

The Procedure Decree provides for an accelerated procedure and a prioritised procedure. The President of the Territorial Commission identifies the cases under the prioritised or accelerated procedure.<sup>56</sup>

### **Border procedure**

With the 2018 reform, confirmed by the 2020 reform, the border procedure was established for applicants making an asylum application directly at the border or in transit areas after having been apprehended for

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<sup>53</sup> Article 4 Procedure Decree, as amended by LD 220/2017.

<sup>54</sup> Article 27 Procedure Decree.

<sup>55</sup> Article 27 Procedure Decree.

<sup>56</sup> Article 28(1) Procedure Decree.

having evaded or attempting to evade border controls. In this case the entire procedure can be carried out directly at the border or in the transit area.<sup>57</sup>

Border and transit areas for the accelerated examination of asylum applications were identified by ministerial decree of 5 August 2019. The list of safe countries of origin has been adopted by decree of the Minister of Foreign Affairs on 4 October 2019, in agreement with the Ministry of Interior and the Ministry of Justice. It includes: Albania, Algeria, Bosnia and Herzegovina, Cape Verde, Ghana, Kosovo, North Macedonia, Morocco, Montenegro, Senegal, Serbia, Tunisia and Ukraine.

In 2019, the border procedure has also been applied to the internal border of Friuli Venezia Giulia for arrivals by land while, in 2020, to the Coastal borders to people disembarked from small boats, considering them as people who avoided or tried to avoid the border controls.

## Appeal

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

Applicants placed in detention facilities and applicants whose application is examined under the accelerated procedure, on the basis of Article 28-bis of the Procedure Decree, have only 15 days to lodge an appeal.<sup>58</sup>

After the entry into force of Decree Law 13/2017, the decision of the civil court (first appeal) can only be challenged in law before the Court of Cassation (final appeal) within 30 days. Before the reform, the decision of the civil court could also be appealed in fact and law in front of the Court of Appeal, within 30 days of the notification of the decision.

## 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
2. Is there a border monitoring system in place? ☐ Yes ☒ No
  - ❖ If so, who is responsible for border monitoring? ☐ National authorities ☐ NGOs ☐ Other
  - ❖ If so, how often is border monitoring carried out? ☐ Frequently ☐ Rarely ☐ Never

Since May 2020 the Italian Government gave instructions to the border authorities of Friuli Venezia Giulia to carry out informal readmissions to Slovenia. At the end of 2020 at least 1,300 people were readmitted to Slovenia (see internal borders, Slovenia).

On 18 January 2021, the Civil Court of Rome<sup>59</sup> accepted the urgent appeal lodged, with the support of ASGI and Border Violence Monitoring Network, by a Pakistani man, asylum seeker, who was informally readmitted in July 2020 by the border police of Trieste to Slovenia according to the Readmission Agreement signed by the Italian and Slovenian Government in 1996. From Slovenia, within 48 hours, the man was then readmitted to Croatia and then pushed back to Bosnia, according to a consolidated mechanism of readmissions by chain. The Court declared the informal readmission procedure

<sup>57</sup> Article 28-bis(2) (b)) Procedure Decree, as amended by Decree Law 130/2020 and L 173/2020

<sup>58</sup> Article 19(3) LD 150/2011.

<sup>59</sup> Civil Court of Rome, 18 January 2021, available at: <https://bit.ly/33d0VnE>.

implemented on the Italian eastern border on the basis of the mentioned agreement that was never ratified by the Italian Parliament, unlawful.

The Court observed that the readmission procedure is carried out in clear violation of the international, European and internal rules that regulate access to the asylum procedure. The concerned persons were not offered any remedies and their individual situations were not examined. The Court therefore concluded clear infringement of the right of defence and the right to an effective remedy. The Court also observed de facto detention carried out without any order from the judicial authority and It further concluded that the procedure clearly violates the obligation of non-refoulement, which prohibits exposing persons to risks of inhuman and degrading treatment, which, as documented by numerous NGOs, is a systematic practice at the Croatian border.

According to the Court the Italian authorities could not deny knowing the mechanism of readmissions by chain carried out by Slovenian and Croatian authorities nor the situation of violence at the Croatian border as reported by several NGOs, international organizations and EU institutions.

In direct application of art. 10 paragraph 3 of the Italian Constitution, the Court recognized the applicant's right to enter Italy immediately in order to have access to the procedure for examining his application for international protection, access that had been precluded due to the unlawful conduct of the Italian authorities.<sup>60</sup>

The applicant was allowed to enter Italy with a visa and to formalise the asylum application. However, immediately after, on 3 May 2021, the Court of Rome accepted the appeal submitted by the Ministry of Interior considering that the personal involvement of the applicant in the readmission procedure was not proved. In this decision the Court does not deny the reconstruction of the first court regarding the illegitimacy of the readmission procedures.<sup>61</sup>

Also, on 11 January 2021, the Civil Court of Appeal of Rome confirmed the decision taken on 28 November 2019 by the Court of Rome accepting the appeal lodged with the support of ASGI and Amnesty by 14 Eritrean citizens based in Israel, who were victims of a collective refoulement by Italian authorities to Libya in 2009. The Court recognized their right to access the asylum procedure in Italy and sentenced Italy to compensate the damage they suffered due to the illegal behaviour of the Italian authorities.<sup>62</sup>

The Court recognized the need to expand the scope of international protection to preserve the position of those who were prevented from submitting an application for international protection due to the fact that they could not access the territory of the State as a consequence of an unlawful act committed by the authority of the referring State, inhibiting the entry to the territory in the form of a collective refoulement, in violation of the Constitution and the Charter of Fundamental Rights of the European Union.<sup>63</sup>

### 1.1. Arrivals by sea

In 2020, 34,154 persons disembarked in Italy<sup>64</sup>, an increase compared to 2019 (11,471) and 2018 (23,370), but still considerably lower than 2017(119,369). In 2020 there were 26,963 asylum applicants.<sup>65</sup>

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<sup>60</sup> Civil Court of Rome, 18 January 2021, available at: <https://bit.ly/33d0VnE>.

<sup>61</sup> Civil Court of Rome, decision of 3 May 2021, available at: <https://bit.ly/3oYocUq>.

<sup>62</sup> ASGI, *Riconosciuto il diritto di entrare in Italia a chi è stata respinto illegittimamente in Libia*, 3 December 2019, available in Italian at: <https://bit.ly/2yJEKtF>; Amnesty, *Importantissima sentenza del Tribunale civile di Roma*, 2 December 2019, available in Italian at: <https://bit.ly/2yHXdXH>.

<sup>63</sup> Civil Court of Rome, decision 22917 of 28 November 2019, available in Italian at: <https://bit.ly/2LgCMnj>; For information in English see also: EDAL, Italy: Recognition of the right to enter as compensation for illegitimate collective expulsions to Libya by the Italian Coast Guard in 2009, 28 November 2019, available at: <https://bit.ly/2SR3S8O>.

<sup>64</sup> Moi Data, available at: <https://bit.ly/3nMilvo>

<sup>65</sup> Moi data, available at: <https://bit.ly/3h0JJKv>

The main nationality of people disembarked remained Tunisian. However, out of the 12,883 Tunisians that disembarked, only 918 were registered as asylum seekers.

Although Algerians were among the main foreign citizens disembarked both in 2020 and 2019, this situation does not match with the list of the most common nationalities of asylum seekers in 2020, where Algerians are not present at all. This data probably reflect the actual obstacles that persons from these countries face in accessing the asylum procedure.

On the other hand, as regards nationals of Pakistan, the number of persons disembarked (1,400) was significantly lower than the number of those who applied for asylum (5,515). This is probably because many arrived via land from other European countries.

In 2019, as mentioned in the 2019 Aida country report, ambiguously the Italian coastguard started to classify most of the search and rescue operations as law enforcement operations.<sup>66</sup> Since 2020 it has stopped publishing data on search and rescue operations.<sup>67</sup>

According to the data collected by Altreconomia 4,944 people were rescued in 2020 at sea, on 98 ships.<sup>68</sup> It is not specified whether the authorities or NGOs saved those people, but considering the current situation in the Mediterranean, lacking any rescue operations, it is rather unlikely that the rescues were carried out by the maritime authorities.

In fact, on 31 March 2020, the Sophia Operation started in 2015 ended definitively and was replaced by the IRINI Operation which changes its main task in implementing the arms embargo against Libya imposed by the UN. A note published by the Chamber of Deputies states that after the Sophia operation, in fact, naval devices useful for the purpose of rescuing people in one of the routes most affected by migratory flows no longer operate.<sup>69</sup> In this regard, the study by the Senate Commission notes that, with the Irini mission, the displacement of the intervention area will bring ships to very decentralized areas with respect to the routes of human traffickers and therefore the "search and rescue component" of the new operation should be strongly reduced compared to Sophia.<sup>70</sup> The report of the Council of Europe Commissioner for human rights, observes that the focus of the EUNAVFOR MED IRINI operations area was the eastern part of the Libyan Search and Rescue Region and the high seas between Greece and Egypt, strongly reducing the possibility of encountering refugees and migrants in distress at sea.<sup>71</sup>

UNHCR data shows that in 2020, 34,154 refugees and migrants arrived in Italy by sea, compared to 11,471 in 2019 and 23,371 in 2018. The highest number of monthly sea arrivals was recorded in July 2020, when 7,064 persons reached Italian shores, followed by 5,360 in November 2020 and 5,326 in August 2020. In December 2020, 1,591 refugees and migrants were recorded at landing points in southern Italy. Approximately 40% of them disembarked on the island of Lampedusa, while 25% reached shore in Calabria. An additional 14% arrived in Apulia, while 11% reached the island of Pantelleria.<sup>72</sup>

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<sup>66</sup> See: Altreconomia, Se i naufraghi nel Mediterraneo diventano "persone intercettate in operazioni di polizia". Le ricadute sui soccorsi, 8 October 2019, available in Italian at: <https://bit.ly/3dwtQ9p>.

<sup>67</sup> See Altreconomia, "Soccorsi nel Mediterraneo, il report scomparso della guardia costiera italiana", available in Italian at: <https://bit.ly/3tgAl27>, 20 July 2020

<sup>68</sup> See data in the reportage of Altreconomia, Appalti sulle frontiere: Leonardo fornirà un drone al Viminale per sorvegliare il Mediterraneo, 17 february 2021, available at: <https://bit.ly/3b1q4WU>

<sup>69</sup> Chamber of Deputies, Emergenza COVID-19: le misure in materia di immigrazione, 11 March 2021, available at: <https://bit.ly/2RsUUAA>.

<sup>70</sup> Senate studies service, "Da Sophia A Irini: La Missione Militare Ue nel Mediterraneo cambia nome, e Priorità, April 2020, available at: <https://bit.ly/2Rq68G4>.

<sup>71</sup> Council of Europe Commissioner for Human Rights, Report: "A distress call for human rights", March 2021, available at: <https://bit.ly/2QX5ikh>.

<sup>72</sup> UNHCR, Italy Sea Arrivals Dashboard - December 2020, 29 January 2021, available at : <https://bit.ly/3uw3pZN>

## The “closure of ports”

The Decree Law 130/2020 repealed the law provision introduced by Decree 53/2019<sup>73</sup> and introduced a new provision to give a legal basis to the Minister of the Interior bans on transit or stop to ships engaged in rescue at sea,<sup>74</sup> thus leaving the risk of penalization of rescues at sea to persist.

The new legal provision no longer bases the mentioned MOI power to Article 19 (2 g) of the Montego Bay Convention (UNCLOS), according to which, a passage of a ship is not considered innocent in case of – in particular- loading or unloading of persons contrary to the immigration or sanitary laws of the coastal state but, it generically refers to the UNCLOS convention asking that action be taken in compliance with it.<sup>75</sup>

Furthermore, the new legal provision has changed the sanction: from administrative it becomes criminal and the fine provided – no longer an administrative penalty – is from 10,000 to 50,000 euros, therefore a reduced sum compared to that foreseen by Decree Law n. 53/2019.<sup>76</sup>

According to Decree Law 130/2020 as amended by L 173/2020 the Minister of the Interior, in agreement with the Minister of Defence and with the Minister of Infrastructure and Transport, prior information to the President of the Council of Ministers, can limit or forbid the transit and the stop of Italian or foreign merchant ships, or governmental ships used as merchant ships, for reasons of public order and public safety, as long as in compliance with the Montego Bay Convention (UNCLOS). The Decree Law provides both the Ministry of the Interior and Ministry of Transport with the competence to stop, limit and the transit of ships. In some cases they have overlapping competences.<sup>77</sup>

The decree, however, excludes its application in case of rescue operations immediately notified to the coordination centre responsible for rescues at sea and to the flag State and carried out in compliance with the indications of the competent search and rescue authority, issued on the basis of the resulting obligations by International conventions on the law of the sea, by the European Convention on Human Rights and by national international and European laws on the right to asylum, without prejudice to what provided for by the Additional Protocol of the Convention of the United Nations Against Transnational Organized Crime to combat the illicit trafficking of migrants by land, sea and road air (L. 146/2006).<sup>78</sup> This means that the law requires that rescue ships immediately communicate the rescue operation to the coordination centre and to the flag state of the ship and that they conduct the rescue operation according to the instructions received from the search and rescue authority.

The Decree further foresees that the authorities must give indications to the rescue ships that respect the conventions and laws referred to.

As highlighted by jurists, this must imply that, on the one hand, if the indications require not to intervene, these should be respected unless, however, the evolution of the situation demonstrates that, in the absence of other interventions, the risk of injury for people materializes. On the other hand, entrusting

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<sup>73</sup> In detail, Article 1 (1, c and d) DL 130/2020 repealed Articles 11 (1 ter) and 12 (6bis, 6 ter, 6 quater) of the TUI.

<sup>74</sup> Article 1 (2) DL 130/2020, converted with amendments by L 173/2020.

<sup>75</sup> According to Article 19(2) lett.g) Montego Bay Convention “a passage of a foreign ship shall be considered to be prejudicial to the peace, order or security of the coastal State if in the territorial sea it engages in any of the following activities: (...) g) the loading or unloading of any commodity, currency or person contrary to the customs, fiscal, immigration or sanitary laws and regulations of the coastal State).

<sup>76</sup> Decree Law 53/2019 foresaw an administrative penalty between € 150,000 to € 1,000,000.

<sup>77</sup> The provision refers to Article 83 of Navigation Code, according to which the Ministry of Transport can limit or ban the transit or stay of merchant ships for reasons of public order, navigation safety and protection of the marine environment, the last one together with the Ministry of the Environment.

<sup>78</sup> Article 1 (2) DL 130/2020 converted by L. 173/2020

people to an unsafe destination cannot be considered compliant with the aforementioned rules, which could be these case when the Libyan authority is indicated as the competent authority.<sup>79</sup>

In 2020, the main measure implemented against NGO ships operating in rescues at sea was that of administrative detention, based on the pretext of technical irregularities

As recorded by Ispi, in a study published by the journal *Corriere della Sera*,<sup>80</sup> from spring 2020 the measure was applied to the following ships: Alan Kurdi and Alta Mari in May-June, Sea Watch3 and Ocean Viking in July, Sea Watch4 in September, again Alan Kurdi and then Louise Michel in October.

Between 9 October and 21 December 2020 the government simultaneously blocked seven NGOs ships (Jugend Rettet, Sea Watch3, Sea Watch4, Eleonore , Alan Kurdi, Ocean Viking and Louise Michel).

On December 2020 the Administrative Court for Sicily, Palermo, forwarded a request for a preliminary ruling to the CJEU regarding the applicability of the Directive 2009/16 / EC to ships that mainly carry out SAR activities. It did so following the appeal filed by **Seawatch 4** against the notice of detention for the master, applied in September 2020, following the rescue at sea of 354 people, which took place at the end of August 2020.

After the rescue and the authorization for the transfer of people on the Allegra ship, in Palermo, the Ministry of Health, imposed anchoring in Palermo for a quarantine period of 14 days for the crew and, at the end, the sanitization of the ship. After sanitization, the Port Authority of Palermo, carried out an inspection as “port state control” (PSC) for unspecified overriding factors recognized with respect to the boat. Following that inspection it imposed the detention on the ship, observing how it did not respect a series of technical requirements and in particular it was not equipped to systematically carry out the rescue of large numbers of people at sea.

The Administrative Court observed that neither in the European, international or in domestic law there are requirements dictated specifically for private ships which can be classified as SAR ships. Therefore, according to the Court, ships carrying out SAR activities should be excluded from the application of international standards (implemented by the Member States and the European Union) on safety in navigation and the protection of the marine environment.

This means that it should not be possible for the authorities of the port state to carry out inspections to impose requirements on merchant ships operating as SAR ships, as the evaluation of these requirements fall under the sole responsibility of the flag State authorities.<sup>81</sup>

Later, on 3 March 2021, having acknowledged the non-application of the accelerated procedure by the CJEU, the Court decided to accept the interim request for suspension advanced by the lawyers of the Seawatch 4. It observed that the Seawatch could not carry out its statutory purposes consisting in saving people at sea, and, since, at the moment, only NGOs carry out this task, the impediment deriving to such activity from a prolonged detention of the ships appears more relevant than the dangers connected to marine pollution raised by the Port Authorities and by the Ministry of Transports.<sup>82</sup>

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<sup>79</sup> See Il delitto d'inosservanza della limitazione o del divieto di transito e sosta nel mare territoriale, Alberto di Martino e Laura Ricci, in *Immigrazione, Protezione Internazionale e Misure Penali*, commento al DL 130/2020.

<sup>80</sup> *Corriere della Sera*, Migranti, Lamorgese ha bloccato più navi Ong di Salvini, 14 March 2021, available at: <https://bit.ly/3xFLEKI>

<sup>81</sup> Administrative Court of Sicily, decision no. 2974 of 23 December 2020, available at: <https://bit.ly/3uldPvN>

<sup>82</sup> Administrative Court of Sicily, interim decision no. 145 of 2 March 2021.

For the Gregoretti case,<sup>83</sup> the former Minister of Interior, Matteo Salvini, faced a criminal trial<sup>84</sup> but, in May 2021 the Court of Catania decided not to indict him for kidnapping.<sup>85</sup> On 17 April 2021, the former Minister of Interior, Salvini, was indicted by the Court of Palermo for the kidnapping of 147 migrants aboard the Open Arms, kept aboard the ship for six days in August 2019. The trial will start on September 15, 2021.<sup>86</sup>

On 10 August 2020 the Court of Rome ordered new investigation in a case in which had already indicted **two officers of the Italian coastguard and of the navy**, for the delay and failure of rescue in the shipwreck which occurred on 11 October 2013, and in which over 250, many children, died at sea.<sup>87</sup>

On 9 December 2020 the Court of Agrigento sentenced the crew of the Aristeus ship for delay and failure of the rescue in the shipwreck occurred on 3 October 2013 in Lampedusa waters, when 368 migrants lost their lives. The court sentenced the ship's captain to six years in prison and each crew member to four years.<sup>88</sup>

On the other hand, in March 2021, the Public Prosecutor of Ragusa ordered the search and seizure against the **Mar Jonio's** tugboat, accused of aiding and abetting illegal immigration for having collected money to take refugees on board from the Etienne oil tanker on 11 September 2020.<sup>89</sup>

### **Refoulement to Libya**

In February 2020, the Memorandum of Understanding between Italy and Libya<sup>90</sup> was renewed, even though a Criminal Court ruled that it was not conform the Italian Constitution and international laws.<sup>91</sup> The Memorandum was heavily criticised by numerous associations including ASGI<sup>92</sup>, and the Council of Europe Commissioner for Human Rights.<sup>93</sup>

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<sup>83</sup> By the end of July 2019 the then Minister of the Interior forbade the landing of the people rescued by the **Gregoretti** Italian Coast Guard ship. Only after six days, on 31 July 2019, the 116 people were disembarked and transferred to the Pozzallo hotspot before being redistributed between France, Germany, Portugal, Luxembourg and Ireland. 50 people remained in Italy in charge of the Italian Episcopal Conference (CEI).

<sup>84</sup> Adnkronos, Gregoretti, nuova udienza per Salvini a Catania, 5 March 2021, available at: <https://bit.ly/3xNLY9W>

<sup>85</sup> Ansa, Gregoretti: Gup, non luogo a procedere per Salvini. Prosciolto perché "il fatto non sussiste", 15 May 2021, available at: <https://bit.ly/3oZysMh>

<sup>86</sup> Il Corriere, Open Arms, Salvini rinviato a giudizio. Decisione del ministro e sbarco su ordine del pm: le differenze con il caso Gregoretti, 17 April 2021, available in Italian at : <https://bit.ly/3aZKbVe>.

<sup>87</sup> Ansa, Naufragio bambini, due ufficiali a giudizio, 16 September 2019, available in Italian at: <https://bit.ly/3fBEFsM>; see also: Alarmphone, Left-to-Die Trial in Rome, 2 December 2019, available at: <https://bit.ly/2LeRHyn>; ECRE, Italy: Officials of the Italian Coast Guard Prosecuted for Shipwreck in 2013, 20 September 2019, available at: <https://bit.ly/3ckBunh>.

<sup>88</sup> Nuovi Desaparecidos, "Strage di Lampedusa prime condanne ma non basta, occorre indagare sui soccorsi", 10 December 2020, available at <http://nuovidesaparecidos.net/?p=4169>

<sup>89</sup> Fanpage, Inchiesta su Mare Jonio, accusata di aver ricevuto soldi in cambio di un trasbordo di migranti, 1 March 2021, available at: <https://bit.ly/3eWWsLh>.

<sup>90</sup> Avvenire, 12 February 2020, Esclusiva. Memorandum Italia-Libia, la bozza integrale: la partita dei fondi a Tripoli, available in Italian at: <https://bit.ly/3bnLOJQ>.

<sup>91</sup> Criminal Court of Trapani, sentence of 23 May 2019, available in Italian at: <https://bit.ly/3dutMHI>; According to article 80 of the Italian Constitution, political agreements can be signed only with Parliament's authorization. Furthermore, it is an agreement concluded with a party, the Libyan coastguard, repeatedly referred to as responsible for crimes against humanity. Therefore, the court found that the agreement violates the principle of non-refoulement.

<sup>92</sup> ASGI, Memorandum Italia-Libia, lettera aperta del Tavolo Asilo alle istituzioni italiane: non rinnovatelo, 30 October 2019, available in Italian at: <https://bit.ly/2Wik9Wi>.

<sup>93</sup> On 31 January 2020, the Council of Europe Commissioner for Human Rights, called on the Italian government to urgently suspend the ongoing cooperation activities with the Libyan Coast Guard which affect the repatriation of people intercepted at sea in Libya where they have suffered serious human rights violations, see: ASGI, Il governo italiano deve sospendere ogni cooperazione con la Guardia Costiera libica, 31 January 2020, available in Italian at: <https://bit.ly/2zmpaEy>.

According to the agreement,<sup>94</sup> Italy undertakes to continue to financially support, with training courses and equipment, the Libyan coast guard of the Ministry of Defence, for search and rescue activities at sea and in the desert, and for the prevention and fight against irregular immigration.

For the two-year period 2020-2021, the Ministry of Interior has foreseen an additional 1.2 million euros in supplies.<sup>95</sup>

Based on the previous agreement, Italy has since 2017 equipped Libya with naval units, supplied and financed the rehabilitation of several patrol boats and ensured the presence in Tripoli of an Italian naval unit (Nave Tremiti, Nave Capri, and then Nave Caprera<sup>96</sup>) to provide to Libya technical assistance and training.<sup>97</sup> Nave Capri and Caprera also coordinated Libyan naval units in the tracking of boats at sea.<sup>98</sup>

The resulting effects of **Italy's indirect pushbacks to Libya** and the consequences on people suffering inhuman and cruel treatments are now being examined by the European Court of Human Rights in the case **S.S. and others v. Italy** concerning a rescue operation of the Sea Watch ship hindered in November 2017 by the Libyan coastguard through a patrol boat donated by Italy and with the coordination of the Italian MRCC.<sup>99</sup>

From January 2020 to September 2020, at least 9,000 people were tracked down by the Libyan coastguard and brought back to Libya.<sup>100</sup> According to data collected by IOM present at the landing sites in Libya, by the end of 2020, 12,000 people were intercepted and brought back by the Libyan authorities meaning that, in 2020, more than 42% of the people who attempted to leave Libya, have been brought back.<sup>101</sup>

Moreover, as highlighted by the Global Legal Action Network (GLAN) on 18 December 2019, through a complaint filed against Italy with the UN Human Rights Committee, Italy appears to play a key role in the **privatised pushbacks policy** which would consist in engaging commercial ships to return refugees and other persons in need of protection to unsafe locations.<sup>102</sup> The complaint concerns the case of an individual refouled to Libya together with 92 migrants after being intercepted in the high seas by a Panamanian merchant vessel, the **Nivin**, in November 2018. The legal submission is based on the Forensic Oceanography report, which shows how the operation was fully coordinated by the MRCC of Rome.<sup>103</sup>

Between June 2018 and June 2019, the Forensic Oceanography recorded a total of 13 privatized pushback attempts in the so-called EU and Italy's system of *refoulement by proxy*. Except for two that failed as a result of migrants' resistance, at least 11 of these 13 privatized pushbacks were successful—with three of these diverted to Tunisia. According to the report the outcome of these operations has been

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<sup>94</sup> A copy of the agreement is published in Italian at: <https://bit.ly/3ciy1FS>.

<sup>95</sup> Altreconomia, L'Italia continua ad equipaggiare la Libia per respingere i migranti, il caso delle motovedette ricondotte a Tripoli, 2 March 2020, available in Italian at: <https://bit.ly/2SSmsNU>.

<sup>96</sup> Analisi difesa, nave Caprera ha sostituito la Capri nel porto di Tripoli, 4 April 2018, available in Italian at: <https://bit.ly/2SP6Hag>.

<sup>97</sup> ASGI, ASGI chiede l'immediato annullamento del Memorandum con la Libia, 2 February 2020, available in Italian at: <https://bit.ly/2zlh1QB>.

<sup>98</sup> Altreconomia, Il grande inganno della Libia sicura e le tappe della regia italiana dei respingimenti delegati, 18 April 2019, available in Italian at: <https://bit.ly/35MIMgW>.

<sup>99</sup> ECtHR, Application No. 21660/18, *S.S. and others v. Italy*, available at: <https://bit.ly/3dvkBGt>; the Third party intervention by the Council of Europe Commissioner for Human Rights is available at: <https://bit.ly/35OFYjn>. Report of Fondazione Migrantes, Il diritto d'asilo, 2020.

<sup>100</sup> Form elaborated by IOM for the Ministry of Labour's Monitoring report on unaccompanied minors, December 2020; see also the following report: <https://bit.ly/34nMePk>, p.26.

<sup>101</sup> Communication to the United Nations Human Rights Committee in the case of SDG against Italy, available at: <https://cutt.ly/cyv9xIT>.

<sup>102</sup> See also: Repubblica, Migranti, un report accusa l'Italia: "Respingimento illegale dei 93 salvati dal mercantile Nivin e riportati in Libia con la forza", 18 December 2019, available in Italian at: <https://cutt.ly/yv9cb0>.

exacerbated by the closed-ports policy in Italy, which prevents ships that carried out rescue operations entering Italy's waters to disembark rescued persons.<sup>104</sup>

In February 2021, five Eritrean citizens, with the support of the ASGI and Amnesty International, initiated a civil action to declare the illegality of the refoulement to Libya carried out on 2 July 2018 by the ship "Asso Ventinove" of the Augusta Offshore during an operation coordinated by the Italian authorities stationed in Libya and with the collaboration of the Libyan Coast Guard.

Meanwhile, on 3 June 2020 the Criminal Appeal Court of Palermo, overturned the decision of the Criminal Court of Trapani that, in May 2019, had acquitted two migrants rescued at sea by Vos Thalassa ship in 2018 who had rebelled aboard the ship, once they realized that the ship was bringing them back to Libya, threatening the captain and the crew. The judge had recognized they acted in self-defence as the act of bringing them back to Libya would have been a crime.<sup>105</sup> Instead, according to the Court of Appeal, the defendants had voluntarily placed themselves in a dangerous condition, having planned an extremely dangerous sea crossing and having then asked for help in order to be recovered from rescue boats. Consequently, according to the Court their violent and threatening conduct - aimed at preventing the crew of the Vos Thalassa from returning them to the Libyan Coast Guard - cannot be considered self-defence.<sup>106</sup>

### Pushbacks at Adriatic ports

As monitored by ASGI, No Name Kitchen, Ambasciata dei Diritti di Ancona and Associazione SOS Diritti, refoulements continue to be carried out from Italy to Greece at Adriatic maritime borders. In 2021, readmissions and refoulements were recorded to Albania and Croatia.<sup>107</sup>

Access to the asylum procedure and to asylum information is very poor and transfers or re-admissions are being immediately executed to send foreign nationals back to Greece.

In many cases where the person has managed to get in touch with the mentioned network of NGOs operating at the Adriatic ports, he or she has managed to apply for asylum. In the others the push back was carried out to the port of departure. According to the testimonies collected by the Network, if the ferry leaves immediately the person is kept on board. Otherwise, he or she is dropped off, held in a police station inside the port, and then taken back to the ferry.

In 2020 the testimonies recorded by the NGO No Name Kitchen regarding readmissions to Greece from the Italian Adriatic maritime borders were published by the Border Violence Monitoring Network. They were collected in the Black Book of Pushbacks, published by BVMN on December 2020.<sup>108</sup>

No Name Kitchen recorded – *inter alia* - the readmissions to Greece of many Afghans:

- ❖ 5 Afghans, out of which 2 unaccompanied minors, from Bari maritime border between October and November 2020;<sup>109</sup>

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<sup>104</sup> Forensic Oceanography Nivin report, affiliated to the Forensic Architecture agency, Goldsmiths, University of London, December 2019, available at: <https://cutt.ly/Hyv9voA>.

<sup>105</sup> Criminal Court of Trapani, cited above. See: Diritto penale contemporaneo, La legittima difesa dei migranti e l'illegittimità dei respingimenti verso la Libia (caso Vos-Thalassa), Luca Masera, 24 June 2019, available in Italian at: <https://cutt.ly/7yv9bfe>; see also: EDAL, Italy - Tribunal of Trapani - Office of the Judge for Preliminary Investigations (Piero Grillo), available at: <https://cutt.ly/Fyv9nHb>.

<sup>106</sup> Criminal Court of Appeal of Palermo, Decision no. 1525/2020, of 3 June 2020, available at: <https://bit.ly/3vIWwFg>.

<sup>107</sup> See ASGI, Network Porti adriatici: continuano i respingimenti e le riammissioni, April 2021, available at: <https://bit.ly/2Rsfofy>

<sup>108</sup> Border Violence Monitoring Network, Black Book of Pushback, Volume I, December 2020, available in English at: <https://bit.ly/3uka61O>.

<sup>109</sup> The readmissions took place on 7 November, 8 November, 20 November, and 12 October. The first are published on the Black book of pushbacks, the last testimony is available at: <https://bit.ly/3eWf0vq>

- ❖ 9 Afghans, out of which 1 minor, from Venice maritime border between September and October, <sup>110</sup> and on February 2020;<sup>111</sup>
- ❖ 2 Afghans from Brindisi maritime border, on September 2020;
- ❖ 4 Afghans, out of which one unaccompanied minor, from Ancona maritime border, on October 2020 and April 2020.<sup>112</sup>

Through F.O.I.A request sent to public administrations, the mentioned NGOs belonging to the Adriatic network came to know about the following readmissions or pushbacks carried out from the 1 January 2020 to 15 April 2020:

- ❖ 311 refoulements at Bari maritime border;
- ❖ 53 refoulements at Brindisi maritime border;
- ❖ 17 refoulements at Venice maritime border;
- ❖ 13 refoulements at Ancona maritime border.

Also, through another F.O.I.A request, they came to know that, from 1 January 2019 to 31 March 2020, from the air and maritime border of Ancona there were 149 readmissions and 56 pushbacks.

Early 2020, the Committee of Ministers of the Council of Europe rejected the request made by the Italian Government to close the supervision processes initiated following the Sharifi ruling.<sup>113</sup>

### 1.1. Arrivals by air

As reported to Parliament on 25 November 2020 by the central director of immigration and border police, of the Mol, Massimo Bontempi, the number of refoulements carried out from air borders in 2020 was 3,100, a number that the director defines as very high considering that the flow of air traffic has been extremely low.<sup>114</sup>

At the Fiumicino airport of Rome, the Prefecture of Rome has entrusted the Albatros1973 cooperative for informing and managing foreign people arriving at the air border who want to seek asylum or who are Dublin returnees. Over a third of the people came with flights from Germany.

At Milan airport of Malpensa, Valdensian Diakonia, charged with implementing services for asylum seekers arriving from the air border in 2020, was replaced by the cooperative Ballafon in early 2021.

At Venice, the cooperative Giuseppe Olivotti, was responsible, up to December 2020, under the agreement with the Prefecture of Venice, of arrivals of asylum seekers and Dublin returnees, not with a stable presence at the airport, but with presence on call.

<sup>110</sup> Readmissions took place on 9 September 2020, available at: <https://bit.ly/3ejQqFs>; 24 October 2020; 2 October 2020 regarding one minor who told to have been readmitted with other 6 afghans, available at: <https://bit.ly/3nVxlr1>

<sup>111</sup> See BVMN Black Book of pushbacks, Volume I, testimony of 26 February 2020.

<sup>112</sup> Testimony of 10 October 2020, available at: <https://bit.ly/3eN3DFO>; 3 October 2020, available at BVMN Black Book of pushbacks, Volume I; and 23 April 2020.

<sup>113</sup> See: Committee of Ministers of the Council of Europe, Communication from a NGO (Associazione per gli Studi Giuridici sull'Immigrazione) (21 January 2020) in the case of SHARIFI AND OTHERS v. Italy and Greece (Application No. 16643/09), available at: <https://cutt.ly/Syv9W2y>; ASGI, Respingimenti: l'Italia ancora sotto indagine per il caso Sharifi, 8 April 2020, available in Italian at: <https://cutt.ly/Tyv9ESC>.

<sup>114</sup> See Massimo Bontempi's audition at Parliament, Schengen Committee, 25 November 2020, available at [https://www.camera.it/leg18/1079?idLegislatura=18&tipologia=indag&sottotipologia=c30\\_migranti&anno=2020&mese=11&giorno=25&idCommissione=30&numero=0029&file=indice\\_stenografico](https://www.camera.it/leg18/1079?idLegislatura=18&tipologia=indag&sottotipologia=c30_migranti&anno=2020&mese=11&giorno=25&idCommissione=30&numero=0029&file=indice_stenografico)

## 1.2. Arrivals at the Slovenian land border

The MOI central director of immigration and border police, Massimo Bontempi, reported to Parliament that as of 20 November 2020, 4,121 irregular third country nationals were traced at the Italian-Slovenian border.<sup>115</sup>

In 2020, cases of re-admissions to Slovenia from Trieste and Gorizia, **Friuli-Venezia Giulia**, without any formal procedure or decision were massively implemented.<sup>116</sup> The readmissions are carried out based on the Readmission Agreement signed by Italian and Slovenian Government in 1996, never ratified by the Italian Parliament, contrary to Article 80 of Italian Constitution.

On 14 January 2020, the Friuli Venezia Giulia Region announced its intention to purchase camera traps to be placed on the paths near the eastern borders to identify the transit of irregular migrants in real time.<sup>117</sup> In mid-May 2020, the Minister of Interior announced an increase in readmissions to be made to the eastern border, as agreed with Slovenia, and the sending 40 agents to the border.<sup>118</sup>

On 23 May 2020 a Slovenian newspaper „Primorski Dnevnik“ reported the testimony of an Italian couple blocked at the border with Trieste by paramilitary Slovenian agents who forced them to kneel with rifles pointed at their heads declaring that they were looking for migrants.<sup>119</sup>

On 20 May 2020 the Questura of Pordenone announced on its website that it had readmitted two Afghan citizens to Slovenia, found hidden in a truck among pallets of wood. The two citizens, aged 20 and 21, were taken back to Gorizia border and from there handed over to the Slovenian authorities.<sup>120</sup>

On 28 May 2020, the Prefect of Trieste then stated that "(..) the readmitted migrant is not deprived of the possibility of applying for asylum, as Slovenia is part of the European context".<sup>121</sup>

On 2 June 2020, replying to ICS- Refugee Office and Caritas, responsible for the accommodation of asylum seekers in Trieste, the Prefect of Trieste added that according to the directives received from the Government, readmissions are implemented to complete the provisions set up in the Dublin Regulation.<sup>122</sup>

On 24 July 2020, the Ministry of the Interior, responding with a written note to the urgent question presented by the Member of Parliament Riccardo Magi, on the situation of the "informal readmissions" of foreign citizens at the Italian-Slovenian land border, confirmed that these readmissions take place without formal provisions and, above all, stated that readmissions against foreign citizens are applied "(..) even if the intention to request international protection is expressed "and that" (..) if the conditions for the

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<sup>115</sup> See Massimo Bontempi's audition at Parliament, Schengen Committee, 25 November 2020

<sup>116</sup> See The New Humanitarian, "Europe's chain of migrant expulsion, from Italy to Bosnia", available at: <https://bit.ly/3f3nOje>, 17 November 2020

<sup>117</sup> Il Gazzettino, Migranti. Fototrappole per animali sul Carso per "catturare" i migranti irregolari, 14 January 2020, available in Italian at: <https://cutt.ly/8yv9FKt>.

<sup>118</sup> Triesteprima, Rotta balcanica, Serracchiani: "In arrivo da Roma 40 poliziotti a Trieste", 14 May 2020, available in Italian at: <https://bit.ly/2LVpjln>; see also. Il Piccolo, Nuovi arrivi dalla rotta balcanica. Roma invia 40 agenti al confine, 15 May 2020, available in Italian at: <https://bit.ly/3gpqVBV>.

<sup>119</sup> Triesteprima, "Stoj" e fucile puntato contro: la gita in bosco si trasforma in un incubo, Intimano l'alt e gli puntano il fucile contro: la gita in bosco si trasforma in un incubo", 23 May 2020, available in Italian at: <https://bit.ly/2ZCAKXd>; see also, Primorski Dnevnik, »Stoj, sit down« ... nato mu je z avtomatsko puško meril v glavo, 23 May 2020, available in Slovenian at: <https://bit.ly/2ZG61s7>.

<sup>120</sup> Questura of Pordenone, website, "La Questura di Pordenone riammette in territorio sloveno due cittadini stranieri nascosti tra bancali di legna, available at : <https://bit.ly/3uz5uVr>, 20 May 2020

<sup>121</sup> Triesteprima, "Migranti rintracciati e rispediti indietro, come la Rotta Balcanica diventa un'Odissea, 28 May 2020, available at: <https://bit.ly/3f4xLN4>

<sup>122</sup> Il Piccolo, "Le realtà dell'accoglienza contro i rimpatri informali: pratiche inaccettabili che calpestano i diritti", 2 June 2020.

readmission request are met (...), the request is not sent to the responsible Questura for the formalization of the asylum request (...)." <sup>123</sup>

The Italian Minister of the Interior declared, in response to a second parliamentary request on 13 January 2021, that, in 2020, 1,301 people were readmitted to Slovenia. <sup>124</sup> However, replying to a data request access made by the journal *Altreconomia*, the Ministry of the Interior - Central Directorate of Immigration and Border Police - reported that readmissions to Slovenia in 2020 had been 1,294.

Slovenia, on the other hand, in the data published by the Slovenian State Police <sup>125</sup> reports that in 2020 readmissions from Italy to Slovenia affected 1,116 people.

In September a group of Eritreans was readmitted in Slovenia and by chain to Bosnia.

On 18 January 2021 the Civil Court of Rome accepted the appeal submitted with the support of ASGI by a Pakistani man, readmitted to Slovenia on July 2020 without having access to asylum, and then readmitted and pushed back by chain to Croatia and to Bosnia. ( See access to the territory). The Government appealed the decision and the case is pending at the time of writing.

While, families and vulnerable people should be excluded from the procedure, readmissions were also carried out against those who claimed to be minors at the border, as reported by the network Tavolo Minori Migranti ( Minor Migrants). <sup>126</sup> This took place on the basis of two directives on the age assessment sent on 31 August and 21 December 2020 by the Public Prosecutor at the Juvenile Court of Trieste. Contrary to the guarantees enshrined in the Zampa Law (L 47/2017), these Directives generally authorize the police to consider migrants intercepted at the Italy-Slovenia border as adults in case the police itself has no doubts about their adulthood, regardless of their eventual declaration of minor age and the consequent judicial review required by law. These indications assign a discretionary power to the Public Security authority for the attribution of age to migrants and refugees subjected to border controls and in so doing clearly contrasts with the provisions of the L 47/2017, which provides that the age assessment must be carried out through documents or through socio-health examinations, always through a multidisciplinary procedure, as part of a proceeding under the jurisdiction of the Juvenile Court. <sup>127</sup> ( see age assessment)

As reported by some media inquiries <sup>128</sup>, many unaccompanied children, currently present in Bosnia without any protection or shelter, underwent this procedure once they arrived in Italy, without even receiving any report regarding the denial of the minor age.

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<sup>123</sup> Urgent request 2/00861 presented by Riccardo Magi on 14 July 2020, <https://bit.ly/3hilQxY>; and the written answer by the MoI, available at: <https://bit.ly/3tzWzBO>

<sup>124</sup> See intervention in Parliament by the Minister of the Interior, Lamorgese, minute 3:00, available at: <https://bit.ly/3tzqLgH>

<sup>125</sup> Data available at the : <https://bit.ly/33vinEo>

<sup>126</sup> The "Tavolo Minori Migranti" is a un network coordinated by Save the Children, to which belong also AiBi, Amnesty International, Asgi, Caritas Italiana, Centro Astalli, CeSpi, CIR, CNCA, Defence for Children, Emergency, Intersos, Oxfam, Salesiani per il Sociale, SOS Villaggi dei bambini and Terre des Hommes. It's born after the approval of L. 47/2017 ai ing at monitoring its full implementation regarding the effective defense of minors.

<sup>127</sup> See Ansa, Migranti: 12 associazioni contestano Procura Minori Trieste, 10 February 2021, available at: <https://bit.ly/2Q4O1Fz>; see also ASGI, "Accertamento dell'età, due direttive della Procura della Repubblica per i minori di Trieste in contrasto con la legge", available at: <https://www.asgi.it/notizie/trieste-minori-eta/>, 10 February 2021

<sup>128</sup> *Il Corriere della Sera*, *A Bihac, la guerra nella neve ai fantasmi che l'Italia respinge* 23 January 2021; *«La Repubblica»*, *I ragazzi nel gelo di Lipa dopo i respingimenti «L'Italia ci apra i confini»*, 30 January 2021, available at: <https://bit.ly/3o1QrRP>

### 1.3. The situation at the French land borders

Many migrants attempting to cross the borders with France, Austria and Switzerland have been subject to rejection at the border, often with the use of violence. A detailed account of the situation at the borders in previous years is available in the previous updates of the AIDA report.<sup>129</sup>

In 2020 push-backs at the border with France remained systematic. In a joint press release, numerous associations operating on the Italian-French border<sup>130</sup> have reported that in 2020, as in 2019 as well,<sup>131</sup> many minors, in particular Sudanese and Afghanis, were returned to Italy from Menton.

From 14 December 2020, mixed Italian-French patrols began to operate along the border of Ventimiglia with the task of patrolling the borders according to the provisions of bilateral police cooperation agreements based on the 1997 Chambéry agreements.<sup>132</sup>

As reported by ASGI,<sup>133</sup> people stopped at the border or on the train are taken to the San Luigi station, identified and given a "refusal of entry" (refus d'entrée). The rejection procedure is completed with the handing over of the concerned persons to the Italian police authorities who invite them to proceed on foot to the city of Ventimiglia. If the third country nationals are intercepted in border areas as defined by the bilateral readmission agreement, they are simply readmitted without any written measure.

However, in June 2020, two Turkish citizens, Kurds, pushed back with a "refus d'entrée" from France were stopped in Ventimiglia and notified with an expulsion decree, although, in May 2020, they had already applied for asylum in Trieste. From Trieste the two applicants had been moved to the Hub Mattei in Bologna from where they had fled due to the serious conditions of overcrowding incompatible with the measures imposed by the pandemic. The Civil Court of Genoa immediately suspended the expulsion decrees and, with a decision of 11 December 2020, annulled one of the two<sup>134</sup>. The other case is still pending.

Due to the pandemic, both transit areas (Ventimiglia and Oulx) suddenly found themselves - totally or partially - without accommodation facilities, while the flows that had slowed down in the first months of the year returned to earlier levels after spring. In Ventimiglia, despite a drop in flows, local associations have provided assistance to about 250 people a day. On 31 July 2020 the Roja Camp, managed by the Italian Red Cross, was closed,<sup>135</sup> after a previous period of quarantine due to two positive cases of Covid19, which prevented new entries. Being the only formal place of accommodation for people in transit, its closure has led to the proliferation of informal settlements and the occupation of public spaces to deal

<sup>129</sup> AIDA, Country Report Italy, 2017 Update, March 2018, available at: <https://bit.ly/2Ga01zb>, 22-24.

<sup>130</sup> La Cimade, Médecins du Monde, Médecins Sans Frontières, Secours Catholique, Anafé, Help Refugees, Refugee Rights Europe, Refugee Youth Service, Safe Passage). See: L'Humanité, Mineurs isolés : « Des pratiques contraires à la convention internationale des droits de l'enfant », 12 October 2020, available in French at: <https://bit.ly/2Q4OkjH>

<sup>131</sup> As reported by Anafé and HRW, in 2019, some UAMs were pushed back to Italy by the French police, regardless of their minor age. See Anafé, *Persona non grata – Conséquences des politiques sécuritaires et migratoires à la frontière franco-italienne*, Rapport d'observations 2017-2018, février 2019 ; Human Rights Watch, « Ça dépend de leur humeur » - Traitement des enfants migrants non accompagnés dans les Hautes-Alpes, 5 septembre 2019

<sup>132</sup> Riviera time, "Una 'squadra mista' italo-francese: parte da Ventimiglia il progetto pilota della Polizia di Frontiera", available at: <https://bit.ly/3bd9bbM>, 21 December 2020.

<sup>133</sup> ASGI, La situazione al confine tra Italia e Francia: effetti della pandemia e tendenze consolidate., available in Italian at: <https://bit.ly/2RDIdb9>, 22 February 2021; see also Medecins Sans Frontieres, DANGEROUS CROSSINGS AT THE NORTHERN BORDERS OF ITALY, Field Visits Report| Dec. 2020, available at: <https://bit.ly/3evBBzV> ; MEDU Rapporto sulla situazione umanitaria dei migranti in transito lungo la frontiera nord-ovest tra Italia e Francia, October 2020, available at: <https://bit.ly/3y1SzgQ>; Refugee Rights Europe, Pushbacks and rights violation at Europe's border, available at <https://bit.ly/34BOR00>.

<sup>134</sup> Civil Court of Genoa, Decision 11 December 2020

<sup>135</sup> Parole sul confine, "Il Campo Roja di Ventimiglia ha definitivamente chiuso", 24 August 2020, available at: <https://bit.ly/3uFs7YE>

with winter nights. Facilities provided by the local Caritas are only able to guarantee a limited number of places for single parents and children.

The ongoing internal border controls and the absence of accommodation facilities has changed the routes along the border. The number of people coming from the Balkan or Adriatic routes seems to be increasing but they are accompanied only up to a certain point of the route, often in the Savona area at about two hours from the border, and invited to continue on foot following the railways. In this context, on 23 December 2020, two young Kurds lost their lives hit by a train running near Quiliano.<sup>136</sup>

The other route to attempt entry into France goes through the Val di Susa, which passes through Bardonecchia and the Frejus pass, on one side, or, on the other, through Oulx and Claviere leading to the Montgenèvre pass. According to MEDU<sup>137</sup> between September and December 2020, over 4,700 people passed through Oulx, in most cases Afghans (44%), Iranians (23%), Algerians (8%). People pushed back are handed over to the Italian police in Claviere which takes them to Oulx where they receive legal orientation on Italian legislation and on the reception system. In February 2021, the rooms set up at the Bardonecchia station that constituted the only form of government reception were made inaccessible due to the covid19 epidemic.

## 2. Hotspots

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

By the end of 2020, four hotspots were operating in: **Apulia** (Taranto) and **Sicily** (Lampedusa, Pozzallo, and Messina). As of 31 December 2020, the hotspots hosted a total of 21 persons, all in Sicily.<sup>138</sup>

As reported by ASGI following a monitoring project in October 2020, the center located in Monastir, in Sardinia, even though not officially included in the existing hotspots, works with a hotspot approach: foreign citizens entering the Italian territory at the Sardinian coasts are sent to this center, for health checks, as well as for identification purposes and security checks. (see [Place of Detention](#)).

In 2019, 7,757 persons entered the hotspots, which represents a significant decrease compared to 13,777 of 2018, 31,287 of 2017 and 45,376 in 2016. People were mainly originating from Tunisia (1,879), Ivory Coast (1,149) and Bangladesh (646).<sup>139</sup>

Between January and 15 April 2020, 2,480 persons entered the hotspots. Out of these 91 were unaccompanied children.<sup>140</sup>

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<sup>136</sup> Ansa, Due immigrati travolti da un treno nel savonese, 23 Dicembre 2020, available at: <https://bit.ly/2QYDOLr>  
<sup>137</sup> MEDU, Ancora critica la situazione dei migranti sulla rotta nord ovest delle Alpi, 4 February 2021, available at: <https://bit.ly/33u6GNZ>

<sup>138</sup> MOI, Cruscotto statistico giornaliero.

<sup>139</sup> Guarantor for the rights of detained persons, *Relazione al Parlamento 2020*, March 2020, 202.

<sup>140</sup> Guarantor for the rights of detained persons, *Relazione al Parlamento 2020*, March 2020, available in Italian at: <https://bit.ly/3eyhiSn>, Table 2.20, 205.

Frontex helps with the identification, registration and fingerprinting of recently arrived people, enforcement of return decisions and collection of information on smuggling routes,<sup>141</sup> while EASO helps with the registration of asylum claims and has assisted in *ad hoc* relocation procedures following disembarkation operations.<sup>142</sup> UNHCR officers present in the “hotspot”, together with the International Organisation for Migration (IOM) should monitor the situation. Save the Children is no longer present. IOM and UNHCR have contracts with the Ministry of Interior for entire areas of competence such as legal information, identification of vulnerable persons and childcare. As highlighted in a recent report by ASGI and other organisations, due to contractual terms such as the express obligation of confidentiality, these actors do not make public any information on critical issues that may arise in the implementation of the hotspot approach.<sup>143</sup>

The Consolidated Act on Immigration (TUI), as amended by L 46/2017, provides that foreigners apprehended for irregular crossing of the internal or external border or arrived in Italy after rescue at sea are directed to appropriate “crisis points” and at first reception centres. There, they will be identified, registered and informed about the asylum procedure, the relocation programme and voluntary return.<sup>144</sup> Decree Law 113/2018 has subsequently introduced the possibility of detention of persons whose nationality cannot be determined, for up to 30 days in suitable facilities set up in hotspots for identification reasons (see [Grounds for Detention](#)).<sup>145</sup>

The Standard Operating Procedures (SOPs) adopted in February 2016 and applying at hotspots also state that “where necessary, the use of force proportionate to overcoming objection, with full respect for the physical integrity and dignity of the person, is appropriate...”<sup>146</sup> The law also provides that the repeated refusal to undergo fingerprinting constitutes a risk of absconding and legitimises detention in CPR (see [Grounds for Detention](#)).<sup>147</sup>

The same law also introduced a [Border Procedure](#) automatically applicable in case a person makes the application for international protection directly at the border or in transit areas – both to be identified and indicated by decree of the Ministry of Interior – after being apprehended for evading or attempting to evade controls. In this case, the entire procedure can be carried out directly at the border or in the transit area.<sup>148</sup>

Revealing the purpose of facilitating the application of an accelerated procedure to the people present in the hotspots, the Moi Decree issued on 5 August 2019 and published on 7 September 2019, identified among the transit and border areas, those ones close to hotspots: Taranto, Messina and Agrigento (Lampedusa hotspot).<sup>149</sup>

Persons arriving at hotspots are classified as asylum seekers or economic migrants depending on a summary assessment, mainly carried out either by using questionnaires (*foglio notizie*) filled in by migrants at disembarkation,<sup>150</sup> or by orally asking questions relating to the reason why they have come to Italy. People are often classified just solely on the basis of their nationality. Migrants coming from countries

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<sup>141</sup> Frontex, ‘Frontex launching new operation in Central Med’, 31 January 2018, available at: <http://bit.ly/2nxJ4md>.

<sup>142</sup> In 2019, according to ASGI experience in In Limine project, EASO personnel was present only at Messina hotspot.

<sup>143</sup> ASGI et al., *Scenari di frontiera: il caso Lampedusa*, October 2018, available in Italian at: <https://bit.ly/2UoWKDu>. For an overview of critiques in previous years, see AIDA, Country Report Italy, 2017 Update, March 2018, 24-26.

<sup>144</sup> Article 10-ter TUI, inserted by Decree Law 13/2017.

<sup>145</sup> Article 6(3-bis) Reception Decree, as amended by Decree Law 113/2018.

<sup>146</sup> Ministry of Interior, *Standard Operating Procedures applicable to Italian hotspots*, February 2016, available at: <http://bit.ly/2kt9JBX>, para B.7.2.c.

<sup>147</sup> Article 10-ter(3) TUI, inserted by Decree Law 13/2017.

<sup>148</sup> Article 28-bis(2) (b) Procedure Decree, as amended by Decree Law 130/2020.

<sup>149</sup> Moi Decree 5 August 2019, Article 2

<sup>150</sup> See the *foglio notizie* at: <http://bit.ly/1LXpUKv>.

informally considered as safe e.g. Tunisia are classified as economic migrants, prevented from accessing the asylum procedure (see [Registration](#)) and handed removal decisions.<sup>151</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 the asylum procedure. In practice, however, concerns with regard to access to information persisted in 2020.

As of April 2019, as part of the monitoring project in Lampedusa, ASGI found that a different type of “foglio notizie” was released to some foreign citizens.<sup>152</sup> It was detailed to exclude all the reasons that would prevent the expulsion, completed before printing, and delivered to the persons not in the identification phase but immediately after their transfer from the hotspot, at their arrival in Porto Empedocle. In addition, migrants were asked to sign a paper called “Scheda informativa”<sup>153</sup>, through which they declared they were not interested in seeking international protection. The declaration was only written in Italian language. After signing these documents they were notified with deferred refoulement orders<sup>154</sup> and transferred to the CPR Trapani-Milo and Caltanissetta-Pian del Lago. As recorded by ASGI some of these persons had already asked asylum or expressed their intention to seek asylum before the transfers and before signing the scheda informativa.<sup>155</sup> Some of them had sent, through ASGI, a certificated e-mail to the Questura of Agrigento, expressing their will to seek asylum.

ASGI monitored the procedure applied to some of these third country nationals, who, only in some cases, obtained the non-validation of their detention orders in CPR. In these cases, the Magistrates considered their request for asylum had not been instrumental in avoiding detention and expulsion orders because it was presented during their stay in the hotspot, therefore before these measures had been applied to them.<sup>156</sup> (See [Judicial review of the detention order](#))

The same situation was monitored in 2020 regarding a second “foglio notizie” submitted to the migrants to be signed by them in order to revoke a previous international protection application will expressed in the first “foglio notizie”. Following two appeals to the Court of Cassation made within the ASGI In Limine project, the Court clearly stated that the compilation and signing of the second “foglio notizie” cannot affect the legal status of the foreign citizen as an applicant for international protection, resulting in the revocation or overcoming of the previously submitted application.<sup>157</sup>

In 2020 hotspots were used as places for quarantine. ASGI has monitored and reported overcrowding and de facto detention beyond the terms set by the quarantine. (see access to asylum, accommodation).

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<sup>151</sup> See ASGI, In Limine report Ombre in Frontiera, March 2020. available in Italian at: <https://bit.ly/3bYpTJF>.

<sup>152</sup> See the *foglio notizie* at: <https://cutt.ly/Kyv9KMr>.

<sup>153</sup> See *scheda informativa* at: <https://cutt.ly/Wyv9LQt>.

<sup>154</sup> Article 10 (2) TUI Consolidated Act on Immigration.

<sup>155</sup> See ASGI, In Limine, La determinazione della condizione giuridica in hotspot, 29 April 2019, available in Italian at: <https://cutt.ly/lyv9XmV>.

<sup>156</sup> See ASGI, In Limine, Esiti delle procedure attuate a Lampedusa per la determinazione della condizione giuridica dei cittadini stranieri, 29 mei 2019, available in Italian at: <https://cutt.ly/Eyv9ChD>.

<sup>157</sup> Court of Cassation, no. 18189/2020, available at: <https://bit.ly/3tuhZQN>; Court of Cassation decision no.18322/2020 available at: <https://bit.ly/3vV7d7O>

### 3. Registration of the asylum application

#### Indicators: Registration

- |   |   |
|---|---|
| 1. Are specific time limits laid down in law for making an application?<br>❖ If so, what is the time limit for making an application?   | At the border<br>8 working days                                     |
| 2. Are specific time limits laid down in law for lodging an application?<br>❖ If so, what is the time limit for lodging an application? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| 3. Are registration and lodging distinct stages in the law or in practice?  | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 4. Is the authority with which the application is lodged also the authority responsible for its examination?                            | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| 5. Can an application for international protection be lodged at embassies, consulates or other external representations?                | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |

The Procedure Decree provides that applications for international protection are made by non-EU citizens on the territory of the State, including at the border and in transit zones, and in the territorial waters.<sup>158</sup>

The Decree also provides for training for police authorities appropriate to their tasks and responsibilities.<sup>159</sup>

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

Under the Procedure Decree,<sup>160</sup> the asylum claim can be made either at the Border Police upon arrival or at the Immigration Office (*Ufficio Immigrazione*) of the Police (*Questura*), if the applicant is already on the territory. The intention to seek international protection may be expressed orally or in writing by the person concerned in their own language with the help of a cultural mediator.<sup>161</sup>

PD 21/2015 provides that asylum seekers who express their wish to apply for international protection before Border Police authorities are to be requested to approach the competent *Questura* within 8 working days. Failure to comply with the 8-working-day time limit without justification, results in deeming the persons as illegally staying on the territory.<sup>162</sup> However, there is no provision for a time limit to make an asylum application before the *Questura* when the applicant is already on the territory.

The law does not foresee any financial support for taking public transport to the competent *Questura*. In practice, the NGOs working at the border points 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.

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

The Procedure Decree provides that the registration of the application shall be carried out within 3 working days from the expression of the intention to seek protection or within 6 working days in case the applicant has expressed such willingness before Border Police authorities. That time limit is extended to 10 working

<sup>158</sup> Article 1 Procedure Decree, as amended by the Reception Decree.

<sup>159</sup> Article 10(1-bis) Procedure Decree, as amended by the Reception Decree.

<sup>160</sup> Article 6 Procedure Decree.

<sup>161</sup> Article 3(1) PD 21/2015.

<sup>162</sup> Article 3(2) PD 21/2015.

days in presence of a significant number of asylum applications due to consistent and tight arrivals of asylum seekers.<sup>163</sup>

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

### 3.2. Lodging the application (*verbalizzazione*)

*Fotosegnalamento* is followed by a second step, consisting in the formal registration of the asylum application, which is carried out exclusively at the Questura within the national territory. EASO has also provided support in this process from 2017 to 2020.

The formal registration of the application (*verbalizzazione or formalizzazione*) is conducted through the “C3” form (*Modello C3*).<sup>164</sup> The form is completed with the basic information regarding the applicant’s personal history, the journey to reach Italy and the reasons for fleeing from the country of origin. This form is signed by the asylum seeker and sent to the Territorial Commission, before the interview. Asylum seekers shall receive a copy of the C3 and copies of all other documents submitted to the police authorities.

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

In 2017, 2018 and 2019 EASO has supported the Questura in the *verbalizzazione* process. According to EASO, by the end of September 2019, 296 different Agency experts were deployed in Italy. After the cut of the EASO staff in the Territorial Commissions in November 2019, the support to the Questura continued on. In 2020 EASO staff has been deployed in Tribunals supporting judges in asylum cases.

The Reception Decree provides for the issuance of a “residence permit for asylum seekers” (*permesso di soggiorno per richiesta asilo*), valid for 6 months, renewable.<sup>165</sup>

### 3.3. Access to the procedure in practice

Reports of denial of access to the asylum procedure recorded by ASGI continued in 2020. Where they prevent access to the procedure, Questura do not issue any document attesting the intention of the persons concerned to seek asylum. This exposes them to risks of arbitrary arrest and deportation.

The quarantine on ships created several problems to access the asylum procedure. As observed, inter alia by ASGI, people do not receive any information on the right to asylum on board. After a visit to a quarantine ship,<sup>166</sup> the Guarantor for the rights of detained persons, highlighted the lack of information to migrants on their rights due to the absence of written and multilingual materials available to Red Cross workers and volunteers.<sup>167</sup>

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<sup>163</sup> Article 26(2-bis) Procedure Decree, as amended by the Reception Decree.

<sup>164</sup> Verbale delle dichiarazioni degli stranieri che chiedono in Italia il riconoscimento dello status di rifugiato ai sensi della Convenzione di Ginevra, available in Italian at: <https://bit.ly/2UWOLx2>.

<sup>165</sup> Article 4(1) Reception Decree.

<sup>166</sup> Visit on Rhapsody, quarantine ship, on 17 September 2020, available at: <https://bit.ly/3fahvKu>

<sup>167</sup> Guarantor for the rights of detained persons, 28 October 2020, available at: <https://bit.ly/3eycJYI>

This situation mainly affected migrants belonging to some nationalities who, after being disembarked, received a notification of an expulsion or a deferred refoulement. In particular, this situation was found for the vast majority of Tunisian migrants interviewed within the Inlimine project or legally helped to access the asylum procedure. The same practice was already recorded, in 2019 at the Hotspots. As recorded by ASGI, those Tunisians who tried to express their will to seek asylum on the ships were not considered as asylum seekers and sent, after quarantine, to CPRs after filling “foglio notizie” not translated in their language and without the actual assistance of a cultural mediator. This also happened in cases where they contacted a lawyer while on board, who subsequently submitted their asylum request to the competent Questura.

In cases where, once in CPR, people managed to submit an asylum application, this was, with few exceptions, considered instrumental in avoiding repatriation, and therefore not useful at avoiding detention. (see detention).

In 2020, the Court of Cassation reaffirmed the close connection between compliance with information obligations and the effectiveness of the right of access to the asylum procedure, both denied by the value attributed to the so-called “foglio notizie” or second “foglio notizie”, which are often submitted to foreign citizens who arrive at the border without a prior or contextual explanation on the meaning of their signature.<sup>168</sup>(see Information at the border and in detention).

As for the eastern border, as mentioned, the practice of readmissions to Slovenia prevented at least 1,300 people in 2020 to access the asylum procedure.

Also, obstacles to registration took different forms, including the following:

#### **Limited opening hours and online appointments**

**Campania:** In 2018 the Questura of Naples introduced an online procedure for registration appointments but it was only available once a week and allowed around 45 people to apply. In July 2019 the Civil Court of Naples ruling on an urgent appeal submitted by a citizen from El Salvador ordered the Questura to proceed with the registration of the asylum application.<sup>169</sup> In 2020, the Questura cancelled this online system but it has not replaced it with an alternative way of seeking asylum. Moreover, since it does not accept requests presented personally by asylum seekers, the only requests registered are those submitted through lawyers.

**Lazio:** In Rome, ASGI continued to document problematic access to the procedure in 2020. The Questura limits access to about 20 applicants a day with the result that many asylum seekers wait a long time before they can submit their request as there is no waiting list. On 4 February 2020, the Civil Court of Rome ordered the Questura of Rome to register the asylum application of a third country national who had repeatedly tried, unsuccessfully, to submit the application at the Immigration Office of Rome. The decree reiterates that the Questura must put in place an appropriate system for the exercise of the right to asylum and therefore the impediment deriving from the logistical needs of the public administration, which in practice allows a limited daily number of people who can formalize the asylum application - is not legitimate.<sup>170</sup>

In October 2020, the Court of Appeal of Rome sentenced the Ministry of the Interior to pay compensation for the damage suffered by an asylum seeker to whom the Questura of Rome had, several times, denied access for the formalization of the subsequent asylum application. The Court found that the applicant had tried at least 5 times to access the police station, twice sleeping on the street in front of the immigration

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<sup>168</sup> Court of Cassation, decision no. 18189/2020 dd. 25.6.2020.

<sup>169</sup> Civil Court of Naples, Order of 29 July 2019, available in Italian at: <https://cutt.ly/Hyv9Bkf>.

<sup>170</sup> Civil Court of Rome, Order of 4 February 2020.

office to be among the first, forced to live on the street, not being able to access the reception system, despite suffering from health pathologies. It granted compensation in his favour of 3,000 euros.<sup>171</sup>

Many cases have also been reported to ASGI where asylum seekers were not allowed to enter the building of the Questura and were obliged to wait several hours outside, over a barrier, being exposed to psychological ill-treatment, such as verbal abuse and shouting. On several occasions, courts have found the refusal of Questura to take action for the lodging of asylum applications unlawful.<sup>172</sup>

In the first months of 2021, the MoI communicated the closure of the CUPA system which allowed, albeit with numerous critical issues, to fix appointments at the Questuras also for the registration of the asylum request. The closure was not accompanied by the implementation of a new booking systems with the result that some Questuras such as that of Bari Bologna and Cuneo, where the Cupa system was in use, have communicated that, temporarily, bookings will take place in person only on some days of the week, but others have not communicated any alternative way of communicating with the offices.

### Residence and requirement of domicile

Article 5(1) of the Reception Decree clarifies that the obligation to inform the police of the domicile or residence is fulfilled by the applicant by means of a declaration, to be made at the moment of the application for international protection and that the address of the reception centres and pre-removal detention centres (CPR) are to be considered the place of residence of asylum applicants who effectively live in these centres.<sup>173</sup> Article 4(4) of the Reception Decree also states that access to reception conditions and the issuance of the residence permit are not subject to additional requirements to those expressly stated by the Decree itself.<sup>174</sup>

With these two provisions,<sup>175</sup> the Decree has made it clear that the unavailability of a domicile shall not be a barrier to access international protection. Nevertheless, still in 2019 Questura denied access to the procedure for lack of proof of domicile e.g. lease contract, declaration of hospitality including the identity document of the host person. This was the case for instance in **Lazio** (Rome), **Campania** (Naples), **Friuli-Venezia Giulia** (Pordenone), **Sicily** (Palermo, Syracuse), **Sardinia** (Cagliari), **Piedmont** (Novara) and **Lombardy** (Milan).

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

An asylum seeker from Pakistan whose brother was already accommodated in Pordenone, **Friuli-Venezia Giulia** was not registered as an asylum seeker because the Questura claimed he should have registered with the Border Police upon arrival. According to the Questura, he could seek asylum in Pordenone only if Pordenone was his place of residence, to be demonstrated with official statements. The Civil Court of Trieste recognised on 22 June 2018 his right to lodge an asylum application in the place

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<sup>171</sup> Court of Appeal of Rome, decision of 29 October 2020, procedure no. 7124/2019, available at : <https://bit.ly/2Q3wZrg>

<sup>172</sup> See e.g. Civil Court of Rome, Order 50192/2018, 18 September 2018, available in Italian at: <https://bit.ly/2ZeuMZE>; Civil Court of Palermo, Order 9994/2018, 13 September 2018, available in Italian at: <https://bit.ly/2UxDNOS>. For a discussion, see ASGI, 'Ancora ostacoli, rimossi con provvedimento ex art. 700 cpc all'esercizio del diritto di asilo', 14 November 2018, available in Italian at: <https://bit.ly/2GdE6Vf>.

<sup>173</sup> Article 5(1) Reception Decree. According to Article 5(2), the address is also valid for the notification of any kind of communication of any act concerning the asylum procedure (see also [Regular Procedure: General](#)).

<sup>174</sup> Article 4(4) Reception Decree.

<sup>175</sup> Articles 4(4) and 5(1) Reception Decree.

where he was staying and his right to be accommodated there.<sup>176</sup> The appeal by the Government against this ruling was dismissed on 3 October 2018.<sup>177</sup> However, again in November 2019 the Questura of Pordenone denied a Pakistani citizen access to the asylum procedure due to the lack of a domicile. In June 2020 the Civil Court of Trieste accepted the appeal and ordered the Questura of Pordenone to proceed to the registration of the asylum application.<sup>178</sup>

In December 2020 the Court of Florence accepted an urgent appeal aimed at ascertaining the right to formalize the asylum application, against the refusal opposed by the Questura in **Florence**, without a formal provision, due to lack of documentation certifying the domicile, claimed through a declaration of hospitality.<sup>179</sup>

ASGI recorded such requests throughout 2020 in Questura of **Apulia Region**, as well.

### **Nationality or presumed merit of applications**

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

**Lombardy:** At the Questura of Milan, as denounced by the NGOs ASGI, Naga and Avvocati per Niente in a letter sent to the Ministry of Interior in April 2016, the Police submits a questionnaire to asylum seekers to assess, from the answers compiled, whether they are refugees or economic migrants, basically applying the same procedure as that applied at **Hotspots**. Those considered economic migrants are denied accessing the asylum procedure and notified of an expulsion order.<sup>180</sup> The same Questura is also reported to deny access to the applicants' lawyers. Replying to the report, the Questura rejected all accusations, explaining, that lawyers are allowed to intervene on the basis of a specific mandate of their clients and for specific disputes with the immigration offices.<sup>181</sup>

This practice has persisted in 2019<sup>182</sup> and 2020. For persons who spontaneously appear before the Questura of Milan to seek asylum, there is a very high frequency of expulsion measures.

In March 2021, ASGI recorded a case in which an asylum seeker went to the Questura of Milan to ask for asylum, but as he had indicated his willingness to support his family by working in Italy in filling out the "foglio notizie", he was directly directed to the expulsions section without being allowed access to the asylum procedure. In this case, the police even drafted and delivered to the person concerned a written report certifying what happened. In general, according to ASGI information, this practice mainly concerns applicants from countries such as Egypt and Tunisia.

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

In conclusion, even though the Questura is not entitled to know in detail the applicant's personal history, some Questura, 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, it has recorded happening that the interpreter writes for him or her.

<sup>176</sup> Civil Court of Trieste, Order 1929/2018, 22 June 2018, EDAL, available at: <https://bit.ly/2Gcl4gz>.

<sup>177</sup> Civil Court of Trieste, Order 1929/2018, 3 October 2018, available in Italian at: <https://bit.ly/2P8V6Qs>.

<sup>178</sup> Civil Court of Trieste, Procedure no. 5159/2019, decision of 21 June 2020

<sup>179</sup> Civil Court of Florence, order of 21 December 2020 – procedure no. 11307/2020, available at : <https://bit.ly/3uDCVX1>

<sup>180</sup> For more information and the letter, see: <http://bit.ly/2kB5kli>.

<sup>181</sup> The response appeared on the newspaper *Avvenire* on 30 April 2016.

<sup>182</sup> In 2017, ASGI et al., made the note 'Protezione internazionale: la Questura deve ricevere la richiesta di asilo, non valutarla', 14 June 2017, available in Italian at: <http://bit.ly/2HN8J3V>.

## Waiting times

The time limits for registration of asylum applications set by the Procedure Decree are generally not respected.

Differential treatment has been reported depending on whether asylum seekers were accommodated in a centre or lived alone. In Caserta, **Campania**, according to the reports, asylum seekers not living in a reception centre can wait up to one year for the registration, while those accommodated usually wait just one month. The same difference, albeit less sizeable, has been reported for example in Como and Milan, **Lombardy**, Florence, **Tuscany** and Rome, **Lazio**. In **Udine**, after quarantine the asylum seekers are sent to the CAS, after which they wait on average from 2 to 4 months for the formalization of the asylum application.

## Access to the procedure from detention

In practice, the possibility of accessing the asylum procedure inside a pre-removal detention centre (CPR) appears to be difficult due to the lack of appropriate legal information and assistance, and to administrative obstacles. In fact, according to the Reception Decree, people are informed about the possibility to seek international protection by the managing body of the centre.<sup>183</sup>

As reported to the Guarantor for the rights of detained persons during his visit to the CPR of Turin on 1 March 2018, detainees who intend to apply for asylum must address their request to one of the operators of the managing body. The latter then communicates to the Questura that one of the detainees has requested an appointment, without providing any indication of the intention expressed by the interested party. Detainees wait for the appointment on average between two to three days but, due to the lack of documents certifying the intention to seek asylum, the police authorities could also not be informed of their legal situation and repatriate them before the submission of the asylum application.<sup>184</sup>

As recorded by ASGI, in 2020, in many cases the detained, not informed of the possibility and the way to ask for asylum, could not express this will even before the Judge of the Peace (Giudice di Pace) at the hearing to validate the detention. Only sometimes, subsequently, they were able to submit the asylum request thanks to their lawyers. This was possible, however, mainly in the CPRs, such as that of Gradisca, where mobiles are not seized. In the CPR of Gradisca ASGI lawyers have recorded cases of denied access to the asylum procedure.

Regarding the possibility to apply for asylum by applicants serving prison terms, ASGI recorded ample difficulties also in 2019 and 2020.

On 4 April 2020, the Civil Court of Turin accepted the appeal lodged by an asylum seeker detained at the Ivrea District House, ordering the Questura of Turin to register the asylum application. Although the applicant had expressed his will to seek asylum several times, the Questura did not proceed with the application and the detainee received an expulsion order to be executed at the end of the prison sentence.<sup>185</sup>

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<sup>183</sup> Article 6(4) Reception Decree.

<sup>184</sup> Guarantor for the rights of detained persons, *Rapporto sulle visite effettuate nei centri di permanenza per il rimpatrio (Febbraio – Marzo 2018)*, 6 September 2018, available in Italian at: <http://bit.ly/2uvu4cr>.

<sup>185</sup> Civil Court of Turin, Order 4 April 2020.

## 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>186</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 at first instance as of 31 December 2020:   | 33,636  |

According to the Procedure Decree, the Territorial Commission interviews the applicant within 30 days after having received the application and decides in the 3 following working days. When the Territorial Commission is unable to take a decision in this time limit and needs to acquire new elements, the examination procedure is concluded within 6 months of the lodging of the application. The Territorial Commission may extend the time limit for a period not exceeding a further 9 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 Territorial Commission, in duly justified circumstances, may further exceed this time limit by 3 months where necessary in order to ensure an adequate and complete examination of the application for international protection.<sup>187</sup> In light of the different possibilities of extension, the asylum procedure may last for a maximum period of 18 months.

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

Statistics on the average duration of the procedure in 2020 are not available. In 2020, 21,200 asylum requests were registered in Italy, which correspond to less than 39% compared to 2019. The main countries of origin are Pakistan, Bangladesh, El Salvador, Tunisia and Nigeria.

40,800 first instance decisions were issued (compared to 93,500 in 2019). Only 28% of these led to a protection status (22% international protection, and 6 % special/humanitarian protection status).

At 31 December 2020, the Territorial Commissions examined 41,753 cases, which, due to suspensions, interruption of hearings and obstacles due to the Covid emergency correspond to almost the half of those examined in 2019, when 81,162 cases were examined. The Territorial Commissions recognized international protection in 22 % of the cases, out of which, 10 % for refugee status and 12 % for subsidiary protection. The rejections amounted to 77 % of the requests. Special protection, introduced by decree-law n. 113 of 2018, was granted to 1.5 % of the applicants.<sup>188</sup> Following the amendments to Decree Law 130/2020 (see below) to the content of special protection, a significantly larger number of people were

<sup>186</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>187</sup> Article 27(2)(3) Procedure Decree.

<sup>188</sup> Ministry of Interior, Asylum statistics, available at: <https://bit.ly/3hg0mle>

recognised: in November 2020 this result increased from 1% to 5% and in December to 8% of decisions (see outcomes).

### Termination and notification

The Procedure Decree states that when the applicant, before having been interviewed, leaves the reception centre without any justification or absconds from CPR or from hotspots, the Territorial Commission suspends the examination of the application on the basis that the applicant is not reachable (*irreperibile*).<sup>189</sup>

The applicant may request the reopening of the suspended procedure within 12 months from the suspension decision, only once. After this deadline, the Territorial Commission declares the termination of the procedure. In this case, applications made after the declaration of termination of the procedure are considered [Subsequent Applications](#).<sup>190</sup>

Subsequent applications submitted after the termination of the 12-month suspension period are subject to a preliminary admissibility examination.<sup>191</sup> 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>192</sup> In the recent years, ASGI received several reports of suspension of procedures for people whose accommodation had been revoked e.g. in Pordenone, **Friuli-Venezia Giulia**. This has also occurred due to lack of communication between reception centres and Questura in the case of transfers to different facilities, as was the case for people moved out of Cona, **Veneto** due to overcrowding.

Decree Law 13/2017 introduced a new procedure to notify interview appointments and decisions taken by the Territorial Commissions.<sup>193</sup>

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

- a. **Accommodated or detained applicants:** Interviews and decisions can be notified by the managers of reception or detention centres, who then transmit the act to the asylum seeker for signature. The notification is considered to be carried out when the manager of the reception centre facility communicates it to the Territorial Commission through a certified email message indicating the date and time of notification. The law specifies that such communication must be immediate.<sup>194</sup>
- b. **Applicants in private accommodation:** The notification must be made to the last address communicated to the competent Questura. In this case, notifications are sent by postal service.<sup>195</sup>
- c. **Non reachable applicants:** The interview summons or decision is sent by certified email from the Territorial Commission to the competent Questura, which keeps it at the disposal of the persons concerned for 20 days. After 20 days, the notification is considered to be completed

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<sup>189</sup> Article 23-bis Procedure Decree, inserted by Article 25 Reception Decree.

<sup>190</sup> Article 2(1)(b-bis) Procedure Decree, inserted by Article 9 Decree Law 113/2018 as amended by L 132/2018.  
<sup>191</sup> This is a preliminary examination governed by Article 29(1-bis) Procedure Decree, to which Article 23-bis expressly refers.

<sup>192</sup> Article 23-bis Procedure Decree, inserted by Article 25(r) Reception Decree.

<sup>193</sup> Article 11(3) Procedure Decree et seq, as amended by Article 6 Decree Law 13/2017 as amended by L 46/2017.

<sup>194</sup> Article 11(3) Procedure Decree, as amended by Article 6 Decree Law 13/2017 and L 46/2017.

<sup>195</sup> Article 11(3-bis) Procedure Decree, as amended by Article 6 Decree Law 13/2017 and L 46/2017.

and a copy of the notified deed is made available for the applicant's collection at the Territorial Commission.<sup>196</sup>

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

In practice, the new notification procedure has created different problems, as Territorial Commissions were not promptly informed about accommodation transfers. Often, people moved from one reception centre to another found out about their appointment for the interview when the date scheduled by the Territorial Commission has already passed. In addition, many ASGI lawyers have experienced problems in notifications of privately housed asylum seekers, as notifications have often not been made.

### **Outcomes of the procedure**

There are eight possible outcomes to the regular procedure, following additions and substantial changes by Decree Law 113/2018 and Decree Law 130/2020. Under the amended Article 32 of the Procedure Decree, the Territorial Commission may decide to:

1. Grant refugee status;
2. Grant subsidiary protection;
3. Recommend to the Questura to issue a two-years "special protection" residence permit;

Decree Law 113/2018 had abolished the status of humanitarian protection by repealing the provision of the TUI concerning the issuance of a residence permit on serious grounds, in particular of a humanitarian nature or resulting from constitutional or international obligations of the Italian State.<sup>197</sup>

Decree Law 130/2020 made significant changes to the substance of the special protection and restored the obligations resulting from the constitutional or international obligations of the Italian State.<sup>198</sup>

Special protection permits are now granted to persons who, according to the law, cannot be expelled or refouled.<sup>199</sup> This covers cases where a person risks being persecuted for reasons of race, sex, sexual orientation and gender identity, language, citizenship, religion, political opinions, personal or social conditions, or may risk being sent back to another country where he or she is not protected from persecution.<sup>200</sup> It also covers cases where a person risks to be sent to a country where there are reasonable grounds to believe that he or she risks being subjected to torture or inhuman or degrading treatments or if they recur the constitutional or international obligations referred to in Article 5 (6) TUI. The existence, in that State, of systematic and serious violations of human rights is taken into account. Significantly, the decree 130/2020 specified that refoulement or expulsion of a person is not permitted if there are good reasons to believe that the

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<sup>196</sup> Article 11(3-ter) and (3-quater) Procedure Decree, as amended by Article 6 Decree Law 13/2017 and L 46/2017.

<sup>197</sup> Article 5(6) TUI, was amended Decree Law 113/2018 but is has been again amended by Decree Law 130/2020 reintroducing the obligation to consider, before rejecting a permit to stay, constitutional and international obligations of the Italian State.

<sup>198</sup> Article 5 (6) as amended by Decree Law 130/2020 and L 173/2020.

<sup>199</sup> Article 32(3) Procedure Decree, as amended by Decree Law 130/2020 and L 173/2020.

<sup>200</sup> Articles 19(1) as amended by Decree Law 130/2020 and L. 173/2020.

removal from the national territory involves a violation of the right to respect for his private and family life, unless that it is necessary for national security reasons, public order and safety as well as health protection. For the assessment, it takes into account the nature and effectiveness of the family ties of the person concerned, his effective social insertion in Italy, the duration of his stay on the national territory as well as the existence of family, cultural or social ties with his or her country of origin.<sup>201</sup> Special protection is not granted when it is possible to transfer the applicant to a country, which could offer equivalent protection (*protezione analoga*) to Italy.<sup>202</sup>

These permits are granted for two years and are renewable and changeable in work permits to stay, with the exception of cases in which such protection is recognized by recurring to the hypotheses of exclusion or denial of international protection.<sup>203</sup> (see [Residence Permit](#)).

Decree Law 130/2020 stated that the new provisions on special protection permits also apply to pending cases before the Territorial Commissions, to the Head of Questura and to Specialised sections of Civil Courts.<sup>204</sup>

Decree Law 113/2018 had not regulated the situation of asylum seekers who applied for international protection before its entry into force on 5 October 2018 and who were still waiting for a first instance decision. In February 2019, the Court of Cassation held that Decree Law 113/2018 should have been considered non-retroactive for all asylum procedures already initiated at the time of its entry into force thus stating that they could still be granted with humanitarian protection.<sup>205</sup> The applicability of Legislative Decree 130/2020 to all pending proceedings cancels the retroactivity of humanitarian protection, with the sole exception of the referral judgments ordered by the Court of Cassation.<sup>206</sup> As the new law on special protection expressly enhances the protection of private and family life and integration in Italy as well as recalls Italy's constitutional and international obligations, the Courts may not apply it as a disadvantage for those who could have been granted with humanitarian protection.

4. Recommend to the Questura to issue a permit to stay for health reasons;

According to Article 32 (3.1) of the Procedure Decree, as amended by Decree Law 130/2020 and L 173/2020, in case of rejection of the application for international protection, the Territorial Commission recommends to Questura to issue a permit to stay when serious psychophysical conditions or serious pathologies could cause significant damage to the health of the applicant in case of return to the country of origin or provenance.<sup>207</sup> The health conditions have to be ascertained through suitable documentation issued by a public health facility or by a doctor of the National Health Service.

The duration of health permits is parameterized to the time certified by the health certification, in any case not exceeding one year, and are renewable and convertible into a work permit to stay. They are valid only on the national territory.

5. Inform the Public Prosecutor to the Juvenile Court to start the procedure to issue a permit to stay for assistance to minors.<sup>208</sup>

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<sup>201</sup> Article 19 (1.1) TUI as amended by Decree Law 130/2020 and L 173/2020.

<sup>202</sup> Article 32(3) Procedure Decree, as amended by Article 1(2)(a) Decree Law 113/2018.

<sup>203</sup> Hypotheses ruled by Articles 10(2), 12 (1) (b) and (c) and 16 of the Qualification Decree.

<sup>204</sup> Article 15 (1) DL 130/2020.

<sup>205</sup> Court of Cassation, Decision 4890/2019, 23 January 2019, EDAL, available at: <https://bit.ly/2X00wQy>.

<sup>206</sup> Article 15 (1) DL 1340/2020 expressly excludes judgments regulated by Article 384 (2) of the Civil Procedure Code.

<sup>207</sup> Article 32 (3.1) Procedure Decree recalls the requirements referred to in Article 19 TUI (2) (d-bis) which excludes the expulsion or extradition of foreigners who are in such health serious conditions.

<sup>208</sup> Article 32 (3.2) Procedure Decree introduced by Decree Law 130/2020 and L 173/2020 and referring to Article 31 (3) TUI.

In cases where the application for international protection is not accepted, the Territorial Commission evaluates the existence of reasons that allow the Juvenile Court to issue a permit to minor's family members for reasons related to the psychophysical health and development of the minor who is in the Italian territory and informs the public Prosecutor at the competent Juvenile Court.

This permit is issued on a fixed-term and can be changed into a work permit to stay.<sup>209</sup>

6. Reject the asylum application as unfounded;
7. Reject the application as manifestly unfounded;<sup>210</sup>

According to the Article 28-ter of the Procedure Decree, an application is deemed to be "manifestly unfounded" where the applicant, not belonging to a vulnerable category<sup>211</sup>:

- a. Has only raised issues unrelated to international protection;
- b. Comes from a [Safe Country of Origin](#);
- c. Has issued clearly inconsistent and contradictory or clearly false declarations, which contradict verified information on the country of origin;
- d. Has misled the authorities by presenting false information or documents or by withholding relevant information or documents with respect to his or her identity and/or nationality that could have had a negative impact on the decision, or in bad faith has destroyed or disposed of an identity or travel document that would have helped establish his or her identity or nationality;
- e. Irregularly entered the territory, or irregularly prolonged his or her stay, and without justified reason, did not make an asylum application promptly;
- f. Refuses to comply with the obligation of being fingerprinted under the Eurodac Regulation;
- g. Is detained in a CPR for reasons of exclusion under Article 1F of the 1951 Convention, public order or security grounds, or there are reasonable grounds to believe that the application is lodged solely to delay or frustrate the execution of a removal order (see [Grounds for Detention](#)).<sup>212</sup>

8. Reject the application on the basis that an internal protection alternative is available.<sup>213</sup>

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

## 1.2. Prioritised examination and fast-track processing

Article 28 of the Procedure Decree, severely amended in 2020, provides that the President of the Territorial Commission, after a preliminary exam, identifies the cases to be processed under the prioritised procedure, when:

- a. The application is supposed to be well-founded;<sup>214</sup>

<sup>209</sup> Article 6 (1 bis) TUI introduced by Decree Law 130/2020 and L 173/2020.

<sup>210</sup> Article 32(1)(b-bis) Procedure Decree, as amended by Decree Law 113/2018 and L 132/2018.

<sup>211</sup> According to Article 28 ter as reformed by Decree Law 130/2020 and L 173/2020 the provision does not apply to people with special needs, referring to Article 17 Reception Decree

<sup>212</sup> Article 28-ter(g) Procedure Decree, citing Article 6(2)-(3) Reception Decree.

<sup>213</sup> Article 32(1)(b-ter) Procedure Decree, inserted by Decree Law 113/2018 and L 132/2018.

<sup>214</sup> Before the reform the law stated that the it applied to applications likely to be well founded.

- b. The applicant is vulnerable, in particular if he or she is an unaccompanied child or a person in need of special procedural guarantees;
- c. The applicant comes from one of the countries identified by the CNDA that allow the omission of the personal interview when considering that there are sufficient grounds available to grant subsidiary protection. The competent Territorial Commission, before adopting such a decision, informs the applicant of the opportunity, within 3 days from the communication, to request a personal interview. In absence of such request, the Territorial Commission takes the decision.<sup>215</sup>

Following the reform, the law states that the President of the Territorial Commission makes a preliminary exam of the application but, in practice, the decision will still be taken on the basis of the documents already present in the asylum application file.

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

Regarding unaccompanied children, L 47/2017 has allowed a faster start of the procedure as it allows the manager of the reception centre to represent the child until the appointment of a guardian.<sup>216</sup> That said, according to ASGI's experience, the prioritised procedure was not widely applied to unaccompanied children in 2018, 2019 and 2020.

### 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
4. Can the asylum seeker request the interviewer and the interpreter to be of a specific gender? ☒ Yes ☐ No
  - ❖ If so, is this applied in practice, for interviews? ☐ Yes ☒ No

The Procedure Decree provides for a personal interview of each applicant, which is not public.<sup>217</sup> During the personal interview the applicant can disclose exhaustively all elements supporting his or her asylum application.<sup>218</sup>

The Decree Law 130/2020, by amending Article 12 (1), provides for the possibility of hearings conducted by audio-visual means, which rarely occurs in practice.<sup>219</sup>

<sup>215</sup> Article 28(2) C Procedure Decree, as amended by Decree Law 130/2020 and L. 173/2020

<sup>216</sup> Article 6(3) L 47/2017.

<sup>217</sup> Article 12(1) Procedure Decree; Article 13(1) Procedure Decree.

<sup>218</sup> Article 13(1-bis) Procedure Decree, inserted by the Reception Decree.

<sup>219</sup> Article 12 (1) as amended by Decree Law 130/2020 and L 173/2020.

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

- (a) Determining authorities have enough elements to grant refugee status under the 1951 Refugee Convention without hearing the applicant; or
- (b) The applicant is recognised as unable or unfit to be interviewed, as certified by a public health unit or by a doctor working with the national health system. In this regard, the law provides that the personal interview can be postponed due to the health conditions of the applicant duly certified by a public health unit or by a doctor working with the national health system or for very serious reasons.<sup>220</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>221</sup>
- (c) For applicants coming from those countries identified by the CNDA, when considering that there are sufficient grounds to grant them subsidiary protection.<sup>222</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.

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

### 1.3.1. Interpretation

In the phases concerning the registration and the examination of the asylum claim, including the personal interview, applicants must receive, where necessary, the services of an interpreter in their language or in a language they understand. Where necessary, the documents produced by the applicant shall be translated.<sup>223</sup>

At border points, however, these services may not always be 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 generally available, there may therefore be significant difficulties in promptly providing an adequate number of qualified interpreters 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.

### 1.3.2. Recording and transcript

The personal interview may be recorded. The recording is admissible as evidence in judicial appeals against the Territorial Commission's decision. Where the recording is transcribed, the signature of the transcript is not required by the applicant.<sup>224</sup> Following Decree Law 13/2017, implemented by L 46/2017,

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<sup>220</sup> Article 12(3) Procedure Decree, as amended by the Reception Decree.

<sup>221</sup> Article 5(4) PD 21/2015.

<sup>222</sup> Article 12(2-bis) Procedure Decree, read in conjunction with Article 5(1-bis).

<sup>223</sup> Article 10(4) Procedure Decree, as amended by the Reception Decree.

<sup>224</sup> Article 14(2-bis) Procedure Decree, inserted by the Reception Decree.

the law states that the interview has to be taped by audio-visual means and transcribed in Italian with the aid of automatic voice recognition systems.<sup>225</sup> The transcript of the interview is read out to the applicant by the interpreter and, following the reading, the necessary corrections are made by the interviewer together with the applicant.

All of the applicant's observations not implemented directly in the text of the transcript are included at the bottom of the document and signed by him or her. The transcript itself is signed only by the interviewer – or the President of the Commission – and by the interpreter.<sup>226</sup> The applicant does not sign the transcript and does not receive any copy of the videotape, but merely a copy of the transcript in Italian. A copy of the videotape and the transcript shall be saved for at least 3 years in an archive of the Ministry of Interior and made available to the court in case of appeal. The applicant can only access the tape during the appeal,<sup>227</sup> meaning that it is not available at the time of drafting the appeal.

The applicant can formulate a reasoned request before the interview not to have the interview recorded. The Commission makes a final decision on this request.<sup>228</sup> This decision cannot be appealed.<sup>229</sup> When the interview cannot be videotaped for technical reasons or due to refusal of the applicant, the interview is transcribed in a report signed by the applicant.<sup>230</sup>

In 2019 and 2020, interviews were still never audio- or video-recorded due to a lack of necessary equipment and technical specifications, for example on how to save the copies and transmit them to the courts. This means that in practice after the interview a transcript is given to the applicant with the opportunity to make further comments and corrections before signing it and receiving the final report. The quality of this report varies depending on the interviewer and the Territorial Commission, which conducts the interview. Complaints on the quality of the transcripts are frequent.

## 1.4. Appeal

### Indicators: Regular Procedure: Appeal

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

❖ If yes, is it	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
❖ If yes, is it suspensive	<input checked="" type="checkbox"/> Judicial	<input type="checkbox"/> Administrative
	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Some grounds <input type="checkbox"/> No
2. Average processing time for the appeal body to make a decision: Not available

### 1.4.1. Appeal before the Civil Court

The Procedure Decree provides for the possibility for the asylum seeker to appeal before the competent Civil Court (*Tribunale Civile*) against a decision issued by the Territorial Commissions rejecting the application, granting subsidiary protection instead of refugee status or requesting the issuance of a residence permit for special protection instead of granting international protection.<sup>231</sup>

### Specialised court sections

Decree Law 13/2017, implemented by L 46/2017, has established specialised sections in the Civil Courts, responsible for immigration, asylum and free movement of EU citizens' cases.<sup>232</sup> Judges to be included in the specialised sections should be appointed on the basis of specific skills acquired through

<sup>225</sup> Article 14(1) Procedure Decree, as amended by Article 6 Decree Law 13/2017 and L 46/2017.

<sup>226</sup> Article 14(2) Procedure Decree, as amended by Article 6 Decree Law 13/2017.

<sup>227</sup> Article 14(5) Procedure Decree, as amended by Article 6 Decree Law 13/2017.

<sup>228</sup> Article 14(6-bis) Procedure Decree, as amended by Article 6 Decree Law 13/2017 and L 46/2017.

<sup>229</sup> Article 14 (6 bis) Procedure Decree.

<sup>230</sup> Article 14(7) Procedure Decree, as amended by Article 6 Decree Law 13/2017 and L 46/2017.

<sup>231</sup> Articles 35(1) and 35-bis(1) Procedure Decree.

<sup>232</sup> Article 1 Decree Law 13/2017, as amended by L 46/2017.

professional experience and training. EASO and UNHCR are entrusted with training of judges, to be held at least annually during the first three years.<sup>233</sup>

Not all of the specialised sections of the Civil Courts deal with the backlog of appeals pending before the entry into force of Decree Law 13/2017.<sup>234</sup>

The competence of the Court is determined on the basis of the location of the competent Territorial Commission, but also on the basis of the place where the applicant is accommodated (governmental reception centres, CAS, SAI and CPR).<sup>235</sup>

### Rules for the lodging of appeals

The appeal must be lodged within 30 calendar days from the notification of the first instance decision and must be submitted by a lawyer.<sup>236</sup>

However, the time limit for lodging an appeal is 15 days for persons placed in CPR and negative decisions taken under the [Accelerated Procedure](#).<sup>237</sup>

The appeal has automatic suspensive effect, except where:<sup>238</sup>

- a. The applicant is detained in CPR or a hotspot;
- b. The application is inadmissible;
- c. The application is manifestly unfounded;
- d. The application is submitted by a person coming from a safe country of origin;
- e. The application is submitted after the applicant has been apprehended in a irregular stay on the national territory and for the sole purpose of avoiding an imminent removal;
- f. The application is submitted by persons investigated or convicted for some of the crimes that may trigger to the exclusion of international protections pursuant to Article 28 -bis ( 1) (b) of the procedure decree.

More in general the appeal lacks the suspensive effect when the application is rejected on some of the grounds for applying the [Accelerated Procedure](#) with the sole exclusion of appeals against decision taken under the border procedure.

However, in those cases, the applicant can individually request a suspension of the return order from the competent judge. The court must issue a decision within 5 days and notify the parties, who have the possibility to submit observations within 5 days. The court takes a non-appealable decision granting or refusing suspensive effect within 5 days of the submission and/or reply to any observations.<sup>239</sup>

Amending Article 35(bis) (4) of the Procedure Decree, the Decree Law 130/2020 specified that the Court takes the decision in collegial composition.<sup>240</sup>

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

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<sup>233</sup> Article 2(1) Decree Law 13/2017, as amended by L 46/2017.

<sup>234</sup> *Ibid*, 11.

<sup>235</sup> Article 4(3) Decree Law 13/2017, as amended by L 46/2017.

<sup>236</sup> Article 35-bis(2) Procedure Decree, as amended by Decree law 130/2020.

<sup>237</sup> *Ibid*.

<sup>238</sup> Article 35-bis(3) Procedure Decree, , as amended by Decree Law 130/2020.

<sup>239</sup> Article 35-bis (4) Procedure Decree.

<sup>240</sup> Article 35 (bis) (4) as amended by Decree >Law 130/2020 and referring to Article 3 (4-bis) Decree Law 13/2017 and L. 46/2017

might come into play, such as the linguistic barriers between asylum seekers and lawyers, and the lack of knowledge of the legal system.

Moreover, a Moi Circular of 30 October 2020<sup>241</sup> ambiguously stated that before the 5 days given to Court to decide on suspension have elapsed, the applicant cannot be repatriated. The wording seems to refer to the possibility that, after these days have elapsed, even without the judge having decided on the suspension request, repatriation can be carried out. In this sense, as registered by ASGI, some illegitimate practices were registered in Rome.

Also, before the 2020 reform, with a Circular of 13 January 2020, the Ministry of Interior considered that after the terms provided for Article 35-bis (4) of the Procedure Decree without the Judge's decision on the suspension having intervened, the measures of removal could legitimately be adopted.

As highlighted by ASGI, these indications appear illegitimate in the light of Article 46 (8) of the Directive 2013/32/EU, which establishes the applicant's right to remain on the national territory, until a judge decision on the suspension request has been taken and in light of Article 41, which provides for specific exceptions to this rule.<sup>242</sup>

After the appeal is notified to the Ministry of Interior at the competent Territorial Commission, the Ministry may present submissions (defensive notes) within the next 20 days. The applicant can also present submissions within 20 days.<sup>243</sup> The law also states that the competent Commission must submit within 20 days from the notification of the appeal the video recording and transcript of the personal interview and the entire documentation obtained and used during the examination procedure, including country of origin information relating to the applicant.<sup>244</sup> In 2018, a substantial part of EASO caseworkers deployed to Territorial Commissions have assisted in the drafting of submissions in appeal proceedings. In 2019 Interim Experts from EASO deployed as Caseworkers to the Territorial Commissions could draft the Commission's submissions in the appeal procedure, although they had no competence to represent the Commission before the Court. Their submissions was supposed to focus exclusively on factual issues and evidence assessment and not enter into legal argumentation.<sup>245</sup> The termination of activities of the Interim Experts deployed at the Territorial Commissions expected by the end of 2019 <sup>246</sup> took place one month before, on November 2019.

## Hearing

According to the appeal procedure following Decree Law 13/2017, implemented by L 46/2017, oral hearings before the court sections are a residual option. The law states that, as a rule, judges shall decide the cases only by consulting the videotaped interview before the Territorial Commission. They shall invite the parties for the hearing only if they consider it essential to listen to the applicant, or they need to clarify some aspects or if they provide technical advice or the intake of evidence.<sup>247</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>248</sup>

Since the adoption of Decree Law 13/2017, ASGI has claimed that the use of video recorded interviews, potentially replacing asylum seekers' hearings by the court, does not comply with the right to an effective

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<sup>241</sup> Moi Circular of 30 October 2020 no. 9075580

<sup>242</sup> ASGI, *Asilo e procedure accelerate: commento alla circolare del Ministero dell'Interno*, 6 March 2020, available in Italian at: <https://bit.ly/2zfAv9L>.

<sup>243</sup> Article 35-bis(7) and (12) Procedure Decree.

<sup>244</sup> Article 35-bis(8) Procedure Decree.

<sup>245</sup> ECRE, *The role of EASO operations in national asylum systems*, 2019, 23, available at: <https://bit.ly/2WHE0NN>, p. 23.

<sup>246</sup> ECRE, *The role of EASO operations in national asylum systems*, 2019, 20, available at: <https://bit.ly/2WHE0NN>.

<sup>247</sup> Article 35-bis Procedure Decree, introduced by Article 6(10) Decree Law 13/2017 and L 46/2017.

<sup>248</sup> Article 6(11) Decree Law 13/2017.

remedy provided by Article 46 of the recast Asylum Procedures Directive, as an applicant's statements are often the only elements on which the application is based. Therefore, there is no certainty that judges will watch the videos of the interviews, and in any case they will not watch them with the assistance of interpreters so as to understand the actual extent of applicants' statements.

Throughout 2017 and 2018, insofar as Territorial Commissions were still not video-recording interviews, most of the court sections have always held oral hearings with asylum seekers, as set out in the law in case the interview is not video-recorded.<sup>249</sup> Although Civil Courts such as **Naples** interpreted the law as leaving discretion to the court to omit a hearing even if the videotape is not available, the Cassation Court clarified in 2018 that in such cases the oral hearing is mandatory and cannot be omitted.<sup>250</sup>

## Decision

The Civil Court can either reject the appeal or grant international protection to the asylum seeker within 4 months.<sup>251</sup> Since the entry into force of Decree Law 13/2017, the appeal procedure has sped up considerably.

No information on the average duration of the appeal procedure for appeals is available for 2019. However, according to what is recorded by ASGI, since 2019, in many cases the Civil Courts have set asylum hearings for 2021 or even for 2022. The same practice was recorded in 2021, with hearings fixed in the next two or three years. Even those hearings already scheduled for 2020 have been postponed for one or two years. This will have a major impact on the average length of proceedings.

### 1.4.2. Onward appeal

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

In case of a negative decision, the asylum seeker can only lodge an appeal before the Court of Cassation within 30 days, compared to 60 days granted before the reform.<sup>252</sup>

The onward appeal is not automatically suspensive. Nevertheless, the Court of Justice of the European Union (CJEU) found in its *F.R.* judgment of 27 September 2018 that this provision complies with EU law as the recast Asylum Procedures Directive does not contain any provisions requiring a second level of jurisdiction against negative asylum decisions and therefore does not require any automatic suspensive effect for onward appeals.<sup>253</sup>

The request for suspensive effect is examined by the judge who rejected the appeal at Civil Court level and has to be submitted within 5 days from the notification of the appeal.<sup>254</sup>

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<sup>249</sup> CSM, *Monitoraggio sezioni specializzate*, October 2018, 27-28.

<sup>250</sup> Court of Cassation, 1<sup>st</sup> Section, Decision 28424/2018, 27 June 2018, available in Italian at: <https://bit.ly/2G6XwuS>; Decision 17717/2018, 5 July 2018, available in Italian at: <https://bit.ly/2GfMYeb>. See also: EDAL, Italy – Supreme Court of Cassation, 27th June 2018, no. 28424, available at: <https://bit.ly/36vKIAn>.

<sup>251</sup> Article 35-bis(13) Procedure Decree.

<sup>252</sup> Article 35-bis(13) Procedure Decree.

<sup>253</sup> CJEU, Case C-422/2018 *F.R. v Ministero dell'interno – Commissione Territoriale per il riconoscimento della Protezione Internazionale presso la Prefettura U.T.G. di Milano*, Judgment of 27 September 2018, EDAL, available at: <https://bit.ly/2D1oGCE>.

<sup>254</sup> Article 35-bis(13) Procedure Decree.

The 2017 reform has sparked strong reactions from NGOs,<sup>255</sup> and even from some magistrates. Cancelling the possibility to appeal the Civil Court decisions at Court of Appeal, making the hearing of the applicant a mere residual option, further complicating access to free legal aid, reducing the time for appeal to the Court of Cassation, and entrusting the assessment of the request for suspensive effect of onward appeals to the same Civil Court judge who delivered the negative first appeal ruling, drastically reduces the judicial protection of asylum seekers. The Cassation Section of the Magistrates' National Association (*Associazione Nazionale Magistrati*) also highlighted the unreasonableness of the choice to abolish the second level of appeal, which is still provided for civil disputes of much lower value if compared to international protection cases, bearing in mind that the procedure before the Court of Cassation is essentially a written procedure.

The reform has had a visible impact on the caseload before the Court of Cassation. In the 2021 report on the administration of justice in 2020, the President of the Court underlines how the most recent problem in the activity of the Court of Cassation is the enormous increase in the number of petitions concerning international protection matters.

The number of petitions rose from 374 appeals in 2016 to 10,341 in 2019 and 6,935 in 2020.<sup>256</sup>

In 2019, 3,053 asylum proceedings were decided.<sup>257</sup> In 2020, this doubled to 6,614 asylum proceedings, which equals 88.2 % of all proceedings.<sup>258</sup> By the end of 2020, 13,101 petitions on international protection were pending before the Court of Cassation.

The average duration of the appeal process in 2020 is not available. It is important to note that from 9 March 2020 to 11 May 2020, due to the Covid-19 emergency, the terms of the civil proceedings were suspended.

As regards appeals lodged before the entry into force of L 46/2017, a second appeal can still be brought before the Court of Appeal. The Court of Cassation has clarified that these second-instance appeals follow the same procedure as before the entry into force of the Reception Decree.<sup>259</sup>

## 1.5. Legal assistance

### Indicators: Regular Procedure: Legal Assistance

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

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

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

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

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

<sup>255</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/2moJoWs>; Antigone, 'Il pacchetto Minniti calpesta i diritti', 12 February 2017, available in Italian at: <http://bit.ly/2l7pjUo>.

<sup>256</sup> Court of Cassation, Report on the administration of justice in the year 2020, final remarks, 29 January 2021, available at: <https://bit.ly/3tEh7ZT>.

<sup>257</sup> Court of Cassation, Report of the Court of Cassation President on the administration of justice in 2019, 31 January 2020, available in Italian at: <https://bit.ly/2WW2xjt>, 47

<sup>258</sup> Court of Cassation, Report on the administration of justice in the year 2020, final remarks, 29 January 2021, available at: <https://bit.ly/3tEh7ZT>.

<sup>259</sup> Court of Cassation, Decision 669/2018, 12 January 2018.

### 1.5.1. Legal assistance at first instance

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

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

A distinction should be made between national public funds and those which are allocated by private foundations and associations. In particular, the main source of funds provided by the State is the National Fund for Asylum Policies and Services, financed by the Ministry of Interior. The Procedure Decree provides that the Ministry of Interior can establish specific agreements with UNHCR or other organisations with experience in assisting asylum seekers, with the aim to provide free information services on the asylum procedure as well on the revocation one and on the possibility to make a judicial appeal. These services are provided in addition to those ensured by the manager of the accommodation centres.<sup>260</sup> However, a difference exists between first accommodation centers (CAS and governmental centers) and SAI system: for the first ones both the old tender specification schemes and the new ones published by Mol on 24 February 2021 only recognise costs for a legal information services and no longer for legal support instead covered in SAI system. (see [Forms and Levels of Material Reception Conditions](#)).

National funds are also allocated for providing information and legal counselling at official land, air, sea border points and in the places where migrants arrive by boat.<sup>261</sup> In addition, some funds for financing legal counselling may also be provided from European projects / programmes or private foundations. However, it should be highlighted that these funds are not sufficient.

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

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

Nevertheless, the vast majority of asylum applicants go through the personal interview without the assistance of a lawyer since they cannot afford a lawyer and specialised NGOs have limited capacity due to lack of funds. Assistance during the administrative steps of the asylum procedure cannot be covered by free legal aid.

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<sup>260</sup> Article 10(2-bis) Procedure Decree.

<sup>261</sup> Article 11(6) TUI.

### 1.5.2. Legal assistance in appeals

With regard to the appeal phase, free state-funded legal aid (*gratuito patrocinio*), is provided by law to asylum seekers who declare an annual taxable income below €11,746 and whose case is not deemed manifestly unfounded.<sup>262</sup> Legal aid is therefore subject to a “means” and “merits” test.

#### Means test

The law specifies that in case of income acquired abroad, the foreigner needs a certification issued by the consular authorities of their country of origin.<sup>263</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>264</sup> Regarding asylum seekers, Article 8 PD 21/2015 clarifies that, in order to be admitted to free legal assistance, the applicant can present a self-declaration instead of the documents prescribed by Article 79 PD 115/2002.

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

#### Merits test

In addition, access to free legal assistance is also subject to a merits test by the competent Bar Association which assesses whether the asylum seeker's motivations for appealing are not manifestly unfounded.<sup>265</sup> During 2017 and 2018, some Bar Associations such as **Milan** and **Trieste** rejected almost all requests to access to free legal assistance, generally deeming the petitioners' claims as manifestly unfounded.

Moreover, it may occur that the applicant is initially granted free legal aid by a Bar Council but, as prescribed by law, the Court revokes the decision if it considers that the admission requirements assessed by the Bar Association are not fulfilled.<sup>266</sup> The Court of Cassation has ruled that the withdrawal of legal aid may only be ordered after a concrete assessment of the circumstances of the case, fulfilling both criteria of being manifestly unfounded and gross negligence.<sup>267</sup>

L 46/2017 has substantially curtailed access to legal aid, as it reverses the rule applicable to all other proceedings. It establishes that, when fully rejecting the appeal, a judge who wishes to grant legal aid has to indicate the reasons why he or she does not consider the applicant's claims as manifestly unfounded.<sup>268</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 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.

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<sup>262</sup> Article 16(2) Procedure Decree.

<sup>263</sup> Article 79(2) PD 115/2002.

<sup>264</sup> Article 94(2) PD 115/2002.

<sup>265</sup> Article 126 PD 115/2002.

<sup>266</sup> Article 136 PD 115/2002.

<sup>267</sup> Court of Cassation, Decision 26661/2017, 10 November 2017.

<sup>268</sup> Article 35-bis(17) Procedure Decree.

## 2. Dublin

### 2.1. General

#### Dublin statistics: 2020

Outgoing procedure			Incoming procedure		
	Requests	Transfers		Requests	Transfers
Take charge	228	:	Take charge	5,637	:
Take back	1,613	:	Take back	13,304	:
<b>Total</b>	<b>1,841</b>	<b>431</b>	<b>Total</b>	<b>18,941</b>	<b>1,366</b>

Source: Ministry of Interior, Dublin Unit, data obtained by ASGI (Data up to date 31 December 2020)

In 2020 there were 5,637 take charge requests in the incoming procedure and 13,304 take back requests. With regards to the outgoing procedure, there were 228 take-charge requests and 1,613 take back requests.

Only 7 family reunification transfers to other States under Dublin III Regulation occurred.

The data, especially those of incoming requests and transfers, reflect the suspension and the obstacles due to the Covid-19 pandemic. The incoming requests were 18,941, around the half compared to 2019, when they were 35,255. Incoming transfers were just about a quarter (1,366 compared to 5,979 in 2019). A similar proportion concerns the outgoing procedure but with much smaller numbers, which make the difference even less, clear. Transfers, for example, were 431 in 2020, compared to 579 in 2019.

#### 2.1.1. Application of the Dublin criteria

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

In 2020, the Dublin Unit dealt with 183 cases of unaccompanied foreign minors eligible for the Dublin family reunification procedure, based on Articles 8 and 17 (2) of the Regulation. Out of these, 24 were outgoing requests and 159 incoming requests.<sup>269</sup>

#### Outgoing procedure

Of the 24 minors involved in the outgoing family procedures, as of 31 December 2020, 3 have absconded before the end of the procedure, 6 have been accepted by the destination country but only 2 have been transferred to the responsible member state, 4 have been definitively rejected and 11 were awaiting for the decision.

Minors were predominantly between the ages of 14 and 16. Six came of age during the procedure and 2 were under the age of 14.

<sup>269</sup> Ministry of Labour, Monitoring report on unaccompanied foreign minors, 31 December 2020, available at: <https://bit.ly/3he8uCO>

The breakdown of outgoing requests of unaccompanied children in 2020 was as follows:

Outgoing procedure of children under the Dublin family reunification, 2020	
Country	Number of requests
United Kingdom	8
Germany	7
Sweden	4
Netherlands	3
Ireland	1
France	1
<b>Total</b>	<b>24</b>

Source: Ministry of Labour

Family reunification was carried out with a parent in 1 case, siblings in 5 cases, uncles or aunts in 9 cases, cousins in 2 cases and grandparents in 1 case.<sup>270</sup>

### Incoming procedure

Regarding the incoming procedure, the Dublin Unit dealt with 159 cases, out of which 125 new cases and 34 ongoing cases from the previous years. Of these, in 74 cases Italy accepted the transfers, but only 36 transfers were actually carried out; Italy refused the transfer in 16 cases. Another 64 were ongoing by the end of 2020; 5 minors absconded before the end of the procedure.

Family reunification was asked with an uncle or aunt in 84 cases, with a brother or sister in 60 cases, with a parent in 8 cases and with a cousin in 7 cases.

The breakdown of incoming requests of unaccompanied children in 2020 was as follows:

incoming procedure of children under the Dublin family reunification, 2020	
Country	Number of requests
Greece	150
Bulgaria	3
Germany	3
Croatia	1
Netherlands	1
Switzerland	1
<b>Total</b>	<b>159</b>

According to what reported by the Ministry of Labour, in the period between March and May 2020, most of the activities related to Dublin family reunification procedures involving minors were interrupted; in the summer of 2020 the situation recovered, and then suffered a new slowdown in the last months of the year.<sup>271</sup>

<sup>270</sup> Ministry of Labour, Monitoring report on unaccompanied foreign minors, 31 December 2020, available at: <https://bit.ly/3he8uCO>

<sup>271</sup> Ministry of Labour, Monitoring report on unaccompanied foreign minors, 31 December 2020, available at: <https://bit.ly/3he8uCO>

### 2.1.2. The discretionary clauses

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

As of February 2019, the Dublin Unit applied the sovereignty clause, before the time to appeal against the transfer decision to Croatia had expired and after a review request, in favour of an Iraqi family whose daughter had been hit by gunshots fired by the Croatian police.

In some cases in 2018, courts held that the "sovereignty clause" may only be applied as long as a decision on the asylum application has not been issued by any Member State concerning the individual applicant,<sup>272</sup> and in "take back" cases the court is not required to assess risks of *refoulement* upon potential return to the country of origin.<sup>273</sup> Nevertheless, the Civil Court of Rome ordered the application of Article 17(1) and annulled the transfer to Norway where the applicant had already received a negative decision on his asylum application. The Court took into account the risk situation for personal safety and respect for fundamental rights in the applicant's country of origin, Afghanistan, in addition to the applicant's young age and the absence of a support network in the country of origin.<sup>274</sup>

In 2019, the Civil Court of Rome confirmed its orientation on the application of the sovereignty clause for Afghan citizens who risked indirect refoulement: by a decision issued on 10 May 2019, the Court annulled the transfer to Germany of an Afghan asylum seeker<sup>275</sup> where the applicant risked to be repatriated to his country of origin because of the negative decision on his asylum application.

In early 2021, the Court overturned the transfer of a Palestinian citizen to Sweden, on the grounds that the return to Palestine, already decided by Sweden, would have represented a risk for the applicant.<sup>276</sup>

On 5 May 2020 the Court of Rome applied Article 17 (1) and annulled the transfer to Romania of an Afghan applicant because of the violation of information obligations pursuant to Articles 4 and 5 of the Dublin Regulation.<sup>277</sup>

The Civil Court of Milan, annulled the transfer to Germany of an Afghan citizen because of the violation of Article 3 (2) of the Dublin Regulation, considering the refoulement risk due to the fact that Germany had already rejected the asylum request of the applicant. The Court, however, excluded the application of Article 17 (1) which would fall within the sole discretion of the State and not of the Court.<sup>278</sup>

The Civil Court of Trieste, which has become competent for a huge number of Dublin appeals (see later procedure) as of March 2019 annulled the transfer of an Afghan asylum seeker to Belgium and applied Article 17(1) because of the risks the applicant would have faced in case of return to Afghanistan.<sup>279</sup>

Later, the same Court changed its orientation rejecting the appeals submitted, in 2020, by Dubliners also in cases involving Afghans or Iraqis who proved the actual risk of indirect refoulement.

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<sup>272</sup> See e.g. Civil Court of Bologna, Decision 1796/2018.

<sup>273</sup> See e.g. Civil Court of Milan, Decision 29819/2018; Civil Court of Caltanissetta, Decision 482/2018; Civil Court of Caltanissetta, Decision 1398/2018.

<sup>274</sup> Civil Court of Rome, Decision 7899/2018, 5 June 2018, EDAL, available at: <https://bit.ly/2DbUCEq>.

<sup>275</sup> Civil Court of Rome, Decision 15246/2019, 10 May 2019.

<sup>276</sup> Civil Court of Rome, Decision of 20 January 2021, number of the procedure 16422/2019.

<sup>277</sup> Civil Court of Rome, Decision 15643/2020, 5 May 2020.

<sup>278</sup> Civil Court of Milan, Decision of 14 October 2020, procedure no. 27034/2020.

<sup>279</sup> Civil Court of Trieste, decision 605/2019, 15 March 2019.

## 2.2. Procedure

### Indicators: Dublin: Procedure

1. Is the Dublin procedure applied by the authority responsible for examining asylum applications?  
☐ Yes ☒ No
2. On average, how long does a transfer take after the responsible Member State has accepted responsibility?  
Not available

The staff of the Italian Dublin Unit had significantly increased in 2018 and benefitted from the support of EASO personnel, mainly in relation to outgoing requests, family reunification and children. Also in 2019, EASO interim staff supported the Italian Dublin Unit.<sup>280</sup> In 2020, only 3 EASO experts remained in the Unit while, for 2021, 20 EASO experts are expected covered by AMIF funds.

Decree Law 113/2018 envisaged the creation of up to three new territorial peripheral units of the Dublin Unit, to be established by Decree of the Ministry of Interior in identified Prefectures.<sup>281</sup> However, no peripheral units have been implemented in 2020.

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

Since December 2017, a specific procedure has been implemented in Questure of **Friuli-Venezia Giulia** region, on the basis that most of asylum seekers arriving in this region from Nordic countries or the Balkan route fall under the Dublin Regulation. ASGI has witnessed cases where the Questure fingerprinted persons seeking asylum in the region as persons in “irregular stay” (“Category 3”) in the Eurodac database,<sup>282</sup> instead of “applicants for international protection” (“Category 1”).<sup>283</sup> The Dublin Unit therefore justified, even in the Court procedure, the implementation of the Dublin transfer prior to the lodging of the application on the basis that no asylum application has been made; it should also be noted that “Category 3” fingerprints are not stored in the Eurodac database.<sup>284</sup>

In 2020, the procedure recorded in 2019 in Friuli Venezia Giulia was overcome by the Covid emergency and, at least partially, replaced by the massive implementation of informal readmissions of migrants in Slovenia even in cases of people seeking asylum, as affirmed by the Civil Court of Rome,<sup>285</sup> when the Dublin Regulation should have been applied (see access to the territory).

Asylum seekers are not properly informed about the procedure or given the possibility to highlight any family links or vulnerabilities. While the Civil Court of Rome, as mentioned, confirmed in 2020 its orientation on the cancellation of the transfer measures adopted without prior due information,<sup>286</sup> other Civil Courts have not expressed the same orientation. The Civil Court of Trieste constantly affirmed in 2020 that the omission of information does not affect the validity of the provision and the Civil Court of Milan has shown the same orientation in some decisions.<sup>287</sup>

The Court of Cassation then expressed, in 2020, two opposing orientations with respect to the consequences of non-compliance with the information obligation pursuant to Articles 4 and 5 of the

<sup>280</sup> Information provided by EASO, 13 February 2019.

<sup>281</sup> Article 3(3) Procedure Decree, as amended by Article 11 Decree Law 113/2018.

<sup>282</sup> Article 17 Eurodac Regulation.

<sup>283</sup> Article 9 Eurodac Regulation.

<sup>284</sup> Article 17(3) Eurodac Regulation.

<sup>285</sup> Civil Court of Rome, decision of 18 January 2021, available in English at: <https://bit.ly/3hgKr6b>

<sup>286</sup> See for example, Civil Court of Rome, Decision 15643/2020, 5 May 2020.

<sup>287</sup> See for example Civil Court of Milan, Decision of 14 October 2020, procedure no. 27034/2020.

Regulation: firstly, with a decision of 27 August 2020, the Court specified that the guarantees of participation and information are of fundamental importance and must be expressed both with the interview with the interested party (Article 5) and with the information (Article 4). According to the Court it is not relevant whether the interested party obtained such information from other subjects or if the interested party has demonstrated how the lack of information has affected his rights of action and defence in Court.<sup>288</sup> Later, with a decision of 27 October 2020, the Court stated that the judge cannot annul the contested transfer by noting formal violations of the Dublin Regulation occurred during the procedure;<sup>289</sup>

To this regard, the Court of Cassation, requested, pursuant to Article 267 of the TFEU, the European Court of Justice to give a preliminary ruling to clarify whether Article 4 of the Dublin Regulation must be interpreted as meaning that the violation of the information obligation can be asserted only on condition that the applicant indicates what information he could have indicated in his favour, decisive for a positive decision in his interest.<sup>290</sup>

### 2.2.1. Individualised guarantees

The Dublin Unit systematically issues outgoing requests to all countries when potential responsibility criteria are triggered. There are no reports of cases where the Dublin Unit has requested individual guarantees before proceeding with a transfer, even in the case of vulnerable persons.

In some cases, the Dublin Unit was not informed about the vulnerability by Questura. This may be related to the fact that personal interviews provided by Article 5 of the Dublin regulation are not properly conducted or they are not conducted at all.

### 2.2.2. Transfers

In case another Member State is considered responsible under the Dublin Regulation, the asylum procedure is terminated.<sup>291</sup> 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>292</sup> Afterwards, the Questura arranges the transfer.

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

Where an appeal is lodged against the transfer decision, the six-month time limit for a transfer starts running from the rejection of the request for suspensive effect, otherwise from the court's decision on the appeal itself.<sup>293</sup> Since the practical organisation of the transfer is up to the Questura, it is difficult to indicate the average time before a transfer is carried out. The length of the Dublin procedure depends on many factors, including the availability of means of transport, the personal condition of the person, whether or not the police needs to accompany the person concerned etc. However, as the majority of applicants abscond and do not present themselves for the transfer, the Italian authorities often ask the responsible Member State for an extension of the deadline up to 18 months, as envisaged under Article 29(2) of the Dublin Regulation.

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

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<sup>288</sup> Court of Cassation, Decsion 17963/2020 of 27 August 2020.

<sup>289</sup> Court of Cassation, Decision 23587/20 of 27 October 2020.

<sup>290</sup> Court of Cassation, decision no. 8668 of 23 February - 29 March 2021.

<sup>291</sup> Article 30(1) Procedure Decree.

<sup>292</sup> Presently, even though L 46/2017 has recognised the jurisdiction of the Civil Court of Rome and stated that the appeal has to be lodged within 30 days, many decisions still direct people to appeal before the Administrative Court of Lazio within 60 days.

<sup>293</sup> Article 3(3-octies) Procedure Decree, as amended by L 46/2017.

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 adequate information that asylum seekers are able to go through the whole Dublin procedure. When necessary, the NGOs contact the authorities to get the required information.

According to the data published by the Ministry of Labour in 2017, the time period between a “take charge” request for unaccompanied children and its acceptance by the destination country was 35 days on average, while it was on average 46 days between the acceptance of the request and the actual transfer of unaccompanied children.<sup>294</sup> No data are available for 2020. However, according to ASGI’s experience, the duration of the procedure is much longer and the procedure may last over one year.

### 2.3. Personal interview

#### Indicators: Dublin: Personal Interview

☐ Same as regular procedure

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

With the exception of the lodging of the asylum application by the competent Questura, personal interviews of asylum seekers are rarely envisaged during the Dublin procedure.

On 8 January 2020, the Civil Court of Rome cancelled a transfer decision to Germany adopted by the Dublin Unit against an Afghan citizen because the written summary of the interview did not allow to verify the compliance with the participation guarantees provided for in Articles 4 and 5 of the Dublin Regulation as it did not indicate the language in which the interview had taken place and it was signed by an unidentified “cultural mediator” whose spoken language was not clarified.<sup>295</sup>

### 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 ☒ Yes ☐ No  
                           ☒ Judicial ☐ Administrative  
 ❖ If yes, is it suspensive ☐ Yes ☒ No

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

An applicant may appeal the transfer decision before the Civil Court of Rome within 30 days of the notification of the transfer.<sup>296</sup> In case applicants are accommodated in asylum seekers’ reception centres when notified about the transfer decision, territorial jurisdiction is determined on the basis of where the centres are located. Therefore the competence falls within the specialised sections of the territorially

<sup>294</sup> Ministry of Labour, *I minori stranieri non accompagnati in Italia*, 31 December 2017, available in Italian at: <http://bit.ly/2FvU6Aj>, 14.

<sup>295</sup> Civil Court of Rome, decision n. 1855/2020 of 8 January 2020.

<sup>296</sup> Article 3(3-ter) Procedure Decree, as amended by Article 6 Decree Law 13/2017 and L 46/2017.

competent Civil Courts and not the location of the Dublin Unit. The assistance of a lawyer is necessary for the lodging of an appeal, but the applicant can apply for legal aid.

### Competent court

Until the end of 2015, the transfer decisions issued by the Dublin Unit were challenged before the administrative courts: at first instance within 60 days from the notification before the Administrative Court of Lazio and, at the second appeal instance before the Council of State (*Consiglio di Stato*). During 2016, however, the administrative courts expressed with several decisions the position that the Dublin procedure should be understood as a phase of the asylum procedure and, consequently, “Dubliner” asylum seekers as holders of an individual right and not a mere legitimate interest. The administrative courts have therefore stated that the judgment should be entrusted to the jurisdiction of ordinary courts, meaning the “natural judge” of individual rights. In this context, the first significant decision was taken on 18 December 2015 by the Council of State,<sup>297</sup> and subsequently by the Administrative Court of Lazio.<sup>298</sup> Reiterating this interpretation, Decree Law 13/2017, implemented by L 46/2017, has designated the specialised section of the Civil Courts as competent to decide on appeals against transfer decisions.<sup>299</sup>

During 2018, the Civil Court of Rome started declaring lack of jurisdiction to decide on appeals lodged by persons accommodated in reception centres throughout the country. According to the Court, in case applicants were accommodated when notified about the transfer decision, territorial jurisdiction should be exclusively determined on the basis of the place of the centres are located, and therefore fall within the specialised sections of the territorially competent Civil Courts and not the location of the Dublin Unit, i.e. Rome.<sup>300</sup> This is echoed by the prospective establishment of local branches of the Dublin Units in specific Prefectures following the 2018 reform.

In 2019, the matter was brought before the Court of Cassation which, initially, interpreted the current legislation establishing the jurisdiction of the Civil Court of Rome.<sup>301</sup>

After the decisions of the Court of Cassation, the Court of Rome, however, continued to consider itself incompetent.

Subsequently, the Court of Cassation expressed an opposite orientation in line with the one of the Civil Court of Rome, recognizing that the territorial jurisdiction depends on the position of the reception centre at the moment of the notification of the transfer decision to the applicants.<sup>302</sup>

In case of appeals brought by people not accommodated at the time they were notified with the transfer decision, the jurisdiction is indisputably up to the Civil Court of Rome.

### Suspensive effect

Article 3 of the Procedure Decree does not unequivocally provide that the transfer is suspended until the time limit for lodging an appeal expires. It states that the lodging of the appeal automatically suspends the transfer if an application for suspension is in the appeal.<sup>303</sup> According to ASGI, this should be interpreted as meaning that transfers may be carried out only once the time limit for an appeal has elapsed without an appeal being filed or with an appeal not indicating a request for suspension.

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<sup>297</sup> Council of State, Decision 5738/2015, 18 December 2015, available at: <http://bit.ly/2lbkoyN>.

<sup>298</sup> Administrative Court of Lazio, Decision 9909/2016, 22 September 2016; Decision 11911/2016, 28 November 2016, available in Italian at: <http://bit.ly/2IOS7AX>.

<sup>299</sup> Article 3(3-bis) Procedure Decree, as amended by Article 6 Decree Law 13/2017 and L 46/2017.

<sup>300</sup> According to the rule provided in Article 4(3) Decree Law 13/2017, as amended by L 46/2017, this also applies to asylum appeals as it generally refers to “accommodated applicants”.

<sup>301</sup> Court of Cassation, decisions 18755/2019; 18756/2019 and 18757/2019, issued on 12 July 2019.

<sup>302</sup> Court of Cassation, decision 31127/2019 of 14 November 2019

<sup>303</sup> Article 3(3-quater) and (3-octies) Procedure Decree, as amended by Article 6 Decree Law 13/2017 and L 46/2017.

To the knowledge of ASGI, in 2020, as in 2019, the Questure waited for the 30-day deadline for lodging the appeal to expire before proceeding with the organisation of the transfer.

According to the law, the Court should decide on the application for suspensive effect within 5 days and notify a decision to the parties, who have 5 days to present submissions and 5 days to reply thereto. In this case, the Court must issue a new, final decision, confirming, modifying or revoking its previous decision.<sup>304</sup> In ASGI's experience, the Civil Courts never complied with these timeframes in 2020.

The appeal procedure is mainly written. Within 10 days of the notification of the appeal, the Dublin Unit must file the documentation on which the transfer decision is based and, within the same time limit, may file its own submissions. In the following 10 days, the applicant can in turn make submissions.<sup>305</sup> The court will set a hearing only if it considers it useful for the purposes of the decision.<sup>306</sup>

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

## 2.5. Legal assistance

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

## 2.6. Suspension of transfers

### Indicators: Dublin: Suspension of Transfers

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

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

With a Circular Letter of 25 February 2020, the Italian Dublin Unit informed the Dublin Units that due to the ongoing health emergency all Dublin flights were suspended, both incoming and outgoing. According to information available to ASGI, after the first six months, transfers have started again but in many cases they were complicated by Covid-19 related health measures and by the unavailability of tests before departure.

As in the previous years, most of the asylum seekers concerned have submitted appeals, leading to transfers being suspended by the courts, while others have become untraceable.

**Greece:** according to ASGI experience no Dublin transfers to Greece were made in 2020. However, readmissions from Adriatic ports were carried out (see arrivals in Italy).

**Hungary:** In late September 2016, the Council of State annulled a transfer to Hungary, defining it as an unsafe country for Dublin returns. The Council of State expressed concerns on the situation in Hungary, considering measures such as the planned construction of an "anti-immigrant wall" expressing the cultural and political climate of aversion to immigration and to the protection of refugees; the option of

<sup>304</sup> Article 3(3-quater) Procedure Decree, as amended by Article 6 Decree Law 13/2017 and L 46/2017.

<sup>305</sup> Article 3(3-quinquies) and (3-sexies) Procedure Decree, as amended by Article 6 Decree Law 13/2017 and L 46/2017.

<sup>306</sup> Article 3(3-septies) Procedure Decree, as amended by Article 6 Decree Law 13/2017 and L 46/2017.

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>307</sup>

**Bulgaria:** In September 2016 the Council of State also suspended several transfers to Bulgaria on the basis that the country is unsafe.<sup>308</sup> The Council of State expressed concerns about the asylum system in Bulgaria due to the critical condition of shelters, some of which appear as detention centres, and more generally of the cultural climate of intolerance and discrimination that reigns in public opinion and among the leaders in the government towards refugees.<sup>309</sup> In a ruling of November 2017, the Council of State reaffirmed its position and suspended the transfer of an Afghan asylum seeker to Bulgaria.<sup>310</sup>

The Court of Turin, in September 2020, cancelled the Dublin transfer of an asylum seeker to Bulgaria, having found, through specific COI, that in Bulgaria there are serious systemic deficiencies in asylum procedures such as: the use of force by the police to prevent the entry of applicants into the national territory; restrictions on the freedom of movement of asylum seekers; shortcomings in reception and support services; as well as extremely low rates of recognition of international protection.<sup>311</sup>

## 2.7. The situation of Dublin returnees

According to Ministry of Interior's reply to ASGI's information request, Italy received 5,979 incoming transfers in 2019.

### Reception guarantees and practice

The Ministry of Interior Circular of 14 January 2019 specified that Dublin returnees who had already applied for asylum prior to leaving Italy should be transferred by the competent Prefecture from the airport of arrival to the province where their application was lodged. If no prior asylum application had been lodged, they should be accommodated in the province of the airport of arrival. Family unity should always be maintained.<sup>312</sup>

The circular does not clarify how the prefectures should facilitate the transfer of the asylum seeker. This circumstance may externally expose the Dublin returnee to face, on its own, the obstacles placed in front of some Questure for the access to the asylum procedure, especially in the absence of a domicile. (see registration).

Following the *Tarakhel v. Switzerland* ruling,<sup>313</sup> in practice the guarantees requested were ensured mainly to families and vulnerable cases through a list of dedicated places in the Sprar/Siproimi system (see [Types of Accommodation](#)), communicated since June 2015 to other countries' Dublin Units.<sup>314</sup> Following the 2020 reform of the reception system, Dublin returnees as asylum seekers could have again access to second-line reception SPRAR, now renamed SAI.

<sup>307</sup> Council of State, Decision 4004/2016, 27 September 2016, available in Italian at: <http://bit.ly/2kWIO1d>.

<sup>308</sup> Council of State, Decisions 3998/2016, 3999/2016, 4000/2016 and 4002/2016, 27 September 2016, available in Italian at: <http://bit.ly/2lIJzAR>.

<sup>309</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>310</sup> Council of State, Decision 5085/2017, 3 November 2017, available in Italian at: <http://bit.ly/2GKtcVA>.

<sup>311</sup> Civil Court of Turin, decree 29 September 2020, procedure no. 12340/2020, available in Italian at: <https://bit.ly/3uzpA1S>.

<sup>312</sup> Ministry of Interior Circular of 14 January 2019, available in Italian at: <https://bit.ly/2P7G5OZ>.

<sup>313</sup> In a ruling concerning an Afghan family with 6 children who were initially hosted in a CARA in Bari before travelling to Austria and then Switzerland, the ECtHR found that Switzerland would have breached Article 3 ECHR if it had returned the family to Italy without having obtained individual guarantees by the Italian authorities on the adequacy of the specific conditions in which they would receive the applicants. The Court stated that it is "incumbent on the Swiss authorities to obtain assurances from their Italian counterparts that on their arrival in Italy the applicants will be received in facilities and in conditions adapted to the age of the children, and that the family will be kept together." ECtHR, *Tarakhel v. Switzerland*, Application No 29217/12, Judgment of 4 November 2014, para 120.

<sup>314</sup> See e.g. Dublin Unit, Circular: Dublin Regulation Nr. 604/2013. Vulnerable cases. Family in SPRAR projects, 4 July 2018, available at: <https://bit.ly/2OwblGT>.

In an answer (March 2021) to the public access request sent by ASGI, the Dublin Unit replied that "in the reception system there are no places reserved for Dubliners returning from other Member States, who are included in the reception system, regulated by legislative decree no. 142/2015".<sup>315</sup>

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

Currently the measures set up for the prevention of covid-19 impose a period of quarantine for all people arriving. This is carried out in a structure identified by the Prefecture of Varese, which then, in the absence of other destinations already identified, can become the reception facility. At the time of writing (April 2021), the information desk for asylum seekers in Milan Malpensa is no longer operated by the Waldensian Diakonia but by the cooperative Ballafon.

At the Fiumicino airport of Rome, the Prefecture of Rome has entrusted in 2020 the Albatros1973 cooperative for informing and managing foreign people arriving at the air border who want to seek asylum or who are Dublin returnees. Over a third of the people came with flights from Germany.

At Venice airport, Marco Polo, the cooperative Giuseppe Olivotti, was responsible, up to December 2020, under the agreement with the Prefecture of Venice, for arrivals of asylum seekers and Dublin returnees. It did not have a stable presence at the airport, but ensured presence on call.

At the airport of Bologna, the cooperative Laimomo is responsible of informing Dublin returnees.

It should be noted that if returnees used to live in asylum seekers' reception centres before leaving Italy, they could encounter problems on their return in submitting a new accommodation request. In fact, due to their first departure and according to the rules provided for the [Withdrawal of Reception Conditions](#), the Prefecture could deny them access to the reception system.<sup>316</sup>

In January 2020, the Swiss Refugee Council published an update about their monitoring of the situation on reception conditions in Italy, also in relation to Dublin returnees, that generally confirms the findings of their previous monitoring.<sup>317</sup> They further reported that in Italy until now there is no standardized, defined procedure in place for taking them (back) into the system.

### Re-accessing the asylum procedure

Access to the asylum procedure is equally problematic. Asylum seekers returned under the Dublin Regulation have to approach the Questura to obtain an appointment to lodge their claim. However, the delay for such an appointment reaches several months in most cases.<sup>318</sup> The competent Questura is often

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<sup>315</sup> Official answer from the Dublin Unit in the availability of the writer.

<sup>316</sup> According to Articles 13 and 23(1) Reception Decree, the withdrawal of reception conditions can be decided when the asylum seeker leaves the centre without notifying the competent Prefecture. See also ASGI, *Il sistema Dublino e l'Italia, un rapporto in bilico*, March 2015.

<sup>317</sup> Swiss Refugee Council, Reception conditions in Italy: Updated report on the situation of asylum seekers and beneficiaries of protection, in particular Dublin returnees, in Italy, January 2020, available at: <https://bit.ly/3cSzToZ>.

<sup>318</sup> Danish Refugee Council and Swiss Refugee Council, *Mutual Trust is still not enough*, December 2018.

located very far from the airport and asylum seekers have only few days to appear there; reported cases refer to persons arriving in Milan, **Lombardy** and invited to appear before the Questura of Catania, **Sicily**. In addition, people are neither accompanied to the competent Questura nor informed of the most suitable means of transport thereto, adding further obstacles to reach the competent Questura within the required time. In some cases, however, people are provided with tickets from the Prefecture desk at **Milan Malpensa Airport**.

Dublin returnees face different situations depending on whether they had applied for asylum in Italy before moving on to another European country, and on whether the decision on their application by the Territorial Commission had already been taken.<sup>319</sup>

- ❖ In “take charge” cases where the person had not applied for asylum during his or her initial transit or stay in Italy before moving on to another country,<sup>320</sup> he or she should be allowed to lodge an application under the regular procedure. However, the person could be considered an irregular migrant by the authorities and be notified an expulsion order.
- ❖ In “take back” cases where the person had already lodged an asylum application and had not appeared for the personal interview, the Territorial Commission may have suspended the procedure on the basis that the person is unreachable (*irreperibile*).<sup>321</sup> He or she may request a new interview with the Territorial Commission if a final decision has not already been taken after the expiry of 12 months from the suspension of the procedure. If the procedure has been concluded, the new application will be considered a **Subsequent Application**.
- ❖ In “take back” cases where the person’s asylum application in Italy has already been rejected by the Territorial Commission,<sup>322</sup> if the applicant has been notified of the decision and lodged no appeal, he or she may be issued an expulsion order and be placed in a CPR. According to the notification procedure (see **Regular Procedure: General**), the same could happen even in case the applicant had not been directly notified of the decision, since in case the applicant is deemed unreachable (*irreperibile*), the Territorial Commission notifies the decision by sending it to the competent Questura and notification is deemed to be complete within 20 days of the transmission of the decision to the Questura.<sup>323</sup>

### 3. Admissibility procedure

#### 3.1. General (scope, criteria, time limits)

Article 29 of the Procedure Decree sets out the grounds for inadmissibility. Decree Law 130/2020 has amended Article 29-bis introduced by Decree Law 113/2018 to the Procedure Decree, setting out an additional inadmissibility ground (see ground 4).

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

1. Has already been recognised as a refugee by a state party according to the 1951 Refugee Convention and can still enjoy such projection;<sup>324</sup>

<sup>319</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>320</sup> Article 13 Dublin III Regulation.

<sup>321</sup> Article 18(1)(c) Dublin III Regulation.

<sup>322</sup> Article 18(1)(d) Dublin III Regulation.

<sup>323</sup> Article 11(3-ter) and (3-quater) Procedure Decree, as amended by Article 6 Decree Law 13/2017 and L 46/2017.

<sup>324</sup> Article 29(1)(a) Procedure Decree.

2. Has made a **Subsequent Application** after a decision has been taken by the Territorial Commission, without presenting new elements concerning his or her personal condition or the situation in his or her country of origin;<sup>325</sup>
3. Has made a **Subsequent Application** during the execution of an imminent removal order (Article 29-bis).<sup>326</sup>
4. Has made a **subsequent application** after the previous application has been terminated by the Territorial Commission after the expiry of 12 months from suspension on the basis that the applicant was unreachable (*irreperibile*) for unjustified leaving of the reception or detention centers and failure to attend the hearing (art.23 bis Procedure Decree). In this case the President can declare the application inadmissible by evaluating reasons for being unreachable.<sup>327</sup>

The President of the Territorial Commission shall conduct a preliminary assessment of the admissibility of the application, to ascertain whether new relevant elements have emerged to the granting of international protection.<sup>328</sup>

If the applicant has already been recognised as a refugee the law provides that the President of the Territorial Commission shall set the hearing of the applicant.<sup>329</sup>

In case of a first subsequent application made during the execution of an imminent removal order, the Procedure Decree now provides that the application must be immediately sent to the President of the competent Territorial Commission, who must conduct a preliminary assessment of the admissibility of the application, within three days, while assessing the risks of direct and indirect refoulement. The application is declared inadmissible in case no new elements have been added, pursuant to article 29, paragraph 1, letter b).

During 2019, the previous formulation of the disposition had determined, following a Circular from the National Commission, an illegitimate omission of the preliminary examination by the competent Territorial Commission, as Questuras automatically declared the inadmissibility of such subsequent applications, inter alia by interpreting the execution phase of a removal order in a broad way. Some rulings of national courts had clarified that this application was contrary to Article 40 of the recast Asylum Procedure Directive.<sup>330</sup>

With the amendments made by Decree Law 130/2020, the law now clarifies that the inadmissibility declaration falls under the responsibility of the Territorial Commission. However, the exclusive role reserved for the President of the Territorial Commission, and not for the Territorial Commission itself, appears inconsistent with the Procedure Decree.<sup>331</sup>

In this regard the CNDA Circular of 3 November 2020<sup>332</sup> refers the need to transmit documents to the Commission that assesses the inadmissibility. The subsequent MOI circular of 13 November 2020 contains an informative annex for applicants, which specifies that the President carries out a preliminary examination but that the Territorial Commission takes the decision on decision on inadmissibility.<sup>333</sup>

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<sup>325</sup> Article 29(1)(b) Procedure Decree.

<sup>326</sup> Article 29-bis Procedure Decree, inserted by Article 9 Decree Law 113/2018 and L. 132/2018, amended by Decree Law 130/2020 and L. 173/2020.

<sup>327</sup> Article 23 bis (2) Procedure Decree.

<sup>328</sup> Article 29(1-bis) Procedure Decree, inserted by the Reception Decree.

<sup>329</sup> Article 29 (1 bis) Procedure Decree.

<sup>330</sup> Civil Court of Milan, decision of 13 November 2019 ordered the competent Territorial Commission to conduct the preliminary examination of a subsequent application deemed inadmissible automatically by the Questura, disapplying the Article 29bis of the Procedure Decree considered not in accordance with Article 40 of the recast Asylum Procedure Directive.

<sup>331</sup> It appears not consistent with the provision of Articles 4 and 29 of the Procedure Decree.

<sup>332</sup> CNDA Circular no. 8414 of 3 November 2020.

<sup>333</sup> MOI Circular no. 79839 of 13 November 2020.

ASGI is of the opinion that, even after the reform, Article 29-bis of the Procedure Decree is still likely to violate the recast Asylum Procedures Directive, as the lodging of a subsequent application for the sole purpose of delaying or frustrating removal is not among the grounds of inadmissibility in Article 33(2) of the Directive. (see subsequent application). The provision still does not clarify which phase is considered the execution of an imminent removal order.<sup>334</sup> Moreover, worryingly, the law now provides that in the event of an application declared inadmissible, the applicant can be detained.<sup>335</sup> (see detention).

No suspensive effect is recognized to the appeal including a suspensive request in case of a decision that declares inadmissible, for the second time, the asylum application pursuant to article 29,(1) b), or declaring the asylum application inadmissible pursuant to article 29-bis of the Procedure Decree.<sup>336</sup>

### 3.2. Personal interview

#### Indicators: Admissibility Procedure: Personal Interview

☐ Same as regular procedure

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

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

### 3.3. Appeal

#### Indicators: Admissibility Procedure: Appeal

☐ Same as regular procedure

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

<ul style="list-style-type: none"> <li>❖ If yes, is it</li> <li>❖ If yes, is it suspensive</li> </ul>	<div style="display: flex; justify-content: space-between;"> <div> <input checked="" type="checkbox"/> Yes  <input checked="" type="checkbox"/> Judicial  <input type="checkbox"/> Yes         </div> <div> <input type="checkbox"/> No  <input type="checkbox"/> Administrative  <input type="checkbox"/> Some grounds <input checked="" type="checkbox"/> No         </div> </div>
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For applications dismissed as inadmissible, the time limit for appealing a negative decision is 30 days, as in the [Regular Procedure: Appeal](#). However, the appeal has no automatic suspensive effect.<sup>337</sup>

### 3.4. Legal assistance

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

<sup>334</sup> The Court of Cassation will rule on this issue following the order no. 11660/2020.

<sup>335</sup> Article 6 ( 2, a bis) Reception Decree, as amended by Article 3 (3) Decree Law 130/2020 and L. 173/2020. According to Decree Law 130/2020 the provision applies in the limits of available places in CPRs.

<sup>336</sup> Article 35 bis (4) Procedure Decree.

<sup>337</sup> Article 35-bis(3) Procedure Decree, as amended by Decree Law 113/2018 and L 132/2018.

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

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

#### Indicators: Border Procedure: General

1. Do border authorities receive written instructions on the referral of asylum seekers to the competent authorities? ☒ Yes ☐ No
2. Where is the border procedure mostly carried out? ☐ Air border ☐ Land border ☒ Sea border
3. Can an application made at the border be examined in substance during a border procedure? ☒ Yes ☐ No
4. Is there a maximum time limit for a first instance decision laid down in the law? ☒ Yes ☐ No  
❖ If yes, what is the maximum time limit? 9 days
5. Is the asylum seeker considered to have entered the national territory during the border procedure? ☐ Yes ☒ No

Decree Law 113/2018 amended the Procedure Decree introducing a border procedure, applicable in border areas and transit zones. Decree Law 130/2020 and L 173/2020 - not changing the substance of the procedure - have amended the legal provision.<sup>338</sup> The law still refers to the issuance of a Mol decree, which was issued on August 5, 2019 and published on 7 September 2019, for the definition and implementation of the procedure<sup>339</sup>

The Mol Decree designated the transit and border areas where the accelerated procedure applies.<sup>340</sup>

The decree does not provide any definition of the border and transit areas as it only establishes that the border or transit areas are identified in those already existing in the following provinces:

- ❖ Trieste and Gorizia in the north-east of the country;
- ❖ Crotone, Cosenza, Matera, Taranto, Lecce and Brindisi in the south;
- ❖ Caltanissetta, Ragusa, Siracusa, Catania, Messina, Trapani and Agrigento in Sicily;
- ❖ Cagliari in Sardinia.<sup>341</sup>

Many of these areas correspond to hotspots (Taranto, Messina and Agrigento (Lampedusa hotspot), or places affected by landings, such as Cagliari, or close to CPR (pre-removal detention centres such as in Gorizia and Trieste, Brindisi, Trapani, Caltanissetta.

Out of the five Territorial Commissions foreseen by the amended Procedure Decree to examine asylum applications subject to the border procedure<sup>342</sup> the Mol Decree has created only two new sections of Territorial Commissions: Matera (section of Bari) and Ragusa (section of Syracuse), therefore assigning to the Territorial Commissions already competent for the border or transit areas, the task of examining the related applications - where the conditions exist - with an accelerated procedure.

Under the border procedure, the entire examination of the asylum application can take place directly at the border area or in the transit zone.<sup>343</sup>

The border procedure may be applied where the applicant makes an application directly at the designated border areas or transit zones after being apprehended for evading or attempting to evade controls.

<sup>338</sup> Article 28-bis (2)(b) Procedure Decree, as amended by Decree Law 130/2020 and L 173/2020

<sup>339</sup> Mol Decree, 5 August 2019, published on Gazzetta Ufficiale as of 7 September 2019: <https://bit.ly/3e8wXES>.

<sup>340</sup> Article 28 bis ( 1) (1-ter) and ( 1 – quater) of the Procedure Decree.

<sup>341</sup> Mol Decree 5 August 2019, Article 2.

<sup>342</sup> Article 28 bis (4) Procedure Decree.

<sup>343</sup> Article 28-bis(2)(2) Procedure Decree, as amended by Decree Law 130/2020.

The border procedure under Article 28-bis(2)(b) of the Procedure Decree follows the same rules as the 9-day [Accelerated Procedure](#) relating to applications made from CPR or hotspots under Article 28-bis (2):

- ❖ (a), for the applicant coming from a safe country of origin, (28-bis (2)
- ❖ c), applications manifestly unfounded ( 28-bis (2)
- ❖ (d) and applications submitted in order to avoid an imminent removal ( 28-bis (2) (e).

Upon receipt of the application, the Questura immediately transmits the necessary documentation to the Territorial Commission, which must take steps for the personal interview within 7 days of the receipt of the documentation. The decision must be taken within the following 2 days.<sup>344</sup>

In two circulars issued on 16 October 2019<sup>345</sup> and 18 October 2019<sup>346</sup>, the MoI gave directives for the application of the border procedure and it attached the specific C3 form to be used to register the asylum application in these cases.

In accordance with the speed imposed by the procedure, the Circulars state that the application for international protection presented at the border and transit areas has to be formalized by the competent Questura at the time of identification connected to the illegal entry. Also, even if the law provides that the President of the Territorial Commission is responsible to identify the cases for accelerated procedures on the basis of the documentation provided,<sup>347</sup> the Circulars establish that, following the formalisation, the Questura informs the competent Territorial Commission about the application of the border procedure and that the latter, via telephone, fixes the hearing date within 7 days<sup>348</sup>. The hearing date is immediately notified to the applicant together with the delivery of the C3.

Circulars expressly excluded the application of the border procedure for attempting to avoid border controls to people rescued at sea following SAR operations and to those who spontaneously turn to the authorities to seek asylum without having been apprehended at the time of landing or immediately afterwards.

Article 28-bis (6) of the Procedure Decree as amended by Decree Law 130/2020 and L. 173/2020 expressly excludes from accelerated procedures, including the border procedure:

- ❖ unaccompanied minors and
- ❖ people with special needs, who should coincide with vulnerable people as identified by Article 17 of the Reception Decree ( see Accelerated procedure).

The circulars issued in 2019 authorized the establishment of “mobile units” within the territorial commissions in order to carry out the hearing at the border offices. The Circulars assure the availability of accommodations for asylum seekers subject to the border procedure within the centres existing in the provinces identified as transit or border areas by the MoI decree 5 August 2019.

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

Also, the requirement of Article 43 of the Directive to allow the applicant to enter the territory if the determining authority has not taken a decision within 4 weeks has not been incorporated in the Procedure

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<sup>344</sup> Article 28-bis(2) (b) Procedure Decree as amended by Decree Law 130/2020 and L 173/2020.

<sup>345</sup> MoI Circular, 16 October 2019 available at : <https://bit.ly/3cYKrTs>.

<sup>346</sup> MOI Circular, 18 October 2019, available at: <https://bit.ly/3cZWXSLL>.

<sup>347</sup> Article 28 (1 bis) Procedure decree.

<sup>348</sup> Pursuant to Article 28 bis (1-ter).

Decree even after the amendments made by Decree Law 130/2020. The Territorial Commission maintains the possibility of extending the duration of the procedure – while the applicant would remain at the border or in the transit zone – to a maximum of 18 months to ensure an adequate examination of the application.<sup>349</sup>

Moreover, according to ASGI, the way the Moi Decree has been drafted, adds other critical issues to the legal framework of the border procedure as the new provisions, referring in a complete generic way to the "transit areas or border areas identified in those existing in the provinces" and not to demarcated areas, such as ports or airport areas or other places coinciding with physical borders with extra EU countries, seem to conflict with the rules of the European Union and therefore to be illegitimate.<sup>350</sup>

The law provides for specific information obligation to be carried out before the formalisation of the asylum application under the border procedure. The dedicated C3 merely indicates the application of the border procedure in Italian and the reasons why it is applied, also informing about the exclusion from the accelerated procedure for vulnerable people.

Among the first cases of border procedure's applications in Trieste, as of December 2019, three Pakistani asylum seekers have been subject to the accelerated procedure simply because they encountered police not far away from the Slovenian border.

According to the time frame set by the law, their hearing before the Territorial Commission took place after only 6 days from their arrival. However, the Commission decided not to recognize them any protection but decided to apply the ordinary procedure. The ordinary procedure was applied founding that the three asylum seekers had not evaded or tried to evade any control. One of them, in particular, was seriously wounded in the foot, he could not run away and he went to meet the police officers hoping they could help him. Furthermore, all of them told that, in their way from Slovenia, they had always walked straight without having to pass any checks and that they had realized they had crossed the border only from the license plates of the cars. The Territorial Commission of Trieste observed that the behaviour was not compatible with the intention to avoid border controls but nothing was observed about the fact that the border between Slovenia and Italy is purely internal to the European Union and no suspension of the Schengen Agreement was in place when the applicants crossed the internal border.

Thanks to the TC's decision, the appeal was filed under the ordinary procedure, granting them with automatic suspensive effect. The acceleration of the procedure, however, prevented the applicants from promptly obtaining the useful documentation to prove their origin and their credibility.

After those cases, probably due to the implementation of readmissions to Slovenia at the eastern border, no more border procedure were applied to people coming from the eastern land border. Nevertheless, according to ASGI, border procedure should not apply at internal borders.

As for the maritime border, in 2020, the procedure was applied to some Tunisian citizens rescued at sea.

## 4.2. Personal interview

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

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<sup>349</sup> Article 28-bis(5) Procedure Decree, citing Article 27(3) and (3-bis).

<sup>350</sup> ASGI note, Le zone di transito e di frontiera, September 2019, available at: <https://bit.ly/3gmYOmX>.

### 4.3. Appeal

#### Indicators: Border Procedure: Appeal

☐ Same as regular procedure

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

- ❖ If yes, is it
- ❖ If yes, is it suspensive

☒ Yes ☐ No  
☒ Judicial ☐ Administrative  
☐ Yes ☐ Some grounds ☒ No

An appeal against a negative decision in the border procedure has to be lodged before the Civil Court within 15 days.<sup>351</sup> However, the appeal does not have automatic suspensive effect.<sup>352</sup>

### 4.4. Legal assistance

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

## 5. Accelerated procedure

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

Article 28-bis of the Procedure Decree, entirely amended by Decree Law 130/2020, implemented by L 173/2020, provides for different accelerated procedures that foresee different time limits following the immediate transmission of the file from the Questura to the Territorial Commission, depending on the applicable ground:

**5-day procedure:** The Territorial Commission takes a decision within 5 days of the receipt of the file where:<sup>353</sup>

1. The applicant makes a [Subsequent Application](#) without presenting new elements.<sup>354</sup> In this case an audition can be omitted.
2. The asylum application is made by a person under investigation for some of the crimes preventing the recognition of international protection pursuant to Article 12 (1, c) and 16 (1, d bis) of the Qualifications Decree,<sup>355</sup> when grounds for detention arise among those provided by Article 6 (2,a,b,c) of the Reception Decree,<sup>356</sup> or by a person convicted - even not definitively - for one of those crimes. In this case the applicant must be heard.

**9-day procedure:** The Territorial Commission takes steps to organise the personal interview within 7 days of receipt of the file and decides within the 2 following days where:<sup>357</sup>

3. The asylum application is made by a person detained in a CPR or in a hotspot or first reception centre;<sup>358</sup>
4. The asylum application is made at the border or in transit areas and is subject to the [Border Procedure](#), i.e. following apprehension for evading or attempting to evade border controls.

<sup>351</sup> Article 35-bis(2) Procedure Decree, as amended by Decree Law 130/2020 and L 173/2020

<sup>352</sup> Article 35-bis(3) Procedure Decree, as amended by Article 6 Decree Law 13/2017 and L 46/2017, as amended by Article 9 Decree Law 113/2018 and L 132/2018.

<sup>353</sup> Article 28-bis(1) Procedure Decree, as amended by Decree Law 130/2020

<sup>354</sup> The law refers to the subsequent application ruled by Article 29 (1 b) Procedure Decree, meaning the case where the applicant submits identical asylum request after a decision has been taken without adding new elements.

<sup>355</sup> This provision resumes the case before ruled by Article 32 (1 bis) of the Procedure Decree, the so called immediate procedure, now repealed by Decree Law 130/2020 and L 173/2020.

<sup>356</sup> If the person is only investigated the law requires that also those grounds for detention arise. The law only recalls those grounds not requesting that the person is in concrete detained.

<sup>357</sup> Article 28 bis (2) as amended by Decree Law 130/2020 and L 173/2020.

<sup>358</sup> In this case, when the person is under investigation or conviction for the offenses referred to in Article 28 bis (1) Procedure Decree, this 5 day procedure applies.

5. The applicant comes from a [Safe Country of Origin](#)<sup>359</sup>
6. The application is manifestly unfounded.<sup>360</sup> (see [Regular Procedure: General](#));
7. The applicant made an application after being apprehended for irregular stay, with the sole purpose to delay or frustrate the issuance or enforcement of a removal order.

Regarding the “new” accelerated procedure for persons investigated or convicted for some crimes which may trigger to the exclusion of international protection, some issues of consistency raise as already underlined regarding the old Article 32 (1 -bis) of the Procedure Decree, now repealed: the procedure reserves a lesser treatment to persons not yet sentenced, contrary to the principle of innocence set out in Article 27 of the Italian Constitution. Furthermore, after the extension already made with the Decree Law 113/2018 and confirmed by the Decree Law 130/2020, the group of crimes that can lead to the exclusion of international protection also includes minor offenses that do not seem to be a danger to public order and state security. In this sense the provision also seems incompatible with the recast Asylum Procedures Directive, Article 31(8) according to which an accelerated procedure can be applied to people considered dangerous for the public order according to the domestic law.

Regarding the accelerate border procedure, as mentioned (see [Border procedure](#)) the requirement of Article 43 of the Directive to allow the applicant to enter the territory if the determining authority has not taken a decision within 4 weeks has not been incorporated in the Procedure Decree even after the amendments made by Decree Law 130/2020.

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

According to Article 28-bis(5) of the Procedure Decree, the Territorial Commission may exceed the above-mentioned time limits where necessary to ensure an adequate and complete examination of the asylum application, subject to a maximum time limit of 18 months.<sup>361</sup> Where the application is made by the applicant detained in CPR or a hotspot or first reception centre, or by a person committed or investigated for crimes allowing the 5 days procedure, the maximum duration of the procedure cannot exceed 6 months.<sup>362</sup>

According to Article 28-bis (6) of the Procedure Decree, the accelerated procedure does not apply to unaccompanied minors and to people with special needs: in this regard, the rule refers to Article 17 of the Reception Decree which, while distinguishing people with special needs in the context of vulnerable people, does not provide an exact definition of this category. It therefore seems reasonable to extend the exclusion from the accelerated procedure to the entire category of vulnerable people.

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

## 5.2. Personal interview

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

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<sup>359</sup> In this case the law, as amended by Decree Law 130/2020 , does no longer provide that the procedure can be done at the border or in transit areas.

<sup>360</sup> Pursuant to Article 28 ter Procedure Decree.

<sup>361</sup> Article 28-bis(5) Procedure Decree, citing Article 27(3)-(3-bis).

<sup>362</sup> *Ibid.*

### 5.3. Appeal

#### Indicators: Accelerated Procedure: Appeal

☐ Same as regular procedure

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

- ❖ If yes, is it
- ❖ If yes, is it suspensive

☒ Yes      ☐ No  
☒ Judicial      ☐ Administrative  
☐ Yes      ☒ Some grounds      ☐ No

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

Time limits for appeals in accelerated procedures: Article 35-bis(2) Procedure Decree <sup>363</sup>		
Ground for accelerated procedure	Legal basis	Days
Safe country of origin	Article 28-bis(2)	15
Subsequent application without new elements	Article 28-bis(1) and 29 (1,b)	15
Border procedure	Article 28-bis(2) (b)	15
Manifestly unfounded application	Articles 28-bis(2)(d) and 28-ter	15
Application after apprehension for irregular entry with the sole purpose of frustrating issuance or execution of removal order	Article 28-bis(2)(e)	15
Applicant detained in a CPR, hotspot or first reception centre	Article 28-bis(2) (a)	15
Applicant investigated or convicted for some of the crimes preventing the recognition of international protection	Article 28-bis (1)	15

The time limits for appealing a negative decision under Article 35-bis(2) and corresponding provisions of the Procedure Decree raise issues of consistency following the 2018 and 2020 reform.

The automatic suspensive effect of the appeal depends on the ground for applying the accelerated procedure.<sup>364</sup> The appeal in the accelerated procedure generally has no automatic suspensive effect, except for applications subject to the [Border Procedure](#).

### 5.4. Legal assistance

The same rules apply as under the regular procedure.

## 6. Immediate procedure

The immediate procedure introduced by Decree Law 113/2018 has been repealed by Decree Law 130/2020 and incorporated, with some changes, in the 5 days accelerated procedure, now ruled by Article 28-bis (1) b) applicable where the applicant:<sup>365</sup>

- ❖ Is subject to investigation for crimes which may trigger exclusion from international protection, and the [Grounds for Detention](#) in a CPR apply;<sup>366</sup>

<sup>363</sup> Article 35 bis Procedure Decree as amended by Decree Law 130/2020 and L 173/2020.

<sup>364</sup> Article 35-bis(3) Procedure Decree, as amended by Decree Law 130/2020 and L 173/2020.

<sup>365</sup> Article 28-bis (1) (b) of the Procedure Decree, as amended by Decree Law 130/2020 and L 173/2020.

<sup>366</sup> The crimes are those cited by Articles 12(1)(c) and 16 (1)(d-bis) Qualification Decree, which include some serious crimes such as devastation, looting, massacre, civil war, mafia related crimes, murder, extortion, robbery, kidnapping even for the purpose of extortion, terrorism, selling or smuggling weapons, drug dealing, slavery, child prostitution, child pornography, trafficking in human beings, purchase and sale of slaves, sexual violence. Decree Law 113/2018 has also included other crimes excluding the recognition of international

- ❖ Has been convicted, including by a non-definitive judgment, of crimes which may trigger exclusion from international protection.

Under the immediate procedure, the Questura promptly notifies the Territorial Commission, which “immediately” proceeds to an interview with the asylum seeker and takes a decision accepting or rejecting the application. The law does not longer provide for the possibility for the Territorial Commission to suspend the decision.<sup>367</sup>

In case of rejection, the law does not longer provide that the applicant has an obligation to leave the national territory but in case of appeal the suspensive effect is not automatic and it has to be requested.<sup>368</sup> The law does not recognise suspensive effect to the appeal even if it includes a suspensive request. Moreover, according to the amended Procedure Decree (Article 35 bis (4) in case of appeal even if the suspensive request is accepted by Court the law does not include this case among the cases where a permit to stay can be issued to the applicant ( See Article 35 bis (4) according to which this happens only in cases regulated by Article 35 bis (3) letters b) c) and d) and not d bis).

## D. Guarantees for vulnerable groups

### 1. Identification

#### Indicators: Identification

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

The Procedure Decree describes the following groups as vulnerable: minors, unaccompanied minors, pregnant women, single parents with minor children, victims of trafficking, disabled, elderly people, persons affected by serious illness or mental disorders; persons for whom has been proved they have experienced torture, rape or other serious forms of psychological, physical or sexual violence; victims of genital mutilation.<sup>369</sup>

#### 1.1. Screening of vulnerability

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

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

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protection which are: violence or threat to a public official; serious personal injury; female genital mutilation; serious personal injury to a public official during sporting events; theft if the person wears weapons or narcotics, without using them; home theft. The grounds for detention referred to are those in Article 6(2)(a), (b) and (c) Reception Decree.

<sup>367</sup> Before the Decree Law 130/2020 this possibility was provided by Article 32(1-bis) Procedure Decree, now repealed.

<sup>368</sup> Article 35 bis (3 )(d-bis) and (4) of the Procedure Decree as amended by Decree Law 130/2020 and L 173/2020.

<sup>369</sup> Article 2(1)(h-bis) Procedure Decree.

The Territorial Commission, on the basis of elements provided by the applicant, may also request a medical examination aimed at ascertaining the effects of persecution or serious harm suffered by the applicants, to be carried out in accordance with the aforementioned guidelines.<sup>370</sup>

## **Children**

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

Any action necessary to identify the family members of the unaccompanied minor seeking asylum is promptly put in place 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>371</sup>

A member of the Territorial Commission, specifically skilled for that purpose, interviews the minor in the presence of the parents or the legal guardian and the supporting personnel providing specific assistance to the minor. For justified reasons, the Territorial Commission may proceed to interview the minor again in 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, the degree of maturity and development, in the light of the minor's best interests.<sup>372</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, MSF started a project in Rome, **Lazio** in collaboration with ASGI and opened a centre specialising in the rehabilitation of victims of torture.<sup>373</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.

The Reception Decree provides that persons for whom has been proved they have experienced torture, rape or other serious forms of violence shall have access to appropriate medical and psychological assistance and care on the basis of Guidelines that will be issued by the Ministry of Health, as mentioned above. To this end, health personnel shall receive appropriate training and must ensure privacy.<sup>374</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,

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<sup>370</sup> Article 8(3-bis) Qualification Decree.

<sup>371</sup> Article 19(7) Reception Decree.

<sup>372</sup> Article 13(3) Procedure Decree.

<sup>373</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>374</sup> Article 17(8) Reception Decree.

the Prosecutor's office or NGOs providing assistance to victims of human trafficking thereof.<sup>375</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>376</sup>

Giving effect to the legal provision, in 2017 the CNDA and UNHCR published detailed guidelines for the Local Commissions on the identification of victims of trafficking among applicants for international protection and the referral mechanism.<sup>377</sup>

The Reception Decree clarifies that trafficked asylum seekers shall be channelled into a special programme of social assistance and integration.<sup>378</sup> Recognised victims of trafficking can also be accommodated in second-line SIPROIMI reception facilities but only after they have been recognised international protected (see [Special Reception Needs](#)).

## 1.2. Age assessment of unaccompanied children

The Procedure Decree includes a specific provision concerning the identification of unaccompanied children. It foresees that in case of doubt on the age of the asylum seeker, unaccompanied children can be subjected to an age assessment through non-invasive examinations.<sup>379</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 the consent of the concerned unaccompanied child or of his or her legal guardian.<sup>380</sup> The refusal by the applicant to undertake the age assessment has no negative consequences on the examination of the asylum application.

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

L 47/2017 has laid down rules on age assessment which apply to all unaccompanied children.<sup>381</sup> The Law provides that within 120 days of its entry into force, a decree of the President of the Council of Ministers should be adopted regulating the interview with the minor aiming at providing further details on his family and personal history and bringing out any other useful element relevant to his/her protection.<sup>382</sup> However, to date, such decree has not yet been adopted.

### Identification documents and methods of assessing age

The law states that, in the absence of identification documents,<sup>383</sup> and in case of doubts about the person's age, the Public Prosecutor's office at the Juvenile Court may order a social / medical examination.<sup>384</sup> This provision may put an end to the critical practice of Questure which directly sent children to hospital facilities without any order by judicial authorities, even when children had valid documents.<sup>385</sup>

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<sup>375</sup> Article 32(3-bis) Procedure Decree.

<sup>376</sup> Article 13 L 228/2003; Article 18 TUI.

<sup>377</sup> CNDA and UNHCR, *L'identificazione delle vittime di tratta tra i richiedenti protezione internazionale e procedure di referral*, September 2017, available in Italian at: <http://bit.ly/2FttAeK>.

<sup>378</sup> Article 17(2) Reception Decree in conjunction with Article 18(3-bis) LD 286/1998 and LD 24/2014.

<sup>379</sup> Article 19(2) Procedure Decree.

<sup>380</sup> *Ibid.*

<sup>381</sup> Article 19-bis Reception Decree, inserted by Article 5 L 47/2017.

<sup>382</sup> Article 5 L 47/2017.

<sup>383</sup> Article 19-bis(3) Reception Decree.

<sup>384</sup> Article 19-bis(4) Reception Decree.

<sup>385</sup> Elena Rozzi, 'L'Italia, un modello per la protezione dei minori stranieri non accompagnati a livello europeo?', in *Il diritto d'asilo*, Fondazione Migrantes, February 2018.

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

The examination is conducted under a multidisciplinary approach by appropriately trained professionals, using the least invasive methods possible and respecting the integrity of the person.<sup>386</sup>

Pending the outcome of the procedure, the applicant benefits from the provisions on reception of unaccompanied children.<sup>387</sup> The benefit of the doubt shall be granted if doubts persist following the examination.<sup>388</sup>

The law also states that the final decision on the age assessment, taken by the Juvenile Court, is notified to the child and to the guardian or the person exercising guardianship and must indicate the margin of error.<sup>389</sup>

Currently, however, according to ASGI's experience, L 47/2017 is not applied uniformly on the national territory. In many places, the multidisciplinary teams required by law have not been established. Consequently, age assessment is still conducted through wrist X-ray, with results not indicating the margin of error. The age assessment is often required even in presence of identity documents and even when there is no reasonable doubt about the minor age. However, the law does not provide the timing for the decision and, pending the results, the minor is often treated and accommodated as an adult, therefore also in situations of promiscuity with adults. Furthermore, the child is often not informed and involved actively in the procedures and he or she is not aware of the reasons for the examinations.

On the other hand, a certainly positive element consists in the decrease of cases in which age assessment is requested by untitled authorities, as more and more often only the Prosecutor order it.

As recorded by ASGI, age assessment procedures were not carried out on board the quarantine ships. The Questura of Palermo stated that for "obvious reasons" this could not happen on ships.<sup>390</sup>

The Juvenile Court of Palermo in response to the request for information on the number of minors transiting on the quarantine vessels and the number of corresponding guardians appointed for unaccompanied minors, declared that up to the date of 8 October 2020, such minors were not communicated to the judicial authority "if not at the end of the quarantine" period. As reported by the Court, a MOI circular dated 21 October would have excluded boarding of unaccompanied minors on quarantine ships.<sup>391</sup>

As mentioned, and reported by several organizations belonging to the network Tavolo Minori Migranti,<sup>392</sup> two directives diffused in **Friuli Venezia Giulia** region on 31 August and 21 December 2020 by the Public Prosecutor at the Juvenile Court of Trieste authorized - contrary to the guarantees enshrined in the Zampa Law (L 47/2017) - the security forces and the border authorities to consider migrants intercepted at the Italy-Slovenia border as adults in case the authorities themselves have no doubts about their adulthood, regardless of their eventual declaration of minor age and the consequent judicial review

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<sup>386</sup> Article 19-bis(5) Reception Decree.

<sup>387</sup> Article 19-bis(6) Reception Decree.

<sup>388</sup> Article 19-bis(8) Reception Decree.

<sup>389</sup> Article 19-bis(7) Reception Decree.

<sup>390</sup> ASGI, Report: Il "modello emergenziale" delle navi quarantena: gli approfondimenti, le analisi, i dati e le principali criticità, April 2021, Available in Italian at: <https://bit.ly/3f3HMKA>.

<sup>391</sup> Information collected by ASGI within the Inlimine project, available at: <https://bit.ly/3c66k4W>.

<sup>392</sup> The "Tavolo Minori Migranti" is a network coordinated by Save the Children, to which belong also AiBi, Amnesty International, Asgi, Caritas Italiana, Centro Astalli, CeSpi, CIR, CNCA, Defence for Children, Emergency, Intersos, Oxfam, Salesiani per il Sociale, SOS Villaggi dei bambini and Terre des Hommes. It's born after the approval of L. 47/2017 aiming at monitoring its full implementation regarding the effective defense of minors.

required by law. This gives a discretionary power to the authorities for the attribution of age to migrants and refugees subjected to border controls, which clearly contrasts with the provisions of the L. 47/2017.<sup>393</sup> Through the implementation of this practice the informal readmission procedure to Slovenia was also applied to migrants declaring themselves as minors. As reported by some media inquiries<sup>394</sup>, many unaccompanied children, currently present in Bosnia without any protection or shelter, underwent this procedure once they arrived in Italy, without even receiving any report regarding the denial of the minor age.

The Guarantor for the rights of detained persons who visited the border premises of the border police of Trieste and Gorizia in December 2020, reported that there were critical issues relating to the procedure for the age assessment of minors, which almost never respects the L. 47/2017 on unaccompanied foreign minors.<sup>395</sup>

The application of this practice also had effects on the reception of many minors. As reported by ASGI, three foreign citizens who declared themselves minors were placed in the CARA of Gradisca from October 2020 to January 2021, in promiscuity with adults, after being identified by the Police as adults, without starting any age assessment procedure. In the identification reports, where it is expressly mentioned the minor age declared by the migrants, the Police, referring to the aforementioned directives, assign a conventional date of birth on the basis of which the same is of an adult. In mid-January 2021, after a legal intervention with the support of ASGI, the three minors were transferred to facilities for unaccompanied minors.

In their final report of the programme jointly implemented, UNHCR and the Children's Ombudsman recommended to the authorities involved to proceed with the age assessment only when there is a well-founded doubt about the minor age, based on an individual and objective evaluation.<sup>396</sup>

During a visit to the First Aid and Reception Centre (*Centro di primo soccorso et di accoglienza*, CPSA) of Roma Capitale, a first reception centre for children in Rome, **Lazio**, carried out in December 2017, the Children's Ombudsman found that, after a first interview, the children were subjected to age assessment through medical examination in all cases where they had no identification document certifying their age, and then submitted to the photo-dactyloscopic surveys at the offices of the Scientific Police.<sup>397</sup>

In its most recent report published in March 2019, the Children's Ombudsman pointed out that, according to the interviewed judges, the frequency of procedures for age assessment is still very low.<sup>398</sup>

### Challenging age assessment

According to L. 47/2017, the age assessment decision can be appealed, and any administrative or criminal procedure is suspended until the decision on the appeal.<sup>399</sup> Before this law, in the absence of a specific provision, children were often prevented from challenging the outcome of age assessments.

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<sup>393</sup> See Ansa, Migrants: 12 associazioni contestano Procura Minori Trieste, 10 February 2021, available at <https://bit.ly/3uBXblw>; see also ASGI, "Accertamento dell'età, due direttive della Procura della Repubblica per i minori di Trieste in contrasto con la legge", available at: <https://bit.ly/3hha0nL>, 10 February 2021

<sup>394</sup> Il Corriere della Sera», *A Bihac, la guerra nella neve ai fantasmi che l'Italia respinge*, 23 January 2021; «La Repubblica», *I ragazzi nel gelo di Lipa dopo i respingimenti "L'Italia ci apra i confini"*, 30 January 2021, available at : <https://bit.ly/3vOSgEq>

<sup>395</sup> Guarantor for the rights of detained persons, report of 18 December 2020, available in Italian at : <https://bit.ly/3tCXNwr>.

<sup>396</sup> UNHCR and the Children's Ombudsman, report, May 2019.

<sup>397</sup> Children's Ombudsman and UNHCR, *Minori stranieri non accompagnati: una valutazione partecipata dei bisogni - Relazione sulle visite nei centri*, May 2018, available in Italian at: <http://bit.ly/2TExUPE>, 19.

<sup>398</sup> Children's Ombudsman, *I movimenti dei minori stranieri non accompagnati alle frontiere settentrionali*, 29 March 2019, available in Italian at: <https://bit.ly/2v2oNt6>, 29.

<sup>399</sup> Article 19-bis(10) Reception Decree.

The ECtHR communicated a case against Italy on 14 February 2017 concerning alleged violations of Articles 3 and 8 ECHR, stemming from the absence of procedural guarantees in the age assessment procedure.<sup>400</sup>

In 2020, in at least 4 cases, the Juvenile Court of Trieste ordered to activate the procedure for the age assessment of the persons involved. The Court decided this on an appeal lodged by minors who had not been considered as such, who were placed in adult facilities and who were not moved away from there even if the bodies managing their accommodation in adult CAS asked for their urgent transfer. The Court recognized the illegitimacy of the practice and sent the procedural documents to the local Juvenile Prosecutor's Office.

## 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: Art. 17 of reception decree (142/2015) has a list of "vulnerable people" such as minors, unaccompanied minors, the disabled, the elderly, pregnant women, single parents with minor children, victims of trafficking in human beings, persons suffering from serious illnesses or mental disorders, persons found to have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence or violence related to sexual orientation or gender identity, victims of genital mutilation".

### 2.1. Adequate support during the interview

The Procedure Decree foresees the possibility for asylum seekers in a vulnerable condition to be assisted by supporting personnel during the personal interview even though the legal provision does not specify which kind of personnel.<sup>401</sup> During the personal interview, the applicant may be accompanied by social workers, medical doctors and/or psychologists.

According to Reception Decree, unaccompanied children can be assisted, in every state and degree of the procedure, by the presence of suitable persons indicated by the child, as well as groups, foundations, associations or NGOs with proven experience in the field of assistance to foreign minors and registered in the register referred to in Article 42 TUI, with the prior consent of the child, accredited by the relevant judicial or administrative authority.<sup>402</sup>

Where it emerges that asylum seekers have been victims of slavery or trafficking in human beings, the Territorial Commission transmits the documents to police for the appropriate evaluations.<sup>403</sup>

### 2.2. Prioritisation and exemption from special procedures

Vulnerable persons are admitted to the prioritised procedure.<sup>404</sup> The Territorial Commission must schedule the applicant's interview "in the first available seat" when that applicant is deemed as vulnerable.<sup>405</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

<sup>400</sup> ECtHR, *Darboe and Camara v. Italy*, Application No 5797/17, Communicated 14 February 2017.

<sup>401</sup> Article 13(2) Procedure Decree.

<sup>402</sup> Article 18(2-bis) Reception Decree.

<sup>403</sup> Article 32(3-bis) Procedure Decree.

<sup>404</sup> Article 28(2) (b) Procedure Decree.

<sup>405</sup> Article 7(2) PD 21/2015.

procedure is applied also in case the Territorial Commissions receive medico-legal reports from specialised NGOs, reception centres and Health centres.

Children can directly make an asylum application through their parents.<sup>406</sup>

Following the 2020 reform, the Procedure Decree exempts unaccompanied children and/or persons in need of special procedural guarantees from the accelerated procedure.<sup>407</sup>

Before the reform, in 2019, the Mol circulars issued on 16 October 2019<sup>408</sup> and on 18 October 2019<sup>409</sup>, excluded from the application of the border procedure for attempting to avoid border controls, people rescued at sea following SAR operations, unaccompanied minors and vulnerable persons.

### 3. Use of medical reports

#### Indicators: Use of Medical Reports

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

The law contains no specific provision on the use of medical reports in support of the applicant's statements regarding past persecutions or serious harm. Nevertheless, the Qualification Decree states that the assessment of an application for international protection is to be carried out taking into account all the relevant documentation presented by the applicant, including information on whether the applicant has been or may be subject to persecution or serious harm.<sup>410</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>411</sup> Moreover, the applicant can ask for the postponement of the personal interview providing the Territorial Commission with pertinent medical documentation.<sup>412</sup>

The Qualification Decree allows the Territorial Commission to seek advice, whenever necessary, from experts on particular issues, such as medical, cultural, religious, child-related or gender issues. Where the Territorial Commission deems it relevant for the assessment of the application, it may, subject to the applicant's consent, arrange for a medical examination of the applicant concerning signs that might indicate past persecution or serious harm according to the Guidelines issued by the Ministry of Health by decree on 3 April 2017 to implement Article 27(1-bis) of the Qualification Decree (see [Content of Protection: Health Care](#)).<sup>413</sup> When no medical examination is 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>414</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

<sup>406</sup> Article 6(2) Procedure Decree.

<sup>407</sup> Article 28 bis (6) Procedure Decree, as amended by Decree Law 130/2020 and L 173/2020.

<sup>408</sup> Mol Circular, 16 October 2019 available in Italian at: <https://bit.ly/3gltWmv>.

<sup>409</sup> MOI Circular, 18 October 2019, available in Italian at: <https://bit.ly/3gjrlcU>.

<sup>410</sup> Article 3 Qualification Decree.

<sup>411</sup> Article 12(2) Procedure Decree.

<sup>412</sup> Article 5(4) PD 21/2015.

<sup>413</sup> Article 27(1-bis) Qualification Decree.

<sup>414</sup> Article 8(3-bis) Procedure Decree.

or after, the substantive interview at first instance. They may also be submitted to the judicial authorities during the appeal stage.

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

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

#### 4. Legal representation of unaccompanied children

##### Indicators: Unaccompanied Children

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

The system of guardianship is not specific to the asylum procedure. A guardian is appointed when children do not have legal capacity and no parents or other relatives or persons who could exercise parental authority are present in the territory.<sup>415</sup> The guardian is responsible for the protection and the well-being of the child.

The Reception Decree, as amended by L 47/2017, provides that affective and psychological assistance is guaranteed to children in every state of the procedure, through the presence of suitable persons indicated by the child and authorised by the relevant authorities.<sup>416</sup> It also guarantees that the unaccompanied child has the right to participate, through a legal representative, in all judicial and administrative proceedings concerning him or her and to be heard on the merits of his or her case. To this end, the law also guarantees the presence of a cultural mediator.<sup>417</sup>

The individuals working with children shall be properly skilled or shall in any case receive a specific training. They also have the duty to respect the privacy rights in relation to the personal information and data of the minors.<sup>418</sup>

The Reception Decree provides that the unaccompanied child can make an asylum application in person or through his or her legal guardian on the basis of the evaluation of the situation of the child concerned.<sup>419</sup>

##### 4.1. Timing of appointment

The Reception Decree, as amended by LD 220/2017, which entered into force on 31 January 2018, provides that the public security authority must give immediate notice of the presence of an unaccompanied child to the Public Prosecutor at the Juvenile Court and to the Juvenile Court (*Tribunale per i minorenni*) for the appointment of a guardian.<sup>420</sup> The Juvenile Court is the sole competent authority following the 2017 reform.

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

<sup>415</sup> Article 343 et seq. Civil Code.

<sup>416</sup> Article 18(2-bis) Reception Decree, inserted by L 47/2017.

<sup>417</sup> Article 18(2-ter) Reception Decree, inserted by L 47/2017.

<sup>418</sup> Article 18(5) Reception Decree.

<sup>419</sup> Article 6(3) Procedure Decree.

<sup>420</sup> Article 19(5) Reception Decree, as amended by LD 220/2017.

Where a guardian has not yet been appointed, the manager of the reception centre is allowed to support the child for the lodging of the asylum application at the Questura.<sup>421</sup> As clarified by the CNDA, however, the guardian remains responsible for representing the child in the next steps of the procedure.<sup>422</sup>

#### 4.2. Duties and qualifications of the guardian

According to the Procedure Decree, the guardian has the responsibility to assist the unaccompanied child during the entire asylum procedure, and even afterwards, in case the child receives a negative decision on the claim.<sup>423</sup> For this reason, the guardian escorts the child to the police, where he or she is fingerprinted if he or she is over 14, and assists the child in filling the form and lodge the asylum claim. The guardian also has a relevant role during the personal interview before the Territorial Commission, who cannot start the interview without his or her presence.<sup>424</sup> The law provides that a member of the Territorial Commission, specifically trained for that purpose, interviews the child in the presence of his or her parents or the guardian and the supporting personnel providing specific assistance to the child. For justified reasons, the Territorial Commission may proceed to interview again the child, even without the presence of the parent or the legal guardian, at the presence of supporting personnel, if considered necessary in relation of the personal situation of the children, his or her degree of maturity and development, and in line with his or her best interests.<sup>425</sup>

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

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

To overcome existing deficiencies and lack of professionalism among guardians, L 47/2017 has established the concept of voluntary guardians. A register of such guardians has to be kept in every Juvenile Court.<sup>426</sup>

The Regional Children's Ombudsman is responsible for selecting and training guardians. The National Children's Ombudsman has established specific guidelines on the basis of which calls for selection of guardians have already been issued in each region.<sup>427</sup> Training courses have started in most of the cities.

The law assigns the responsibility to monitor the state of implementation of the guardianship provisions to the Children's Ombudsman (Italian Independent Authority for children and adolescents - Agia).<sup>428</sup> The Regional Children's Ombudsman and the one of the autonomous provinces of Trento and Bolzano have to cooperate regularly with the Children's Ombudsman, to whom they have to submit a report on their activities every two months. A monitoring project financed with the AMIF fund and managed by the Ministry of the Interior was launched to implement the provision.

In March 2021 the Children's Ombudsman published five monitoring reports, dated November 2020 on the voluntary guardianship system for unaccompanied minors in Italy.<sup>429</sup> As emerges from the fifth

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<sup>421</sup> Article 26(5) Procedure Decree, as amended by L 47/2017.

<sup>422</sup> CNDA Circular No 6425 of 21 August 2017, available in Italian at: <http://bit.ly/2Fn38Um>.

<sup>423</sup> Article 19(1) Procedure Decree.

<sup>424</sup> Article 13(3) Procedure Decree.

<sup>425</sup> *Ibid.*

<sup>426</sup> Article 11 L 47/2017.

<sup>427</sup> Children's Ombudsman, *Guidelines for the selection, training and registration in the lists of voluntary guardians pursuant to Article 11 L 47/2017*, available in Italian at: <http://bit.ly/2Dgl4tS>.

<sup>428</sup> Article 11 L. 47/2017 as amended by Article 2 (3) LD 220/2017.

<sup>429</sup> Of the 5 reports, 4 represent a qualitative survey on: unaccompanied foreign minors without a matched voluntary guardian; unaccompanied foreign minors with guardians; voluntary guardians; intercultural relations. The qualitative monitoring, started in November 2019 and concluded in February 2020, involved five pilot

monitoring report on quantitative aspects, the total number of voluntary guardians as of 30 June 2019 was 2,960. Of these, 3 out of 4 were women, 63.1% were over 45 and most of them (78.2%) were employed, while retirees represented the 10.8% of the total.

As of 30 June 2019, out of 1,679 unaccompanied minors present, 1,324 minors were found to have a guardian.<sup>430</sup> Regarding the number of minors per guardian, the reports do not show precise data, since not all Juvenile Courts provided the data, but it seems that on average many guardians have the protection of 2 or 3 minors, while in some regions the ratio is much higher even reaching 23 minors for 1 single guardian in Friuli Venezia Giulia.<sup>431</sup>

In 2020, 8,939 minors were traced on Italian territory. Of these, 4,461, (49.9%) arrived following disembarkation. The regions most affected by the arrivals of minors were Sicily (41.8%), for arrivals by sea, Friuli Venezia Giulia (24.1%) and Lombardy (7.7%); the last two for the arrivals by land and by the Balkan route.<sup>432</sup>

In 2020, 753 unaccompanied minors submitted an asylum application.

Unaccompanied asylum-seeking children: 2020	
Nationality	Number
Bangladesh	152
Pakistan	120
Somalia	96
Tunisia	86
Afghanistan	46
Ivory Coast	33
Mali	32
Guinea	28
Nigeria	17
Sudan	15
Others	128
<b>Total</b>	<b>659</b>

Source: Ministry of Labour.

58% of unaccompanied minors' asylum applications were rejected. 27% of applicants have obtained the refugee status, 13% were recognized subsidiary protected. 2% obtained special protection recognition.

As of 31 December 2020, 3,099 unaccompanied children absconded from accommodation. Of those, 1,113 were Afghans, 647 were Tunisians, 280 Pakistanis and 147 from Bangladesh.<sup>433</sup>

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regions: Friuli Venezia Giulia, Liguria, Tuscany, Abruzzo and Sicily. The last is a quantitative survey updated to 30 June 2019, carried out with the participation of the juvenile courts and the regional and autonomous provinces guarantors. All reports are available in Italian at: <https://tutelavolontaria.garanteinfanzia.org/biblioteca>

<sup>430</sup> Children's Ombudsman 5th Monitoring report, 2021, available at: <https://bit.ly/3uCP6bu>.

<sup>431</sup> See Children's Ombudsman 3rd monitoring report on voluntary guardians, table 14, available at: <https://bit.ly/3vYhXCt>

<sup>432</sup> Ministry of Labour, *I minori stranieri non accompagnati*, 31 December 2020, available in Italian at: <https://bit.ly/3hhmWdj>

<sup>433</sup> Ministry of Labour, *I minori stranieri non accompagnati*, 31 December 2020, available in Italian at: <https://bit.ly/2RLIOOh>.

## E. Subsequent applications

### Indicators: Subsequent Applications

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

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

Decree Law 113/2018, implemented by L 132/2018, has introduced a definition of “subsequent application” (*domanda reiterata*).<sup>434</sup> An asylum application is considered a subsequent application where it is made after:

- A final decision has been taken on the previous application;
- The previous application has been explicitly withdrawn;<sup>435</sup>
- The previous application has been terminated or rejected after the expiry of 12 months from suspension on the basis that the applicant was unreachable (*irreperibile*).<sup>436</sup>

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

However, pursuant to the new Article 6 (2 a bis) of the Reception Decree, in case of subsequent applications made during the execution of an imminent removal order, the applicant can be detained.<sup>437</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.

### 1. Preliminary admissibility assessment

As stated in [Accelerated Procedure](#), upon the transmission without delay of the application by the Questura, the Territorial Commission has 5 days to decide on the subsequent application made without adding new elements to the personal story or to the situation of the country of origin pursuant to Article 29 (1 b) of the Procedure Decree .<sup>438</sup>

The President of the Territorial Commission makes a preliminary assessment in order to evaluate whether new elements concerning the personal condition of the asylum seeker or the situation in his or her country of origin have been added to the asylum application.<sup>439</sup> Where no new elements are identified, the application is dismissed as inadmissible (see [Admissibility Procedure](#)).

The procedure differentiates depending on the case:

<sup>434</sup> Article 2(1)(b-bis) Procedure Decree, introduced by Article 9 Decree Law 113/2018 and L 132/2018.

<sup>435</sup> Article 23 Procedure Decree.

<sup>436</sup> Article 23-bis(2) Procedure Decree.

<sup>437</sup> Article 6 ( 2, a bis) Reception Decree, as amended by Article 3 (3) Decree Law 130/2020 and L. 173/2020. According to Decree Law 130/2020 the provision applies in the limits of available places in CPRs

<sup>438</sup> Article 28-bis(1-bis) Procedure Decree.

<sup>439</sup> Article 29(1)(b) Procedure Decree.

- In cases of applicants already recognised as refugees the law provides that the President of the Territorial Commission sets the hearing of the applicant.<sup>440</sup>
- In case of a **subsequent application** made after the previous application has been terminated because the applicant was unreachable (*irreperibile*), the President can declare the application inadmissible by evaluating reasons for being unreachable.<sup>441</sup>
- In case of a first subsequent application made during the execution of an imminent removal order, but after the amendments made by Decree Law 130/2020, the law provides that the application must be immediately sent to the President of the competent territorial Commission, who must conduct a preliminary assessment of the admissibility of the application, within three days, while assessing the risks of direct and indirect refoulement.
- During 2019, the previous formulation of the disposition had determined, following a Circular from the National Commission, an illegitimate omission of the preliminary examination by the competent Territorial Commission, as Questuras automatically declared the inadmissibility of such subsequent applications, inter alia by interpreting the execution phase of a removal order in a broad way. Some rulings of national courts had clarified that this application was contrary to Article 40 of the recast Asylum Procedure Directive.<sup>442</sup>

As stated by decree Law 130/2020, in this case, if the application is declared inadmissible, the applicant can be detained.<sup>443</sup> (see detention).

The law still does not clarify how the term “execution phase of a removal procedure” should be interpreted. If this provision is not strictly applied to cases in which the removal is actually being performed, it is likely to be applied to all cases of subsequent applications as currently defined by law.

More in general, in case the subsequent application is declared inadmissible, reception conditions can be revoked.<sup>444</sup>

## 2. Right to remain and suspensive effect

The Procedure Decree, as amended by Decree Law 130/2020, provides that the right to remain on the territory until a decision is taken by the Territorial Commission is not guaranteed where the applicant:

- Made a first subsequent application for the sole purpose of delaying or preventing the execution of an imminent removal decision;<sup>445</sup>
- Wishes to make a further subsequent application following a final decision declaring the first subsequent application inadmissible, unfounded or manifestly unfounded.<sup>446</sup>

The law does not foresee a specific procedure to appeal against a decision on inadmissibility for subsequent applications. The Procedure Decree as amended by Decree Law 130/2020 provides, however, that suspensive effect is not granted for appeals against the inadmissibility of a second

<sup>440</sup> Article 29 (1 bis) Procedure Decree. This includes MS and other countries as the law mentions refugees recognised by countries part of the Geneva Convention, in case the refugees can still enjoy the protection.

<sup>441</sup> Article 23 bis (2) Procedure Decree.

<sup>442</sup> Civil Court of Milan, decision of 13 November 2019 ordered the competent Territorial Commission to conduct the preliminary examination of a subsequent application deemed inadmissible automatically by the Questura, disapplying the Article 29bis of the Procedure Decree considered not in accordance with Article 40 of the recast Asylum Procedure Directive.

<sup>443</sup> Article 6 (2, a bis) Reception Decree, as amended by Article 3 (3) Decree Law 130/2020 and L. 173/2020 and Article 29 bis Procedure Decree. According to Decree Law 130/2020 the provision applies in the limits of available places in CPRs.

<sup>444</sup> Article 23(1) Reception Decree.

<sup>445</sup> Article 7(2)(d) Procedure Decree.

<sup>446</sup> Article 7(2)(e) Procedure Decree, as amended by Article 9 Decree Law 113/2018 and L. 132/2018.

subsequent application and for appeals against the inadmissibility of a subsequent application submitted in order to avoid an imminent removal, pursuant to Article 29 bis of the Procedure Decree.<sup>447</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 [Regular Procedure: Appeal](#)).

## F. The safe country concepts

### Indicators: Safe Country Concepts

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

### 1. Safe country of origin

The “safe country of origin” concept has been introduced in Italian legislation by Decree Law 113/2018, implemented by L 132/2018.<sup>448</sup>

#### 1.1. Definition and list of safe countries of origin

According to the law, a third country can be considered a safe country of origin if, on the basis of its legal system, the application of the law within a democratic system and the general political situation, it can be shown that, generally and constantly, there are no acts of persecution as defined in the Qualification Decree, nor torture or other forms of inhuman or degrading punishment or treatment, nor danger due to indiscriminate violence in situations of internal or international armed conflict.<sup>449</sup>

The assessment aimed at ascertaining whether or not a country can be considered a safe country of origin shall take into account the protection offered against persecution and ill-treatment through:<sup>450</sup>

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

The assessment shall be based on information provided by the CNDA, as well as on other sources of information, including in particular those provided by other Member States of the European Union, EASO, UNHCR, the Council of Europe and other competent international organisations.<sup>451</sup>

<sup>447</sup> Article 35-bis(5) Procedure Decree, as amended by Decree Law 130/2020. Prior to the 2020 reform, the Procedure Decree stated that suspensive effect was not granted for appeals against the inadmissibility of a first subsequent application.

<sup>448</sup> Article 2-bis Procedure Decree, inserted by Article 7 Decree Law 113/2018 and L 132/2018.

<sup>449</sup> Article 2-bis(2) Procedure Decree.

<sup>450</sup> Article 2-bis(3) Procedure Decree.

<sup>451</sup> Article 2-bis(4) Procedure Decree.

A list of safe countries of origin is adopted by decree of the Ministry of Foreign Affairs, in agreement with Ministry of Interior and Ministry of Justice. The list must be periodically updated and notified to the European Commission.<sup>452</sup>

The list, adopted by decree of 4 October 2019 and entered into force on 22 October 2019,<sup>453</sup> includes the following countries: Albania, Algeria, Bosnia and Herzegovina, Cape Verde, Ghana, Kosovo, North Macedonia, Morocco, Montenegro, Senegal, Serbia, Tunisia and Ukraine.

Even if the law provides that the designation of a safe country of origin can be done with the exception of parts of the territory or of categories of persons,<sup>454</sup> the decree merely refers to States without making any distinction and exception.

Indeed, information collected by the Ministry of Foreign Affairs, assisted by the CNDA COI Unit, had indicated, for many countries,<sup>455</sup> categories of persons or parts of the country for which the presumption of safety cannot apply.<sup>456</sup>

The existence of parts of the territory or categories for which the country cannot be considered safe should have led to the non-inclusion of these countries in the list.<sup>457</sup>

In any case, as highlighted by ASGI,<sup>458</sup> the decree appears illegitimate in several respects, as it does not offer any indication of the reasons and criteria followed for the inclusion of each country in the list. Moreover, the country files elaborated by the CNDA and by the Ministry of Foreign Affairs reveal that the choice of countries has not been based on a plurality of sources and, in some cases, the inclusion of only partially safe countries without the distinctions indicated by the CNDA is in contradiction with the results of the same investigation.

## 1.2. Procedural consequences

An applicant can be considered coming from a safe country of origin only if he or she is a citizen of that country or a stateless person who previously habitually resided in that country and he or she has not invoked serious grounds to believe that the country is not safe due to his or her particular situation.<sup>459</sup>

The Questura shall inform the applicant that if he or she comes from a designated country of safe origin, his or her application may be rejected.<sup>460</sup>

An application made by an applicant coming from a safe country of origin is channelled into an **Accelerated Procedure**, whereby the Territorial Commission takes a decision within 9 days.<sup>461</sup>

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<sup>452</sup> Article 2-bis(1) Procedure Decree.

<sup>453</sup> Ministry of Foreign Affairs Decree, 4 October 2019, Identification of Safe Countries of origin, according to Article 2-bis of the Procedure Decree published on 7 October 2019 n. 235.

<sup>454</sup> Article 2 bis (2) Procedure Decree.

<sup>455</sup> This is the case of Algeria, Ghana, Morocco, Senegal, Ukraine and Tunisia.

<sup>456</sup> The information sheets drawn up for each country were then sent to all the Territorial Commissions as an attachment to the CNDA circular no. 9004 of 31 October 2019, available in Italian at: <https://bit.ly/2TBVjiF>.

<sup>457</sup> In this sense, Civil Court of Florence, interim decision of 22 January 2020, available at: <https://bit.ly/2TA3hZD>; see also Questione Giustizia, I primi nodi della disciplina sui Paesi di origine sicuri vengono al pettine, Cesare Pitea, 7 February 2020, <https://bit.ly/2zgXZeG>; see also EDAL, Italy: The region of Casamance, Senegal, excluded by the presumption of "safe third countries", 22 January 2020, available at: <https://bit.ly/2yx3Qfu>.

<sup>458</sup> ASGI, Nota di commento del Decreto del Ministro degli affari esteri e della cooperazione internazionale 4 ottobre 2019 sull'elenco dei Paesi di origine sicuri, 27 November 2019, available in Italian at: <https://bit.ly/3edVetq>.

<sup>459</sup> Article 2-bis(5) Procedure Decree.

<sup>460</sup> Article 10(1) Procedure Decree, as amended by Article 7 Decree Law 113/2018 and L 132/2018.

<sup>461</sup> Article 28-bis (2) (c) as amended by Decree Law 130/2020.

An application submitted by applicants coming from a safe country of origin can be rejected as manifestly unfounded,<sup>462</sup> whether under the regular procedure or the accelerated procedure. In this case the decision rejecting the application is based on the fact that the person concerned has not shown that there are serious reasons to believe that the designated safe country of origin is not safe in relation to his or her particular situation.<sup>463</sup>

Following the entry into force of the safe countries of origin list, the CNDA issued two circulars, on 28 October 2019 and 31 October 2019, giving directives to the Territorial Commissions on the application of the new provisions. In particular the CNDA assumed that the inclusion of a country of origin in the safe countries list introduces an absolute presumption of safety, which can be overcome only with a contrary proof presented by the asylum seeker. CNDA also underlined that, in the event of rejection, the applications should always be regarded as manifestly unfounded applications. In practice, according to ASGI experience, Territorial Commissions are applying the CNDA directives to all rejections of asylum applications in case of safe country of origin.

However, an overall exam of the rules of the Procedure Decree shows that the manifestly unfounded decision is only one of the possible outcomes of the examination of the asylum application when the applicant comes from a country designated as safe.<sup>464</sup>

On 22 January 2020, the Civil Court of Florence deemed the exclusion of the automatic suspensive effect to an appeal lodged by an asylum seeker from Senegal as illegitimate as the applicant belongs to a category, that of LGBTI, whose treatment in Senegal, should have resulted in the exclusion of Senegal from the list of safe countries or should have determined at least the provision, within the decree, of a specific exception for this social group to the rules dictated for asylum applications submitted by safe countries nationals. Consequently, according to the Court, the Territorial Commission should not have refused the asylum application as manifestly unfounded only because of the safe country of origin of the applicant.<sup>465</sup> However, since the amendments made by Decree law 130/2020 the lack of automatic suspensive effect is connected to all applications made under the accelerate procedure, with the sole exclusion of applications made under the border procedure.<sup>466</sup>

The Court of Cassation, with judgement 19252/2020, stated that the circumstance of coming from a country included in the list of safe countries does not preclude the applicant from being able to assert the origin from a specific area of the country itself, affected by phenomena of violence and generalized insecurity which, even if territorially circumscribed, may be relevant for the purposes of granting international or humanitarian protection, nor does it exclude the duty of the judge, in the presence of such an allegation, to proceed with a concrete ascertainment of the danger of said area and of the relevance of the aforementioned phenomena.<sup>467</sup>

## 2. First country of asylum

The Procedure Decree provides for the “first country of asylum” concept as a ground for inadmissibility (see [Admissibility Procedure](#)). The Territorial Commission declares an asylum application inadmissible

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<sup>462</sup> Article 28-ter(1)(b) Procedure Decree, inserted Article 7 Decree Law 113/2018 and L 132/2018.

<sup>463</sup> Article 9(2-bis) Procedure Decree, inserted by Article 7 Decree Law 113/2018 and L 132/2018.

<sup>464</sup> Article 32 (1 b bis) read together with Article 2 bis (5) Procedure Decree must be interpreted as meaning that the asylum request is manifestly unfounded only when the applicant has not invoked serious grounds to believe that the country is not safe due to his or her particular situation. Moreover, Article 35 bis of the Procedure Decree links the halving of the time limits for appeal and the absence of automatic suspensive effect to applications that are manifestly unfounded and not, in general, to applications from asylum seekers from countries designated as safe. See *Questione Giustizia, Le nuove procedure accelerate, lo svilimento del diritto d’asilo*, 3 November 2019, available in Italian at: <https://bit.ly/2XqA8Rs>.

<sup>465</sup> Civil Court of Florence, interim decision of 22 January 2020, cited above; see also: <https://bit.ly/3bWqjA4>.

<sup>466</sup> Article 35 -bis (3) Procedure Decree.

<sup>467</sup> Court of Cassation, judgement 19252/2020, mentioned in Court of Cassation decision ceiling of 2020, available at: <https://bit.ly/3eDGdS>.

where the applicant has already been recognised as a refugee by a state party to the 1951 Refugee Convention and can still enjoy such projection.<sup>468</sup> The “first country of asylum” concept has not been used in practice.

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

### 1. Provision of information on the procedure

#### Indicators: Information on the Procedure

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

❖ Is tailored information provided to unaccompanied children? ☐ Yes ☒ No

According to Article 10 of the Procedure Decree,<sup>469</sup> when a person makes an asylum application, the Questura shall inform the applicant about the asylum procedure and his or her rights and obligations, and of time limits and any means (i.e. relevant documentation) at his or her disposal to support the application. In this regard, police authorities should hand over an information leaflet. The amended Procedure Decree adds that the Questura informs the applicant that if he or she comes from a **Safe Country of Origin**, his or her application may be rejected.<sup>470</sup>

According to the amended Procedure Decree, the Territorial Commission promptly informs the applicant of the decision to apply the accelerated procedure or the prioritised procedure.<sup>471</sup>

Regarding information on accommodation rights, the Reception Decree provides that Questura, shall provide information related to reception conditions for asylum seekers and hand over information leaflets accordingly.<sup>472</sup> The brochures distributed also contain the contact details of UNHCR and refugee-assisting NGOs. However, the practice of distribution of these brochures by police authorities is quite rare. Moreover, although Italian legislation does not explicitly state that the information must also be provided orally, this happens in practice at the discretion of Questura but not in a systematic manner. Therefore, adequate information is not constantly and regularly ensured, mainly due to the insufficient number of police staff dealing with the number of asylum applications, as well as to the shortage of professional interpreters and linguistic mediators. According to the Reception Decree such information on reception rights is also provided at the accommodation centers within a maximum of 15 days from the making of the asylum application.<sup>473</sup>

PD 21/2015 provides that unaccompanied children shall receive information on the specific procedural guarantees specifically provided for them by law.<sup>474</sup> However, during visits to reception centres for unaccompanied children carried out in 2017, the Children’s Ombudsman found a general lack of information to children which caused distress, disorientation and distrust, and significantly increased the risk of children absconding from centres.<sup>475</sup>

<sup>468</sup> Article 29(1)(a) Procedure Decree.

<sup>469</sup> Article 10(1) Procedure Decree.

<sup>470</sup> *Ibid*, as amended by Article 7 Decree Law 113/2018 and L 132/2018.

<sup>471</sup> Article 28 (1) Procedure Decree as amended by DL 130/2020.

<sup>472</sup> Article 3 Reception Decree.

<sup>473</sup> Article 3 (3) Reception Decree.

<sup>474</sup> Article 3(3) PD 21/2015.

<sup>475</sup> Children’s Ombudsman and UNHCR, *Minori stranieri non accompagnati: una valutazione partecipata dei bisogni - Relazione sulle visite nei centri*, May 2018, available in Italian at: <http://bit.ly/2TEuUPE>.

The visits to emergency, first and second-line reception centres for unaccompanied children carried out during 2017 and 2018 by the Children's Ombudsman together with UNHCR confirmed the same need to receive more information especially on the asylum procedure.<sup>476</sup>

### 1.1. Information on the Dublin Regulation

Asylum seekers are not properly informed of the different steps or given the possibility to highlight family links or vulnerabilities in the [Dublin Procedure](#), particularly in the context of the specific procedure applied in **Friuli-Venezia Giulia**.

In 2020, the Civil Court of Rome confirmed its orientation by cancelling Dublin transfer measures not preceded by adequate information. Other courts, such as that of Trieste, considered compliance with articles 4 and 5 of the regulation to be relevant only when the applicant had demonstrated in court how the lack of correct information had affected the outcome of the procedure.

The Court of Cassation requested, pursuant to Article 267 of the TFEU, the European Court of Justice to give a preliminary ruling to clarify whether Article 4 of the Dublin Regulation must be interpreted as meaning that the violation of the information obligation can be asserted only on condition that the applicant indicates what information he could have indicated in his favour, decisive for a positive decision in his interest.<sup>477</sup>

The Children's Ombudsman verified after her visits to reception centres for unaccompanied children that the children had not received the information leaflet provided for in the Dublin Implementing Regulation. This was reported to be the case in the following centres: first reception centre in Mincio-Rome, **Lazio**, CAS Como, **Lombardy**, first reception centre in San Michele di Ganzaria, Catania, **Sicily**, and the "House of bricks" community centre in Fermo-Ancona, **Marche**.<sup>478</sup>

### 1.2. Information at the border and in detention

According to the law, persons who express the intention to seek international protection at border areas and in transit zones shall be provided with information on the asylum procedure, in the framework of the information and reception services set by Article 11(6) TUI.<sup>479</sup>

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

According to Article 10ter TUI, the third country national tracked down during the irregular crossing at an internal or external border or arrived in Italy following rescue operations must receive information on the right to asylum, on the relocation program in other EU Member States and on the possibility of voluntary repatriation.

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<sup>476</sup> Children's Ombudsman and UNHCR, L'ascolto e la partecipazione dei minori stranieri non accompagnati in Italia, *Rapporto finale attività di partecipazione 2017-2018*, May 2019, available in Italian at: <https://bit.ly/2A5VxaB>.

<sup>477</sup> Court of Cassation, decision no. 8668 of 23 February - 29 March 2021.

<sup>478</sup> Children's Ombudsman and UNHCR, *Minori stranieri non accompagnati: una valutazione partecipata dei bisogni - Relazione sulle visite nei centri*, May 2018, 15.

<sup>479</sup> Article 10-bis(1) Procedure Decree, inserted by the Reception Decree.

Furthermore, as stated by Decree Law 130/2020, in case the conditions for detention are met, the foreign citizen is promptly informed on the rights and on the powers deriving from the validation procedure of the detention decree in a language he or she knows, or, if not possible, in French, English or Spanish.<sup>480</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 continues to monitor the access of foreigners to the relevant procedures and the initial reception of asylum seekers and migrants in the framework of their mandates. The activities are funded under the Asylum, Migration and Integration Fund (AMIF).

The Reception Decree provides that foreigners detained in CPR shall be provided by the manager of the facility with relevant information on the possibility of applying for international protection. Asylum seekers detained in such facilities are provided with the relevant information set out by Article 10(1) of the Procedure Decree, by means of an informative leaflet.<sup>481</sup>

The Reception Decree also provides that asylum seekers detained in CPR or in hotspots are informed on the rules in force in the centre as well as on their rights and obligations in the first language they indicate.<sup>482</sup> If it is not possible, information is provided in a language they are reasonably supposed to know meaning, as ruled by Procedure Decree, English, French, Spanish or Arabic, according to the preference they give.<sup>483</sup>

In 2020, the Court of Cassation and some Civil Courts reaffirmed the close connection between the compliance with information obligations and the effectiveness of the right of access to the asylum procedure, both denied by the value attributed to the so-called foglio notizie or secondo foglio notizie often submitted to foreign citizens who arrive at the border without a prior or contextual explanation on the meaning of their signature.

The Court of Trieste, on several occasions in 2020, was able to observe how the cd. Foglio Notizie could not fulfil the information obligation required by law. For example in a case where the validation of detention was examined, the Court found, the information "(..)" was drafted in an approximate way, it did not contain an express indication or information on the possibility to request asylum; it was complex to read even for a person with a level of knowledge higher than that presumed for a migrant; (...)the indication "came to Italy for" was not translated and therefore the answers (translated) could be misunderstood. The Court found that it is therefore likely that the migrant did not understand the possibility of applying for international protection."<sup>484</sup> In this case, however, the detention was validated as the Court found that the asylum application was presented only in order to avoid repatriation.

In other rulings, the Civil Court of Trieste held that there was no evidence that the detainee, on the occasion of crossing the border, had been enabled to consciously manifest his will to apply for asylum, as required by Article 10 ter, (1), TUI and that therefore there were no reasons to consider the request as a pretext (i.e. submitted for the sole purpose of delaying or preventing expulsion) even if not presented before the Giudice di Pace because even before that hearing it was not proven that the information obligation had been fulfilled.<sup>485</sup>

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<sup>480</sup> Article 10 ter (3) as amended by DL 130/2020.

<sup>481</sup> Article 6(4) Reception Decree.

<sup>482</sup> Article 7 (4) Reception Decree.

<sup>483</sup> Article 10 (4) Procedure Decree, to which Article 7 (4) reception decree expressly refers to.

<sup>484</sup> Civil Court of Trieste, decision of 15 September 2020.

<sup>485</sup> Civil Court of Trieste, decision 3882/2020 of 2 December 2020, procedure no. 3733/2020.

Moreover, in 2020, the practice of submitting a second information sheet (second foglio notizie) to the foreigner arriving at the border continued.

As already represented in the AIDA report 2019, it is a systematic practice not to inform persons of specific nationalities of the appropriate information on the right to asylum. In fact, a second “foglio notizie” is sometimes used in cases where in the “first” foglio notizie the applicant had expressed his or her will to ask asylum. The second foglio notizie is an extremely detailed document that contains information on all non-expulsion cases. By signing this document, the person declares that he/she is not interested in seeking international protection, even in the event that he/she has already expressed his/her will to seek asylum. Following the signature of these documents, deferred rejection and detention orders are notified.

The Court of Cassation clearly stated that the compilation and signing of the second foglio notizie cannot affect the legal status of the foreign citizen as an asylum seeker resulting in the revocation or overcoming of the previously submitted asylum application. The Court of Cassation<sup>486</sup> declared the validation of the detention issued by the Justice of the Peace of Trapani and by the Civil Court of Palermo, of asylum seekers of Tunisian nationality on the basis of the second foglio notizie, illegitimate.

## 2. Access to NGOs and UNHCR

### Indicators: Access to NGOs and UNHCR

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

The Procedure Decree expressly requires the competent authorities to guarantee asylum seekers the possibility to contact UNHCR and NGOs during all phases of the asylum procedure.<sup>487</sup> For more detailed information on access to CPR, see the section on [Access to Detention Facilities](#).

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

As for the [Hotspots](#), the SOPs ensure that access to international and non-governmental organisations is guaranteed subject to authorisation of the Ministry of Interior and on the basis of specific agreements, for the provision of specific services<sup>488</sup>. The SOPs also foresee that authorised humanitarian organisations will provide support to the Italian authorities in the timely identification of vulnerable persons who have special needs, and they will also carry out information activities according to their respective mandates. Currently in the hotspots, UNHCR monitors activities, performs the information service and, as provided in the SOPs, is responsible for receiving applications for asylum together with Frontex, EASO and IOM. Save the Children is also present in hotspots.

However, since asylum seekers can be detained for identification purposes in the hotspots, access to the guarantees provided by Article 7 of the Reception Decree in relation to detention centres should also

<sup>486</sup> Court of Cassation, decision no. 18189/2020 of 1 September 2020, available at: <https://bit.ly/3tygEsd> and no. 18322/2020 of 8 September 2020.

<sup>487</sup> Article 10(3) Procedure Decree.

<sup>488</sup> SOPS, paragraph B.2.

apply (see access to detention facilities). According to Article 7, the access to NGOs with consolidated experience in protecting asylum seekers is allowed; it can be limited for security reasons, public order, or for reasons connected to the correct management of the centres but not completely impeded.<sup>489</sup>

However, by December 2019, ASGI tried to obtain access to the hotspot of Lampedusa but it was formally denied. The Prefecture of Agrigento alleged the lack of specific agreements with the Ministry of Interior, as requested by the SOPs. As regards the access guarantees provided by the Reception Decree for detention centres, the Prefecture has considered that it allows limiting the access of NGOs just for the administrative management of the centre and that the presence of EASO, UNHCR and IOM, as well as the access of the Guarantor for the rights of detained people are sufficient to protect migrants.

ASGI lodged an appeal before the Administrative Court of Sicily obtaining, in September 2020,<sup>490</sup> a first interim decision by the Court which ordered the Prefecture to review the request. With a new provision, however, the Prefecture again denied access to the hotspot for reasons that do not differ much from the previous ones, but adding however reasons due to the epidemic situation of Covid-19. ASGI lodged a new appeal which is pending at the time of writing.

Access of UNHCR and other refugee-assisting organisations to border points is provided. For security and public order grounds or, in any case, for any reasons connected to the administrative management, the access can be limited on condition that is not completely denied.<sup>491</sup>

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

### Indicators: Treatment of Specific Nationalities

1. Are applications from specific nationalities considered manifestly well-founded? ☒ Yes ☐ No  
❖ If yes, specify which: Afghanistan, Venezuela, Somalia
2. Are applications from specific nationalities considered manifestly unfounded? ☒ Yes ☐ No  
❖ If yes, specify which: countries included in the safe countries of origin list

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

The issue, on 4 October 2019, of the [Safe Country of Origin](#) decree, has directly affected the treatment and prerogatives of asylum seekers whose nationalities are indicated by the decree, also because of the CNDA directive to consider all rejections as manifestly unfounded applications.

Statistics on decisions in asylum applications in 2020 show a recognition rate of about 93% for **Afghans**, 91 % for Venezuelans, 77% for **Somalis**, 59% for **Iraqis**. And 58% for people coming from El Salvador. As for 2019, Syrians do not appear in the 2020 statistics among the main countries of origin of asylum seekers.

In practice, as already highlighted in [Hotspots](#) and [Registration](#), some nationalities face more difficulties to access the asylum procedure, both at hotspots and at Questure. In the hotspots, ASGI has directly recorded in 2020, as in 2019, that people from **Tunisia** were notified expulsion orders despite having expressly requested international protection.<sup>492</sup>

<sup>489</sup> Article 7 (3) Reception Decree.

<sup>490</sup> Administrative Court of Sicily, interim decision no. 943 of 24 September 2020.

<sup>491</sup> Article 10-bis(2) Procedure Decree.

<sup>492</sup> CNDA, Statistics 2020, available at : <https://bit.ly/2R7FRN3>

### Short overview of the Italian reception system

Decree Law 130/2020 converted into Law 173/2020 has significantly changed – at least in theory - two fundamental aspects of the reception system for asylum seekers:

- ❖ Access to the (second) reception system;
- ❖ and the type and level of services provided in first and second accommodation facilities.

The accommodation system (former SPRAR, then Siproimi) is now called S.A.I.: System of accommodation and integration.

The aforementioned changes partially restore the reception model that had been outlined by the Legislative Decree no. 142 of 2015 (Reception decree), a system intended as a single system for asylum seekers and beneficiaries of international protection albeit divided into different phases:

- ❖ a first aid and identification phase implemented in the crisis points present at the main disembarkations places;<sup>493</sup>
- ❖ a first “assistance” phase aimed at first assisting the applicant in starting the asylum procedure, implemented in first governmental centres;<sup>494</sup>
- ❖ a “proper” reception phase, operated in small centers, not far from the city center or in any case well connected to it, implemented in the SAI system.

In case of unavailability of places due to a large influx of arrivals, first reception may be implemented in “temporary” structures” (*strutture temporanee*), also known as Emergency Reception Centres (*Centri di accoglienza straordinaria*, CAS), established by Prefectures, subject to an assessment of the applicant’s health conditions and potential special needs.<sup>495</sup> When reception is provided in CAS, it is limited to the time strictly necessary for the transfer of the applicant in the second reception centres.<sup>496</sup>

Under the validity of the Legislative decree 142/2015, the effective access to second reception facilities for asylum seekers was often illusory. The extraordinary centres, CAS, whose activation was - and is - ordered by the Prefectures in case of lack of places in the ordinary system, represented - and represents - over the 70% of the facilities where asylum seekers were and are accommodated. Only a small number of asylum seekers were able to access the second reception system whose projects were - and are - voluntarily joined by the municipalities and whose places from 2011 onwards have always been seriously insufficient to cover the reception needs.

### Access to the system

The Decree Law 113/2018, implemented by L 132/2018, had brought a drastic change to the design of the Italian reception system, with consequences still affecting the accommodation system even if the law, in 2020, has again reformed it.

In particular, the tender specifications schemes for the first reception services had drastically lowered the costs of the first reception phase, eliminated the services and provided for a negligible number of operators compared to the number of accommodated (1 operator for 50 asylum seekers). Due to this tender specification schemes it de facto favoured the creation of large centres managed by multinationals or for-profit organizations and many of the small non-profit organizations and cooperatives were excluded from the accommodation panorama, thereby cancelling the positive effects on the territory in terms of employment and income.

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<sup>493</sup> Article 8 (2) Reception Decree, as amended by Decree Law 130/2020.

<sup>494</sup> Ibid.

<sup>495</sup> Article 11(1) Reception Decree, as amended by Decree Law 130/2020.

<sup>496</sup> Article 11(3) Reception Decree, as amended by Decree Law 130/2020.

The Decree Law 130/2020 has again conceived the reception system as a single system for asylum seekers and beneficiaries of international and special protection, even if organised in progressive phases. As in the past, however, there remains the strong limit of the voluntary adhesion of the municipalities to the second reception system and therefore of the scarce availability of places in these projects. The limit of indeterminacy regarding the actual passage from first reception centers to S.A.I. centers remains and there is still significant vagueness about the times in which this can happen. The law, as amended by Decree Law 130/2020, ensures the access to these centers only "within the limits of the available places"<sup>497</sup>, following the completion of unspecified obligations necessary to identify asylum seekers and to start the asylum procedure<sup>498</sup> and limiting the stay in CAS activated at times indicated as "strictly necessary".<sup>499</sup> Even in providing a "priority" access to the second reception facilities for vulnerable people, the law does not place any condition for this to actually take place.<sup>500</sup>

Even after the reform, SAI system is still conceived and indicated as primarily intended for beneficiaries of international protection and unaccompanied foreign minors. All the others access only in case of additional places available.<sup>501</sup>

### **Services provided**

The other important aspect affected by Decree Law 130/2020 is the type of services that asylum seekers can benefit from. In theory the following services should be provided: social and psychological assistance, cultural mediation, Italian language courses, legal information service and information on territorial services.<sup>502</sup> They are all services that the 2018 tender specification schemes had cancelled.

However, the picture that emerges from the new tender specification schemes published on 24 February 2021 on the Mol website<sup>503</sup> is not at all comforting. The services that with the previous specifications and regulatory framework had been zeroed are now effectively provided for and included in the accountable costs but the expected increase in costs for these services and above all the hourly amounts of the respective operators are so low that the forecast appears to be only a formula without content. That is, the specification reveals, how the actual interest in having these services actually implemented in first reception is in fact scarce null and void.

And this is extremely relevant considering that de facto asylum seekers spend all the time of the asylum procedure or most of it in the first reception centers or in CAS.

On paper, the same level of services is provided for asylum seekers who will access to the S.A.I before the recognition of an international or special protection: here asylum seekers will be able to benefit from "first level" services which do not include support for integration, job research, job orientation and professional training, limited to beneficiaries of international and special protection.<sup>504</sup>

However, in practice, due to the low level of services provided for the first accommodation facilities, there will be a significant difference between those who will live in Sai and those who will be accommodated in CAS or first reception facilities.

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<sup>497</sup> Article 8 (3) Reception Decree, as amended by DL 130/2020 and Article 9 (4 bis) regarding the passage from governmental centers to SAI.

<sup>498</sup> Article 9 (4 bis) Reception Decree as amended by DL 130/2020.

<sup>499</sup> Article 11 (3) Reception Decree as amended by DL 130/2020.

<sup>500</sup> Article 9 (4 bis) regarding the passage from governmental centers to SAI and Article 11 (3) Reception Decree regarding the passage from CAS to SAI.

<sup>501</sup> Article 1 sexies (1) DL 516/1989 according to which in the SAI system, dedicated to beneficiaries of international protection and unaccompanied minors, municipalities can also accommodate asylum seekers and holders of specified permits to stay.

<sup>502</sup> Article 10 (1) Reception decree, as amended by DL 130/2020.

<sup>503</sup> According to Article 12 Reception Decree.

<sup>504</sup> Article 1 sexies (2 bis) DL 416/1989, introduced by DL 130/2020.

Only unaccompanied children have immediate access to SAI. It is confirmed that local authorities can also accommodate in SAI victims of trafficking; domestic violence and particular exploitation; persons issued a residence permit for medical treatment, or natural calamity in the country of origin, or for acts of particular civic value.<sup>505</sup> Moreover, Decree Law 130/2020 states that local authorities can also accommodate in these facilities asylum seekers, holders of special protection, holders of special cases protection (former humanitarian protection),<sup>506</sup> and adults, former unaccompanied minors, who obtained a prosecution of assistance.<sup>507</sup> Holders of special protection, in case of application of the international protection exclusion clauses, are excluded from the SAI.

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

1. First aid and identification operations that continue to take place in the centres set up in the principal places of disembarkation.<sup>508</sup> First Aid and Reception Centres (CPSA),<sup>509</sup> created in 2006 for the purposes of first aid and identification before persons are transferred to other centres, and now formally operating as **Hotspots**.<sup>510</sup>
2. First assistance and reception, to be implemented in existing collective governmental centres or in centres to be established by specific Ministerial Decrees<sup>511</sup> This includes the centres previously known as governmental centres for accommodation of asylum seekers (CARA) and accommodation centres (CDA). The law now states that first assistance can also take place in temporary centres (CAS).<sup>512</sup>
3. Proper reception, to be carried out in SAI system, with an access provided as soon as possible and a prioritized access for vulnerable people.

As mentioned, however, the current reception system for asylum seekers is currently affected by the changes laid down by legislative decree 113/2018 and by the contextual tender specifications schemes, changes which have led to reception in large centres and rendered reception in small-scale facilities and apartments economically unsustainable.

As highlighted by several reports<sup>513</sup> and journalistic investigations, the 2018 security decree marked a net change in the reception approach, preferring a system based on big CAS centres, attracting profit companies, such as ORS.<sup>514</sup> The very low numbers of operators granted by the funds in proportion to the number of guests led to the loss of many jobs<sup>515</sup> and the services' cut made reception a mere management of food and accommodation, also reducing the positive effects on the host territories, in terms of income and socio-employment integration.<sup>516</sup>

<sup>505</sup> Article 1 sexies (1) DL 416/1989, as amended by DL 130/2020, citing Articles 18, 18-bis, 19(2)(d-bis), 20, 22(12-quater) and 42-bis TUI. The statuses in Articles 20 and 42-bis had been inserted by Decree Law 113/2018.

<sup>506</sup> Ibid, mentioning Articles 1 (9) DL 113/2018 (special cases); Article 19, (1, 1.1) TUI, amended by DL 130/2020.

<sup>507</sup> Article 1 sexies (1 bis) DL 416/1989, introduced by DL 130/2020. In some cases according to the law unaccompanied minors becoming adults can benefit of a further assistance (accommodation and help) up to 21 years. It is called "proseguo amministrativo"

<sup>508</sup> Article 8(2) Reception Decree, as amended by DL 130/2020, which now directly recalls Article 10-ter TUI L 563/1995.

<sup>510</sup> Article 10-ter TUI, inserted by Article 17 Decree Law 13/2017 and L 46/2017.

<sup>511</sup> Article 8 (2) Reception Decree, as amended by DL 130/2020, and Article 9 Reception Decree.

<sup>512</sup> Article 8 (2) as amended by DL 130/2020.

<sup>513</sup> Openpolis, Actionaid, Centri d'Italia, La sicurezza dell'esclusione, October 2019, available in Italian at: <https://bit.ly/2A0YZDx>.

<sup>514</sup> Valori, Dai timori alla realtà: «I centri-migranti sempre più ghetti senza servizi». E a Trieste rispunta ORS, 31 January 2020, available in Italian at: <https://bit.ly/2TvisTl>.

<sup>515</sup> Avvenire, Decreto Sicurezza. Accoglienza migranti in crisi, 15mila operatori rischiano il lavoro, 6 May 2019, available in Italian at: <https://bit.ly/3edXbWM>.

<sup>516</sup> Valori, Accoglienza migranti: i quattro fallimenti del decreto Sicurezza, 31 July 2019, available in Italian at: <https://bit.ly/3c0VIBs>.

Moreover, the new tender specification schemes published on 24 February 2021, brings no significant change to the first accommodation context that emerged after the 2018 reform.

In some cases, the farraginous control mechanisms of Prefectures, responsible for the establishment of CAS centres, have favoured the participation in the reception services of realities connected to underworld and false non-profit organizations, which, according to an investigation now underway, would have falsely attested services never actually performed. These would be contexts related to organized crime.<sup>517</sup>

Also, the distinction made by Decree Law 130/2020 between service levels dedicated to asylum seekers and the ones dedicated to beneficiaries replicates the erroneous logic to reserve resources for the integration for those who will benefit from international protection, contrary to a logic of protection and considerably slowing down the process of regaining self-sufficiency.

### **Covid-19: Quarantine ships**

Due to the Covid-19 emergency measures have been taken that affect access to reception. In some cases, quarantine and isolation are foreseen on board of ships.

The circulars of the Ministry of the Interior of 18 March<sup>518</sup> and 1 April 2020<sup>519</sup> provided that migrants upon arrival, and after health screening by the competent health authorities, are subjected to quarantine for a period of 14 days, and that only at the end of that period – in cases not positive to the virus - migrants can be transferred to other accommodation facilities.

The decree of the Head of the Civil Protection Department of 12 April 2020,<sup>520</sup> assigned the assistance on accommodation and health surveillance of these migrants to the responsibility of the Ministry of the Interior (Department of Civil Liberties and Immigration), through the operational help of the Italian Red Cross.<sup>521</sup> The same decree of 12 April also stated that the Civil Liberties and Immigration Department may use private ferries to isolate migrants rescued at sea for the period of quarantine or fiduciary isolation in cases where Italy cannot be considered a "safe harbour" (pursuant to the decree of 7 April<sup>522</sup>) or arrived on the national territory following autonomous landings. The operators of the Italian Red Cross carry out health surveillance on board.

Over the months, the procedure has been also used for asylum seekers already present in Italy in reception centres. In September, a notice published by the Civil Protection provided for the use of quarantine ships for migrants arriving on the national territory from land borders, in particular in Friuli Venezia Giulia, where it is not possible to identify other areas or facilities to be used for accommodation.<sup>523</sup>

On 10 December 2020, 150 Italian and international organizations, including ASGI, signed a document asking the Ministry of the Interior, the Ministry of Transport, the Ministry of Health, and the Civil Protection Department to close the quarantine management model with ships.<sup>524</sup> The associations raised strong alarm regarding detention on ships and quarantine centers violating the prohibition of discrimination as it is implemented in different ways for foreign citizens and in such a way as to determine deprivation of personal freedoms. The associations complained about the complete absence of official information on what happens on board of these ships. From a health point of view, quarantine on board of ships makes

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<sup>517</sup> Repubblica, Parma: Fake Onlus: l'indagine sull'accoglienza dei migranti tocca Parma, 2 July 2019, available in Italian at: <https://bit.ly/2A2InLE>.

<sup>518</sup> MoI Circular 18 March 2020, available at: <https://bit.ly/3tHdIJQ>

<sup>519</sup> MoI Circular, 1 April 2020, available at: <https://bit.ly/2RJ28AM>

<sup>520</sup> Decree of the head of the Civil Protection Department, 12 April 2020, available at: <https://bit.ly/33Bfkuf>

<sup>521</sup> On 8 May 2020, the MoI signed an agreement with the Red Cross for the management of the emergency on board quarantine vessels, agreement available at: <https://bit.ly/2QdjnKc>

<sup>522</sup> According to Inter Ministerial Decree of 7 April 2020, it should be applied to people rescued by foreign ships outside the Italian SAR zone, Decree available at : <http://www.immigrazione.biz/legge.php?id=1005>

<sup>523</sup> Civil Protection, 10 September 2020, available at: <https://bit.ly/3w5FVMI>

<sup>524</sup> Critical issues in the quarantine ship system for migrants analysis and requests del sistema navi quarantena per persone migranti analisi e richieste, available in English at: <https://bit.ly/3tGJSFm>

it impossible to distance and completely isolate positive cases and risks exacerbating previous health problems and psychological distress.<sup>525</sup>

According to two humanitarian workers of the Red Cross on board of a quarantine ship, the ships present situations of promiscuity of minors with adults, scarcity of medical personnel and inadequate spaces. The two workers also explained that due to the common spaces people negative to the covid-19 test came into contact with positive cases and were forced to prolong their isolation. They also spoke about people and families brought in isolation from reception centers even at night and frightened because, not informed of what was about to happen to them, they thought that getting on board meant being repatriated.<sup>526</sup>

On 20 May 2020, a 28-year-old Tunisian boy drowned after jumping overboard from a quarantine ship to swim to the coast.<sup>527</sup> In October 2020, a 15 year old child, rescued from the open arms and then quarantined on the Allegra ship, died, after ten days on the ship, due to his worsening health conditions, which was not related to Covid-19. This could probably have been prevented if he was promptly moved to the mainland for more adequate health treatments and monitoring.<sup>528</sup>

As recorded by ASGI and by local associations in Sicily, there have been numerous cases of migrants in quarantine held in isolation for periods longer than 14 days, resulting in the restart of the quarantine from the arrival of a new group of migrants.

Between September and October 2020, the Ministry of the Interior, supported by the Red Cross, has transferred hundreds of foreign citizens who tested positive for Covid-19, and who were already accommodated in reception centers on the land to these quarantine ships.<sup>529</sup>

Following a visit on a quarantine ship<sup>530</sup>, the Guarantor for the rights of detained persons highlighted two critical aspects: the effectiveness of the information on the rights due to the absence of written and multilingual materials available to Red Cross workers and volunteers, and the difficulty in dealing with people to immediately recognize vulnerabilities.<sup>531</sup> These issues were confirmed by the interviews conducted - between the second half of May and the beginning of November 2020 - from the In Limine project, to 82 persons who, after their arrival in Italy, spent quarantine aboard one of the ships.<sup>532</sup>

### Financing, coordination and monitoring

The overall activities concerning the first reception and the definition of the legal status of the asylum seeker are conducted under the programming and criteria established by both national and regional Working Groups (*Tavolo di coordinamento nazionale e tavoli regionali*).<sup>533</sup> The Department of Civil Liberties and Immigration of the Ministry of Interior, including through the Prefectures, conducts control and monitoring activities in the reception facilities. To this end, the Prefectures may make use of the municipality's social services.<sup>534</sup>

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<sup>525</sup> See also on this point "A distress call for human rights", report of the Council of Europe Commissioner for Human Rights about the Confinement on ships as a method of "disembarkation", March 2021, available at: <https://bit.ly/3eFa9zF>.

<sup>526</sup> Redattore sociale, Navi quarantena, due operatori umanitari raccontano quel sistema sbagliato che sospende il diritto, 24 December 2020, available at: <https://bit.ly/3tCEkvD>

<sup>527</sup> La Repubblica, *Migrante si getta in mare dalla Moby Zazà: morto*, 28 luglio 2020.

<sup>528</sup> AGI; Il calvario 'europeo' di Abou, morto dopo lo sbarco dalla nave quarantena, 7 October 2020, available at: <https://bit.ly/3eEYbpE>

<sup>529</sup> Open Migration, il trasferimento di uomini e donne già presenrti sul territorio italiano sulle navi quarantena è illegale, 9 October 2020, available at: <https://bit.ly/3w5HWbn>

<sup>530</sup> Visit on Rhapsody, quarantine ship, on 17 September 2020, available at: <https://bit.ly/3hIDCAj>

<sup>531</sup> Guarantor for the rights of detained persons, 28 October 2020, available at: <https://bit.ly/3bk72eG>

<sup>532</sup> See In Limine, Report "Rights on the skids. The experiment of quarantine ships and main points of criticism", 7 May 2021, available at: <https://bit.ly/2R8ap1j>

<sup>533</sup> Article 9(1) Reception Decree.

<sup>534</sup> Article 20(1) Reception Decree.

The Decree of 20 November 2018, through which the Ministry of Interior adopted the tender specifications scheme (*capitolato d'appalto*) for the supply of goods and services related to CPSA, first reception centres, CAS and CPR<sup>535</sup> and which only foresees a basic level of services and drastically reduces funding for the centres still needs to be replaced by a new one to provide coverage for the new services provided by law in first accommodation and CAS facilities (see further [Forms and Levels of Material Reception Conditions](#)).

## A. Access and forms of reception conditions

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

Indicators: Criteria and Restrictions to Reception Conditions			
1. Does the law make material reception conditions to asylum seekers in the following stages of the asylum procedure?			
❖ Regular procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Dublin procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Border procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Accelerated procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ First appeal	<input 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	

The Reception Decree sets out the reception standards for third-country nationals making an application for international protection on the territory, including at the borders and in the transit zones or in Italian territorial waters.<sup>536</sup>

It provides that reception conditions apply from the moment destitute applicants have manifested their willingness to make an application for international protection,<sup>537</sup> without conditioning the access to the reception measures upon additional requirements.<sup>538</sup> Destitution is evaluated by the Prefecture on the basis of the annual social income (*assegno sociale annuo*).<sup>539</sup>

In practice, the assessment of financial resources is not carried out by the Prefectures, which to date have considered the self-declarations made by the asylum seekers as valid. However, during the accommodation period, Prefectures could change their decision in the event, for example, that the person accommodated has a job, even temporary. In 2020 this had led in many cases to the withdrawal of the reception conditions (see after).

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

According to the practice recorded in recent years and continuing in 2020, even though by law asylum seekers are entitled to material reception conditions immediately after claiming asylum and undergoing initial registration (*fotosegnalamento*), they may access accommodation centres only after their claim has been lodged (*verbalizzazione*). This implies that, since the *verbalizzazione* can take place even months after the presentation of the asylum application, asylum seekers can face obstacles in finding alternative

<sup>535</sup> According to Article 12 Reception Decree.

<sup>536</sup> Article 1(1) Reception Decree.

<sup>537</sup> Article 1(2) Reception Decree.

<sup>538</sup> Article 4(4) Reception Decree.

<sup>539</sup> Article 14(1) and (3) Reception Decree. For the year 2019 the amount corresponded to €5,953.87 and for 2020 to € 5,977.79

temporary accommodation solutions. Due to this issue, some asylum seekers lacking economic resources are obliged to either resort to friends or to emergency facilities, or to sleeping rough.<sup>540</sup>

In 2020, the access and the time of access to reception facilities were strongly influenced by the health measures taken to prevent Covid-19. These measures were different throughout the national territory. In some border areas, such as Trieste and Udine, effective access to reception is preceded by a 14-day quarantine (in some cases reduced to 10 days)<sup>541</sup> in public facilities, set up by the Prefectures, where people accommodated are already considered asylum seekers, benefitting from some services, albeit limited by the health measures.

Due to the pandemic, both transit areas (Ventimiglia and Oulx) suddenly found themselves - totally or partially - without accommodation facilities, while the flows that had slowed down in the first months of the year returned to earlier levels after spring. In Ventimiglia, despite a drop in flows, local associations have provided assistance to about 250 people a day.

On 31 July 2020 the Roja Camp, managed by the Italian Red Cross, was closed.<sup>542</sup> Being the only formal place of accommodation for people in transit, its closure has led to the proliferation of informal settlements and the occupation of public spaces to deal with winter nights. The facilities provided by the local Caritas are able to guarantee only a limited number of places for single parent and children.<sup>543</sup>

In February 2021, rooms set up at the Bardonecchia station, which constituted the only form of government reception, were made inaccessible due to the covid-19 epidemic. Two structures therefore remain accessible: the first located in Oulx in front of the station and managed by the "Fraternity Massi - Talità Kum" in agreement with the Municipality of Oulx; and the second which consists of a former cantonal house managed by a group of activists (Chez JesOulx). The latter hosts most of the migrants.<sup>544</sup>

According to data provided by the Minister of the Interior, in mid-September, there were about 3,000 people in quarantine or isolation in facilities on the mainland, while more than 2,000 were located on five quarantine ships.<sup>545</sup>

On 23 August, the President of the Sicilian Region prohibited through an ordinance entry to the regional territory of all migrants who arrived on the Sicilian coasts and ordered the transfer of all migrants present in the hotspots and in reception facilities to other facilities outside Sicily. The ordinance, which was supposed to be valid from 24 August to 10 September, was immediately suspended by the Regional Court of Sicily, as the provision went beyond the scope of the powers attributed to the Regions and, the existence of a concrete aggravation of the health risk as a consequence of the migratory phenomenon did not appear to be supported by an adequate and rigorous investigation.<sup>546</sup>

More in general, in case of disembarkation, people are moved to ships or to territorial facilities for the quarantine. Sometimes they are first placed in hotspots and then on the ships. After the quarantine in southern Italy, people are distributed along facilities throughout Italy. At their arrival in the facilities they could be subject to another Covid-19 test before being allowed to enter the facility. This happens, for

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<sup>540</sup> For more information, see MSF, *Fuori campo*, February 2018, available in Italian at: <http://bit.ly/2Gagwa2>; *Fuori campo*, March 2016, available in Italian at: <http://bit.ly/2letTQd>, 11; ANCI *et al.*, *Rapporto sulla protezione internazionale in Italia*, 2014, available in Italian at: <http://bit.ly/15k6twe>, 124.

<sup>541</sup> Moi Circular 1 April 2020, Ministry of Health Circular 12 October 2020; Also, according to Article 8 of the Decree of the Prime Minister issued on 18 January 2021, the fiduciary isolation is provided for 14 days for people coming from some countries. Available at: <https://bit.ly/3y5ppha>

<sup>542</sup> Parole sul confine, "Il Campo Roja di Ventimiglia ha definitivamente chiuso", 24 August 2020, available at: <https://bit.ly/3y5pnWA>

<sup>543</sup> See ASGI, Medea project, 21 February 2021, available at: <https://bit.ly/3y0oJtr>

<sup>544</sup> See ASGI, See ASGI, Medea project, 21 February 2021, available at: <https://bit.ly/3obV1gd>

<sup>545</sup> See : <https://bit.ly/2RKp175>

<sup>546</sup> See Regional Court for Sicily, decision no. 842/2020 of 27 August 2020, available in Italian at: <https://bit.ly/2RdY37F>; see also Adnkronos, Migranti, Tar Sicilia sospende ordinanza Musumeci, 27 August 2020, available at: <https://bit.ly/3ydYSyJ>

example, upon arrival in Turin: asylum seekers are subject to covid-19 tests and quarantined until the result is reached.

People arriving from land borders or from autonomous disembarkations have to present themselves to Questuras to access the asylum procedure and reception measures. In this case, sometimes access to reception facilities is subject to negative results of a covid test or health triage. Other times, to a period of quarantine in dedicated facilities, but this depended on the availability of such facilities. Only in some cases, such as the one mentioned in Trieste, access to reception facilities is immediate and the facility is specifically dedicated to asylum seekers.<sup>547</sup>

On September 2020, in Udine, about thirty asylum seekers, arriving from the Balkan route, were forced to quarantine on board of a bus, where they slept and ate, without toilets to wash themselves and under the constant control of the police who prevented them from leaving the bus. They stayed there for more than a week. As pointed out by Action Aid, ASGI, INTERSOS and other organizations in Udine, those conditions were detrimental to human dignity and did not respect the minimum reception standards. It amounts to inhuman and degrading treatment prohibited by article 3 of the European Convention on Human Rights.

In some cases, mainly in hotspots or on ships, the quarantine lasted well beyond 14 days due to the entry of other people disembarked, which restarted the quarantine days, resulting in a de facto detention.

A survey<sup>548</sup> conducted by the National Institute for Health Migration and Poverty from 11 May 2020 to 12 June 2020, on 73.7% of reception facilities (5,038 out of 6,837), highlighted how, worryingly, the isolation of persons who tested positive had occurred inside the facility in a quarter of the cases and that, out of these, only 54% were isolated in a single room with exclusive services.

A monitoring conducted by the associations part of the Tavolo Asilo and Tavolo Immigrazione e Salute, (National Asylum Table, Immigration and Health Table) published in June and updated in February 2021 highlighted the critical absence of institutional indications, which had led the facilities to organize their own solutions that had produced effective protection of the guests, but also had significantly **reduced the reception capacity**.<sup>549</sup> (see reception conditions). In the February update, it is reported that in one case in ten the access to accommodation stopped, partly (3%) due to the lack of procedures ensuring the safety of the guests and operators; but also due - in 7% of cases - to the absence of requests for the access of potential guests from the relative Institutions (SPRAR / SAI / Prefecture / Municipality / free number Anti-trafficking).

## 1.2. Reception at second instance

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

However, when appeals have no automatic suspensive effect, the applicant remains in the same accommodation centre until a decision on the suspensive request is taken by the competent judge. If this

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<sup>547</sup> See Report Migrants 2020, Elena Rozzi, "L'accoglienza ai tempi del coronavirus", available in Italian at: <https://bit.ly/3fgTgut>

<sup>548</sup> Covid-19 national survey on the reception facilities for migrants", National Institute for Health Migration and Poverty, available in Italian at: <https://bit.ly/3y8tGQH>, 9 August 2020.

<sup>549</sup> Tavolo Asilo Nazionale, Tavolo Immigrazione e Salute, "Dossier Covid-19, procedure, condizioni di sicurezza, criticità nei sistemi di accoglienza in Italia", available in Italian at : <https://bit.ly/3vREOj8>, June 2020; update, 25 February 2021, available at: <https://bit.ly/3tGtLI6>, 25 February 2021.

request is positive, the applicant remains in the accommodation centre where he or she already lives.<sup>550</sup> Where the appeal is made by an applicant detained in a CPR requesting the suspensive effect of the order, in case it is accepted by the judge, the person remains in the CPR or, if the detention grounds are no longer valid, he or she is transferred to governmental reception centres.<sup>551</sup>

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

## 2. Forms and levels of material reception conditions

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

1. Amount of the monthly financial allowance/vouchers granted to asylum seekers as of 31 December 2020 (in original currency and in €): €75<sup>552</sup>

According to the law, the scope of material reception conditions and services offered to asylum seekers shall be defined by decree of the Ministry of Interior so as to guarantee uniform levels of reception across the territory, taking into account the peculiarities of each type of reception centre.<sup>553</sup> The Reception Decree provides for a monitoring system in reception centres by the Prefecture, through the social services of municipalities.<sup>554</sup>

The latest decree approving the tender specifications schemes (*capitolato d'appalto*) was adopted on 24 February 2021.<sup>555</sup>

Under the tender specifications schemes issued following Decree Law 113/2018, the daily amount per person allocated to the centres' management was reduced from €35 to €21, *de facto* forcing contractors to opt for large centres, reducing the number of operators and the activities offered in the centres. As expected, government policies on the design of the reception system opened a market for large companies<sup>556</sup>.

According to the new tender specification schemes, adopted after the extension of the first reception services implemented by Decree Law 130/2020, the average costs to be placed on the basis of the contract increased (for non-collective structures up to 50 places) from €21 of the old specifications to €28 of the current one. A cost that does not appear sufficient to favour small facilities, even taking into account that there are additional services (Italian language courses, legal orientation, psychological support, albeit to a minimal extent). For collective structures the costs are higher (33 for collective structures up to 50 places) and this confirms once again little or no interest in favouring the reception in small structures scattered throughout the territory on the model of the SAI system which avoids ghettoization and favours integration.

The new tender specification schemes guarantee basic needs such as personal hygiene, pocket money, and €5 for phone cards and, compared to the Capitolato published in 2018, it also covers: Italian language courses; orientation to local services; psychological support. As the 2018 one, it confirmed the replacement of legal support with a "legal information service". Contrary to the 2017 specifications it does

<sup>550</sup> Article 14(4) Reception Decree.

<sup>551</sup> Article 14(5) Reception Decree.

<sup>552</sup> See attachment B, point 10, to the tender specification scheme, valid for first accommodation centers and CAS, available at: <https://bit.ly/3bkUEuM>

<sup>553</sup> Article 12(1) Reception Decree.

<sup>554</sup> Article 20(1) Reception Decree.

<sup>555</sup> Ministry of Interior Decree published on 24 February 2021, available in Italian at: <https://bit.ly/3tGSWtO>.

<sup>556</sup> Valori, *Migranti gli sciacalli della finanza brindano a Salvini*, January 2019, available in Italian at: <https://bit.ly/2TE4TmV>.

not cover professional training, leisure activities and job orientation, activities not covered for asylum seekers neither in SAI system.

As it can be seen from the table below, for reception facilities up to 50 guests the following services are foreseen: 10 hours a day of a daytime operator and 8 of nighttime operator which is still equivalent to the previous specification schemes, 1 operator every 50 guests; six hours per week for psychological support (7 minutes per person per week); 4 hours per week for orientation to local services and legal information (4.5 minutes per person per week); 4 hours of Italian language courses per week; 10 hours per week of linguistic mediation (even reduced from the 12 of the 2018 specification schemes and corresponding to 12 minutes per week per person).

	Up to 50 places	51 to 100 places	101 to 300 places	301 to 600 places	601 to 900 places
Daytime worker	1 worker 10 hours a day	2 workers 18 h a day	2 workers up to 150 and 3 workers from 151 for 12 hours a day;	3 workers up to 300 and 1 more each 125 more places, 12 hours a day	5 workers up to 600 + 1 each more 100, 12 h a day
Night time worker	1 worker 8 hours a day	1 worker 12 h a day	1 worker up to 150 + 1 from 151 for 12 h a day	2 workers up to 300+ 1 each 150, for 12 h a day	3 workers up to 600 + 1 each 250, 12 h a day
Director	18 h a week	24 h a week	30 h a week	36 h a week	36 h a week
Nurse		16 h a week	6 h a day	12 h a day	16 h a day
Doctor	Available 4 a day for 7 days	12 h a week	24 h a week	36 h a week	42 h a week
Psychologist	6 h a week	12 h a week	24 h a week	36 h a week	42 h a week
linguistic mediation	10 h a week	12 h a week	24 h a week	36 h a week	42 h a week
Italian language	4 h a week	12 h a week	24 h a week	48 h a week	72 h a week
Legal information	4 h a week	7 h a week	9 h a week	17 h a week	22h a week

Source: attachment A (table) to the tender specification schemes, Mol<sup>557</sup>

The services that disappeared from the 2018 specifications, are now again foreseen but in such a minimal form that they do not meet the real needs, and can therefore be considered useless. No specific services for vulnerable people are provided, thus leaving the protection of these persons to purely voluntary contributions.

In 2019 many calls went without proposals due to the limited funding and services offered in the tender. Therefore, many Prefectures had to renegotiate the tenders in order not to leave the reception centres uncovered.<sup>558</sup> With the express purpose of dealing with deserted calls and homogenizing the responses of Prefectures in their territories, as of 4 February 2020, the new Mol issued a Circular allowing Prefectures to minimally vary the auction bases.<sup>559</sup>

<sup>557</sup> Mol website, Attachment A available at: <https://bit.ly/3tCYghX>.

<sup>558</sup> According to the report published by Openpolis and Actionaid on October 2019, from the entry into force of the new tender specifications schemes (10 December 2018) to the beginning of August 2019, out of the 428 procurement contracts banned by 89 Prefectures, more than half were extensions of ongoing contracts or procedures aimed at solving specific situations, usually to find temporary solutions pending the put in place of the new system. See the first part of the report available at : <https://bit.ly/3bRPbZO>.

<sup>559</sup> Mol Circular, 4 February 2020, available at: <https://bit.ly/36rb6WQ>.

The suggested flexibility of the tender specifications schemes, limited to an increase around € 3 per day, did not affect in any way the type, quality and quantity of services to be guaranteed as it only allowed to adjust the daily amount to the different costs of the accommodation facilities leased along the national territory and to foresee an increase on surveillance services, in line with the preference for big centres, aimed at control rather than integration of the asylum seekers.<sup>560</sup>

Moreover, the circular allowed Prefectures to admit, in selecting the managing companies, to derogate from the minimum professionalism requirements indicated in the tender specification scheme, including, for example, the minimum three-year experience in accommodation services.

As documented by Actionaid and Openpolis, the tender specification schemes resulted in 2019 in the disappearance of many small centres (CAS); also because small associations and cooperatives refused to take part in a reception system based on the mere control of migrants.<sup>561</sup> In Rome and Milan the accommodation scene saw the prevalence of big social cooperatives (Medihospes in Rome and Versoporobo in Milan) and the appearance of profit-making organizations without any social purpose such as Ospita Srl, Engel Italia Srl, Nova Facility and Ors Italia srl.<sup>562</sup>

The appeals filed by small and specialized social cooperatives and non-profit organizations against the call for tenders were rejected by the Administrative Tribunal of Lazio.

In relation to financial allowances i.e. pocket money for personal needs, each asylum seeker hosted in first reception centres receives €2.50 per day. Although the level pocket money in CAS is agreed with the competent Prefecture, according to the Decree of 24 February 2021, the amount received by applicants hosted in CAS should be €2.50 per day for single adults and up to €7.50 for families.

The Reception Decree does not provide any financial allowance for asylum applicants who are not in accommodation.

### 3. Reduction or withdrawal of reception conditions

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

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

According to Article 23(1) of the Reception Decree, the Prefect of the region where the asylum seeker's accommodation centre is placed may decide, on an individual basis and with a motivated decision, to revoke material reception conditions on the following grounds:<sup>563</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>560</sup> Redattore Sociale, Accoglienza migranti, più fondi ma sui servizi non si cambia. "Solo maquillage", 6 February 2020, available in Italian at: <https://bit.ly/2zrLJYL>.

<sup>561</sup> Actionaid, Openpolis, La sicurezza dell'esclusione, Second part, December 2019, available in Italian at : <https://bit.ly/3d0z65i>.

<sup>562</sup> Openpolis and Actionaid report that in Rome 83.5% reception places are located in large centres. Medihospes manages 63% of all reception places. In Milan, 64% of reception places are provided in large centres. See: <https://bit.ly/2ysJleg>; for a complete picture of the accommodation system in Milan see NAGA, Senza Scampo, December 2019, available at: <https://bit.ly/2M5Inxr>; see also Internazionale, Il decreto Salvini ha favorito il "business dell'accoglienza", 17 February 2020, available at: <https://bit.ly/3ep41sD>.

<sup>563</sup> See also Article 13 Reception Decree.

- (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.

The law does not provide for any assessment of destitution risks when withdrawing reception. However, while assessing the withdrawal of reception conditions, the Prefect must take into account the specific conditions of vulnerability of the applicant.<sup>564</sup>

Asylum seekers may lodge an appeal before the Regional Administrative Court (*Tribunale amministrativo regionale*) against the decision of the Prefect to withdraw material reception conditions.<sup>565</sup> To this end, they can benefit from free legal aid.

Available figures seem to corroborate an overly broad use of withdrawal provisions. According to an investigation carried out by Altreconomia since 2017 and updated in 2019, on the basis of data from 60 Prefectures out of 106, between 2016 and 2019, at least 100,000 asylum seekers and beneficiaries of international protection lost the right to accommodation in reception centres. No data for 2020 are available.

### Departure from the centre

According to the Reception Decree, when asylum seekers fail to present themselves to the assigned centre or leave the centre without informing the authorities, the centre managers must immediately inform the competent Prefecture.<sup>566</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>567</sup>

Certain Prefectures have interpreted this ground particularly strictly:

**Veneto:** in the case of a woman seeking asylum, victim of trafficking, who had left the centre because of the criminal organization that had forced her into prostitution, and which she had later reported to police, the prefecture of Padua had not recognized force majeure and had remained silent on the request for reinstatement of the reception measures. The Administrative Regional Court of Veneto, with a decision of 11 November 2020, accepted the appeal, ordering the Prefecture to adopt a decision and, pending the decision, to arrange a provisional reception for the lady.<sup>568</sup>

**Campania:** On 16 June 2017, the Prefecture of Naples adopted a new regulation to be applied in CAS. The regulation provides for the "withdrawal of reception measures" in case of unauthorised departure from the centre even for a single day, also understood as the mere return after the curfew, set at 22:00, and at 21:00 in spring and summer. ASGI has challenged the regulation before the Council of State claiming a violation of the law, as the Prefecture has effectively introduced a ground for withdrawal of reception conditions not provided in the law but the Council of State rejected the appeal believing that the regulation did not automatically lead to the withdrawal of the reception measures, as the recipients were allowed to represent their reasons to the administration.<sup>569</sup>

**Tuscany:** As of 14 May 2019, the Council of State (Consiglio di Stato) confirmed the decision of the Administrative Court of Tuscany against a Prefecture of Tuscany and accepted the appeal lodged by an asylum seeker whose reception conditions had been withdrawn due to the absence of one night from the

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<sup>564</sup> Article 23(2) Reception Decree.

<sup>565</sup> Article 23(5) Reception Decree.

<sup>566</sup> Article 23(3) Reception Decree.

<sup>567</sup> Article 23(3) Reception Decree.

<sup>568</sup> TAR Veneto, decision of 11 November 2020, case n. 851/2020, available at: <https://bit.ly/3y5uxli>

<sup>569</sup> Council of State, decision 06454/2019 of 26 September 2019.

reception centre. The Council of State noted that this behaviour should be considered a departure from the centre and not abandonment and that as such it can only cause the withdrawal of the reception conditions if duly justified as a serious violation of the house rules.<sup>570</sup>

**Lombardy:** As reported by NAGA<sup>571</sup>, during 2019 the Prefecture of Milan has started a greater control of the night registers, exerting pressure on the CAS centres' management so that individual absences had to be communicated immediately. As a result, the centres no longer have any chance to manage the guests' absence, in the light of their personal situation. As of 19 February 2020, the Administrative Court of Lombardy cancelled the withdrawal decision adopted by the Prefecture of Milan on 6 November 2019, observing that the absence from the facility for one night does not mean an abandonment of the centre and that in any case the measure violates Article 20 of the Reception Directive because it is not proportionate and it does not ensure respect for human dignity.<sup>572</sup>

## 2.1. Violation of house rules and violent behaviour

In case of violation of the house rules of the centre or of violent behaviour, the manager of the reception facility shall send to the Prefecture a report on the facts that can give rise to the potential withdrawal of reception conditions within 3 days from their occurrence.<sup>573</sup> The duty to involve the asylum seeker in the procedure and to allow him or her to make submissions prior to the issuance of a decision was highlighted in a recent ruling of the Administrative Court of **Campania**, which annulled a decision taken solely on the basis of declarations made by the manager of a reception facility in Naples.<sup>574</sup>

The law does not clarify what is meant by "serious violations" of the centre's house rules and, in ASGI's experience, this has allowed Prefectures to misuse the provision revoking reception measures on ill-founded grounds. According to ASGI, such misuse of the provision amounts to a violation of the Article 20 of the recast Reception Conditions Directive according to which the withdrawal of reception conditions should be an exceptional measure. It also infringes Article 20 of the Directive since it does not include measures through which the reception measures may be reduced without being completely withdrawn.

Prefectures have interpreted conditions strictly or have considered certain forms of conduct to be "serious" without evaluating them in the context in which they occurred:

**Liguria:** On 15 October 2019, the Council of State confirmed the decision of the Prefecture of Savona which had considered the absence of an asylum seeker from the centre for one night a serious violation of the house rules.<sup>575</sup>

Similarly, in **Friuli Venezia Giulia:** by the end of January 2020, the Prefecture of Pordenone notified the withdrawal of the reception conditions to an asylum seeker from Peru because of his absence from the centre for one night. The man had formalized his asylum application only one month before, therefore he was not even admitted to work to sustain himself. On 15 May 2020 the Administrative Court of Friuli Venezia Giulia ordered the Prefecture to make a new exam of the withdrawal decision before 30 of June 2020, taking into account the Article 20 of the recast Reception Conditions Directive.<sup>576</sup> However the Prefecture confirmed with a new order the withdrawal of the accommodation, not taking into account Article 20 of the EU Reception Directive and the CJEU decision in the Habqin-case (C-233/18). Following a new appeal, in December 2020, the Administrative Court of Friuli Venezia Giulia cancelled the withdrawal. Significantly, the Court assessed the applicant's interest in the decision, who in the meantime had chosen to abandon the reception facility, because a confirmation of the withdrawal would have

<sup>570</sup> Consiglio di Stato, decision 1322/2019, 14 May 2019, available in Italian at: <https://bit.ly/2Twnlk>.

<sup>571</sup> NAGA, Senza Scampo, December 2019, available in Italian at: <https://cutt.ly/byOB3Wr>.

<sup>572</sup> Administrative Court of Lombardy, decision 329/2020, 19 February 2020.

<sup>573</sup> Article 23(4) Reception Decree.

<sup>574</sup> Administrative Court of Campania, Decision 5476/2018, 12 September 2018, available in Italian at: <https://bit.ly/2VJU2VL>.

<sup>575</sup> Council of State, 15 October 2019, decision 7018/2019, available at: <https://cutt.ly/xyOB75i>.

<sup>576</sup> Administrative Court of Friuli Venezia Giulia. Interim measure n. 42/2020, 15 May 2020.

prevented him in the future, if his personal conditions had changed, to access that reception system or to Siproimi (now SAI).<sup>577</sup> The court considered his interest still valid because the withdrawal of reception conditions prevents new access to accommodation in case the asylum seeker needs it again.

On 26 September 2018, the Administrative Court of **Tuscany** asked the CJEU to rule on the compatibility of Article 23 of the Reception Decree with Article 20(4) of the recast Reception Conditions Directive, to ascertain whether violations of general rules of the domestic legal system, not specifically laid down in the house rules of the reception centres, can constitute serious violations of the house rules for the purpose of withdrawing reception conditions.<sup>578</sup>

On 15 April 2020 the Administrative Court of **Tuscany** decided to disapply Article 23 (let. e) of the Reception decree considered contrary to Article 20 of the recast Reception Conditions Directive<sup>579</sup> (see further par. 3.3.). The same Court with other subsequent pronunciations confirmed the decision.<sup>580</sup>

**Lombardy:** by decision of February 19, 2021, the Administrative Court of Brescia cancelled the withdrawal of the reception measures decided by the Prefecture of Brescia against an asylum seeker who had been denounced for having proposed to a police officer in civilian clothes the purchase of Narcotics. The Court found the decision contrary to Article 20 of the Reception Directive as interpreted by the Court of Justice, Haqbin judgment C-233/18.<sup>581</sup>

On 30 December 2020, the **Council of State** raised a preliminary question to the CJEU asking if Article 20, paragraphs 4 and 5, of the Reception Directive, precludes national legislation that provides for the revocation of the reception measures against the applicant who does not fall within the category of "vulnerable persons", in the event that the applicant is believed to be the perpetrator of particularly violent behavior, carried out outside the reception centre, which resulted in the use of physical violence against public officials and / or persons in charge of public service, causing injuries to the victims.<sup>582</sup>

## 2.2. Possession of sufficient resources

Another worrying practice relates to withdrawal of reception conditions for reasons of sufficient resources (see [Criteria and Restrictions to Access Reception Conditions](#)).

Prefectures use the annual social income level to evaluate the sufficiency of the applicant's financial resources to justify the withdrawal of reception conditions. According to the Reception Decree, if it is established that the applicant is not destitute, the applicant is required to reimburse the costs incurred for the measures from which he or she has unduly benefitted.<sup>583</sup>

In several cases in 2019, as in 2018, however, Prefectures have withdrawn reception conditions based on a decision that does not comply with the law or the spirit of the recast Reception Conditions Directive. For example, the Prefecture of Pordenone, **Friuli-Venezia Giulia** decided to withdraw reception conditions of persons who started to work based on a mere assumption of sufficient economic resources. In one case, the decision was taken with retroactive effect, as of the month following the starting date of employment, even though the person's financial remuneration had not exceeded the reference limit set by law. On 13 March 2019, the Administrative Court of Friuli-Venezia Giulia rejected the appeal lodged in this case considering that the choice of the Administration to evaluate the applicant's income conditions

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<sup>577</sup> Administrative Court of Friuli Venezia Giulia, 451/2020, 22 December 2020.

<sup>578</sup> Administrative Court of Tuscany, 1481/2018, 12 November 2018, EDAL, available at: <https://bit.ly/2VKeHsL>.

<sup>579</sup> Administrative Court of Tuscany, decision no 00437/2020 of 15 April 2020.

<sup>580</sup> Administrative Court of Tuscany, decision no 1060, 22 September 2020; decision no. 1263, 22 October 2020.

<sup>581</sup> Administrative Court of Brescia, decision no. 00167/2021, 17 February 2021, published on 19 February 2021.

<sup>582</sup> Council of State, order no. 8540/2020, of 30 December 2020

<sup>583</sup> Article 23(6) Reception Decree.

on the basis of a prognostic criterion, calculated over a reasonable period of observation, was in accordance with the purposes and criteria of the state of indigence's assessment.<sup>584</sup>

On 18 November 2020, the Administrative Court of Friuli Venezia Giulia cancelled the provision through which the Prefecture of Pordenone had requested a refund of over 9,000 € from an asylum seeker accommodated in Pordenone reception system and who, in 2019, had worked and received income for an amount higher than the social allowance. Contradictorily, the Prefecture of Pordenone had confirmed the stay in reception because the beneficiary was unemployed, but had revoked the accommodation measures ex post for the previous year, asking for a refund for the reception received for an amount even higher than the working income. The Court, invoking art. 20 (3) of the Reception Directive, specified that the applicant "has concealed financial resources", "and that in any case the amount of the reimbursement requested must be proportionate and such as to allow a decent standard of living to the asylum seeker".<sup>585</sup>

In 2020 the Prefecture of Pordenone request such high reimbursements from many asylum seekers, but not all of them were able to submit an appeal before the competent Court. Similarly, in 2020, as recorded by ASGI, the Prefecture of Bergamo asked for high reimbursements assuming exceeding income limits even in cases where the limit was not actually reached. In one case, the amount requested was 12,000 euros.

In other cases Prefectures have taken a withdrawal decision solely based on a presumption of existence of resources. In 2018, this was the case in Matera, **Basilicata** where the Prefecture revoked reception conditions of asylum seekers who had been employed. On 3 January 2019, ASGI sent a letter to the Prefecture of Matera requesting a review of the decisions and asking it to ascertain the effective sufficiency of resources for the asylum seeker involved in the procedures.<sup>586</sup>

In 2019 the Administrative Court of Basilicata accepted the appeals lodged by 7 young asylum seekers, lodged in CAS facilities of Matera whose reception conditions were revoked due to the fact that "they had carried out work activities". The decisions did not take into account the gains, nor the stability of the revenues, nor the vulnerability of the people involved. The applicants had worked as labourers in the countryside of the Metaponto, but only occasionally and for very low wages.<sup>587</sup>

On 15 April 2020 the Administrative Court of Tuscany cancelled the withdrawal of the reception conditions decided against a Pakistani asylum seeker by the Prefecture of Florence based on the availability of economic resources and on the violation of the house rules for the failure to communicate the beginning of a work activity.

The Court confirms that the assessment of the availability of resources must be made on an annual basis, and not on the income received monthly. Also, recalling the CJEU decision on the case C-233/18, the Court decides to disapply letter e) of Article 23 of the Reception decree considered contrary to the recast Reception Conditions Directive.<sup>588</sup>

Where detention grounds apply to asylum seekers placed in reception centres, the Prefect orders the withdrawal of the reception conditions and refers the case to the Questura for the adoption of the relevant measures.<sup>589</sup>

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<sup>584</sup> Administrative Court of Friuli Venezia Giulia, decision No. 122/2019 of 13 March 2019.

<sup>585</sup> Administrative Court of Friuli Venezia Giulia, decision no. 396/2020, 11 November 2020, published 18 November 2020, available in Italian at: <https://bit.ly/3eCnA3w>.

<sup>586</sup> Meltingpot, 'Revoca dell'accoglienza per presunta "sufficienza di mezzi economici" nei confronti di richiedenti asilo e titolari di Protezione. Le associazioni scrivono al Prefetto di Matera', 8 January 2019, available in Italian at: <https://bit.ly/2lfRY4G>.

<sup>587</sup> Lasciateci centrare, 6 June 2019, available in Italian at: <https://cutt.ly/WyOB60J>.

<sup>588</sup> Administrative Court of Tuscany, decision no 00437/2020 of 15 April 2020.

<sup>589</sup> Article 23(7) Reception Decree.

## 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>590</sup> In practice, this provision has never been applied so far.

However, asylum seekers arrived from abroad and placed in quarantine facilities (in hotspots, first governmental centres, ships or other ad hoc facilities) are completely limited in their freedom of movement, especially when they are placed on ships.

### 4.1. Dispersal of asylum seekers

Asylum seekers can be placed in centres all over the territory, depending on the availability of places and based on criteria providing about 2.5 accommodated asylum seekers per thousand inhabitants in each region. The placement in a reception centre is not done through a formal decision and is therefore not appealable by the applicant.

At the end of 2020 the total number of asylum seekers and beneficiaries of international protection accommodated was 79,938 (including those in Siproimi- SAI) and their distribution across the regions was as follows:

Distribution of migrants arriving in Italy per region: 31 December 2020		
Region	Number of migrants	Percentage
Lombardy	10,494	13%
Lazio	7,491	9.3%
Campania	5,815	7.2%
Emilia-Romagna	8,392	10.5%
Sicily	2,610	8.5%
Piedmont	7,275	9%
Tuscany	5,086	6.3%
Veneto	4,616	5.7%
Apulia	4,261	5%
Calabria	3,881	4.8%
Liguria	3,309	4%
Friuli-Venezia Giulia	2,801	3.5%
Marche	2,160	2.7%
Trentino-Alto Adige	1,443	1.8%
Abruzzo	1,592	2%
Sardinia	1,100	1.3%
Umbria	1,289	1.6%
Molise	991	1.2%

<sup>590</sup> Article 5(4) Reception Decree.

Basicilata	1,383	1.7%
Valle d'Aosta	79	0.09%

Source: Ministry of Interior Cruscotto Statistico Giornaliero

### Transfers between reception centres

After their initial allocation, asylum seekers may be moved from one centre to another, passing from: (1) CPSA / hotspots; to (2) governmental first reception centres, to (3) CAS or to (4) SAI system.

Asylum seekers are often moved from one CAS to another, in order to try to balance the asylum seekers' presence in the centres across the regions and provinces. Prefectures decide these transfers, while the consideration for people's choice to move varies from place to place. Transfers cannot be appealed.

## 4.2. Restrictions in accommodation in reception centres

The Reception Decree also clarifies that asylum applicants are free to exit from first reception centres during the daytime but they have the duty to re-enter during the night time. The applicant can ask the Prefecture for a temporary permit to leave the centre at different hours for relevant personal reasons or for those related to the asylum procedure.<sup>591</sup> The law does not provide such a limitation for people accommodated in CAS, but rules concerning the entry to /exit from the centre are laid down in the reception agreement signed between the body running the structure and the asylum seeker at the beginning of the accommodation period.

Applicants' freedom of movement can be affected by the fact that it is not possible to leave the reception centre temporarily e.g. to visit relatives, without prior authorisation. Authorisation is usually granted with permission to leave for some days. In case a person leaves the centre without permission and does not return to the structure within a brief period of time (usually agreed with the management body), that person cannot be readmitted to the same structure and material reception conditions can be withdrawn (see [Reduction or Withdrawal of Material Reception Conditions](#)).

On 16 June 2017, the Prefecture of Naples adopted a new regulation to be applied in CAS. The regulation establishes a curfew at 22:00, or 21:00 in spring and summer. The regulation also foresees [Withdrawal of Reception Conditions](#) if the curfew is not observed. The regulation has been challenged by ASGI before the Council of State but the latter rejected the appeal considering that the regulation cannot imply an automatic withdrawal of the reception conditions since the administration is required to evaluate case-by-case the reasons of the absence.

However, in these situations the existence itself of measures regulating the access to the structure and the potential lack of legal advice prevent recipients from challenging revocations.

In 2020, the preventive isolation and quarantine measures, were sometimes extended beyond the days provided for in the circulars of the Government and of the Ministry of Health due to chain infections and contacts with new entrants who were not adequately screened in advance. As mentioned, in some cases the applicants who tested positive for covid-19 were taken - even in the middle of the night - to the ships moored on the Sicilian coast to spend the quarantine there without prior information.

In some cases, all the guests were placed in quarantine in overcrowded centers, which led to a dizzying increase in infections in a short time. This was the case of Caserma Serena, Treviso, where in August 2020, there were 244 infected people out of 300 guests. In other cases, the mayors decreed a specific entry and exit ban for centers hosting asylum seekers due to infections affecting some of the guests. This

<sup>591</sup> Article 10(2) Reception Decree.

was the case of the Caserma Cavarzerani, in Udine, where a measure of this type was taken at least on 21 July 2020 and 25 February 2021 and lasted for a few weeks.<sup>592</sup>

## B. Housing

### 1. Types of accommodation

#### Indicators: Types of Accommodation

1. Number of reception centres: Not available<sup>593</sup>
2. Total number of places in the reception centres: 79,938<sup>594</sup>
3. Type of accommodation most frequently used in a regular procedure:  
☒ Reception centre ☐ Hotel or hostel ☒ Emergency shelter ☐ Private housing ☐ Other
4. Type of accommodation most frequently used in an accelerated procedure:  
☐ Reception centre ☐ Hotel or hostel ☐ Emergency shelter ☐ Private housing ☒ CPR

There are no available comprehensive statistics on the capacity and occupancy of the entire reception system, given the different types of accommodation facilities existing in Italy. The following sections contain information and figures on: CPSA / hotspots; governmental reception centres; and CAS.

At the end of 2020, the number of asylum seekers and beneficiaries of international protection in the reception system was 79,938, decreased from 91,424 present in the accommodation system at the end of 2019. Out of them, at the end of 2020, 54,343 were in first reception facilities (CAS and first governmental centres) and 25,574 in SAI (former Siproimi).<sup>595</sup>

Occupancy of the reception system: 31 December 2020			
Hotspots	CAS and first governmental centers	Siproimi	Total
21	54,343	25,574	79,938

Source: Ministry of Interior

According to the data obtained by Altreconomia, the total number of CAS facilities at 31 July 2020 was 5,565 where 64,352 asylum seekers were hosted. The number of facilities decreased with about 500 units from the 6,004 existing in October 2019. The number of accommodated persons, however, did not drop by much (at the end of 2019 the total of people accommodated between first reception centers and CAS was 66,958). This suggests that in 2020 the trend of the closure of small CAS continued, prevented from continuing the reception activity by the effects of the 2018 Decrees and the 2018 tender specification schemes.

#### 1.1. First aid and identification: CPSA / Hotspots

The Reception Decree states that the first aid and identification operations take place in the centres set up in the principal places of disembarkation.<sup>596</sup> These are First Aid and Reception Centres (CPSA),<sup>597</sup>

<sup>592</sup> See: La Gazzetta de Mezzogiorno, 6 March 2021, available at: <https://bit.ly/3uIAhPJ>

<sup>593</sup> This data is not available. However, according to data collected by Altreconomia at 31 July 2020 the number of CAS was 5,565. According to data published by Mol at June 2020 (available at: <https://bit.ly/3y3leSN>) the number of governmental first accommodation centers was 9. About Siproimi/SAI data indicate the number of projects, which was at the end of 2020, 760.

<sup>594</sup> This is the number of persons accommodated in CPSA, hotspots governmental reception centres CAS and Sai/Siproimi at 31 December 2020, Source Mol Cruscotto Statistico giornaliero.

<sup>595</sup> Source: Mol Cruscotto statistico giornaliero, available at: <https://bit.ly/2RGWqzn>; See also: Openpolis, "Come funziona l'accoglienza dei migranti in Italia", 29 January 2021, available at: <https://bit.ly/3hltQyo>

<sup>596</sup> Article 8(2) Reception Decree, as amended by DL 130/2020, which now directly recalls Article 10- ter TUI L 563/1995.

<sup>597</sup>

created in 2006 for the purposes of first aid and identification before persons are transferred to other centres, and now formally operating as **Hotspots**.<sup>598</sup> According to the SOPs, persons should stay in these centres “as short as possible”, but in practice they are accommodated for days or weeks. In 2020 and in 2021, up to the time of writing, due to the Covid-19 emergency, hotspots have been used for quarantine and isolation measures.

By the end of 2020, four hotspots were operating in **Apulia** (Taranto) and **Sicily** (Lampedusa, Pozzallo, and Messina), while the Trapani hotspot was converted into a CPR. The hotspot of Messina was empty from August 2020 till the end of December 2020. A total of 21 persons were accommodated in hotspots at the end of the year, all in Sicily.<sup>599</sup>

## 1.2. Governmental first reception centres

The Reception Decree provides that the governmental first reception centres are managed by public local entities, consortia of municipalities and other public or private bodies specialised in the assistance of asylum applicants through public tender.<sup>600</sup>

At the time of writing, first reception centres are established in the following regions in Italy:

First reception centres by region	
First reception centre	Region
Gorizia (CARA)	Friuli-Venezia Giulia
Udine (Caserma Cavarzerani)	Friuli-Venezia Giulia
Foggia (Borgo Mezzanone)	Apulia
Bari	Apulia
Brindisi	Apulia
Crotone (Sant' Anna)	Calabria
Caltanissetta	Sicily
Messina	Sicily
Treviso (ex Caserma Serena)	Veneto

Source: Mol, available at: <https://bit.ly/3y7vo52>

In early 2019, some centres were closed by the Government. This is the case of Castelnuovo di Porto, Rome, **Lazio**,<sup>601</sup> whose closure, albeit long awaited, has sparked serious criticism for the way in which it happened, and Cona, Venice, **Veneto**.<sup>602</sup>

The first governmental centre of Mineo (Catania), Sicily, was definitively closed as of 10 July 2019. As for the other centres, the way in which it was closed, the scarce or no consideration of vulnerable situations and the transfer of the guests to equally low-threshold centres, mainly in the Cara of Isola Capo Rizzuto, Crotone, have raised bitter criticisms also among organizations such as Doctors for Human Rights (Medu), who have called for the centre's closure for years.<sup>603</sup>

<sup>598</sup> Article 10-ter TUI, inserted by Article 17 Decree Law 13/2017 and L 46/2017.

<sup>599</sup> MOI, Cruscotto Statistico Giornaliero, 31 December 2020, available in Italian at: <https://bit.ly/3ohlZmP>

<sup>600</sup> Article 9(2) Reception Decree.

<sup>601</sup> Redattore Sociale, 'Non difendiamo i grandi centri ma così è inumano', 23 January 2019, available in Italian at: <https://bit.ly/2T4Dzt2>; 'Cara Castelnuovo parlamentare blocca un pullman con i migranti', 23 January 2019, available in Italian at: <https://bit.ly/2W0tn6P>.

<sup>602</sup> Venezia Today, 'Chiuso centro di accoglienza Conetta', 20 December 2018, available in Italian at: <https://bit.ly/2O4ouXH>.

<sup>603</sup> Repubblica, Cara di Mineo, ecco perchè non c'è da festeggiare, 10 July 2019, available in Italian at: <https://cutt.ly/HyONuy1>.

The Hub center located in Bologna, Mattei, is now classified as CAS. Others governmental centres working as first accommodation facilities but not classified as first governmental centres by Mol<sup>604</sup> are the one of Ferneti, in Trieste, called Casa Malala, and the one in Pordenone, Caserma Monti, both in Friuli Venezia Giulia.

In **Foggia**, even if the centre of Borgo mezzanine is still indicated by Mol as a governmental first reception centre, according to information collected by ASGI in 2020, it has no longer hosted asylum seekers. People living there have been left there without services. The conditions of the modules have been reported as worse than the ones of makeshift camps. As of 25 March 2021 a part of it has been converted in covid-19 isolation centre.<sup>605</sup>

Villa Sikania, a first accommodation centre in **Agrigento**, Sicily, was closed in 2019 but, in April 2020, due to the Covid-19 emergency, 70 people disembarked in Lampedusa were placed there in fiduciary isolation.<sup>606</sup> Since then, the centre has become one of the centres for the fiduciary isolation of migrants disembarked in Lampedusa. Cases of prolonged isolation even beyond 30 days have been reported.<sup>607</sup> On 3 September 2020, an Eritrean man, aged 20, died in an attempt to escape from that structure as he was hit on the street and died.

As for **Treviso**, during 2020, Caserma Serena was sadly at the center of the news: at the outbreak of the pandemic it was hosting over 300 people who were not moved or distributed in larger spaces. After an operator's positive covid-19 test result, all guests were quarantined. This, right at the end of May, was shortly after the end of the lock down which lasted from March to May 2020. The quarantine communication news generated strong protests from some guests. After two months, in August 2020, perhaps due to a quarantine carried out in the same structure with such high numbers of guests, the infections increased from 2 to 244. Of these, 11 were social workers.<sup>608</sup>

When, in mid-August, 5 of the guests were moved to an apartment near the city center, neighbours started to protest.<sup>609</sup> On 19 August 2020, 4 of the asylum seekers were arrested for the riots in June with allegations of devastation, looting and kidnapping.<sup>610</sup> The 4 were taken to prison and placed in solitary confinement. On November 2020, the youngest of them, not bearing this condition, took his own life.<sup>611</sup>

In **Trieste**, the Administrative Court of Friuli Venezia Giulia overturned the result of the tender for the first reception centre located on the border with Ferneti which was won by Ors society. The Court ascertained that Ors was in fact inactive at the time of participation in the call while the second, Versoprobo, had had an excessive score. The Court therefore attributed the call to ICS - Refugee Office which had continued to manage the structure by extension.<sup>612</sup>

### 1.3. Temporary facilities: CAS

In case of temporary unavailability of places in the first reception centres, the Reception Decree provides the use of Emergency Reception Centres (*centri di accoglienza straordinaria*, CAS). The CAS system, originally designed as a temporary measure to prepare for transfer to second-line reception, expanded in recent years to the point of being entrenched in the ordinary system. The Reception Decree adopted in

<sup>604</sup> See Mol, available at: <https://bit.ly/3y4dbFm>

<sup>605</sup> See Apulia Region press release, 25 March 2021, available at: <https://bit.ly/3uH02A2>

<sup>606</sup> See Agrigento notizie available at: <https://cutt.ly/KyONyEK>

<sup>607</sup> See Osservatorio diritti, Villa Sikania: migranti "detenuti" da un mese nel centro di accoglienza, 7 September 2020, available in Italian at: <https://bit.ly/3hjfdvt>

<sup>608</sup> See Oggi Treviso, Coronavirus, Caserma Serena, 244 contagiati, available at: <https://bit.ly/2RO6bvO>

<sup>609</sup> See Treviso Oggi, available at: <https://bit.ly/3bmNNAT>

<sup>610</sup> See La Voce di Venezia, available at: <https://bit.ly/3tHVdoT>

<sup>611</sup> See Meltingpot: "Ex Caserma Serena, Treviso: «Per Chaka, perché la sua morte non sia stata vana, perché la libertà è tutto!», available at: <https://bit.ly/33J45jf>

<sup>612</sup> See Il Piccolo, Il Tar restituisce all'ICS l'appalto per Casa Malala, 20 december 2020, available at: <https://bit.ly/2R7OBD5>

August 2015 missed the opportunity to actually change the system and simply renamed these centres from emergency centres to “temporary facilities” (*strutture temporanee*).

The CAS are identified and activated by the Prefectures, in cooperation with the Ministry of Interior. Following Decree Law 113/2018, CAS facilities can be activated only after obtaining the opinion of the local authority on whose territory the structures will be set up.<sup>613</sup> Activation is reserved for emergency cases of substantial arrivals but applies in practice to all situations in which, as it is currently the case, capacity in ordinary centres are not sufficient to meet the reception demand.

Following the reform of the accommodation system made by Decree Law 130/2020, the CAS are specifically designed only for the first accommodation phase for the time “strictly necessary” until the transfer of asylum seekers to the SAI system.<sup>614</sup> The services guaranteed are the same as in the first reception centres (see [Forms and Levels of Material Reception Conditions](#)).<sup>615</sup>

Decree Law 130/2020, implemented by L 173/2020, refrained from defining time limits for transfer to the proper accommodation system implemented in SAI, thus further endorsing a temporary and precarious approach to reception for asylum seekers. In 2018, the law stated that within one year of the entry into force of the 2018 reform, the Minister of Interior should have monitored the progress of migratory flows with a view to the gradual closure of the CAS centres.<sup>616</sup>

There are over 5,500 CAS established across Italy.<sup>617</sup> As underlined (see [Forms and Levels of Material Reception Conditions](#)), following the 2018 Mol tender specification schemes most of the small CAS were obliged to close, leaving the accommodation scene to large centres managed by profit organizations or big social cooperatives.

The fact that the majority of available places are currently in CAS, illustrates a reception policy based on leaving asylum seekers in emergency accommodation during the entire asylum procedure. The vagueness of the timing of the transfer from CAS remained unchanged with the 2020 reform and the poor offer of the new tender specification schemes published in February 2021, in addition to the maintenance of the SAI system with a purely voluntary adhesion by the Municipalities, suggest that the situation will not change in the course of 2021.

#### 1.4. Second accommodation- S.A.I. system

The second accommodation system remains dedicated mainly to beneficiaries of international protection and unaccompanied minors.<sup>618</sup>

As mentioned, the decision to keep those projects based on a voluntary adhesion by municipalities do not favour the availability of places in this system and it will not favour the immediate access of asylum seekers to the system.

The system now called S.A.I. (system of accommodation and integration) is mainly made by small facilities and apartments in the city centre or not far away from it or well connected to it by public transports (see content of protection).

Here asylum seekers can benefit of a **first level services** which include the same services now guaranteed in first accommodation facilities (CAS and governmental centres): in addition to material

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<sup>613</sup> Article 11(2) Reception Decree, as amended by Article 12 Decree Law 113/2018 and L 132/2018. Prior to the reform, the law provided that the local authorities should only be notified and issue a non-binding opinion.

<sup>614</sup> Article 11 (3) Reception Decree, as amended by Decree Law 130/2020 .

<sup>615</sup> Articles 10(1) and 11(2) Reception Decree.

<sup>616</sup> Article 12-bis Decree Law 113/2018, as amended by L 132/2018.

<sup>617</sup> According to data obtained by Mol by Altreconomia , at 31 JULY 2020 the number of CAS was 5,565

<sup>618</sup> According to Article 1 sexies DL 416/1989, as amended by DL 130/2020, local authorities responsible of the SAI projects “can” host in such projects also asylum seekers and beneficiaries of special protection or other protection titles.

reception services, health care, social and psychological assistance, linguistic-cultural mediation, Italian language courses, legal orientation and orientation to the territorial services.<sup>619</sup>

The system already existing and the resources not depending by the tender specification schemes make these guarantees of services immediately effective for those who will be able to access this system with no delay. A **second level services** which include job orientation and professional training are reserved to beneficiaries of international protection, UAMs and beneficiaries of other forms of protection.<sup>620</sup> (See content of protection)

## 1.5 Private accommodation with families and churches

In addition to the abovementioned reception centres, there is also a network of private accommodation facilities which are not part of the national reception system, provided for example by Catholic or voluntary associations, which support a number of asylum seekers and refugees. Several churches had already accommodated refugees and many others have decided to do so following the Pope's call of 6 September 2015.<sup>621</sup>

It is very difficult to ascertain the number of available places in these forms of reception. The function of these structures is relevant especially in emergency cases or as integration pathways, following or in lieu of accommodation in SPRAR prior to the reform.

## 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

Given the extremely small number of arrivals in 2019, the lack of access to reception is not related to the absence of places but often to the difficulties in the registration of the asylum application or to the difficulties related to the Covid-19 screening. (see Registration).

Reception conditions in the centres were inevitably conditioned by health measures and the covid-19 pandemic. Regarding the facilities set up for the quarantine, the overcrowding that characterizes many of these centres made it impossible to comply with the isolation measures and did not allow decent accommodation conditions. The most serious case was the one of the Lampedusa hotspot, which with an official capacity of 192 places, hosted on average over a thousand of people in the summer months.<sup>622</sup> On 27 July 2020, 180 people fled from a tensile structure of the Civil Protection set up in Porto Empedocle, without windows and with a maximum capacity of 100 people, which at that time housed 520 migrants: inhumane conditions, in which people risked suffocation, as pointed out by the mayor of the Sicilian city.<sup>623</sup>

In October 2020, some asylum seekers and beneficiaries of international protection, who tested positive to Covid-19, were taken at night from a CAS in Rome, and, without any prior information, were transferred

<sup>619</sup> Article 1 sexies ( 2 bis, a) DL 416/1989, introduced by DL 130/2020.

<sup>620</sup> Article 1 sexies ( 2 bis, b) DL 416/1989.

<sup>621</sup> Il Fatto Quotidiano, 'Profughi, l'appello di Papa Francesco: "Ogni parrocchia accoglia una famiglia"', 6 September 2015, available in Italian at: <http://bit.ly/2GjNpIL>.

<sup>622</sup> See for example the video on the outcomes of the task force of the Sicily Region in September 2020, Le condizioni dell'hotspot di Lampedusa accertate dalla task force della Regione siciliana, 2 September 2020, available at: <https://bit.ly/3blknTH>

<sup>623</sup> See the video posted by Corriere.it, Porto Empedocle, fuga di massa dalla tensostruttura della Protezione Civile: il video, available at: <https://bit.ly/3eHBe5a>, 27 July 2020

to a quarantine ship moored in the harbours of Palermo, Trapani, and Bari. A measure that NGOs defined unreasonable and harmful<sup>624</sup> as well as illegal and discriminatory.<sup>625</sup> In other cases, people were placed in quarantine all, together which led to an increase in infections in a short time.

In June 2020, the asylum seekers accommodated at the Mattei CAS center, in Bologna, denounced the serious overcrowding of the structure and the impossibility of maintaining personal distancing, as a result of living together in rooms with 10-12 people.<sup>626</sup> The Civil Court of Bologna rejected a legal action brought forward to support the need to move asylum seekers to places suitable for containing the pandemic.

In the former Cara of Gradisca d'Isonzo, Gorizia, first governmental center, as of 23 November 2020 over 112 asylum seekers tested positive. The guests were divided and the people found to be infected, were temporarily housed in a tensile structure, and then in special modules. The Prefect of Gorizia stated in this regard that a clear separation had been made with the area hosting the hundred negatives, with barriers and increased surveillance.<sup>627</sup>

The National Institute for Health Migration and Poverty conducted a survey<sup>628</sup> from 11 May 2020 to 12 June 2020, on 73.7% of reception facilities (5,038 out of 6,837). It underlined that among the suspected covid cases emerged in the facilities, 89% had been reported to the national health service, which had prescribed quarantine in 39.6% of cases outside the facility and in 51.4% inside the facility itself. Only 44.1% of suspects quarantined inside the facility were isolated in a single room with private facilities.

There were 239 confirmed cases, almost all in the northern regions. All confirmed cases have been notified to the sanitary service, which has prescribed isolation at the facility for 61 people (25.5%). Out of them, 33 (54.1%) were isolated in a single room with private services, while 14 (23.0%) in a room with other people positive to the virus and 5 (8.2%) in a single room with shared services.

The 5,038 structures participating in the survey recorded a saturation (ratio between the number of guests and the total capacity) of 79%: the saturation was higher among the 169 structures with at least one suspected case (88.1%) and among the 68 facilities with at least one confirmed case (87.7%), while it was lower among the 4,970 facilities with no confirmed case (78.6%).

The survey highlighted an incidence of positive cases similar to the one found in the general population, with a geographical distribution of cases (higher in the north than in the south) that reflected the national data. In addition, it highlighted how, worryingly, the isolation of persons who tested positive had occurred inside the facility in a quarter of the cases and that, out of these, only 54% had been performed in a single room with exclusive services.

A monitoring conducted by the associations part of the Tavolo Asilo and Tavolo Immigrazione e Salute, (National Asylum Table, Immigration and Health Table) published in June and updated in February 2021 highlighted the practices found in some accommodation facilities in the management of covid-19 cases.

The June report,<sup>629</sup> based on the data collected from 200 facilities between April and May 2020, highlighted the critical absence of institutional indications, which had led the facilities to organize their own

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<sup>624</sup> See Redattore sociale, about MEDU statements, "Trasferimenti migranti navi quarantena. Medu: "Irragionevoli e dannosi", 13 October 2020, available at: <https://bit.ly/3ulPY9N>

<sup>625</sup> See ASGI; Illegali e discriminatori i trasferimenti coercitivi sulle "navi quarantena", 9 October 2020, available at: <https://bit.ly/3w3G9TQ>

<sup>626</sup> See Meltingpot, CAS di Via Mattei, k migranti denunciano il sovraffollamento, available at : <https://bit.ly/33zsEPT>

<sup>627</sup> See Tg 24, available: <https://bit.ly/3oc1RCO>

<sup>628</sup> Covid-19 national survey on the reception facilities for migrants", National Institute for Health Migration and Poverty, available in Italian at: <https://bit.ly/2Qb4qrV>, 9 August 2020

<sup>629</sup> Tavolo Asilo Nazionale, Tavolo Immigrazione e Salute, "Dossier Covid-19, procedure, condizioni di sicurezza, criticità nei sistemi di accoglienza in Italia", available in Italian at: <https://bit.ly/3eDYwgc>, June 2020,

solutions that had produced effective protection of the guests but that had also significantly reduced the reception capacity.

The report updated in February,<sup>630</sup> on the basis of data collected in October 2020 on 179 reception facilities, underlines the continuing uncertainty about national or regional guidelines and the risk that this translates into a vaccine plan that effectively excludes more fragile parts of the population.

With respect to the management of Covid-19 cases, the updated February report distinguishes two hypotheses:

- ❖ In the case of covid-19 positive people who do not need hospitalization, the transfer to structures set up by the health authorities or public institutions remains residual (27% of the answers).
- ❖ People who had close contacts with people that tested positive or who have suspicious symptoms: the prevailing practice (62% of the answers) is that the person is swabbed and is isolated within the reception structure.

According to the report, the main criticalities are therefore:

- ❖ difficult coordination with health authorities;
- ❖ the absence of detailed protocols;
- ❖ the absence of facilities for fiduciary isolation and the difficulty of organizing isolation within the reception facilities.

The report also explains that, although guidelines on the management of structures with fragility and social marginalization were issued at the end of July<sup>631</sup>, they are not easily adaptable to the concrete cases that lie ahead in the reception facilities.

As stated in [Forms and Levels of Material Reception Conditions](#), the Decree of the Ministry of Interior of 20 November 2018 providing the tender specification schemes (*capitolati*) for first reception, cancelled all integration services as well as funding related to psychological support, which is now guaranteed only in CPR and hotspots. Conversely, former SPRAR projects ensured interpretation and linguistic-cultural mediation services, legal counselling, teaching of the Italian language and access to schools for minors, health assistance, socio-psychological support in particular to vulnerable persons, training and re-training, support at providing employment, counselling on the services available at local level to allow integration locally, information on (assisted) voluntary return programmes, as well as information on recreational, sport and cultural activities.<sup>632</sup>

Subsequently, the indications contained in the circular dated 4 February 2020 issued by the new Mol did not change the situation, allowing to exceed the prices indicated only in consideration of the higher costs of rents and surveillance.

In practice, reception conditions vary considerably not only among different reception centres but also between the same type of facilities. While the services provided are the same, the quality can differ depending on the management bodies running the centres. While the SPRAR system published an annual report on its reception system, no comprehensive and updated reports on reception conditions are available for the entire Italian territory.

It is not possible to determine an overall average of duration of stay. However, asylum seekers remain in reception centres throughout the whole asylum procedure, which may last several months, as well as

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<sup>630</sup> Tavolo Asilo Nazionale, Tavolo Immigrazione e Salute, "Dossier Covid-19, update, available at : <https://bit.ly/3fexwz8>, 25 February 2021

<sup>631</sup> Interim operating procedures for the management of facilities with persons who are highly vulnerable and at high risk of health and social care exclusion during the covid-19 pandemic. Available in English at: <https://bit.ly/3bot13Q>

<sup>632</sup> Article 30 Ministry of Interior Decree 10 August 2016.

during the appeal procedure. The Reception Decree does not provide any timeframe on the reception, since this has to be provided since the expression of the intention to make an asylum application and throughout the whole asylum procedure.

The recent adoption of the safe countries list together with the issue of the border procedures and, more generally, the application of accelerated procedures, will probably have a significant impact on the times and on the right to reception conditions, denying, due to an incorrect use of the institute of manifestly unfounded decisions, the protection to guarantee to asylum seekers even shortly after their arrival. (see accelerated procedure).

## 2.1. Conditions in first reception centres

Whereas first reception centres are the main form of accommodation following the 2018 reform, the law still states that their aim is to offer accommodation to asylum seekers for the purpose of completion of operations necessary for the determination of their legal status,<sup>633</sup> and of medical tests for the detection of vulnerabilities, to take into account for a subsequent and more focused placement.<sup>634</sup>

First reception centres are collective centres, up until now set up in large facilities, isolated from urban centres and with poor or otherwise difficult contacts with the outside world.

Generally speaking, all governmental centres are very often overcrowded. Accordingly, the quality of the reception services offered is not equivalent to reception facilities of smaller size. In general, concerns have systematically been raised about the high variability in the standards of reception centres in practice, which may manifest itself in: overcrowding and limitations in the space available for assistance, legal advice and social life; physical inadequacy of the facilities and their remoteness from the community; or difficulties in accessing appropriate information.<sup>635</sup> Nevertheless, it must be pointed out that the material conditions also vary from one centre to another depending on the size, the occupancy rate, and the level and quality of the services provided by the body managing each centre.

Managers tend to avoid accommodating together people of the same nationality but belonging to different ethnicities, religion, or political groups in order to prevent of the rise of tensions and violence.

## 2.2. Conditions in CAS

According to the Reception Decree, services guaranteed in temporary centres (CAS) are the same as those guaranteed in first reception governmental centres.<sup>636</sup>

Following the reform provided by the Decree Law 130/2020 and L 173/2020, the services guaranteed to asylum seekers are the same as guaranteed in the SAI system. This remains largely theoretic. As explained (see: Form and Levels of Material Reception Conditions) the new tender specification schemes published by the Mol on 24 February 2021 do not intervene to concretely change the level of services in CAS and governmental centres, keeping the proportions between operators and people accommodated very low, providing for a negligible number of hours for the services provided and recognizing costs that are totally inadequate to guarantee the effectiveness of the protection.

The chronic emergency state under which the CAS operate has forced the improvisation of interventions and favoured the entry into the reception network of bodies lacking the necessary skills and, in the worst cases, only interested in profits.

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<sup>633</sup> Article 9(1) Reception Decree.

<sup>634</sup> Article 9(4) Reception Decree.

<sup>635</sup> This is a recurring concern: Council of Europe Commissioner for Human Rights, *Report by Nils Muiznieks, Commissioner for Human Rights of the Council of Europe, following his visit to Italy from 3 to 6 July 2012*, CommDH(2012)26, 18 September 2012, 36.

<sup>636</sup> Articles 11(2) and 10(1) Reception Decree.

The functioning of CAS depends on agreements by the management bodies with the Prefectures and on the professionalism of the bodies involved.

As discussed in [Forms and Levels of Material Reception Conditions](#), the calls for tenders modelled on the Ministry of Interior tender scheme of 20 November 2018 resulted in the disappearance of many virtuous projects<sup>637</sup> and the new tender specification schemes risks keeping the reception panorama unchanged.

### 2.3. Conditions in makeshift camps

As discussed in [Criteria and Restrictions to Access Reception Conditions](#), at least 10,000 persons were excluded from the reception system as of February 2018, among whom asylum seekers and beneficiaries of international protection.

Informal settlements with limited or no access to essential services are spread across Italy. A report by MSF published in February 2018 described the situation in some makeshift camps.<sup>638</sup>

By the end of 2018, some of these camps had been rapidly evacuated. This happened to the Ferrhotel in Bari.<sup>639</sup> In both cases people were warned only two days before the eviction and it is not clear if they have been transferred to proper reception facilities or simply have been evicted.

The makeshift camp of San Ferdinando, **Calabria**, a tent camp where among others migrants, some asylum seekers and agricultural workers were living, was evacuated on 6 March 2019. Asylum seekers have been dispersed or transferred to CAS of other regions. Many of them protested because they would lose their job and salary.<sup>640</sup>

On 30 July 2019 the former Olympic village (MOI), in **Turin**, was evacuated and the over 400 migrants who were living there moved to other accommodations. The eviction plan, the media explained, was accelerated due to the extremely insecure conditions of one of the two buildings.<sup>641</sup>

Since January 2018, the Naga network has been monitoring the informal settlements in **Milan** where they found living, among others, asylum seekers who had no access to the asylum procedure, asylum seekers who were waiting for weeks to register their asylum application and who were therefore prevented from accessing the reception conditions, and also beneficiaries of international protection forced to abandon the sprar/siproimi reception due to the expiry of their project.

The report,<sup>642</sup> published in December 2019 offers a description of the types of informal settlements frequently subject, even in 2019, to evictions. Among these:

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<sup>637</sup> This happened, for example, in Milan, Lombardy, where 11 third sector managers, in many cases small companies with a strong social vocation, decided not to participate in new tenders, See Openpolis and Actionad, third report, available in Italian at: <https://cutt.ly/7yONsIR>. In Livorno, Tuscany, in 2019, the vast majority of third sector managers have decided not to participate in the new tenders, therefore all small and many medium-sized centres have closed and the number of available places in reception has drastically decreased. The migrants hosted in centres that have been closed have often been transferred to other locations. Others, not to abandon the integration paths developed over time, have decided to stay in Livorno with high risks of social marginality. See Openpolis and Actionaid, second report, available in Italian at: <https://cutt.ly/uyONs8z>

<sup>638</sup> MSF, *Fuori campo*, February 2018, 2, 36.

<sup>639</sup> Il Giornale, 'Bari, sgomberati i locali della Ferrhotel occupati da extracomunitari', 12 October 2018, available in Italian at: <https://bit.ly/2HBfOGQ>.

<sup>640</sup> Internazionale 'A San Ferdinando sgomberata una tendopoli se ne apre un'altra', 6 March 2019, available in Italian at: <https://bit.ly/2F2S3EQ>.

<sup>641</sup> Repubblica, 'Operazione Moi libero: sgombrate le ultime due palazzine. Salvini: stop a nuove arbitrarie intrusioni', 30 July 2019, available in Italian at: <https://cutt.ly/syONdnk>.

<sup>642</sup> Naga, *Senza Scampo*, December 2019, available in Italian at: <https://cutt.ly/1yONfN4>.

- ❖ Abandoned covered structures (such as old industrial warehouses, railway warehouses, building sites whose work has been interrupted), buildings without walls and with no divided spaces;<sup>643</sup>
- ❖ Open spaces such as parks, disused construction sites or railway yards, where many of the people cleared of the covered structures subject to evictions went to live;
- ❖ Abandoned buildings (old spas, offices, schools) originally not intended for housing with spaces built and organized according to a division into units (offices, apartments, rooms);
- ❖ public parks.

In **Foggia**, in the Capitanata area, **Apulia** region, from June to September 2019 the Doctors for Human Rights (MEDU) mobile clinic assisted 225 people (209 men and 16 women) carrying out 292 medical visits and 153 legal orientation interviews operating mainly in five informal settlements: the Ghetto of Rignano Gargano, Borgo Mezzanone, the farmhouses of Poggio Imperiale and Palmori. 60 % of the people were regular asylum seekers or international protected or humanitarian protected. The remaining 40% were in irregular condition.<sup>644</sup>

The final report "The Bad Season" (La Cattiva Stagione)<sup>645</sup> written by MEDU illustrates the living and working conditions of the labourers and describes the unhealthy settlements, isolated without any minimum basic service and with pervasive exploitation of workers.

## 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?       | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| ❖ If yes, when do asylum seekers have access the labour market?                 | 2 months  |
| 2. Does the law allow access to employment only following a labour market test? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| 3. Does the law only allow asylum seekers to work in specific sectors?          | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| ❖ If yes, specify which sectors   |   |
| 4. Does the law limit asylum seekers' employment to a maximum working time?     | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| ❖ If yes, specify the number of days per year                                   |   |
| 5. Are there restrictions to accessing employment in practice?                  | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |

According to the Reception Decree, an asylum seeker can start to work after 60 days from the moment he or she lodged the asylum application.<sup>646</sup> Even if he or she starts working, the asylum seeker permit cannot be converted into a work or residence permit.<sup>647</sup>

Even though the law makes a generic reference to the right to access to employment without indicating any limitations, and albeit being entitled to register with Provincial Offices for Labour, in practice asylum seekers face difficulties in obtaining a residence permit which allows them to work. This is due to the delay in the **Registration** of their asylum applications, on the basis of which the permit of stay will be consequently issued, or to the delay in the renewal thereof.

<sup>643</sup> According to the report, following the evictions, by the end of 2019 only one of these spaces would still be occupied.

<sup>644</sup> Immediato, Più di 200 migranti curati nei ghetti della provincia di Foggia, quasi la metà era irregolare, 21 October 2019, available in Italian at: <https://cutt.ly/wyONgAc>.

<sup>645</sup> Medici per i diritti umani, report La Cattiva Stagione, 21 October 2019, available in Italian at : <https://cutt.ly/JyONhtH>.

<sup>646</sup> Article 22(1) Reception Decree.

<sup>647</sup> Article 22(2) Reception Decree.

Furthermore, employers are not confident to hire asylum seekers who are in possession of only the asylum request receipt or of the request for renewal of the six-month permit because the receipt, although bearing the photograph and legally equated to the residence permit, has no expiry date. They prefer to hire people with original permits.

Moreover, as reported to ASGI, many Provincial Offices for Labour do not allow asylum seekers under the Dublin procedure to enrol on the lists of unemployed persons and some Questure have expressed a negative opinion about the possibility for these people to be employed before it is confirmed that Italy is responsible for their asylum application. During 2018, some regions where this occurred such as **Friuli-Venezia Giulia** changed their position on this issue. However, in 2019, ASGI was told the problem was still occurring along the national territory. The CJEU decision of 14 January 2021, according to which Article 15 of the Directive 2013/33/EU must be interpreted as precluding national legislation which excludes an applicant for international protection from access to the labour market on the sole ground that a transfer decision has been taken in his or her regard under Dublin Regulation, should overcome the different orientations existing along the national territory.<sup>648</sup>

In addition, the objective factors affecting the possibility of asylum seekers to find a job are language barriers, the remote location of the accommodation and the lack of specific support founded on their needs.

Decree Law 113/2018, implemented by L 132/2018, has abolished the possibility for asylum seekers to be involved in activities of social utility in favour of local communities.<sup>649</sup> The (former) SPRAR system was the only integrated system that provided these kind of services to residents. Asylum seekers or beneficiaries of international protection accommodated in the SPRAR system were generally supported in their integration process, by means of individualised projects which include vocational training and internships.<sup>650</sup>

As asylum seekers now no longer have access to SIPROIMI centres, their integration pathways will not start in the reception centre except for those who manage to enter the SIPROIMI after having obtained international protection. As discussed in [Forms and Levels of Material Reception Conditions](#), the calls for tenders for first reception centres and CAS, modelled on the tender specifications scheme (*capitolato*) published by the Ministry of Interior on 20 November 2018, no longer provide integration services such as professional orientation services. This resulted in a considerable difference of opportunities in accessing integration programmes as they will strictly depend on the services provided by the reception centres where asylum seekers are accommodated.

The 2018 reform has also abolished the provision allowing asylum applicants seekers in the (former) SPRAR centres to attend vocational training when envisaged in programmes eventually adopted by the public local entities.<sup>651</sup> Vocational training or other integration programmes can be provided also by the means of National public funds (*8xmille*) or AMIF. In this case, the Ministry of Interior can finance specific projects to NGOs at national level concerning integration and social inclusion. The projects financed under AMIF are, however, very limited in terms of period of activity and in number of beneficiaries.

## 2. Access to education

### Indicators: Access to Education

1. Does the law provide for access to education for asylum-seeking children? ☒ Yes ☐ No
2. Are children able to access education in practice? ☒ Yes ☐ No

<sup>648</sup> CJEU decision, joined cases C322/19 and C385/19, 14 January 2021.

<sup>649</sup> Article 22-bis(3) Reception Decree, as amended by Article 12 Decree Law 113/2018 and L 132/2018 now only refers to beneficiaries of international protection, no longer to asylum seekers.

<sup>650</sup> SPRAR, *Manuale per operatori*, April 2015, available in Italian at: <https://bit.ly/2UzwNBf>, 34-37.

<sup>651</sup> Article 22(3) Reception Decree has been repealed by Article 12 Decree Law 113/2018.

Italian legislation provides that all children until the age of 16, both nationals and foreigners, have the right and the obligation to take part in the national education system. Under the Reception Decree, unaccompanied asylum-seeking children and children of asylum seekers exercise these rights and are also admitted to the courses of Italian language.<sup>652</sup> The Reception Decree makes reference to Article 38 TUI, which states that foreign children present on Italian territory are subject to compulsory education, emphasising that all provisions concerning the right to education and the access to education services apply to foreign children as well.

This principle has been further clarified by Article 45 PD 394/1999, which gives foreign children equal rights to education as for Italian children, even when they are in an irregular situation. Asylum seeking children have access to the same public schools as Italian citizens and are entitled to the same assistance and arrangements in case they have special needs. They are automatically integrated in the obligatory National Educational System. No preparatory classes are foreseen at National level, but since the Italian education system envisages some degree of autonomy in the organisation of the study courses, it is possible that some institutions organise additional courses in order to assist the integration of foreign children.

In practice, the main issues concerning school enrolment lie in: the reluctance of some schools to enrol a high number of foreign students; the refusal from the family members and/or the child to attend classes; and the insufficiency of places available in schools located near the accommodation centres and the consequent difficulty to reach the schools if the centres are placed in remote areas.

In some cases, attempts to make up for the lack of places in Italian language courses by introducing other courses have not delivered positive results. In Udine, **Friuli-Venezia Giulia**, additional literacy courses were introduced in October 2017 for asylum seekers during morning hours, which coincided with middle school classes. This led to protests by parents and the teaching staff.<sup>653</sup>

## D. Health care

### Indicators: Health Care

1. Is access to emergency healthcare for asylum seekers guaranteed in national legislation?  
☒ Yes ☐ No
2. Do asylum seekers have adequate access to health care in practice?  
☒ Yes ☐ Limited ☐ No
3. Is specialised treatment for victims of torture or traumatised asylum seekers available in practice?  
☐ Yes ☒ Limited ☐ No
4. If material conditions are reduced or withdrawn, are asylum seekers still given access to health care?  
☐ Yes ☒ Limited ☐ No

Asylum seekers and beneficiaries of international protection are required to register with the National Health Service.<sup>654</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 from the National Health System.

Asylum seekers gave access to the Covid-19 vaccination scheme on equal footing as Italians.

<sup>652</sup> Article 21(2) Reception Decree.

<sup>653</sup> Udine Today, 'Lezioni ai richiedenti asilo a fianco dei ragazzi delle medie: è caos', 29 October 2017, available in Italian at: <http://bit.ly/2GncxrV>.

<sup>654</sup> Article 34 TUI; Article 16 PD 21/2015; Article 21 Reception Decree.

## 1. Practical obstacles to access health care

The right to medical assistance is acquired at the moment of the lodging of the asylum application but very often the exercise of this fundamental right is hindered and severely delayed, depending upon the attribution of the tax code assigned by Questure when lodging the asylum application. This means that it reflects the delay in lodging the asylum claim, which corresponds to several months in certain regions (see [Registration](#)).

Pending enrolment, asylum seekers only have access to medical treatment ensured by Article 35 TUI to irregular migrants: they have access to emergency care and essential treatments and they benefit from preventive medical treatment programmes aimed at safeguarding individual and public health.<sup>655</sup>

Asylum seekers have to register with the national sanitary service in the offices of the Local Health Board (*Azienda sanitaria locale*, ASL) competent for the place they declare to have a domicile.<sup>656</sup> Once registered, they are provided with the European Health Insurance Card (*Tessera europea di assicurazione malattia*, TEAM), whose validity is related to the one of the permit of stay. Registration entitles the asylum seeker to the following health services:

- Free choice of a general doctor from the list presented by the ASL and choice of a paediatrician for children (free medical visits, home visits, prescriptions, certification for access to nursery and maternal schools, obligatory primary, media and secondary schools);
- Special medical assistance through a general doctor or paediatrician's request and on presentation of the health card;
- Midwifery and gynaecological visits at the "family planning" (*consultorio familiare*) to which access is direct and does not require doctors' request; and
- Free hospitalisation in public hospitals and some private subsidised structures.

Delays in the issuance of health cards had been exacerbated in 2016 due to the attribution of special tax codes to asylum seekers other than the ones attributed to other people, consisting in numerical and not alphanumeric codes.<sup>657</sup> Such obstacles were reported with regard to access to health cards in 2019 and 2020 too. These problems persist also with regard to access to other social rights.

The right to medical assistance should not expire in the process of the renewal of the permit of stay,<sup>658</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 newborn babies of parents registered with the National Health System.<sup>659</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>660</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.

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<sup>655</sup> Article 21 Reception Decree; Article 16 PD 21/2015.

<sup>656</sup> Article 21(1) Reception Decree, citing Article 34(1) TUI; Accordo della Conferenza Stato-Regioni del 20 dicembre 2012 "Indicazioni per la corretta applicazione della normativa per l'assistenza sanitaria alla popolazione straniera da parte delle Regioni e Province Autonome italiane".

<sup>657</sup> Ministry of Interior Circular of 1 September 2016; Revenue Agency Circular No 8/2016.

<sup>658</sup> Article 42 PD 394/1999.

<sup>659</sup> Article 22 Qualification Decree.

<sup>660</sup> See M Benvenuti, *La protezione internazionale degli stranieri in Italia*, Jovene Editore, Napoli 2011, 263.

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>661</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 due to the adverse conditions of some accommodation centres and of informal settlements (see conditions in makeshift camps).

## 2. Contribution to health care costs

Asylum seekers benefit from free of charge health services on the basis of a self-declaration of destitution submitted to the competent ASL. The medical ticket exemption is due to the fact that asylum seekers are treated under the same rules as unemployed Italian citizens,<sup>662</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 lodging of the asylum application (see [Access to the Labour Market](#)). During this period they are assimilated to unemployed people and granted with the same exemption code.

For the next period, in some regions asylum seekers are no longer exempted from the sanitary ticket because they are considered inactive and not unemployed. In other regions such as **Piedmont** and **Lombardy**, the exemption is extended until asylum seekers do 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.

The entry into force of Decree Law 113/2018, implemented by L. 132/2018, which abolished civil registration of asylum seekers (see [Civil Registration](#)), has also created difficulties for access to health treatment with exemption from a medical ticket. In Italy, people can in fact benefit from an exemption from medical costs not only in the case of unemployment but also on the basis of (low) income. However, to do so, one must produce documentation that certifies income based on the Equivalent Economic Situation Indicator (*Indicatore della situazione economica equivalente*, ISEE). However, such documentation is only issued to residents by the Fiscal Assistance Centres (*Centri assistenza fiscale*, CAF). Although the Decree Law clarifies that all services must be ensured to asylum seekers on the basis of their domicile only, in the absence of internal circulars, health service offices are denying this right.

## 3. Specialised treatment for vulnerable groups

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

The Ministry of Interior has clarified that the Guidelines on assistance and rehabilitation of refugees and subsidiary protection holders victims of torture or serious violence, issued by Decree on 3 April 2017 to implement Article 27(1-bis) of the Qualification Decree, also apply to asylum seekers (see [Content of Protection: Health Care](#)).

In order to ensure the protection of the health of foreign citizens in Italy, ASGI has collaborated with the Italian Society of Migration Medicine (*Società italiana di medicina delle migrazioni*, SIMM) since 2014, monitoring and reporting cases of violation of the constitutional right to health.

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<sup>661</sup> *Ibid.*

<sup>662</sup> Ministry of Health Circular No 5 of 24 March 2000.

Since 2015, ASGI also collaborates with MSF, providing legal support for migrants victims of violence. As of April 2016, the two organisations have started a project in **Rome** opening a centre specialising in the rehabilitation of victims of torture.<sup>663</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.<sup>664</sup> More recent information is not available.

## E. Civil registration

Decree Law 113/2018 repealed the rules governing civil registration (*iscrizione anagrafica*) of asylum seekers,<sup>665</sup> and stated that the residence permit issued to them were not valid titles for registration at the registry office.<sup>666</sup>

On 31 July 2020 the Constitutional Court declared the denial of civil registration for asylum seekers introduced by the legislative Decree 113/2018, contrary to the principle of equality enshrined in the Article 3 of the Italian Constitution.<sup>667</sup> Subsequently, Decree Law 130/2020, amended by L 173/2020, re-introduced Article 5bis of the Reception Decree, expressly allowing asylum seekers to obtain civil registration.<sup>668</sup>

According to the law, the applicant for international protection, in possession of a residence permit for asylum request<sup>669</sup> or of the receipt certifying the request<sup>670</sup> is registered in the registry of the resident population.<sup>671</sup> For applicants accommodated in first reception centers, the person in charge of the centers must notify the municipality of the changes in co-habitation within twenty days from the date on which the facts occurred. Furthermore, the law states that the communication of the withdrawal of the reception measures or of the unjustified removal of the asylum seeker from the first reception centers and from the SAI centers, constitutes a reason for immediate cancellation of the residence.<sup>672</sup>

As observed by some studies - even if limited to the exceptional cases of revocation of reception and unjustified removal - the provision still appears discriminatory with respect to asylum seekers because it excludes only these categories of people from the application of the rule according to which only being unavailable for 12 months leads to cancellation. The rule can have particularly negative effects because it is difficult for those who are removed from the reception system to immediately find other stable accommodation.<sup>673</sup>

After registration, asylum seekers get an identity card valid for three years.<sup>674</sup>

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<sup>663</sup> 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>664</sup> MSF, *Fuori campo*, February 2018, 39.

<sup>665</sup> Article 5-bis Reception Decree was repealed by Article 13 Decree Law 113/2018 and L 132/2018.

<sup>666</sup> Article 4(1-bis) Reception Decree, inserted by Article 13 Decree Law 113/2018 and L 132/2018.

<sup>667</sup> Decision no. 186/2020 of 31 July 2020, available at: <https://bit.ly/2SCXDbI>

<sup>668</sup> Article 5 bis Reception Decree.

<sup>669</sup> Article 4 (1) Reception Decree.

<sup>670</sup> Article 4 (3) Reception Decree.

<sup>671</sup> Article 5 bis (1) Reception Decree, re-introduced, with amendments, by Decree Law 130/2020 and L 173/2020.

<sup>672</sup> Article 5 bis (3) Reception Decree.

<sup>673</sup> See *L'Iscrizione anagrafica dei richiedenti asilo e dei protetti internazionali*, Paolo Morozzo della Rocca, in *Immigrazione, protezione internazionale e misure penali*, Pacini Giuridica, 2021.

<sup>674</sup> Article 5 bis (4) introduced by Decree Law 130/2020.

## F. Special reception needs of vulnerable groups

### Indicators: Special Reception Needs

1. Is there an assessment of special reception needs of vulnerable persons in practice?

☐ Yes

☒ No

Article 17(1) of the Reception Decree provides that reception is provided taking into account the special needs of the asylum seekers, in particular those of vulnerable persons such as children, unaccompanied children, disabled persons, elderly people, pregnant women, single parents with minor children, persons who have been subjected to torture, rape or other forms of psychological, physical or sexual violence, victims of trafficking and genital mutilation, as well as persons affected by serious illness or mental disorders (see [Identification](#)).

There are no legal provisions on how, when and by whom this assessment should be carried out. The Reception Decree provides that asylum applicants undergo a health check since they enter the first reception centres and in temporary reception structures to assess their health condition and special reception needs.<sup>675</sup> The Decree provides, in theory, that special services addressed to vulnerable people with special needs shall be ensured in first reception centres.<sup>676</sup>

However, in 2018, the reduction of funding and services provided in first reception centres under the 20 November 2018 tender specifications scheme (*capitolato*) of the Ministry of Interior and the exclusion of psychologists' services from eligible costs rendered the effective identification and protection of these categories of people even more precarious.

The reform provided to the accommodation system by Decree Law 130/2020 extends the protection afforded to asylum seekers in first reception facilities by extending the type of services to be provided. This largely theoretical as the new tender specifications guarantee them only to a minimum extent, thereby not having any positive impact on the situation that arose after the cancellation of these services following the Decree Law 113/2018.

Decree Law 113/2018, implemented by L 132/2018, repealed the provision that envisaged the activation of special reception services in the SPRAR/SIPROIMI facilities for vulnerable people.<sup>677</sup>

Currently, in case vulnerable people reach to access the SAI system before they are granted of a title of protection they could enjoy some additional services allowed by the Decree 18 November 2019 for disabled persons and persons affected by serious illness or mental disorders.<sup>678</sup>

However, the places intended for the reception of vulnerable people are insufficient: as Linkiesta reconstructs in a December 2020 report, in Italy, there are 734 places specialized in accommodation of vulnerable refugees, compared to the 2,000 who, according to the Ministry of the Interior, have been officially diagnosed with a disease. Only 2.3% of these people with severe mental illness are adequately assisted.<sup>679</sup>

In January 2021, SAI reported that there were only 623 places for people with mental distress and disabilities in SAI projects. In 8 regions (Abruzzo, Basilicata, Campania, Liguria, Molise, Sardinia, Trentino Alto Adige, Valle d'Aosta and Veneto) there is not even a dedicated place.<sup>680</sup>

<sup>675</sup> Articles 9(4) and 11(1) Reception Decree.

<sup>676</sup> Article 17(3) Reception Decree.

<sup>677</sup> Article 17(4) Reception Decree has been repealed by Article 12 Decree Law 113/2018 and L 132/2018.

<sup>678</sup> Article 34 MoI Decree 18 November 2019

<sup>679</sup> See Linkiesta, La questione irrisolta dei migranti con disturbi mentali, 23 December 2020, available in Italian at: <https://bit.ly/3eGbVR4>; see also Migranti Torino, "La salute mentale nei rifugiati prima, durante e dopo la migrazione", 15 January 2021, available at: <https://bit.ly/3w4iinb>

<sup>680</sup> SAI, I numeri del SAI, January 2021, available at: <https://www.retesai.it/i-numeri-dello-sprar/>

The law clarifies the need to set up specific spaces within governmental first reception centres where services related to the information, legal counselling, psychological support, and receiving visitors are ensured.<sup>681</sup> Where possible, adult vulnerable people are placed together with other adult family members already present in the reception centres.<sup>682</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>683</sup>

## 1. Reception of families and children

The Reception Decree specifies that asylum seekers are accommodated in facilities which ensure the protection of family unity comprising of spouses and first-degree relatives.<sup>684</sup> The management body of the reception centres shall respect the family unity principle. Therefore they cannot separate children from parents who live in the same wing of the facility. In practice, it may happen that a father is accommodated in a wing for single men and his wife and children in the wing for women. In general, dedicated wings are designed for single parents with children. It may also happen that the parents are divided and placed in different centres, and usually the children are accommodated with the mother.

It may happen in first reception centres that families are divided in case the accommodation conditions are deemed not adequate and suitable for children. In these situations mothers and children are hosted in a facility, and men in another.

On 3 April 2019, the Court of Cassation clarified that minors are considered accompanied only when they can be considered assisted by a present parent. In any case of family members other than parents the Juvenile Court has to activate the guardianship.<sup>685</sup> Following this decision, Juvenile Courts gave indications to authorities not to directly accommodate minors with relatives different other than parents.

Following the 2018 reform of the reception system, families accommodated in first reception centres or CAS could be subsequently transferred to a SIPROIMI facility only when at least one member of the family has been granted international protection or another status that allows access to second-line reception (see [Content of Protection: Housing](#)). However, the transfer depends on factors such as the composition of the family, its vulnerability and/or health problems and the availability of places in the SIPROIMI system.

In May 2019, many small CAS closed due funding cuts made by the calls modulated on the new tender specifications schemes. Following these closures more than 300 people were transferred to Cavarzerani centre. Among them also many families with even very young children.<sup>686</sup>

Based on NGOs' experience, no specific or standardised mechanisms are put in place to prevent gender-based violence in reception centres. As a general rule, permanent law enforcement personnel is present outside governmental centres with the task of preventing problems and maintaining public order. Generally speaking, the management body of governmental centres divides each family from the others hosted in the centre. Women and men are always separated.

## 2. Reception of unaccompanied children

The Reception Decree states that the best interests of the child have priority in the application of reception measures, in order to ensure living conditions suitable for a child with regard to protection, well-being and

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<sup>681</sup> Article 9(3) PD 21/2015.

<sup>682</sup> Article 17(5) Reception Decree.

<sup>683</sup> Article 17(7) Reception Decree.

<sup>684</sup> Article 10(1) Reception Decree.

<sup>685</sup> Court of Cassation, 3 April 2019, decision 9199/2019

<sup>686</sup> Repubblica, Friuli, caos sull'accoglienza e i richiedenti asilo tornano in caserma. Le associazioni: "È una deportazione, available in Italian at: <https://cutt.ly/xyO8uH0>.

development, including social development, in accordance with Article 3 of the Convention on the Rights of the Child.<sup>687</sup>

In order to evaluate the best interests of the child, the child shall be heard, taking into account his or her age, the extent of his or her maturity and personal development, also for the purpose of understanding his or her past experiences and to assess the risk of being a victim of trafficking, and the possibility of family reunion pursuant to Article 8(2) of the Dublin Regulation as long as it corresponds to the best interests.<sup>688</sup>

At the end of 2020, the total number of unaccompanied children accommodated in Italy was 7,080. Of those, 96.2% were accommodated in reception facilities while 3.8 % were accommodated in private housing (with families). The majority of unaccompanied children were accommodated in **Sicily** (18.3%), followed by **Lombardy** (13.3%), **Emilia-Romagna** (9.9 %), Lazio (8.8%), Piedmont (6.3%), Campania (6.0%), Tuscany (6.0%), Apulia (5.8%), **Friuli-Venezia Giulia** (4.6%), Tuscany, (7.6%) Veneto (4.9%), Piedmont (4.3%), Apulia (3.7%) and Liguria (3.4%).<sup>689</sup>

In the final report drawn up following the visits carried out jointly between 2017 and 2018, the Children's Ombudsman and UNHCR highlighted how, despite the fact that the number of unaccompanied minors has decreased, a high number of them are accommodated in a limited number of regions, a circumstance that does not facilitate the minors social paths.<sup>690</sup>

Since 2015, the management of the Fund for the reception of unaccompanied minors has been transferred from the Ministry of Labour to the Ministry of Interior.<sup>691</sup> Through the Fund, the Ministry provides, with his own decree, after hearing the Unified Conference, to cover the costs incurred by local authorities for the reception of unaccompanied foreign minors, within the limits of the resources allocated. According to the 2019 budget law, the Fund for the reception of minors has approximately 150 million euros for 2019 and 170 million for 2020 and 2021.

The interventions in favour of unaccompanied foreign minors are also funded by resources from the European Asylum, Migration and Integration Fund (AMIF) 2014-2020.<sup>692</sup> On 17 December 2020 the Ministry of the Interior - Department for Civil Liberties and Immigration published a decree extending 6 AMIF projects until 31 December 2021.<sup>693</sup> On 22 December 2020, the Mol informed that the AMIF fund had authorised the funding of 21 million euros to Mol to strengthen the implementation by local authorities of projects for the reception of unaccompanied minors in the SIPROIMI (SAI) network. The maximum cost of the projects is € 68,40 per day per person.<sup>694</sup>

In application of the anti Covid 19 regulations, the unaccompanied minors, disembarked or just arrived by land borders, were placed in ad hoc structures for quarantine. The procedures for placing unaccompanied minors in quarantine have been provided for by the various regional ordinances in compliance with the national legislation; in some areas regions have used hotels, in other cases rooms have been organized within the reception system. As reported by the Ministry of Labour, in cases where hotels were used, the minors, at the end of the quarantine, were transferred to government reception facilities. When the quarantine was carried out in second-level structures, the minors continued their reception in the same facility, after the period of fiduciary isolation.

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<sup>687</sup> Article 18(1) Reception Decree.

<sup>688</sup> Article 18(2) Reception Decree.

<sup>689</sup> Ministry of Labour, Monitoring report on Unaccompanied children, 31 December 2020, available in Italian at: <https://bit.ly/3ycR0g8>

<sup>690</sup> Children's Ombudsman and UNHCR report, May 2019, available in Italian at: <https://cutt.ly/SyO8sdV>.

<sup>691</sup> 2015 Stability Law (Law 190/2014, Article 1 (181-182)

<sup>692</sup> Chamber of Deputies, Study Service, 19 March 2020, available in Italian at: <https://cutt.ly/myO8ddD>.

<sup>693</sup> MOI, available at: <https://bit.ly/3fg5x2e>

<sup>694</sup> See: <https://bit.ly/3oeJzRb>

As evidenced by ASGI many minors had to spend the quarantine on ships, with serious consequences for access to treatment and psychophysical health of minors. At the beginning of October, Abou Diakite, aged 15, died following an emergency hospitalization, which occurred only after several days of isolation on the GNV Allegra ship. Just before, on September 15, Abdallah Said, aged 17, died of tuberculous encephalitis at Catania Hospital, where he had been transferred only after a period of quarantine on the ship GNV Azzurra.

## 2.1. Dedicated facilities for unaccompanied children

At the end of 2020, there were 981 reception facilities hosting unaccompanied children, mainly boys (95.2%) aged 16 or 17 (72.7%).<sup>695</sup>

Out of the 6,814 accommodated unaccompanied children, 5,549 were in second-line reception facilities (78.4%), which include SIPROIMI-SAI facilities, second-line accommodation facilities funded by AMIF and all second-level structures authorised at regional or municipal level. Another 1,265 (17.8%) were in first reception centres.<sup>696</sup>

### SIPROIMI – SAI

According to the law, the accommodation of unaccompanied children shall primarily take place in SAI (former SIPROIMI /SPRAR) facilities.<sup>697</sup> All unaccompanied children, including those seeking asylum, have access to SAI.

Children reaching adulthood in SAI centres can remain there until a final decision on their asylum application.<sup>698</sup> Circulars issued by the Ministry of Interior of 27 December 2018 and 3 January 2019 specified that in case the unaccompanied child is granted international protection, he or she can stay in SIPROIMI for another 6 months. The same Circulars specified that unaccompanied children who obtained an administrative extension of their placement can remain in second-line reception for the entire duration of the extension. The Siproimi Guidelines issued by the Ministry of Interior with decree of 18 November 2019 regulated the matter in the same way.<sup>699</sup> DL 130/2020 finally authorised the access to SAI for unaccompanied minors who became adults obtaining an administrative extension of their placement.<sup>700</sup>

Siproimi Guidelines adopted by MoI Decree of 18 November 2019 provided additional specific activities and services in favour of unaccompanied minors and in particular the activation of services aimed at promoting family foster care; aimed at supporting the paths of autonomy, also by promoting forms of support for housing autonomy in the transition to adulthood; encouraging the connection with the voluntary tutors. It also provides specialized services dedicated to minors with particular fragility.<sup>701</sup>

As of January 2021, 4,469 places were financed for unaccompanied children in 145 SAI/SIPROIMI projects, including 206 places in 11 AMIF-funded projects.<sup>702</sup> The number of places dedicated to

<sup>695</sup> Ministry of Labour, monitoring report. 31 December 2020, available in Italian at: <https://bit.ly/3uLZI2R>

<sup>696</sup> *Ibid*, 35.

<sup>697</sup> Article 19(2) Reception Decree.

<sup>698</sup> Article 12(5-bis) Decree Law 113/2018, as amended by L 132/2018.

<sup>699</sup> Article 38 MoI Decree 18 November 2019.

<sup>700</sup> DL 130/2020, Article 4 (3) b), amending Article 1 sexies (1 bis) DL 416/1989. In 2020 ASGI had underlined that, although the Ministry of Interior had not clarified it, it was not justified a different treatment of unaccompanied children who obtained an administrative extension of their placement but who, due to the unavailability of places in SIPROIMI, had not been included within this system during the minor age, see ASGI, *Emergenza covid-19 e percorsi dei minori non accompagnati dopo i 18 anni*, 13 March 2020, available in Italian at: <https://cutt.ly/NyO8h6T>.

<sup>701</sup> MoI Decree, 18 November 2019, Article 35, available in Italian at: <https://cutt.ly/hyO8jxD>.

<sup>702</sup> SAI, *I numeri del SAI*, January 2021, available in Italian at: <https://www.retesai.it/i-numeri-dello-sprar/>; the number of AMIF projects is available in the Ministry of Labour monitoring report, 31 December 2020.

unaccompanied children still falls short of current needs, i.e. 6,814 unaccompanied children present in the reception system.<sup>703</sup>

### First reception centres and CAS for unaccompanied children

In case of lack of available places in the SAI/SIPROIMI system and for immediate relief and protection purposes, unaccompanied children may be accommodated in governmental first reception facilities. The first reception facilities are funded by AMIF, implemented by the Ministry of Interior in agreement with the local authority on whose territory the structure is located, and managed by the Ministry of Interior also in agreement with the local authorities.<sup>704</sup>

Where implemented, stay in first reception centres cannot exceed 30 days and must last for the strictly necessary time for identification, which must be completed within 10 days. This serves to identify and assess the age of the child and to receive any information on the rights recognised to the child and on the modalities of exercise of such rights, including the right to apply for international protection. Throughout the time in which the child is accommodated in the first reception centre, one or more meetings with an age development psychologist are provided, where necessary, in presence of a cultural mediator, in order to understand the personal condition of the child, the reasons and circumstances of departure from his or her home country and his or her travel, as well as his or her future expectations.<sup>705</sup>

The Ministry of Interior Decree issued on 1 September 2016 has identified the structural requirements and the services ensured in such centres.<sup>706</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 children.<sup>707</sup>

During 2017 and 2018, the Children's Ombudsman and UNHCR jointly implemented a programme of visits to emergency, first and second-line reception centres for unaccompanied children.<sup>708</sup> The visits have made it possible to ascertain that the permanence of minors in first reception centres is extended well beyond the deadline of 30 days, and continues in most cases up to the actual completion of age, involving the lack of access to second reception projects. In the first accommodation and identification centre of Rome -CPSA - It has been found that the actual average time of stay it is about 10 days, during which children undergoing identification procedures are forbidden from leaving the centres. The visits to some first reception centres found limited conditions possibility of movement by minors. According to the rules in force in these centres, in order to protect the potential victims of trafficking, minors could not own cell phones and exit only in the presence of operators.

As reported by the Children's Ombudsman, the frequent stay in these first reception centres well beyond the prescribed 30 days often creates feelings of despondency and abandonment among children. This can play an important role in absconding from centres.<sup>709</sup>

If even first reception centres are saturated, reception must be temporarily assured by the public authority of the Municipality where the child is located, without prejudice to the possibility of transfer to another municipality in accordance with the best interests of the child.<sup>710</sup> According to Article 19(3-bis) of the

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<sup>703</sup> Data as of 31 December 2020, Ministry of Labour report available in Italian at: <https://bit.ly/3y9tlND>

<sup>704</sup> Article 19(1) Reception Decree.

<sup>705</sup> *Ibid.*

<sup>706</sup> Ministry of Interior Decree of 1 September 2016 on the establishment of first reception centres dedicated to unaccompanied minors.

<sup>707</sup> Article 3 Ministry of Interior Decree of 1 September 2016.

<sup>708</sup> Children's Ombudsman and UNHCR, *L'ascolto e la partecipazione dei minori stranieri non accompagnati in Italia, Rapporto finale attività di partecipazione 2017-2018*, May 2019, available in Italian at: <https://cutt.ly/LyO8zDa>.

<sup>709</sup> Children's Ombudsman, *I movimenti dei minori stranieri non accompagnati alle frontiere settentrionali*, 29 March 2019, available in Italian at: <https://bit.ly/2v2oNt6>.

<sup>710</sup> Article 19(3) Reception Decree.

Reception Decree, in case of mass arrivals of unaccompanied children and unavailability of the dedicated reception centres, the use of CAS to accommodate children is permitted.<sup>711</sup>

Similar to the temporary shelters for adults (see [Types of Accommodation](#)), these CAS are implemented by Prefectures. The law states that each structure may have a maximum capacity of 50 places and may ensure the same services as governmental first reception centres dedicated to children.<sup>712</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>713</sup> In any event, these temporary centres cannot host children under the age of 14. The accommodation of children has to be communicated by the manager of the temporary structure to the municipality where the structure is located, for the coordination with the services of the territory.<sup>714</sup>

At the end of 2020, first reception centres accommodated 1,265 unaccompanied children in 8 projects. These centres include government centres financed by AMIF, CAS activated by the Prefects; first reception facilities authorised by the municipalities or regions; and emergency and provisional centres. Of the 8 projects operational in Italy, 7 were in Sicily and 1 in Molise.

Specifically as regards AMIF-funded first reception centres, from 23 August 2016 to 31 December 2020, the total number of unaccompanied children hosted was 8,115. 3,568 voluntarily left accommodation, while 4,099 have been transferred to second-line reception facilities belonging to the SPRAR/SIPROIMI network or in second-line reception facilities financed with AMIF funds.

At the end of 2020, there were 313 unaccompanied children present in these facilities.<sup>715</sup>

In 2019, the Children’s Ombudsman has critically highlighted the lack of sufficient numbers of centres for unaccompanied children in the border areas, resulting in a lack of adequate response to the needs of unaccompanied children in transit at the northern borders.<sup>716</sup>

The reception of unaccompanied children not transferred to the governmental centres or SIPROIMI facilities remains under the responsibility of the city of arrival. The amended Reception Decree states that the interested municipalities should not have any expenses in charge.<sup>717</sup>

The Ministry of Interior has developed guidelines for the accommodation of unaccompanied minors in first reception centres, with practical information on the procedures to be followed for daily work.<sup>718</sup>

## 2.2. Accommodation with adults and destitution

Unaccompanied children cannot be held or detained in governmental reception centres for adults and CPR.<sup>719</sup> However, throughout 2017 and 2018, both due to the problems related to age assessment (see [Identification](#)) and to the unavailability of places in dedicated shelters, there have been reported cases of children accommodated in adults’ reception centres.<sup>720</sup> Throughout 2017, more appeals were presented

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<sup>711</sup> Article 19(3-bis) Reception Decree, citing Article 11.

<sup>712</sup> Article 19(1) Reception Decree.

<sup>713</sup> Article 19(3-bis) Reception Decree, citing Article 19(2)-(3).

<sup>714</sup> Article 19(3-bis) Reception Decree.

<sup>715</sup> Ministry of Labour, Monitoring report *I minori stranieri non accompagnati*, 31 December 2020, 37.

<sup>716</sup> Children’s Ombudsman, *I movimenti dei minori stranieri non accompagnati alle frontiere settentrionali*, 29 March 2019.

<sup>717</sup> Article 19(3) Reception Decree, as amended by Article 12 Decree Law 113/2018 and L 132/2018.

<sup>718</sup> Mol Guidelines available in Italian at: <https://cutt.ly/2yO8nAN>.

<sup>719</sup> Article 19(4) Reception Decree.

<sup>720</sup> Children’s Ombudsman and UNHCR, *L’ascolto e la partecipazione dei minori stranieri non accompagnati in Italia, Rapporto finale attività di partecipazione 2017-2018*, May 2019, available in Italian at: <https://cutt.ly/vyO8mh2>.

to the ECtHR to protect unaccompanied children placed in adult reception centres in Italy, including Rome, **Lazio**,<sup>721</sup> and Como, **Lombardy**.<sup>722</sup>

In 2020, the Public Prosecutor at the Juvenile Court of Trieste sent the implementation of two directives to authorities in Friuli Venezia Giulia region. They authorized the authorities to no longer carry out the age assessment procedure for those who declare as minors, but are believed to be adults. This had a negative effect on the accommodation of many minors (see age assessment and arrival in the territory, Slovenian border).

As reported by ASGI, three foreign citizens who declared themselves as minors were placed in the CARA of Gradisca from October 2020 to January 2021, in promiscuity with adults, after being identified by the Police as adults, without starting any age assessment procedure. In mid-January 2021, after a legal intervention with the support of ASGI, the three minors were transferred to facilities for unaccompanied minors.

In at least 4 cases where minors were not considered as such and placed in adult facilities, the Juvenile Court of Trieste, recognized the illegitimacy of the practice and sent the procedural documents to the local Juvenile Prosecutor's Office ordering to activate the procedure for the age assessment of the persons involved.

ASGI also recorded cases where minors were detained in CPRs as adults (see detention).

## G. Information for asylum seekers and access to reception centres

### 1. Provision of information on reception

According to the Procedure Decree, upon submission of an asylum application, police authorities have to inform applicants through a written brochure about their rights and obligations and the relevant timeframes applicable during asylum procedures (see [Provision of Information on the Procedure](#)).<sup>723</sup> The brochure also includes information on health services and on the reception system, and on the modalities to access these services. In addition, it contains the contact details of UNHCR and other specialised refugee-assisting NGOs. The Reception Decree contains a provision on the right to information, confirming the obligation to hand over the brochure, as stated above, and states that this information is provided in reception centres within 15 days from the presentation of the asylum application. This information is ensured through the assistance of an interpreter.<sup>724</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>725</sup> is actually quite rare at the Questure. Although the law does not foresee it, the information is orally provided by police officers but not in a systematic way mainly due to the shortage of professional interpreters and linguistic mediators. The gaps in providing information is of concern to NGOs as it is considered necessary that asylum seekers receive information orally, taking into consideration their habits, cultural backgrounds and level of education which may constitute obstacles in effectively understanding the contents of the leaflets.

Upon arrival in the reception centres, asylum seekers are informed on the benefits and level of material reception conditions. Depending of the type of centre and the rules adopted by the managers of the

<sup>721</sup> ECtHR, *Bacary v. Italy*, Application No 36986/17, Communicated on 5 July 2017.

<sup>722</sup> ECtHR, *M.A. v. Italy*, Application No 70583/17, Communicated on 3 October 2017.

<sup>723</sup> Article 10(1) Procedure Decree.

<sup>724</sup> Article 3 Reception Decree and Article 10 PD 21/2015.

<sup>725</sup> Italian, English, French, Spanish, Arabic, Somali, Kurdish, Amharic, Farsi and Tigrinya.

reception centres, asylum seekers may benefit from proper information of the asylum procedure, access to the labour market or any other information on their integration rights and opportunities. Generally speaking, leaflets are distributed in the accommodation centres and asylum seekers are informed orally through the assistance of interpreters.

## 2. Access to reception centres by third parties

### Indicators: Access to Reception Centres

1. Do family members, legal advisers, UNHCR and/or NGOs have access to reception centres?  
☐ Yes ☒ With limitations ☐ No

According to the Reception Decree, applicants have the opportunity to communicate with UNHCR, NGOs with experience in the field of asylum, religious entities, lawyers and family members.<sup>726</sup> The representatives of the aforementioned bodies are allowed to enter in these centres, except for security reasons and for the protection of the structures and of the asylum seekers.<sup>727</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.

Article 15(5) of the Reception Decree, provides that lawyers and legal counsellors indicated by the applicant, UNHCR as well as other entities and NGOs working in the field of asylum and refugee protection, have access to these facilities in order to provide assistance to hosted asylum seekers.

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 Milan, Naga volunteers reported that, in 2019, as in previous years, to access the CAS centres it was necessary to request a clearance from the Prefecture of Milan, which in turn requires authorization of the Ministry of Interior. After months, and after repeated reminders, it was possible to make the visit to the CAS centres requested, but, unlike what happened until 2017, the visits took place not only with the necessary and usual presence of the operators in the centre, but also in the presence of an official of the Prefecture and without the possibility of visiting the structure.<sup>728</sup>

Concerning the governmental first reception centres for unaccompanied children, the law allows entry into the centres for members of the national and European Parliament, as well as to UNHCR, IOM, EASO and to the Children's Ombudsman, to the Mayor or a person delegated by him or her. Access is also allowed to persons who have a motivated interest, because of their institutional engagement within the region or the local authority where the centres is based, to child protection agencies with long experience, to representatives of the media, and to other persons who present a justified request.<sup>729</sup>

In 2020, however, access was strongly limited due to -existing or claimed – health reasons due to Covid-19 prevention. All requests made by Lasciatecientrare network to enter CAS in 2020 were rejected with summary reasons or even not responded.

<sup>726</sup> Article 10(3) Reception Decree.

<sup>727</sup> Article 10(4) Reception Decree.

<sup>728</sup> Naga, Senza Scampo, December 2019.

<sup>729</sup> Article 7 Ministry of Interior Decree of 1 September 2016.

## H. Differential treatment of specific nationalities in reception

Once in reception, there are no recorded differences among asylum seekers on the basis of their nationalities. However, problems have been reported as regards the possibility to access the asylum procedure and the reception system for specific nationalities (see [Registration](#)).

## Detention of Asylum Seekers

### A. General

#### Indicators: General Information on Detention

1. Total number of persons detained in 2020:	
❖ CPR	Not available
❖ Hotspots	Not available
2. Number of persons in detention at the end of 2020:	
❖ CPR	344 <sup>730</sup>
❖ Hotspots	250 <sup>731</sup>
3. Number of detention centres:	
❖ CPR	10
❖ Hotspots	4 <sup>732</sup>
4. Total capacity of detention centres:	
❖ CPR	1,285 <sup>733</sup>
❖ Hotspots	Not available

The Reception Decree prohibits the detention of asylum seekers for the sole purpose of examining their asylum application.<sup>734</sup> However, the new provisions introduced by Decree Law 113/2018, implemented by L 132/2018, create the risk of automatic violation of this principle since they foresee detention in suitable facilities set up in hotspots, first reception centres or subsequently in pre-removal centres (*Centri di permanenza per il rimpatrio*, CPR) for the purpose of establishing identity or nationality.<sup>735</sup>

The Decree Law 130/2020, converted by L. 173/2020, modified this provision only with respect to the terms of the detention - 30 days to which 90 days can be added and a further 30 in some cases, compared to the previous 30 days plus 6 months - but it did not change the grounds for the detention.<sup>736</sup>

According to what was reported by the Director of the Immigration Department, Bontempi, on an abstract capacity of 1,274 places, in November 2020, there was an effective capacity available of 485 due to the need to prevent the spread of covid-19 and to guarantee social distancing.<sup>737</sup>

As of December 2019, as reported from the Guarantor for the rights of detained persons, 6,172 people had been detained in CPRs, out of which 2,992 actually returned.<sup>738</sup>

As of 15 April 2020, 1,153 people have been detained in CPRs, out of which 378 actually returned.<sup>739</sup>

At the end of November 2020 the persons detained were 450.<sup>740</sup>

The number of CPR has increased from five in 2017 to ten in 2020: **Restinco** in Brindisi, **Bari**, **Caltanissetta**, **Ponte Galeria** in Rome; **Turin**, **Palazzo San Gervasio** in Potenza, **Trapani**, **Gradisca d'Isonzo** in Gorizia, **Macomer**, Nuoro (in Sardinia), Corelli in Milan.

<sup>730</sup> Data as of 22 October 2020, National Guarantor for the rights of detained persons, update of 28 October 2020, The Viewpoint no. 1, available in English at : <https://bit.ly/3uQvAUj>

<sup>731</sup> As of 22 October 2020, In the *hotspots*, out of 250, 174 were in the hotspot of Lampedusa and 76 in Pozzallo (RG), Guarantor for the rights of detained persons, Viewpoint of 28 October 2020

<sup>732</sup> As of June 2020, Source MOI, available at: <https://bit.ly/3hq9VOL>

<sup>733</sup> However, considering the Covid-19 measures the actual capacity is 485, situation at November 2020, hearing at Parliament, Schengen Committee, of Bontempi, Mol Director of Immigration and Border Police.

<sup>734</sup> Article 6(1) Reception Decree.

<sup>735</sup> Article 6(3-bis) Reception Decree, inserted by Article 3 Decree Law 113/2018 and L 132/2018.

<sup>736</sup> Article 6 (3-bis) Reception Decree, as amended by DL 130/2020 and L. 173/2020

<sup>737</sup> Data at 25 November 2020, hearing at Parliament of Bontempi, Mol Director of Immigration and Border Police

<sup>738</sup> Ibidem

<sup>739</sup> Ibidem, p. 205

<sup>740</sup> National Guarantor for the rights of detained persons, update of 28 October 2020, The Viewpoint no. 1, available in English at: <https://bit.ly/3hqyOtQ>

The number of persons entering the hotspots in 2020 is not available at the time of writing.  
As of 15 April 2020, 2,840 persons entered in hotspots.<sup>741</sup> Persons applying for asylum in CPR are subject to the [Accelerated Procedure](#).

## 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 checked="" type="checkbox"/> Yes	<input 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
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According to article 14 TUI, amended by Decree Law 130/2020, the Questore asks the Department of Public Security of the Ministry of the Interior where to send the foreigner. Furthermore, Decree Law 130/2020 has established a priority to be given to the detention of foreigners who are dangerous to public order and security or who have been convicted even with a non-definitive sentence for an offense impeding entry,<sup>742</sup> and that a priority has to be given in any case to citizens of countries with which repatriation agreements exist.<sup>743</sup>

In his report to Parliament of March 2020, the Guarantor for the rights of detained persons expressed concern that many people had been detained without legal basis and in fact most had been released on the orders of the judges.

As of 15 of April 2020, out of 1,152 people who passed through the CPRs, 358 people were released because the detention was not considered legitimate by the Judge. 378 people were repatriated.

In 2019, out of 6,172 people who entered the CPRs, 1,755 were released because the detention was not validated and 2,992 were actually repatriated.<sup>744</sup>

#### 1.1. Asylum detention

Asylum seekers shall not be detained for the sole reason of the examination of their application.<sup>745</sup> An applicant shall be detained in CPR, on the basis of a case by case evaluation. As a result of the amendments made by the Decree Law 130/2020 converted into Law 173/2020 these cases arise when:<sup>746</sup>

- (a) He or she falls under the exclusion clauses laid down in Article 1F of the 1951 Convention, following a decision of the CNDA; or under Article 12 (1, b, c) and under Article 16 of the Qualification Decree.<sup>747</sup>

<sup>741</sup> Guarantor for the rights of detained persons, Report to Parliament, March 2020, Tab. 2.20 p. 205.

<sup>742</sup> According to Article 4 (3) and 5 (5) TUI.

<sup>743</sup> Article 14 (1.1) TUI.

<sup>744</sup> Report to Parliament, March 2020, Guarantor for the rights of detained persons.

<sup>745</sup> Article 6(1) Reception Decree.

<sup>746</sup> Article 6(2) Reception Decree.

<sup>747</sup> Decree Law 130/2020 converted by L. 173/2020 has amended Article 6 (2, a) Reception Decree, enlarging the exclusion clauses to be referred to detain asylum seekers.

- (b) a bis) He or she submits a subsequent asylum application during the execution of a removal order, according to Article 29 bis Procedure Decree<sup>748</sup>
- (c) Is issued an expulsion order on the basis that he or she constitutes a danger to public order or state security,<sup>749</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>750</sup> including with the intention of committing acts of terrorism;<sup>751</sup>
- (d) May represent a danger for public order and security or in case of crimes mentioned by Article 12 (1, c) and 16 (1, d bis) Qualification Decree and regarding some exclusion clauses.<sup>752</sup>

According to the law, to assess such a danger, previous convictions, final or non-final, may be taken into account, including the conviction adopted following the enforcement of the penalty at the request of the party pursuant to Article 444 of the Italian Criminal Procedure Code, in relation to certain serious crimes,<sup>753</sup> to drug crimes, sexual crimes, facilitation of illegal immigration, recruiting of persons for prostitution, exploitation of prostitution and of children to be used in illegal activities.

With regard to this provision, the Court of Cassation annulled an order of the Court of Turin to extend the detention of an asylum seeker convicted for resistance to a public official. The Court considered that the granting of the benefit of the conditional suspension of the penalty contradicted the finding of a threat to public order.<sup>754</sup>

- (e) Presents a risk of absconding.

The assessment of such risk is made on a case by case basis, when the applicant has previously and systematically provided false declarations or documents on his or her personal data in order to avoid the adoption or the enforcement of an expulsion order, or when the applicant has not complied with alternatives to detention such as, stay in an assigned place of residence determined by the competent authority or reporting at given times to the competent authority.<sup>755</sup> Following Decree Law 13/2017, implemented by L 46/2017, repeated refusal to undergo fingerprinting at hotspots or on the national territory also constitutes a criterion indicating a risk of absconding.<sup>756</sup>

## 1.2. Pre-removal detention

The Reception Decree also provides that:

- (f) Third-country nationals who apply for asylum when they are already held in CPR and are waiting for the enforcement of a return order pursuant to Article 10 TUI or an expulsion order pursuant to

<sup>748</sup> Introduced by Decree Law 130/2020 converted by L 173/2020.

<sup>749</sup> Article 13(1) TUI.

<sup>750</sup> Article 13(2)(c) TUI.

<sup>751</sup> Article 3(1) Decree Law 144/2005, implemented by L 155/2005.

<sup>752</sup> Article amended by Decree Law 130/2020 converted by L 173/2020

<sup>753</sup> Article 380(1)-(2) Criminal Procedure Code is cited, which refers to individuals who have participated in, among others, the following criminal activities: (a) child prostitution; (b) child pornography; (c) slavery; (d) looting and vandalism; (e) crimes against the community or the state authorities.

<sup>754</sup> Court of Cassation, Decision 27739/2018, 31 October 2018.

<sup>755</sup> Article 13(5), (5.2) and (13) and Article 14 TUI. Article 13 TUI, to which Article 6 Reception Decree refers, also includes the obligation to surrender a passport but this should not be applied to asylum seekers because of their particular condition.

<sup>756</sup> Article 10-ter(3) TUI, inserted by Decree Law 13/2017 and L 46/2017.

Articles 13 and 14 TUI shall remain in detention when, in addition to the abovementioned reasons, there are reasonable grounds to consider that the application has been submitted with the sole reason of delaying or obstructing the enforcement of the expulsion order.<sup>757</sup>

### 1.3. Detention for identification purposes

Furthermore, a 2018 amendment to the Reception Decree has added that:

- (g) Asylum seekers may be detained in hotspots or first reception centres for the purpose of establishment of their identity or nationality. If the determination or verification of identity or nationality is not possible in those premises, they can be transferred to a CPR.<sup>758</sup>

As those premises had not yet been identified, detention in hotspots occurs *de facto*.<sup>759</sup> (see duration of detention for identification purposes). In **Lampedusa**, the civil society organisations were able to observe that the centre gate was constantly closed and migrants could leave the centre only through openings in the fence, regularly adjusted by the administration and reopened by migrants. On the other hand, people taken to Lampedusa are *de facto* detained on the island, because, without an identity document, they cannot purchase a title of travel and leave.<sup>760</sup>

While the law does not clarify the procedure relating to the validation of this form of detention, the Ministry of Interior Circular of 27 December 2018 generically refers to validation by the judicial authority. According to ASGI, the same procedure envisaged for other grounds for detention of asylum seekers should apply to these cases.

In addition, the law does not specify in which cases the need for identification arises, thus linking detention not to the conduct of the applicant but to an objective circumstance such as the lack of identity documents.

According to ASGI, the new detention ground represents a violation of the prohibition on detention of asylum seekers for the sole purpose of examining their application under see Article 8(1) of the recast Reception Conditions Directive. People fleeing their countries often do not have identification documents and cannot contact the authorities of the countries of origin as this could be interpreted as re-availing themselves of the protection of that country.

## 2. Alternatives to detention

### Indicators: Alternatives to Detention

1. Which alternatives to detention have been laid down in the law? ☒ Reporting duties  
☒ Surrendering documents  
☐ Financial guarantee  
☒ Residence restrictions  
☐ Other
2. Are alternatives to detention used in practice? ☐ Yes ☒ No

Article 6(5) of the Reception Decree makes reference to the alternatives to detention provided in the TUI. To this end, authorities should apply Article 14 TUI to the compatible extent, including the provisions on alternative detention measures provided by Article 14(1-bis).

<sup>757</sup> Article 6(3) Reception Decree.

<sup>758</sup> Article 6(3-bis) Reception Decree, inserted by Article 3 Decree Law 113/2018 and L. 132/2018 and amended by DL 130/2020 and L. 173/2020.

<sup>759</sup> Guarantor for the rights of detained persons, *Relazione al Parlamento*, 15 June 2018, available in Italian at: <http://bit.ly/2TZy9ol>, 233.

<sup>760</sup> ASGI et al., *Scenari di frontiera: il caso Lampedusa*, October 2018, available in Italian at: <http://bit.ly/2FF2obD>.

The TUI provides that a foreign national who has received an expulsion order may request to the Prefect a certain period of time for voluntary departure. In that case the person will not be detained and will not be forcibly removed from the territory. However, in order to benefit from this measure, some strict requirements must be fulfilled:<sup>761</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;
- (c) The obligation to report to police authorities following police instructions.

The Reception Decree provides that when the detained applicant requests to be returned to his or her country of origin or to the country from which he or she came from, the removal order<sup>762</sup> shall be immediately adopted or executed. The repatriation request corresponds to a withdrawal of the application for international protection.<sup>763</sup>

In case the applicant is the recipient of an expulsion order,<sup>764</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>765</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

#### 3.1. Detention of unaccompanied children

The law explicitly provides that unaccompanied children can never be detained.<sup>766</sup> However, there have been cases where unaccompanied children have been placed in CPR following a wrong age assessment.

Children have also been detained in hotspots in practice.

A total of 1,609 children were placed in hotspots in 2019, including 1,228 unaccompanied and 381 accompanied children.<sup>767</sup> Regarding 2020, as of 15 April 2020, 606 minors were placed in hotspots, including 515 unaccompanied and 91 accompanied children.<sup>768</sup>

<sup>761</sup> Articles 13(5.2) and 14-ter TUI.

<sup>762</sup> Pursuant to Article 13(4) and (5-bis) TUI.

<sup>763</sup> Article 6(9) Reception Decree.

<sup>764</sup> The expulsion order to be executed according to the procedures set out in Article 13(5)-(5.2) TUI.

<sup>765</sup> Article 6(10) Reception Decree.

<sup>766</sup> Article 19(4) Reception Decree.

<sup>767</sup> Guarantor for the rights of detained persons, *Relazione al Parlamento 2019*, 26 March 2019, available in Italian at: <https://bit.ly/2GijVoY>, 133.

<sup>768</sup> Guarantor for the rights of detained persons, Report to Parliament, March 2020, p. 205

On 30 December 2020, the regional Guarantor for detained persons visited the CPR of Ponte Galeria, in Rome. Many detained persons told the guarantor that they were minors, but in only one case a detainee was able to document it. Thus, the situation was immediately represented to the President of the Juvenile Court and to the Public Prosecutor's Office and, the day after, on December 31<sup>st</sup>, the Tunisian minor was released by the CPR and placed in a reception facility.<sup>769</sup>

LasciateCientrare told ASGI about several cases of minors detained in CPR in 2020 and early 2021: one case was reported at the CPR of Gradisca d'Isonzo; 7 cases at the CPR of Turin; 3 in Ponte Galeria, in Rome; one other case at Palazzo San Gervasio, in March 2021.<sup>770</sup>

An ASGI lawyer directly dealt with the case of a minor detained at Ponte Galeria CPR in December 2020. The boy had been transferred to the CPR directly after the quarantine period spent on a ship and during which he was not able to prove his minor age and was notified with a refoulement order. Once in CPR, although he had exhibited a birth certificate which showed he was 17 years old, no report had been made to the Public prosecutor to the Juvenile Court. The health assessment was carried out in total autonomy by the Questura. At the second validation hearing the new Judge of the peace, having ascertained that the health assessment did not entirely exclude the minor age, did not validate the detention.

In the report published on 12 April 2021, the National Guarantor for detained persons found an illegitimate practice at the CPR of Gradisca, Rome and Turin according to which social and health checks were ordered by the Public Security Authority against detainees who had declared themselves minors without the involvement of the Public Prosecutor's Office at the Juvenile Court. In numerous cases examined as a result of the examinations carried out, people were considered adults and often repatriated without further and different checks. This practice is completely contrary to the age assessment procedure referred to in 19 bis (4) and (9) Reception Decree.

In Gradisca this happened at least in two cases in which people had declared that they were born in 2003 but were repatriated to Tunisia on 23 November 2020 and 7 December 2020. Also in Turin this involved another Tunisian detainee who had declared as a date born in 2003, repatriated on November 23, 2020.

With respect to the Trapani-Milo CPR, on the day of the visit carried out on 25 November 2019, the Guarantor found 11 people who declared themselves minors coming from the hotspot of Lampedusa and in general, he ascertained that the phenomenon was very frequent because, during the of the visit carried out on 23 November 2019 in the hotspot of Lampedusa, he verified that the foreign citizen is substantially precluded from the possibility of modifying the personal data reported in the foglio notizie.

At the outcome of the age assessment procedure, in the CPR of Trapani-Milo dozens of people from Lampedusa and registered there as adults were recognized as minors and, consequently, released but in the meantime they had undergone several weeks of unlawful detention.

Although in Trapani-Milo the Guarantor verified that people who declare themselves minors were transferred to a special area (sector C) this however represented a violation of the law that provides, in case of doubts that the person is considered a minor and therefore not withheld at all. Furthermore, he underlined that the solution did not avoid situations of promiscuity between adults and minors.<sup>771</sup>

### 3.2. Detention of other vulnerable groups

Detention of children in families in CPR is not prohibited. Children can be detained together with their parents if they request it and if decided by the Juvenile Court. In practice, very few children are detained.

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<sup>769</sup> Region Lazio, "Il centro di permanenza per il rimpatrio di Ponte Galeria", 4 January 2021, available at : <https://bit.ly/3ulcgZ8>

<sup>770</sup> Information reported to ASGI by LasciateCientrare.

<sup>771</sup> National Guarantor for detained persons, report 12 April 2021, p. 37, available at: <https://bit.ly/3hpzuQ7>

Following the 2017 reform, the law also prohibits the detention of vulnerable persons.<sup>772</sup> According to the law, in the framework of the social and health services guaranteed in CPR, an assessment of vulnerability situations requiring specific assistance should be periodically provided.<sup>773</sup>

In CPR, however, legal assistance and psychological support are not systematically provided, although the latter was foreseen in the tender specifications scheme (*capitolato*) published by the Ministry of Interior on 20 November 2018 and in the new one published on 24 February 2021. To date, no protocol on early identification of and assistance to vulnerable persons, and on the referral system to specialised services and/or reception centres has been adopted. Although standards of services in CPR centres are planned following the national regulation on management of the centres, they are insufficient and inadequate, especially for vulnerable categories of individuals. Moreover, the quality of services may differ from one CPR to another. In this respect, the Reception Decree provides that, where possible, a specific place should be reserved to asylum seekers,<sup>774</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.

According to ASGI experience this is not applied in practice.

#### 4. Duration of detention

##### Indicators: Duration of Detention

- |  |               |
|--|---------------|
| 1. What is the maximum detention period set in the law (incl. extensions): |               |
| ❖ Asylum detention   | 12 months     |
| ❖ Pre-removal detention  | 120 days      |
| ❖ Detention for the purpose of identification                              | 150 days      |
| 2. In practice, how long in average are asylum seekers detained?           |               |
| ❖ CPR  | not available |
| ❖ Hotspots   | not available |

##### 4.1. Duration of detention for identification purposes

According to the SOPs applying at hotspots, from the moment of entry, the period of stay in the facility should be as short as possible, in accordance with the national legal framework.

However, Article 6(3-bis) of the Reception Decree introduced by Decree Law 113/2018 introduced the possibility to detain asylum seekers in hotspots for the purpose of determining their identity or nationality. After the amendment introduced by Decree law 130/2020 as converted by L. 173/2020, the law states that this should happen in the shortest possible time and for a period not exceeding 30 days and, if identification has not been possible within that timeframe, they could be sent to CPR for detention up to 90 days plus an additional 30 days when the migrant belongs to a country with which Italy has signed repatriation agreements.<sup>775</sup>

The provision of a detention period up to 30 days and extendable to up to 90 plus 30 days in the CPR seems incompatible with the principle laid down in Article 9 of the recast Reception Conditions Directive according to which an applicant shall be detained only for as short a period as possible. For asylum seekers, this cannot be justified as - given the impossibility of contacting the authorities of the country of origin - it could only coincide with the *fotosegnalamento*, which certainly cannot take more than a few days.<sup>776</sup>

<sup>772</sup> Article 7(5) Reception Decree, as amended by Article 8 Decree Law 13/2017 and L 46/2017.

<sup>773</sup> Article 7(5) Reception Decree.

<sup>774</sup> Article 6(1) Reception Decree.

<sup>775</sup> Article 6(3-bis) Reception Decree, inserted by Article 3 Decree Law 113/2018 and L 132/2018 and amended by Article 3 (2, b) DL 130/2020 and L 173/2020.

<sup>776</sup> See Guido Savio, La nuova disciplina del trattenimento per l'esecuzione dell'espulsione, in Immigrazione, protezione internazionale e misure penali, commento al d.l. 130/2020 convertito in L. 173/2020, 2021

During 2018 and before the reform, ASGI was able to observe that *de facto* detention in hotspots took place mainly in the first days after arrival and lasted until the identification procedures were concluded.<sup>777</sup> The reform, introduced by L. 132/2018 and confirmed by DL 130/2020 converted by L. 173/2020, has given a legal basis to this practice already being implemented. However, as underlined by ASGI and CILd in a letter<sup>778</sup> sent on January 2021 to the Committee of Ministers of the Council of Europe, the detention still takes place in hotspots without any clear legal basis, in the absence of a written act adopted by the competent authority and validated by a judge, in the absence of a maximum detention period, without proper information provided, in a manner inconsistent with the need to protect the individuals against arbitrariness.

Responding to ASGI requests of September 2019, the Prefectures of Agrigento<sup>779</sup>, Ragusa<sup>780</sup>, Messina,<sup>781</sup> Taranto,<sup>782</sup> reported that the detention for identification purposes was still not applied and that appropriate places for detention for identification purposes had not yet been identified.

The Guarantor for the Rights of detained persons, stated that “at least until 31 December 2019, no hotspot has been equipped with detention facilities and no detention measures have been ordered against asylum seekers inside them”.

In November 2020 the Questura of Agrigento confirmed to ASGI the impossibility to identify a place at the Lampedusa hotspot for the detention for identification purposes of asylum seekers and specified that no detention was carried out pursuant to art.6, par. 3bis, of the Legislative Decree 142/2015. Therefore, the detention of asylum seekers and foreign nationals does not take place through the implementation of the provisions contained in Law 132/2018.

The Guarantor for the Rights of detained persons raised critical issues on the detention of asylum seekers for identification purposes: “the lack of taxability of the conditions of application, the lack of regulation of the methods of detention in the premises identified in the hotspots/governmental reception centres, the inadequacy of the hotspots for detention of 30 days, the lack of proportionality of the maximum terms of detention with respect to other institutions that the law provides for similar purposes”.<sup>783</sup> In his previous report (March 2020) to Parliament, the Guarantor had pointed out that in the hotspots it may happen that migrants are deprived of their liberty without the possibility of recourse before the judicial authority, in a condition that he defined as a “limbo of legal protection”. The fact that these places are being used for quarantine, risks that the detention is prolonged indefinitely, if the period of precautionary isolation actually starts again every time new people arrive in the quarantine facility.<sup>784</sup>

Thus, during 2020, as also observed by ASGI as part of the In Limine project, the situation remained almost unchanged compared to 2019 and 2018 and a *de facto* detention, therefore devoid of any control of legitimacy by the judicial authority, continued in the hotspots during the identification phase and, in the case of Lampedusa hotspot, even after that phase until the person is finally transferred to another destination depending on his/her legal status.<sup>785</sup>

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<sup>777</sup> ASGI et al., *Scenari di frontiera: il caso Lampedusa*, October 2018.

<sup>778</sup> ASGI and CILD, communication to the Committee of Ministers of the Council of Europe as part of the supervision procedure on the implementation of the Khlaifia ruling of the ECHR available in English at: <https://bit.ly/3bu0haa>, January 2021

<sup>779</sup> Answer from the Prefecture of Agrigento, 10 September 2019, available in Italian at: <https://cutt.ly/wyO8Ssu>.

<sup>780</sup> Answer from the Prefecture of Ragusa, 5 September 2019, available in Italian at: <https://cutt.ly/uyO8S0q>.

<sup>781</sup> Answer from the Prefecture of Messina, 20 September 2019, available in Italian at: <https://cutt.ly/XyO8Dgi>.

<sup>782</sup> Answer from the Prefecture of Taranto, 23 September 2019, available in Italian at: <https://cutt.ly/lyO8Fet>.

<sup>783</sup> Guarantor for the rights of detained persons, Parere sul decreto-legge 21 ottobre 2020, n. 130, available at: <https://bit.ly/33IUnO8>

<sup>784</sup> Guarantor for the rights of detained persons, Report to Parliament, March 2020, available at: <https://bit.ly/3okpJnx>, para. 22, pp. 105-107

<sup>785</sup> ASGI and CILD, communication to the Committee of Ministers of the Council of Europe as part of the supervision procedure on the implementation of the Khlaifia ruling of the ECHR available in English at: <https://bit.ly/33FsXZd>, January 2021; see also Il trattenimento dei richiedenti asilo negli hotspot tra previsioni normative e detenzione arbitraria, 30 September 2019, available in Italian at: <https://cutt.ly/4yO8GLX>.

The use of the hotspots such as the one of Lampedusa as a place for quarantine exacerbated the situation depriving the migrants of their personal liberty, which in some cases lasted over 15 days, without any maximum time limits. In most cases, they were subject to particularly strict controls and restriction regimes that impose a physical closure of the persons concerned and constant surveillance by means of surveillance devices.

The **Lampedusa** hotspot continued, in 2020, to be a place where de facto detention is carried out.<sup>786</sup> Unlike other hotspots, the centre does not have an internal regulation, there is no system for regulating the entry and the exit from the structure. The military who guard the entrance do not allow foreign citizens to exit and to enter the gate and some people who are in the centre manage to exit through holes in the perimeter network, which is damaged in several places.

**According to what was orally reported in October 2020 to ASGI by the competent authorities, even in the accommodation center of Monastir, people are de facto detained for identification purposes.**<sup>787</sup>

#### 4.2. Duration of asylum and pre-removal detention

The maximum duration of detention of asylum seekers is 12 months.<sup>788</sup> The duration of pre-removal detention has been decreased from 180 to 90 days, plus 30 days in cases of repatriation agreements with the country of origins.<sup>789</sup> According to ASGI, the difference between the maximum duration of ordinary detention for third-country nationals (6 months) and the maximum duration of detention of asylum seekers (12 months) appears as an unreasonable violation of the principle of equality provided for by Article 3 of the Italian Constitution, resulting in a discriminatory treatment of the latter category. Moreover, it is not clear if the 30-day duration of detention for identification reasons may or may not be counted in these maximum detention periods.

When detention is already taking place at the time of the making of the application, the terms provided by Article 14(5) TUI are suspended and the Questore shall transmit the relevant files to the competent judicial authority to validate the detention for a maximum period of 60 days, in order to allow the completion of procedure related to the examination of the asylum application.<sup>790</sup> However, the detention or the extension of the detention shall not last longer than the time necessary for the examination of the asylum application under the **Accelerated Procedure**,<sup>791</sup> unless additional detention grounds exist pursuant to Article 14 TUI. Any delays in the completion of the administrative procedures required for the examination of the asylum application, if not caused by the applicant, do not constitute a valid ground for the extension of the detention.<sup>792</sup>

In 2020 in some cases Civil Courts have released asylum seekers detained in CPR. The Courts observed that time limits of the accelerated procedure as regulated by art. 28bis of the Procedures Decree were exceeded, without any justification. In two cases asylum seekers had been detained in CPR for more than two months without the audition having been set.<sup>793</sup> The Court of Cassation also affirmed the principle

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<sup>786</sup> See: ASGI, In Limine, The theatre of Lampedusa, From the spectacularisation of NGO disembarkations to the silence on the day-to-day management of arrivals by sea, 19 July 2019, available in English at <https://inlimine.ASGI.it/the-theatre-of-lampedusa/>; and Borderline Sicilia Onlus, article on Metlingpot, Il confine Lampedusa. Prassi illegittime, indifferenza e resistenza, 29 September 2019, available in Italian at: <https://cutt.ly/zyO8Kts>.

<sup>787</sup> ASGI, Report sopralluogo giuridico: la Sardegna come luogo di frontiera e di transito, December 2020, available at: <https://bit.ly/2SPky3r>

<sup>788</sup> Article 6(8) Reception Decree.

<sup>789</sup> Article 14(5) TUI, as amended by Decree Law 130/2020 and L. 173/2020.

<sup>790</sup> Article 6(5) Reception Decree.

<sup>791</sup> Pursuant to Article 28-bis(1) and (3) Procedure Decree.

<sup>792</sup> Article 6(6) Reception Decree.

<sup>793</sup> Civil Court of Turin, decision 5114/2019, 6 August 2019, procedure 19920/2019, available in Italian at: <https://cutt.ly/6yO8BKm>; Civil Court of Trieste, decision 30/2020, 13 January 2020, available in Italian at: <https://cutt.ly/lyO8NjY>.

according to which an asylum seeker cannot be detained over the times scheduled under the accelerated procedure, unless other reasons for detention arise<sup>794</sup> (see also Judicial Review).

According to the Reception Decree, the applicant detained in CPR or for identification reasons in hotspots or first governmental reception centres, who appeals against the rejection decision issued by the Territorial Commission, remains in the detention facility until the adoption of the decision on the suspension of the order by the judge.<sup>795</sup> The detained applicant also remains in detention as long as he or she is authorised to remain on the territory as a consequence of the lodged appeal.<sup>796</sup> The way the law was worded before did not make it clear whether, when the suspensive request was upheld, asylum seekers could leave the CPR, and in practice they did not.

In this respect the Questore shall request the extension of the ongoing detention for additional periods of no longer than 60 days, which can be extended by the judicial authority from time to time, until the above conditions persist. In any case, the maximum detention period cannot last more than 12 months.<sup>797</sup>

The average duration of detention in CPR in 2020 is not available.

As of 15 April 2020 the average time spent in hotspots was 11 days, but it reached 17 days in Messina and 21 days in the Pozzallo hotspot. In 2019, the average staying in Messina hotspot reached 42 days.<sup>798</sup>

Out of 6,172 persons detained in CPR in 2019, 515 were released by the Questore following the expiry of the maximum time limit of detention.<sup>799</sup> As for 2020, as of 15 April 2020, out of 1,152 people detained, 204 were released following the expiry of the maximum time limit of detention.<sup>800</sup>

## 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. Pre-removal detention centres (CPR)

Under the Reception Decree, asylum seekers can be detained in CPR where third-country nationals who have received an expulsion order are generally held.<sup>801</sup>

According to the Ministry of Interior, seven pre-removal centres of the existing 9 are currently operational, following the re-purposing of the hotspot of **Trapani** into a CPR. The CPR of **Potenza** was urgently opened by the end of January 2018 and made operational shortly thereafter. The pre-removal centre of **Caltanissetta** was closed in the first few months of 2018 due to the damages caused by an internal uprising, and reopened in December 2018, with a capacity of 96 persons.

<sup>794</sup> Court of Cassation, decision no. 2458/2021 published on 2 February 2021.

<sup>795</sup> Article 35-bis(4) Procedure Decree.

<sup>796</sup> Article 6(7) Reception Decree, as amended by Article 8 Decree Law 13/2017 and L 46/2017.

<sup>797</sup> Article 6(8) Reception Decree.

<sup>798</sup> Guarantor for the rights of detained persons, *Relazione al Parlamento 2020*, March 2020, 203

<sup>799</sup> Guarantor for the rights of detained persons, *Relazione al Parlamento 2020*, March 2020, p. 194.

<sup>800</sup> Ibidem, 206

<sup>801</sup> Article 6(2) Reception Decree.

The latest data available on capacity of CPR and persons detained therein are as follows, updated at November 2020<sup>802</sup>:

Capacity and detentions by CPR		
CPR	Official capacity <sup>803</sup>	Persons detained in 2020
Brindisi	48	Not available
Bari	126	Not available
Caltanissetta	96	Not available
Rome	250	Not available
Turin	210	Not available
Potenza	150	Not available
Trapani	205	Not available
Gradisca d'Isonzo (Gorizia)	150	Not available
Macomer (Nuoro)	50	Not available
Milan	-	Not available
<b>Total</b>	<b>1,285</b>	Not available

Source: Guarantor of detained persons, October 2020

As of 22 October 2020, Rome, Turin, Gradisca d'Isonzo (GO) and Macomer (NU) were hosting the majority of detained persons with respectively 102; 73; 58 and 45 migrants. The rest were distributed in the CPRs of Bari (32) and Brindisi (27) and in the reopened centre of Milan (8)

The CPR of Macomer has a current capacity of 50 places but it is being expanded to 100. The management of the CPR is entrusted to the company Ors Italia.

In 2020 these CPR started their activity:

- Gradisca d'Isonzo, Gorizia, **Friuli-Venezia Giulia**: previously used as a Centre for Identification and Expulsion (CIE) opened on 16 December 2019.<sup>804</sup> By the end of December it was hosting around 88 people<sup>805</sup> but its capacity is for 150 people.
- Macomer, Cagliari, **Sardinia**: the CPR has been set up in a former prison and it started its activity on 20 January 2020. The contract was awarded to the ORS Italia Company belonging to the Swiss ORS Company.<sup>806</sup>
- Milan, **Lombardy**: 140 places are provided in a building on Via Corelli, already previously used as CIE.<sup>807</sup> The opening, initially scheduled for early March 2020, actually took place on 28 September 2020 and it was immediately followed by protests of NGOs active against the administrative detention.<sup>808</sup> The centre, managed by Versoprobo Scs of Vercelli and Luna Scs of Vasto (Chieti) is a reason for protests by NGOs, including ASGI due to the hygienic conditions,

<sup>802</sup> MOI; hearing at Parliament of Director Bontempi, 25 November 2020

<sup>803</sup> Guarantor for the rights of detained persons, Report to Parliament March 2020, Tab 2.22, p. 205. However, as mentioned, the official capacity is different due to Covid health measures and it corresponds to 485 places, according to MOI, and to 548 places according to the Guarantor of detained persons as of October 2020 (Viewpoint of 28 October 2020)

<sup>804</sup> See Ansa Migranti: apre Cpr a Gradisca. Prefetto, fino a 150 posti. Circa 200 telecamere di sorveglianza, aggregati 50 militari', 16 December 2019, available in Italian at: <https://cutt.ly/xyO82wh>.

<sup>805</sup> Guarantor for detained persons, Viewpoint of 18 December 2020, available at: <https://bit.ly/3wiNbVh>

<sup>806</sup> La Nuova Sardegna, Macomer, il nuovo CPR affidato alla società svizzera ORS, 16 December 2019, available in Italian at: <https://cutt.ly/2yO83Ky>.

<sup>807</sup> Linkiesta, 'Migranti, ora il business si chiama detenzione e rimpatrio (e a fare i soldi sono i francesi)', 14 February 2019, available in Italian at: <http://bit.ly/2YwGPS7>.

<sup>808</sup> Meltingpot, Apre in sordina il CPR di Milano, parte la mobilitazione permanente per la chiusura di questa struttura, 5 October 2020 available at: <https://bit.ly/3fhYDcD>

the scarce anti-covid measures and the foreclosure of the communication rights and right of defence of detained people including asylum seekers.

With decision no. 2020 of 30 November 2020, the Civil Court of Appeal of Bari confirmed the decision of the Civil Court of Bari<sup>809</sup> and sentenced the Ministry of the Interior to pay a sum by way of compensation for damage, resulting from the inhuman and degrading treatment for foreign citizens detained in the **CPR of Bari**.<sup>810</sup>

Decree Law 13/2017, implemented by L 46/2017, had foreseen the extension of the network of the CPR to ensure the distribution across the entire national territory.<sup>811</sup> In order to speed up the implementation of CPR, Decree Law 113/2018 encouraged the use of negotiated procedures, without tender, for works whose amounts are below the EU threshold relevance and for a maximum period of three years.<sup>812</sup>

## 1.2. Hotspots

As described in the [Hotspots](#) section, there are four operating hotspots, where 21 persons were present as of 31 December 2020.<sup>813</sup> In September 2018, the hotspot of Trapani was converted into a CPR.

Hotspot	Capacity
Lampedusa	96
Pozzallo	234
Taranto	400
Messina	160
<b>Total</b>	<b>890</b>

As reported by ASGI after a monitoring project in October 2020, the Monastir center (not officially included in the hotspots list), works with a hotspot approach. People entering Sardinia from the costs are taken there for health care, identification purposes and security checks.<sup>814</sup>

The Reception Decree does not provide a legal framework for the operations carried out in the First Aid and Reception Centre (CPSA) now converted into hotspots. Both in the past and recently in the CPSA, in the absence of a legislative framework and in the name of unspecified identification needs, asylum seekers have been unlawfully deprived of their liberty and held for weeks in conditions detrimental to their personal dignity. The legal vacuum, the lack of places in the reception system and the bureaucratic chaos have legitimised in these places detention of asylum seekers without adopting any formal decision or judicial validation.

In the case of *Khlaifia v. Italy*, the European Court of Human Rights (ECtHR) has strongly condemned Italy for the detention of some Tunisians in Lampedusa CPSA in 2011, noting the breach, to them, of various rights protected by ECHR. In particular, the Court found that the detention was unlawful, and that the conditions in which the Tunisians were accommodated – in a situation of overcrowding, poor hygienic conditions, prohibition of contacts with the outside world and continuous surveillance by law enforcement,

<sup>809</sup> Civil Court of Bari, Decision no. 4089 of 10 August 2017

<sup>810</sup> Civil Court of Appeal of Bari, decision no. 2020 of 30 November 2020, available at: <https://bit.ly/3ycLkCU>; The court observes that the problems of public order and safety deriving from the presence of such a poorly managed Center cannot be underestimated, if only one considers the numerous protests of the persons there detained. Therefore according to the Court, a citizen elector may not feel indifferent to the fact that in his/her city it is located a Center where the dignity of the people hosted is held in such low regard, and where continuous riots and protests occur, as result of powerlessness to act much more of actual and pre-existing aggression.

<sup>811</sup> Article 19(3) Decree Law 13/2017 implemented by L 46/2017.

<sup>812</sup> Article 2(2) Decree Law 113/2018, implemented by L 132/2018.

<sup>813</sup> MOI, Cruscotto statistico giornaliero, available at : <https://bit.ly/3eQkitH>

<sup>814</sup> ASGI report, Report sopralluogo giuridico: la Sardegna come luogo di frontiera e di transito, 1 December 2020, available at: <https://bit.ly/33VzteR>

lack of information on their legal status and the duration and the reasons for detention – constituted a violation of Article 3 ECHR, the prohibition of inhuman and degrading treatment, and of Article 5 ECHR, in addition to the violation of Article 13 ECHR due to the lack of an effective remedy against these violations.<sup>815</sup> The Grand Chamber judgment of 15 December 2016 confirmed the violation of such fundamental rights.<sup>816</sup>

Although the new Article 6(3-bis) of the Reception Decree foresees the possibility of detention for identification purposes in specific places, such places are not specified and they will not be identified by law. In a Circular issued on 27 December 2018, the Ministry of Interior specified that it will be the responsibility of the Prefects in whose territories such structures are found to identify special facilities where this form of detention could be performed. At the time of writing, such facilities have not yet been identified (see [Duration of detention for identification purposes](#) par. 4.1.)

According to ASGI, detention in facilities other than CPR and prisons violates Article 10 of the recast Reception Conditions Directive, which does not allow any detention in other locations and also because in these places, the guarantees provided by this provision are not in place. According to ASGI, the amended Reception Decree also violates Article 13 of the Italian Constitution, since the law does not indicate the exceptional circumstances and the conditions of necessity and urgency allowing, according to constitutional law, for the implementation of detention. Moreover, the law makes only a generic reference to places of detention, which will be not identified by law but by the prefectures, thus violating the “*riserva di legge*” laid down in the Article 13 of the Constitution, according to which the modalities of personal freedom restrictions can be laid down only in legislation and not in other instruments such as circulars.<sup>817</sup>

### 1.3. Transit zones

During visits carried out in early 2019 at the Rome Fiumicino and Milano Malpensa airports, the national Guarantor for detained persons found that, in 2018, 260 people, in the case of Rome and, 333 people, in the case of Milano, were held at the border crossing for over 3 days immediately after their arrival in Italy, as they were considered not entitled to enter the national territory. Some of them were held in these areas for 8 days.<sup>818</sup>

In both areas, as evidenced by the Guarantor, access to lawyers is effectively prevented.

Responding, on 10 October 2019, to an open letter from ASGI, the Ministry of Interior, Central Directorate for Immigration, has made it known that the staying even for several days in the transit area is not supposed to be considered as detention and therefore to have the defence rights guarantees related to detention because it is implemented as part of the immediate refoulement procedure that does not provide for jurisdictional validation.<sup>819</sup>

However, the Guarantor for detained persons concluded in his report that a de facto detention contrary to Articles 13 of the Italian Constitution and to Article 5 of the ECHR<sup>820</sup> was configurable in the situation where people were unable to enter Italy since they were notified an immediate refoulement measure and were obliged, at the disposal of the border police, to stay in special rooms in the transit area of the airports. This period of time varied according to the availability of flight connections with the place of origin.

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<sup>815</sup> ECtHR, *Khlaifia and Others v. Italy*, Application No 16483/12, Judgment of 1 September 2015.

<sup>816</sup> ECtHR, *Khlaifia and Others v. Italy*, Grand Chamber, Judgment of 15 December 2016.

<sup>817</sup> ASGI, *Manifeste illegittimità costituzionali delle nuove norme concernenti permessi di soggiorno per esigenze umanitarie, protezione internazionale, immigrazione e cittadinanza previste dal decreto-legge 4 ottobre 2018, n. 113*, 15 October 2018, available in Italian at: <http://bit.ly/2FCsyLW>.

<sup>818</sup> Guarantor for detained persons report, available in Italian at: <https://cutt.ly/PyO86HW>.

<sup>819</sup> Letter from Ministry of Interior, 8 October 2019, available in Italian at: <https://cutt.ly/WyO4qYF>.

<sup>820</sup> Guarantor report, page 7. See also, *Questione Giustizia, Zone di transito internazionali degli aeroporti, zon grigie del diritto*, 9 December 2019, available in Italian at: <https://cutt.ly/EyO4wL9>.

Article 13 (5 bis) TUI, as amended by DL 113/2018,<sup>821</sup> introduced the possibility of detaining people, to be expelled after being in Italy, in suitable premises at the concerned border office.

Responding to ASGI requests, the air border police offices of Rome Fiumicino and Milan Malpensa communicated in early 2020 that still no premises have been identified within the transit areas of the two airports for the detention of those who have to be expelled and that therefore no detention measures had been carried out in these areas.<sup>822</sup>

However, the authorities attached to the answer related to Rome Fiumicino the project for the identification of the detention places.

## 2. Conditions in detention facilities

### Indicators: Conditions in Detention Facilities

- |   |   |  |
|---|---|--|
| 1. Do detainees have access to health care in practice? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ❖ If yes, is it limited to emergency health care?       | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No |

In relation to detention conditions, the Reception Decree provides as a general rule that full necessary assistance and respect of dignity shall be guaranteed to the detainees. Separation of persons in respect of gender differences, maintaining, where possible, the family unity and the access to open-air spaces must be ensured.<sup>823</sup>

Even after the 2020 reform, serious regulatory protection deficits remain with respect to the actual prison regime. This regards, for example:

- ❖ the lack of a mechanism that allows family members to be notified in case of need, a circumstance that has made it extremely difficult to notify the families of people who have lost their lives in detention;
- ❖ the absence of a mechanism for monitoring prison conditions entrusted, as for prisons, to the judicial authority;
- ❖ the absence of a strong role of public health and the decisive role left to the managing body for the protection of health.

The decree-law 130/2020 expressly provides that adequate sanitary and housing standards must be ensured in the CPR.<sup>824</sup>

However, as pointed out by the Guarantor of prisoners in his latest report, the protection of the right to health and adequate assistance is strongly influenced by the organizational factor as the law reserves a secondary role for the National Health System and entrusts the performance of health services within the CPRs to the managing body.

With respect to the lack of transparency and recording of critical events, Annex 5-bis to the tender specifications scheme published on 24 February 2021 provides for the obligation on the part of the managing body to "... keep a register with any episodes that have caused injuries to guests and operators"<sup>825</sup>

<sup>821</sup> Article 13(5bis) as amended by Article 4 (1) DL 113/2018 converted by L. 132/2018 introduced the possibility of detaining the people to be expelled, pending the validation procedure and in the event of no availability of places at the CPRs, in structures in the availability of the Public Security Authority. Detention is ordered by the Magistrate (Giudice di Pace) at the request of the Questore with the decree which sets the hearing to validate the expulsion. After this hearing, the Magistrate, at the request of the Questore, may authorize further detention, for a maximum of 48 hours, in suitable premises at the border office concerned.

<sup>822</sup> Article 13 (5 bis) TUI.

<sup>823</sup> Article 7(1) Reception Decree.

<sup>824</sup> Article 14 (2) TUI as amended by Article 3 (4 a) of Decree Law 130/2020.

<sup>825</sup> Tender specification schemes for CPR, available at: <https://bit.ly/3w4RTWh>

Between June 2019 and July 2020, five foreign nationals lost their lives while detained in a CPR.

In 2020, this happened in the CPR of Caltanissetta, Pian del Lago, in January 2020, and in Gradisca d'Isonzo (Gorizia) in January and July 2020.<sup>826</sup>

Decree Law 130/2020 introduced the possibility of making requests or complaints in written or oral form to the National Guarantor and to the regional or local Guarantors of the rights of detained persons<sup>827</sup> However, as the National Guarantor underlined in his latest report, the effectiveness of this provision is limited by the absence of information on this point and by the limits set by the CIE Regulation which provides that the delivery and use of pencils is forbidden inside the housing modules; and in any case it takes place under the supervision of the managing body which is responsible to collect them after use.<sup>828</sup>

In 2019, as in the previous years, the lack of effectiveness of the repatriation system was confirmed, as less than 50% of the people detained was actually repatriated.<sup>829</sup>

The health emergency did not affect the application of the detention measure and worsened life inside the centres which still do not have spaces for activities during detention.

The European Court of Human Rights, invested with some urgent appeals presented between April and May 2020 by lawyers with the support of ASGI for some foreign citizens whose repatriation was completely impracticable given the closure of the air spaces, considered there were no reasons to recognize the violation of Article 3 ECHR.

The Reception Decree states that foreigners detained in CPR shall be provided by the manager of the facility with relevant information on the possibility of applying for international protection. The asylum applicants detained in such facilities are provided with the relevant information set out by Article 10(1) of the Procedure Decree, by means of an informative leaflet.<sup>830</sup>

Detention conditions are monitored *inter alia* by the [Human Rights Commission](#) of the Senate, the [Inquiry Commission on the reception system](#) set up by the Chamber of Deputies, as well as the [Guarantor for the rights of detained persons](#).

During 2019 and 2020, the National Guarantor carried out visits to the detention centres for repatriation (CPR), monitoring the centres of Turin (17 April 2019), Rome-Ponte Galeria, including the new men's section (6 June 2019, 27 March 2020 and 1 September 2020), Palazzo SanGervasio (18 June 2019), Bari (19 June 2019), Brindisi-Restinco (20 June 2019), Caltanissetta-Pian delLago (24 November 2019), Trapani-Milo (25 November 2019), Gradisca d'Isonzo (20 January 2020 and 14 December 2020), Macomer (7 March 2020) and Milan (18 December 2020 and 13 February 2021).

The Guarantor has published the results of the monitoring in the 12 April 2021 report.<sup>831</sup>

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<sup>826</sup> A Nigerian man died on 2 June 2019 in the Brindisi-Restinco CPR; a Bengali citizen died on 8 July 2019 in the Turin CPR (Ospedaletto area); a Tunisian citizen died on 12 January 2020 in the CPR of Caltanissetta-Pian del Lago where he had entered the previous 10 December following release from prison; a Georgian citizen died on 18 January 2020 in the hospital of Gorizia, held in the CPR of Gradisca d'Isonzo; Tan Albanian citizen died on 14 July 2020 in the CPR of Gradisca d'Isonzo.

<sup>827</sup> Article 14 (2 bis) TUI

<sup>828</sup> Guarantor for the rights of detained persons, Report on visits in CPR (2019-2020), 12 April 2021, available in Italian at : <https://bit.ly/3ogz2F8>

<sup>829</sup> Report of the National Guarantor for detained persons, 12 April 2021.

<sup>830</sup> Article 6(4) Reception Decree.

<sup>831</sup> Guarantor for the rights of detained persons, Report on visits in CPR (2019-2020), 12 April 2021, available in Italian at: <https://bit.ly/3eQkWHd>

## 2.1. Overall conditions

### Hotspots

Conditions in hotspots vary given that the facilities host different numbers of persons at any given time. At the beginning of 2020, due to the informal **redistribution** policy of migrants disembarked and the slowness of the relative procedures, the people disembarked and accommodated at the hotspots have lived a long time in conditions of overcrowding, with poor hygiene conditions and in most cases a de facto detention.<sup>832</sup> The quarantine measure implemented in hotspots created several problems.

As for **Lampedusa**, in 2020, the hotspot was characterised by periods of severe overcrowding. In September 2020, compared to an allowed capacity of 192 people, the hotspot hosted on average over a thousand people.<sup>833</sup>

The **Messina hotspot** consists of a series of zinc plate containers capable of accommodating up to 250 people. ASGI, Actionaid and Borderline Sicilia published a report on the situation after a visit carried out on 25 July 2019.<sup>834</sup> Containers - air conditioned and equipped with small lockers to hold personal belongings - have a capacity of 12 or 10 beds (6/5 bunk beds in each container). The centre has 16 bathrooms, one for disabled persons, and 22 showers. Out of these, 3 toilets and 2 showers are placed in the area for "vulnerable" people. A tensile structure acts as a canteen but in the summer months it is not used because too hot. People receive a hygiene kit, at the entrance, and a pocket money of € 2.50 per day and 2 telephone cards, 5 euros each.

The report underlined some critical issues: at the time of the visit, 5 couples were sharing the same container equipped with bunk beds. The guests reported that the hygiene kit was insufficient and so was the food. The asylum seekers present, were accommodated in the hotspot for about two months after having been rescued by Sea-Watch 3 and disembarked in Lampedusa on 29 June 2019. They had not been registered to the national health service. As a result they only had access to the clinic inside the centre. Though sharing spaces with adults, children could not be vaccinated and victims of torture or violence did not have access to specialist visits. People were found not informed about the redistribution procedure. On 3 October 2019, the NGOs sent a letter to the Ministry of Interior reporting about the situation, as well proposing some recommendations.<sup>835</sup>

**Taranto:** for about three years the hotspot has been used as a place where foreign people apprehended along the northern borders were held. The people who land on the Apulian coast are instead transferred and identified at the "Don Tonino Bello" centre in Otranto. A delegation from ASGI and Oxfam visited the area in May 2019.<sup>836</sup> The centre, located near the steel mill (former Ilva), has 400 beds distributed between large tensile structures and containers, of about 8 places each, the latter reserved for unaccompanied minors, families and vulnerable people. According to what was reported during the interviews conducted by the delegation, among the people brought to the hotspot there are also asylum seekers, people with pending appeals, vulnerable people and, sometimes, unaccompanied minors. People are identified and then, generally during the same day, differently addressed according to their personal situation (reception centres, centres for minors, CPR).

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<sup>832</sup> Bordeline Sicilia, *Europa Frotniera Sud, un'altra estate di morti in mare e diritti calpestati*, 2 September 2019, available in Italian at: <https://cutt.ly/QyO7stf>; see also: Border Criminologies blog, *Forced Mobility and the Hotspot Approach: The Case of the Informal Disembarkation Agreements*, 12 February 2020, available in English at: <https://cutt.ly/OyO7d6f>.

<sup>833</sup> See *Il Sole 24 ore*, "Migranti nell'hotspot di Lampedusa "emergenze, sovraffollamento", available at : <https://bit.ly/3ohW52w>, 2 September 2020.

<sup>834</sup> ASGI, *Hotspot e redistribuzione dei migranti: troppe criticità. Le richieste di ASGI, Borderline e ActionAid*, 9 October 2019, available in Italian at: <https://cutt.ly/NyO7nxK>.

<sup>835</sup> <https://cutt.ly/XyO7mFk>.

<sup>836</sup> See ASGI, <https://inlimine.ASGI.it/visita-allhotspot-di-taranto>.

A data access requested by ASGI in September 2019 to the Questura of Imperia confirmed that the transfers of third country nationals found without a residence permit were going on from Ventimiglia to the Taranto hotspot.

In the territory of **Monastir** there is a reception center where foreign citizens entering the Italian territory at the Sardinian coasts are taken, for health checks, as well as for identification purposes and security checks. As highlighted by ASGI, although the hotspot centers officially operational on the Italian territory remain Pozzallo, Messina, Taranto and Lampedusa, this structure has clear functions attributable to those defined by the hotspot approach.

The management of the "Center for migrants" has been entrusted from 1 April 2020 to the Soc. ORS Italia Srl. The center is characterized by structural isolation. It extends over a large perimeter, divided into various buildings, surrounded by large fences as it is a military zone. The legal basis of this center is unclear, as it is not possible to classify it as a structure referred to in the decree-law of 30 October 1995, n. 451, or as a first accommodation facility (Article 9 Reception Decree), where a crisis point can be set up pursuant to art. 10-ter of TUI. As recorded by ASGI, Standard Operating Procedures (SOPs) are in fact implemented, such as health screening with the issue of medical certification, pre-identification with "foglio notizie", identification, *fotosegnalamento* and control and inclusion in databases, aimed at defining the legal status of the foreign citizen on the territory. Information on the right of access to the asylum procedure is provided through the distribution of information brochures. With regard to the classification mechanisms of incoming foreign citizens, as confirmed by the competent authorities, the procedures adopted provide for the use of the "foglio notizie". In the centre, as orally reported to ASGI from the competent authorities, people are de facto detained for identification purposes. Frontex is the only one, among the European agencies and international organizations, present in the centre.<sup>837</sup>

## CPR

Persons held in CPR vary significantly in terms of social origin, psychological condition, health condition, legal status. According to the law, asylum seekers detained in CPR should be placed in a dedicated space.<sup>838</sup> However, as reported by the Guarantor for the rights of detained persons in his report of visits to CPR in 2016 and 2017 detained persons in all structures were in a precarious state without any consideration of legal status, not even that of asylum seekers.<sup>839</sup> In 2019, the Guarantor reported that he had recommended all CPR to favour as much as possible the separation between those who come from the criminal circuit and those who are only in a position of administrative irregularity or who are asylum seekers. Only the prefecture of Brindisi had responded by committing to identify different organizational methods.<sup>840</sup>

According to ASGI members' experience, asylum seekers are not placed in dedicated spaces in CPR.

By the end of December 2019 and at the beginning of 2020 in many CPR there were riots due to the living conditions inside the centres. As denounced by the Guarantor and reiterated by the media, this is the only means that the CPR detainees have to contest the reception conditions. Unlike detainees in prisons, they have no complaints rights.<sup>841</sup>

After visiting the **CPR of Turin**, in January 2020, the Guarantor for the rights of detained persons of Turin compared the persons' cells to "zoo cages" and denounced that the migrants had their phones seized.

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<sup>837</sup> ASGI; Report sopralluogo giuridico: la Sardegna come luogo di frontiera e di transito, December 2020, available at: <https://bit.ly/3fm4mhP>

<sup>838</sup> Article 6(2) Reception Decree.

<sup>839</sup> Guarantor for the rights of detained persons, *Rapporto sulle visite nei CIE e negli hotspot in Italia 2016/2017*, 11 May 2017, 29.

<sup>840</sup> Guarantor for the rights of detained persons, *Relazione al Parlamento 2019*, 26 March 2019, available in Italian at: <https://bit.ly/2GijVoY>, page 196.

<sup>841</sup> Il Dubbio, CPR da Gorizia a Trapani migranti in rivolta per le condizioni di vita, 8 January 2020, , available in Italian at: <https://cutt.ly/syO7Rcy>.

The member of the College of the National Guarantor denounced that migrants lived in seven-person rooms where the bathroom is not even separated from the place where people sleep and that there were no places to sit, therefore foreign citizens are forced to eat on the ground with dishes on their legs.

The National Guarantor for the rights of detained persons, heard at Parliament in June 2019, reported that during a visit to the CPR of Turin he found two rooms in the basement, the existence of which had been denied to the national Guarantor by the responsible authorities. The writing on the walls made it possible to understand the presence of people placed at least for limited periods of time inside those rooms.<sup>842</sup>

At the time of the Guarantor's visit, in April 2019, hot water was not available. The absence of doors for toilets and showers prevented the necessary privacy. Moreover, the Guarantor found that blood samples were often taken in the infirmary rooms without authorization from the health service. In Trapani and Caltanissetta interaction with the operators was possible only through the bars.

Following a visit to the CPR of **Trapani** in January 2020, a member of Parliament presented a question to the Ministry of Interior representing the poor living conditions of the centre with whole parts to be restored and explaining that the people detained had all referred to him about the difficulty of talking with lawyers, the failed or late responses to health problems and ill-treatment by law enforcement agents.<sup>843</sup>

Regarding the services, according to media, during 2019 there has been a significant reduction in personal services. The medical service that previously worked 144 hours a week was present in the facility for 42 hours (-70.83%). The same situation for the service of psychologists, from 54 to 24 hours a week, to the mediator service from 108 to 48 and even to the legal service, from 72 hours to just 16.<sup>844</sup>

Since February 2020, the Trapani Milo CPR has closed for renovations.

As of December 2019, a journalistic reportage informed that the Ministry of Interior declared that the **CPR of Palazzo San Gervasio in Potenza** should be closed and had ordered the progressive transfer of people to other CPRs. The reportage cites reports of IOM, UNHCR and the Guarantor for detained persons on the inhumane and degrading conditions of the centre. All detainees interviewed reported that the housing modules were missing doors and windows. Their statements were confirmed by pictures. The detainees also reported that the toilets were unusable and there were no sinks and the heating often did not work so the staff distributed heavier clothes. Staff reported there were no chairs but only a small table in the small room where the prisoners' lawyers have access. According to the media report the Public Prosecutor had opened an investigation that would focus in particular on improper giving of sedatives to detainees.<sup>845</sup>

Shortly thereafter, in January 2020, another news report reported an ongoing investigation on abuses inside the centre and sedated detainees.<sup>846</sup>

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<sup>842</sup> Hearing at Chamber of Deputies of the Guarantor for the rights of detained persons, 27 June 2019, available in Italian at: <https://cutt.ly/JyO7TZ3>.

<sup>843</sup> Trapani Oggi, Cosa succede al CPR di Trapani Milo Interrogazione al Ministro dell'Interno del deputato del PD Fausto Raciti, 22 January 2020, available in Italian at: <https://cutt.ly/VyO7Ur9>.

<sup>844</sup> Article of Torino Oggi, "CPR di Corso Brunelleschi il Garante lancia l'allarme Gabbrie come allo zoo una persona non può soggiornare lì", 22 January 2020 available in Italian at: <https://cutt.ly/WyO7ItQ>.

<sup>845</sup> La Gazzetta del Mezzogiorno, "Un lager chiamato CPR che non riesce a chiudere. Il Ministero: "Svuotate la struttura". Ma resta lettera morta", 14 December 2019.

<sup>846</sup> Il Mattino di Foggia, "Maltrattamenti nel Cpr di Palazzo San Gervasio", la scoperta del giornalista investigativo Amendolara su Panorama: "Sedavano gli immigrati", 9 January 2020.

In June 2019 the Guarantor for detained persons reported concern about the fact that, at Palazzo San Gervasio, there is not even a place to eat so the detainees eat on the bed, and about the fact that people work in structures that are basically containers, and lawyers also meet people in containers.<sup>847</sup> In May 2020 the CPR was closed due to renovations works. It reopened at the end of February 2021.

In the CPR of **Pian del Lago, Caltanissetta**, on 12 January 2020, a Tunisian citizen lost his life. Lasciateci centrare declared to have received several reports from the persons inside the centre on the ignoble conditions of the centre, cold rooms, no windows, and requests for inmate health care remained unanswered.<sup>848</sup> The Guarantor for the rights of detained persons reports that, in February 2020, an inspection made by the Provincial Health Authority of Caltanissetta determined the inadequacy of the Caltanissetta CPR structure with respect to preventing the risk of spreading infectious diseases. The authorities announced the upcoming planning of the closure of the Centre, for the start of renovations.<sup>849</sup> As of May 2020 the centre was no longer hosting migrants<sup>850</sup> and, at the time of writing (May 2021) it is still closed.

On 18 January 2020, a man from Georgia died in the CPR of **Gradisca d'Isonzo** (Gorizia). The testimony collected from the inside revealed violence committed by law enforcement officers.<sup>851</sup> However, the first results of the appraisal ordered by the prosecutor, even though excluding that death is natural, exclude a direct connection to the violence suffered.<sup>852</sup> The Guarantor for the rights of detained persons appointed a lawyer and a forensic doctor in the criminal procedure. As of September 2020, he told the *Journal il Manifesto* that the autopsy had been handed over to the prosecutor who still had to draw conclusions and that, even if there would seem to be no elements leading to believe the beating as a cause of death, there were still no histological and toxicological results and there were photographs in which signs of violence were visible.<sup>853</sup>

On 14 July 2020 another person died during his detention in this CPR: in this case, which seems to be due to the abuse of drugs, there are still no medical reports.<sup>854</sup>

During the winter of 2020 the detainees reported to ASGI and Lasciateci centrare that they suffer a lot from the cold and the absence of heating. In his latest report, the Guarantor highlighted a malfunction of the CPR of Gradisca's heating system, which becomes blocked when it detects the presence of even minimal smoke in the rooms. This causes continuous interruptions to the heating, which must be reactivated manually by the staff. To mitigate the impact of such a condition, the Municipal Guarantor for detained persons had provided the inmates with warm clothes.

**Macomer:** in October 2020 ASGI carried out a monitoring in this centre, highlighting the presence of a single room for meetings with lawyers, and the seizure of the personal effects, including the mobile phone of the lawyer at the entrance to the centre. During the meeting with the lawyer, the presence outside the room of the public security personnel did not guarantee the necessary confidentiality.<sup>855</sup> The practice of seizing telephones of detained foreign nationals has also been noted. Internal phones only work with

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<sup>847</sup> Hearing at Chamber of Deputies of the Guarantor for the rights of detained persons, 27 June 2019, available in Italian at: <https://cutt.ly/eyO701E>.

<sup>848</sup> Lasciateci centrare, Aymen, morto di CPR a Caltanissetta, 12 January 2020.

<sup>849</sup> Guarantor for the rights of detained persons, Report to Parliament, March 2020, p. 292, available at: <https://bit.ly/2RNJiIO>

<sup>850</sup> Meltingpot, Detenzione Migranti e Covid 19 in Italia, un commento, 21 December 2020, available at: <https://bit.ly/33J0hyM>

<sup>851</sup> Avvenire, La denuncia. Migrante georgiano morto a Gradisca. Lo spettro di un nuovo "caso Cucchi"?, 23 January 2020.

<sup>852</sup> Avvenire, "Autopsia sul migrante morto a Gradisca " Decesso non dovuto a percosse" 27 January 2020.

<sup>853</sup> Il Manifesto, Carceri, Rsa, hotspot e Cpr ai tempi del Covid-19, interview to the Guarantor for the rights of detained persons, 2 September 2020, available at: <https://bit.ly/3fhcQqm>

<sup>854</sup> TGR, Friuli Venezia Giulia, "Un morto nel Cpr di Gradisca. Un altro ospite grave in ospedale ", 14 July 2020 available at: <https://bit.ly/3eMPWlw>

<sup>855</sup> ASGI, Report sopralluogo giuridico: la Sardegna come luogo di frontiera e di transito, December 2020, available at: <https://bit.ly/3ofJ3Ci>

some operators. Following a request for the return of the mobile phone from a detained person, to the Questura and the managing body, the Questura responded by declaring itself incompetent and considering the search of the telephone of the detained person as a "mandatory deposit of the personal effects to the managing body pursuant to law".<sup>856</sup>

On December 30, 2020, the Regional Guarantor for the rights of detained visited the CPR of **Ponte Galeria** in Rome. All 122 available places, two of which were intended for quarantine, were occupied. Four departments in the women's sector (completely closed for months) are awaiting testing, after renovations that will allow 32 women to be accommodated with spaces for socializing. Many told the Guarantor that they were minors, but in only one case a detainee was able to document it. Thus, the situation was immediately represented to the President of the Juvenile Court and to the Public Prosecutor's Office and, the day after, on December 31st, the Tunisian minor was released by the CPR and placed in a reception facility. The Guarantor observed after the visit that the criticalities of the structure remain unchanged: the detainees claim that they do not understand what their status is; there is no activity, even sports; poor quality of food; difficulties in communicating with family members (since the reopening of the male sector they were no longer allowed to keep mobile phones that must be delivered at the entrance, but the telephone cards are insufficient to ensure adequate contacts with distant families). Also, health care is delayed by the Covid-19 emergency". The protocol with the competent Local Health Authority provides for six half days of attendance per week for suitability assessment and also as a bridge for hospitalizations and specialist visits outside. However, in the last period only two mornings had been guaranteed, as one of the two doctors had been transferred and had not yet been replaced.<sup>857</sup>

A reportage published by *il Manifesto* on August 2020, shows flooded rooms, dirty mattresses, people sleeping on the floor or on the tables where they are supposed to eat.<sup>858</sup>

**CPR of Milan**, via Corelli: with a letter sent on November 27 to the National Guarantor for the rights of detained persons, ASGI Naga Lasciateci centrare and Mai più Lager - No CPR reported various violations detected within the CPR of Milan. Following a quarantine ordered as a result of the ascertained positivity of two foreign nationals detained, for the entire period of the fiduciary isolation, the inmates' were not allowed to meet their respective lawyers, thereby preventing the exercise of the right of defense at the hearing to validate or extend the detention and preventing a correct and continuous information on their legal status. "The absence of professional mediators on site" and "the lack of confidentiality was found during the interviews between the defender and the client in light of the constant presence of the public security authorities"<sup>859</sup>, was also reported.

In February 2021, due to a positive covid-19 case of a detainee, consultations with lawyers were completely suspended for one week. The NGO Naga, pointing out this situation, also highlights the "numerous reports concerning the non-use by of safety devices by law enforcement personnel", as well as "the lack of cleaning and sanitation services".<sup>860</sup>

In providing for a distribution of CPR on the entire national territory, Decree Law 13/2017, implemented by L 46/2017, specified that this should have followed an accentuation of the role of the Guarantor for the rights of detained persons, and an extension of the power of access for those who do not require authorisation, and an absolute respect for human dignity.

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<sup>856</sup> Ibidem.

<sup>857</sup> Region Lazio, "Il centro di permanenza per il rimpatrio di Ponte Galeria", 4 January 2021, available at: <https://bit.ly/3vZ5bDI>

<sup>858</sup> *Il Manifesto*, Le immagini dal CPR di Ponte Galeria, peggio di un animale, 19 August 2020, available at: <https://bit.ly/3ogDYtE>

<sup>859</sup> Milano today, Milano, le associazioni: "Al Cpr di via Corelli stanno violando il diritto di difesa con la scusa covid" associazioni: "Al Cpr di via Corelli stanno violando il diritto di difesa delle persone"; Milano, le associazioni: "Con il covid, al Cpr di via Corelli stanno violando il diritto di difesa", 9 December 2020, available at: <https://bit.ly/3tMw0d1>

<sup>860</sup> Affari Italiani, Migante positivo nel Cpr di Via Corelli, stop alle visite dei difensori, 5 February 2021, Available at: <https://bit.ly/3eNcqsW>.

## Transit zones

Between January and February 2019, the Guarantor for detained persons visited the transit areas of the airports of Rome Fiumicino and Milan Malpensa where people who just landed in Italy are held while awaiting for the immediate refoulement to be carried out.

With respect to the areas where the detention takes place in Rome, the Guarantor observed that the place appears unsuitable for the permanence of people for a period of time longer than 24 hours. The European Committee in its report on the visit carried out in June 2017, pointed out the inadequacy of the environments, in particular due to the lack of natural air and light and the impossibility of accessing the outdoors and the transfer of people to other facilities in case of stay longer than 24 hours.<sup>861</sup>

As for Malpensa, according to the testimonies collected by ASGI within the In Limine project, the size of the common room is about 8x6 meters, not enough to accommodate the number of people who are kept there. The room has no windows and the camp beds are made of iron, without mattresses. The possibility of going out in the open air is not given.<sup>862</sup>

## 2.2. Activities

According to Article 4(h) of the CIE Regulation, social, recreational and religious activities shall be organised in the centres. However, the shortage of recreational activities in CPR bears especially negative impact on living conditions of people staying in the CPR 24 hours a day for prolonged periods, thus being one of the main factors entailing distress among people in detention.

By January 2020, the Guarantor for the rights of detained persons of Turin stressed that in the **CPR of Turin** there are no re-educational courses or activities of any kind and recommended, among other things, the organization of recreational activities (with the involvement of external subjects as well), the use of the sports centre and the possibility to switch the light on and off independently and not centrally.<sup>863</sup>

As for the CPR of Gradisca d'Isonzo, after the visit made on 20 January 2020, following the death of the Georgian citizen, an Italian parliamentarian reported that many of the guests were taking sedatives and psychotropic drugs and that the common and leisure areas, such as the canteen or the football field, were not used. He also reported an abnormal deterioration situation, since it was a new structure and he underlined how people were living in cages in situations of coexistence between those who had committed crimes and those who were only in a situation of administrative irregularity.<sup>864</sup>

On February 23, 2021, the Civil Court of Milan accepted the urgent appeal presented by a Tunisian asylum seeker held at the CPR of Milan, in order to obtain the return of his mobile phone which, according to the current practice also in other CPRs, he was prevented from using inside the centre. The Court observed that the impossibility of accessing one's mobile phone constitutes a limitation of the right to freedom of communication of the detainees, not permitted by Italian law, but is also capable of constituting a violation of the right of defence of detainees. In the case of the applicant, the impossibility of communicating with his lawyer before the hearing to validate the detention, prevented him from being able to avail himself of his assistance there. The Court further observed that freedom of correspondence cannot be guaranteed through the availability of fixed or portable devices, generally present within the centre.<sup>865</sup>

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<sup>861</sup> European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), available at: <https://www.coe.int/en/web/cpt/italy>.

<sup>862</sup> ASGI, In Limine, Il valico di frontiera aeroportuale di Malpens, La privazione della libertà dei cittadini stranieri in attesa di respingimento immediato, available in Italian at: <https://cutt.ly/wyO73RG>.

<sup>863</sup> CittàAgorà, "CPR la Garante comunale per i detenuti monitora le condizioni di vita del centro, 21 January 2020.

<sup>864</sup> Il Friuli, Il Garante visita il Cpr di Gradisca: "Situazione tesa", 20 January 2020.

<sup>865</sup> Civil Court of Milan, decision of 23 February 2021, available at: <https://bit.ly/3bopoLe>

More generally, even in his latest report, the National Guarantor for detained persons highlighted how the security approach of the CPR and the absence of additional spaces with respect to rooms and activities makes administrative detention a place of extreme social marginality and isolation from a community which is prevented from entering detention facilities and creating relationships with detainees. The CPR prevents the opportunity to spend time in a meaningful way and it condemns people to live in a condition of permanent forced idleness. Thus, even small daily life choices are prevented, such as reading a book, writing, playing sports.<sup>866</sup>

### 2.3. Health care and special needs in detention

Access to health care is guaranteed to all persons in detention. The law provides as a general rule that full necessary assistance and respect of dignity shall be guaranteed.<sup>867</sup> The law further states that the fundamental rights of detained persons must be guaranteed and that inside detention centres essential health services are provided.<sup>868</sup>

Moreover, the Reception Decree provides that asylum seekers with health problems incompatible with the detention conditions cannot be detained and, after the amendment made by Decree Law 13/2017 and L 46/2017, it also establishes the incompatibility of detention for vulnerable people, as defined by Article 17 of the Reception Decree.

In his report to Parliament of March 2020, the Guarantor for the rights of detained persons underlined the need to strengthen the right to access health information by people during their detention. This lack of information, he informed, represents the subject of a number of reports to the office of the guarantor. In many CPRs as recorded by ASGI, detained persons do not have access to their health file until the end of their detention. In some cases, such as in Gradisca D'Isonzo CPR, the health information and the exams were given to the lawyer on specific request.

Within the socio-health services provided in the CPR, a periodical assessment of the conditions of vulnerability requiring special reception measures must be ensured.<sup>869</sup> In this regard, Article 3 of the CIE Regulation describes in detail the health services provided to detainees and the possibility for the Prefecture to stipulate specific agreements with the public health units.

In this regard, in 2020 the Guarantor underlined that the responsibility of the National Health Service for the periodic verification of the sanitary conditions of the structures and services provided should be expressly provided for by law.<sup>870</sup>

The CPR of **Caltanissetta** is equipped with a separate area dedicated to medical care.<sup>871</sup> Following the death of a Tunisian man on 12 January 2020, the other detainees reported he had not received enough health assistance.

Both in the CPR of **Brindisi** and in that of **Turin**, the Guarantor verified between February and March 2018 the practice of using the rooms of sanitary isolation for punitive purposes, although the isolation is not provided for by the CIE Regulation even as an exceptional measure.

By December 2018, the Human Rights and Migration Law Clinic published the "Uscita d'Emergenza" report, relating to the health protection of detainees within the CPR of Turin. The report revealed that the health policy within the Centre was highly characterized by an informal approach, since no type of prior

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<sup>866</sup> National Guarantor for detained persons, Report of 12 April 2021, p. 6.

<sup>867</sup> Article 14(2) TUI.

<sup>868</sup> Article 21(1) and (2) PD 394/1999.

<sup>869</sup> Article 7(5) Reception Decree.

<sup>870</sup> Guarantor for the rights of detained persons, report to Palriamen, March 2020

<sup>871</sup> Guarantor for the rights of detained persons, *Rapporto sulle visite nei CIE e negli hotspot in Italia 2016/2017*, 11 May 2017, 15.

technical evaluation was foreseen regarding the compatibility between the migrant's state of health and the restrictive measure. Even therapeutic continuity was hardly guaranteed. In addition, the number of medical personnel was not appropriate for the number of guests within the Turin facility.<sup>872</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

Decree Law 13/2017, implemented by L 46/2017, has clarified that access to CPR is guaranteed under the same conditions as access to prisons. This means that the Guarantor for the rights of detained persons and parliamentarians, among other official bodies, has unrestricted access to CPR.

However, in June 2019, the parliamentarian Riccardo Magi asked to access the CPR of Trapani with a delegation from ASGI and LasciateCientrare. Generally referring to the rules on access to CPR, the Prefect of Trapani refused the entry of the delegation.<sup>873</sup> ASGI lodged an appeal before the Administrative Court of Sicily, which, on 20 September 2019, declared that the public administration has no discretion to limit the access of a Member of Parliament and those accompanying him. The Court recognised the parliamentarian has a subjective right to enter CPR and to choose the delegation, and therefore the administrative judge declared itself not competent to decide on the case, as it falls under the jurisdiction of the ordinary judge.<sup>874</sup>

As CPR and eventually hotspots are places where asylum seekers are detained, Article 7 (2) of the Reception Decree applies. It states that UNHCR or organisations working on its behalf, family members, lawyers assisting asylum seekers, organisations with consolidated experience in the field of asylum, and representatives of religious entities also have access to CPR.<sup>875</sup> Access can be limited for public order and security reasons or for reasons related to the administrative management of the centres but not fully impeded.<sup>876</sup>

However, the regulation of CPRs requires an authorisation from the competent Prefecture for family members, NGOs, representatives of religious entities, journalists and any other person who make the request to enter CPR.<sup>877</sup>

According to ASGI experience, Prefectures apply the regulation of CPR significantly restricting the scope of the guarantees provided by Law 46/2017 and by Reception decree.

Access to CPR for journalists is quite difficult. They have to pass through two different stages before gaining authorisation to visit the CPR. Firstly, they need to make a request to the local *prefecture* (the local government representative), which then forwards the request to the Ministry of Interior who investigates the applicant, before finally sending the authorisation back to the Prefecture.

During his visits carried out between February and March 2018 in the CPR of Brindisi, Bari, Potenza and Turin, the Guarantor for the rights of detained persons verified that the possibility of religious practice was

<sup>872</sup> Human Rights and Migration Law Clinic (HRMLC), Uscita d'Emergenza, Rapporto sulla tutela della salute dei trattenuti nel CPR di Torino, December 2018, available in Italian at: <https://cutt.ly/LyO747R>.

<sup>873</sup> See for more information: <https://cutt.ly/GyO77SA>.

<sup>874</sup> Administrative Court of Sicily, decision 2360/2019, 20 September 2019.

<sup>875</sup> Article 7(2) Reception Decree.

<sup>876</sup> Article 7(3) Reception Decree.

<sup>877</sup> Article 6 (4) and (5) MoI Decree 20 October 2014

strongly limited since no minister of worship actually has access to the centres and there were no spaces set up for places of worship.<sup>878</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 CPR with journalists, lawyers, members of Parliament and NGOs.

The Senate highlighted in its December 2017 report that it has often welcomed in its delegations visiting CPR the mayors or the municipal and provincial counsellors of the cities that host CPR. They are unable to enter themselves in those facilities unless authorised by the Prefectures but, as highlighted in the report, easier access could establish closer links to the concerned local populations.<sup>879</sup> The situation as regards mayors' access to detention facilities remained the same in 2018.

During 2018, LasciateCIEntrare found serious obstacles to access CPR. A visit to the CPR of Bari on August 2018 was interrupted for one hour after the Prefecture claimed the delegation had not been authorised even though a Member of the European Parliament was present.<sup>880</sup> In 2019, all access requests presented by LasciateCIEntrare to visit the CPR of Bari, Trapani, Caltanissetta, Turin, Brindisi, Palazzo San Gervasio, Gradisca d'Isonzo, and Ponte Galeria (Rome) were denied.<sup>881</sup>

In April and May 2019 ASGI asked access to the CPR of Caltanissetta but it was denied. In November 2019, ASGI asked access to the CPR of Turin but it was formally denied. The Prefecture of Turin, after collecting the negative opinion by the Ministry of Interior, used order and security reasons and considered ASGI not included among the subjects allowed to access CPRs according to the MOI Decree issued on 20 October 2014 (CPR regulation). In both cases ASGI lodged an appeal before the Administrative Court assuming the violation, above all, of the Reception Decree.

On 30 April 2020 the Administrative Court of Piemonte ordered the authorities to make a new exam of the access request, considering the refusal illegitimate, as it was not motivated.<sup>882</sup>

As for Caltanissetta, on 21 October 2020, the Administrative Court of Sicily accepted the appeal submitted by ASGI and allowed access to the CPR.<sup>883</sup> The Government, however, lodged an appeal against the decision, pending at the time of writing.

On 22 September 2020, the Prefecture of Nuoro (Sardinia) denied ASGI request to access to the CPR of Macomer, considering ASGI not to be included among the entities referred to in Article 7 of the Reception Decree and in any case deeming the entrance irreconcilable with the health emergency due to Covid-19. ASGI lodged an appeal before the Administrative Court of Sardinia, which, on 13 January 2021, ordered the Prefecture with an interim decision<sup>884</sup> to review the request. However, with a next decision of April 2021, the Prefecture of Nuoro confirmed its previous decision claiming that ASGI is not included, for its statutory purposes, in organizations allowed to enter.

On 2 March 2020 the Prefecture of Agrigento rejected ASGI's request to access the Lampedusa hotspot on the grounds that ASGI has not signed any agreement with the Ministry of the Interior and for unspecified reasons connected with the administrative management of the centre. ASGI lodged an appeal before the Administrative Court of Sicily and obtained a first interim decision, in September

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<sup>878</sup> Guarantor for the rights of detained persons, *Rapporto sulle visite effettuate nei centri di permanenza per il rimpatrio (Febbraio – Marzo 2018)*, 6 September 2018, available in Italian at: <http://bit.ly/2uvu4cr>.

<sup>879</sup> Senate, *CPR Report*, December 2017, 24.

<sup>880</sup> LasciateCIEntrare, 'Migranti, Lasciateci entrare nei CPR di Bari e Brindisi online il report', 7 November 2018, available in Italian at: <http://bit.ly/2CIFwpQ>.

<sup>881</sup> Meltingpot, *Morti e proteste nei CPR. Ma il Ministro e il Governo non se ne accorgono*, 13 January 2020.

<sup>882</sup> See ASGI, CPR: TAR Piemonte, si deve motivare il diniego di accesso, 12 May 2020, available in Italian at: <https://cutt.ly/oyO5eu9>.

<sup>883</sup> Administrative Court of Sicily, decision no. 2169 of 21 October 2020, Available at : <https://bit.ly/3w8yVho>

<sup>884</sup> Administrative Court of Sardinia, interim decision no. 4 of 13 January 2021.

2020,<sup>885</sup> ordering the Prefecture to review the request. With a new provision, however, the Prefecture again denied access to the hotspot for reasons that do not differ much from the previous ones, adding however the impossibility of reconciling entry with the protection of the health of guests, delegates of the association and operators, due to the epidemic situation of Covid-19. Against the new denial ASGI lodged an appeal for additional reasons which is pending at the time of writing.

As of November 2019, ASGI asked access to the transit zones but the competent authorities never answered to the request.<sup>886</sup> On January 2021 ASGI sent again a request to have access to the transit zones of Malpensa airport and Rome Fiumicino airport. The Prefecture of Rome replied not to have any competence in deciding the access. The other authorities did not answer.

## 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?<br>and up to 60 days for asylum seekers | 30 days for irregular migrants          |                             |

Asylum seekers should not be sent to CPR before they have had the possibility to seek asylum, due to lack of proper information on the asylum procedure or because they are denied access to the procedure (see [Registration](#)). In practice, however, this happens and, in this case they are subject to the procedure for irregular migrants provided by the TUI until they are able to ask for asylum.

In 2020, in several cases, the Civil Court of Trieste did not validate the detention of Tunisians asylum seekers who had already submitted an asylum application from the quarantine ship and whose application therefore could not be considered instrumental.<sup>887</sup>

The detention decision must be validated within 48 hours by the competent Magistrates' Court (*giudice di pace*). After the initial period of detention of 30 days, the judge, upon the request by the Chief of the Questura, may prolong the detention in CPR for an additional 30 days.<sup>888</sup> After this first extension, the Questore may request one or more extensions to a lower civil court, where it is decided by a Magistrates' Court, in case there are concrete elements to believe that the identification of the concerned third-country national is likely to be carried out or that such delay is necessary to implement the return operations. The assessment concerning the duration of such an extension lies with the magistrate who decides on a case-by-case basis. The third-country national has the right to challenge the detention. The TUI, in fact, provides the right to appeal a detention order or an order extending detention.<sup>889</sup>

Decree Law 113/2018, implemented by L 132/2018, has provided for the possibility of detention in premises other than CPR. According to the amended Article 13(5-bis) TUI, in case of unavailability of places in the CPR located in the district of the competent Court, the Magistrate, upon request by the Questura, and fixing by decree the hearing to validate the detention, may authorise the temporary stay of the foreigner in different and suitable structures in the availability of the Public Security Authority until the conclusion of the validation procedure. In case the unavailability of places in CPR remain even after the validation hearing, the Magistrate can authorise the stay in suitable places near the Border Police Office

<sup>885</sup> Administrative Court of Sicily, interim decision no. 943 of 24 September 2020.

<sup>886</sup> ASGI, In Limine Project, 18 February 2020, see: <https://cutt.ly/6yO5rMM>.

<sup>887</sup> i.e. Civil Court of Trieste, decision of 20 November 2020.

<sup>888</sup> Article 14(5) TUI.

<sup>889</sup> Article 14(6) TUI.

concerned until the effective removal and in any case not exceeding 48 hours following the validation hearing.<sup>890</sup>

If, after being sent to a CPR or other places according to Article 13(5-bis) TUI, third-country nationals apply for asylum, they will be subject to detention pursuant to Article 6 of the Reception Decree. In these cases the competence to the judicial review on the validation or extension of detention is up to the specialized section of the competent Civil Court, having regard to the place where the centre is located.<sup>891</sup>

The Questore's order related to the detention or the extension thereof shall be issued in writing, accompanied by an explanatory statement, and shall indicate that the applicant may submit to the court section responsible for validating the order, personally or with the aid of a lawyer, statements of 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>892</sup>

According to the law, the applicant takes part in the hearing on the validation of detention by videoconference, allowing the lawyer to be present at the place where the applicant is located. The presence of a police officer should ensure that there are no impediments or limitations on the exercise of the asylum seeker's rights.<sup>893</sup> As stressed during the discussion of the provision in the Senate, the lawyer is then forced to choose between being present next to the client or next to the judge at the validation hearing.<sup>894</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 of the asylum application.<sup>895</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>896</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, should not constitute valid ground for the extension of the detention.<sup>897</sup>

On 6 October 2016, in the case *Richmond Yaw and others v. Italy*, the European Court of Human Rights condemned Italy for a violation of Article 5 ECHR regarding the detention in CPR of some Ghanese asylum seekers, whose detention had been extended without a validation hearing and therefore without ensuring a debate between the parties.<sup>898</sup>

On 15 January 2019, the Court of Palermo ruled that the request to extend the detention of an asylum seeker within CPR of Trapani was inadmissible in the absence of the procedural guarantees provided by law. The request for extension had in fact been sent to the Court by the immigration office of the Questura without any written provision adopted by the Questore of Trapani and nothing had been notified to the person concerned.<sup>899</sup>

On 6 August 2019, the Civil Court of Turin ordered the immediate release of an asylum seeker detained for over two months without the audition having been set, considering the unjustified exceeding of the

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<sup>890</sup> Article 13(5-bis) TUI, inserted by Article 4 Decree Law 113/2018 and L 132/2018.

<sup>891</sup> Article 3 (1 c), read in conjunction with art. 4 (3) Law decree 13/2017 converted by Law 46/2017 and Article 6 (7) Reception Decree.

<sup>892</sup> Article 6(5) Reception Decree, as amended by L 46/2017. 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.

<sup>893</sup> Article 6(5) Reception Decree, as amended by L 46/2017.

<sup>894</sup> Senate, *2017 CPR Report*, December 2017.

<sup>895</sup> Article 6(5) Reception Decree.

<sup>896</sup> Pursuant to Article 28-bis(1) and (3) Procedure Decree.

<sup>897</sup> Article 6(6) Reception Decree.

<sup>898</sup> ECtHR, *Richmond Yaw and others v. Italy*, Application No 3342/11, Judgment of 6 October 2016.

<sup>899</sup> Civil Court of Palermo, Decision 439/2019, 15 January 2019, available at: <http://bit.ly/2UIWEvH>.

accelerated procedure terms regulated by art. 28 bis of the Procedures Decree. The Court decided on a review request ruled by Article 9 (5) Directive 2013/33/EU, self-executing in Italy.<sup>900</sup>

The Civil Court of Trieste rejected on 13 January 2020, the request to extend the detention of an asylum seeker within the CPR of Gradisca d'Isonzo, for the unjustified exceeding of the accelerated procedure terms.<sup>901</sup>

On 11 December 2020, the Court of Cassation affirmed an important principle regarding the need not to limit personal freedom for asylum seekers beyond the time limits for examining the application provided for under the accelerated procedure, unless there are other reasons for detention. In the case examined by the Court, the applicant had submitted an application, within the CPR, and the application was deemed to have been submitted for the sole purpose of preventing or avoiding a removal order. After about two months the Civil Court of Turin had extended the detention although the Territorial Commission had not yet summoned the applicant for the hearing. Therefore, the times to examine the application had exceeded the limits set out in Article 28 bis of the Procedure Decree and the provisions of Article 6 of the Reception Decree were violated as according to it any delays in the procedure not attributable to the applicant do not justify the extension of the detention.<sup>902</sup>

By extending the scope of this ruling to the judicial phase, the Civil Court of Trieste rejected the extension of a detention for which the suspension of the refusal issued by the Territorial Commission had been requested with the appeal for more than two and a half months. The Court observed that the Court had omitted to rule about the suspension within 5 days from the request, as required under accelerated procedure by the Procedure Decree.<sup>903</sup>

With a decision of 9 December 2020, the Court of Cassation reiterated that detention must be considered exceptional and considered the extension illegitimate because it was not adequately motivated with respect to the corresponding functionality for repatriation.<sup>904</sup>

In 2019 the Civil Court of Palermo assessed the legitimacy of the detention of some foreign citizens transferred from the Lampedusa hotspot to the Trapani CPR. As monitored by ASGI (see Hotspot) during their stay in hotspot these persons had already expressed their will to seek asylum but before their transfer they were asked to sign an information sheet “**scheda informativa**” declaring to be no longer interested in seeking international protection. Transferred to the CPR of Trapani these persons again expressed their will to seek asylum before the Magistrate (Giudice di Pace) during the detention validation hearing. Their detention was validated as the Magistrates based their decision on the statements contained in the information sheet (*scheda informativa*). Only after about 20 days, they reached to register their will to seek asylum to the competent Questura. Deciding on the validity of their detention order, in one case the Civil Court of Palermo considered the asylum applications submitted for the sole purpose of delaying or preventing the execution of the removal order pursuant to Article 6 (3) of the Reception Decree.<sup>905</sup> In two other cases the Civil Court of Palermo did not validate the detention of two asylum seekers denying value to the statement contained in the *scheda informativa* considering it was not sufficient to fulfill the duty of information on the right of asylum pursuant to art. 10 ter TUI and in any case considering it was unreliable for the way it was hired.<sup>906</sup> In 2020, in two relevant cases the Court of Cassation confirmed the inconsistency of “foglio notizie” to determine the legal status of migrants (see Information at the border).

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<sup>900</sup> Civil Court of Turin, decision 5114/2019, 6 August 2019, procedure 19920/2019, available in Italian at: <https://cutt.ly/kyO5bvZ>.

<sup>901</sup> Civil Court of Trieste, decision 30/2020, 13 January 2020, see: <https://cutt.ly/cyO5Jth>.

<sup>902</sup> Court of Cassation, decision no. 2548/2021, of 11 December 2020, published on 3 February 2021. See also for a note to the decision: <https://bit.ly/3oeonus>

<sup>903</sup> Civil Court of Trieste, decision 16 March 2021.

<sup>904</sup> Court of Cassation, decision of 23 July 2020, published on 9 December 2020, no. 28063.

<sup>905</sup> Civil Court of Palermo, see: <https://cutt.ly/yyO5n4g>.

<sup>906</sup> Civil Court of Palermo, decision available in Italian at: <https://cutt.ly/myO5LIE>.

Out of 6,172 persons placed in detention in 2019, 1,755 were released following an order from the court. Regarding 2020, as of 15 April 2020, out of 1,152 persons detained, 358 were released because the judge did not validate their detention.<sup>907</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?  
☒ Yes ☐ No
2. Do asylum seekers have effective access to free legal assistance in practice?  
☒ Yes ☐ No

According to Article 2 of the CIE Regulation the individual is informed of his or her rights and duties in a language he or she understands and is provided with the list of lawyers. Due to the broad discretion of each Prefecture in authorising access to CPR (see section on [Access to Detention Facilities](#)), however, lawyers may have problems in entering these detention structures.<sup>908</sup>

Under the TUI, free legal aid must be provided in case of appeal against the person's expulsion order, on the basis of which third-country nationals who have not lodged their asylum application can be detained.<sup>909</sup>

Free legal aid is provided for the validation or extension of detention of third-country nationals. However the effectiveness of the legal defence is compromised due to the circumstance that relevant documents are sent in advance to the judge (Giudice di Pace) but not to the lawyer who, therefore, generally manages to see the reasons underlying the request for validation or extension of the detention only immediately before the hearing.

The same situation concerns the defence of asylum seekers who do not have or no longer have the right to remain in the centre (therefore in Italy) pending the judicial decision on their asylum application, since in such cases the jurisdiction is of the Giudice di Pace and not of the Civil Court.<sup>910</sup>

Free legal aid is also provided for the validation of detention of asylum seekers, as well. In this case, the asylum seeker concerned can also request a court-appointed lawyer. Lawyers appointed by the State have no specific expertise in the field of refugee law and they may not offer effective legal assistance. In addition, according to some legal experts, assigned attorneys may not have enough time to prepare the case as they are usually appointed in the morning of the hearing.

In his report published after the visit carried out in February 2018 in the CPR of **Brindisi**, the Guarantor for the rights of detained persons, expressed concern about a communication he found of the local Prefecture addressed to the managing body about the need to reduce access to the CPR to the legal advisers of the detainees, limiting it only to Monday to Friday and in time slots established by the same managing body. Noting how the limitation is improper, he asked for the reasons.<sup>911</sup>

Some Bar Councils such as those in **Turin** and **Bari** set up specific lists of Court-appointed lawyers specialised in immigration law.

As for legal assistance inside the CPR, it should be provided by the body managing the centre, which however does not often guarantee this service and usually provides low-quality legal counselling. In this regard, it appears that there is a lack of sufficient and qualified legal assistance inside CPR.<sup>912</sup>

<sup>907</sup> Guarantor for the rights of detained persons, Report to Parliament, March 2020, p. 206.

<sup>908</sup> LasciateCIEEntrare, *Mai più CIE*, 2013, 7.

<sup>909</sup> Article 13(5-bis) TUI.

<sup>910</sup> Article 6 (7) LD 142/2015.

<sup>911</sup> Guarantor for the rights of detained persons, *Rapporto sulle visite effettuate nei centri di permanenza per il rimpatrio (Febbraio – Marzo 2018)*, 6 September 2018, available in Italian at: <http://bit.ly/2uvu4cr>.

<sup>912</sup> Senate, *CIE Report*, September 2014, 30.

Another relevant obstacle which hampers persons detained in CPR from obtaining information on their rights and thus enjoying their right to legal assistance is the shortage of interpreters available in the detention centres, who should be provided by the specific body running the structure.

As for the legal assistance in the hearing during the health emergency, the Bari Bar Association adopted a protocol establishing that the hearings be held online and specifying the procedure that the judges, the chancelleries, the defenders and the police personnel must follow.<sup>913</sup>

In Turin, in March 2021, after the positive result to the covid test of a police officer who works in the CPR, the CPR was closed to the defenders. Even the hearings were held in the absence of the detainees.

In 2020 and 2021 in many cases, the judges of the Civil Court in Trieste, held that the hearings to extend the detention of asylum seekers could be held without the presence of the detainee, either in person or with audiovisual tools.

### E. Differential treatment of specific nationalities in detention

Following a Ministry of Interior Circular of January 2017, encouraging Questure to trace **Nigerians**, and in light of the readmission agreements signed by Italy with countries such as Tunisia, practice indicates that these nationalities are particularly targeted for detention. Also, as for Tunisians, ASGI could observe that their treatment in the hotspot of Lampedusa was different (see detention in hotspot).

According to the data published by a journalistic investigation, there are 7,054 returns made in 2019.<sup>914</sup> Most of the returned are Tunisians and Moroccans. The Guarantor for the rights of the detained persons expressed concern about the high number of returns to Egypt (about 363 in 2019).

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<sup>913</sup> Available at : <https://bit.ly/3eL60uj>

<sup>914</sup> Pagella Politica, Salvini non parla più di rimpatri? I dati su quanto (non) ha fatto al governo, 17 February 2020.

### A. Status and residence

#### 1. Residence permit

##### Indicators: Residence Permit

- |  |         |
|--|---------|
| 1. What is the duration of residence permits granted to beneficiaries of protection? |         |
| ❖ Refugee status   | 5 years |
| ❖ Subsidiary protection  | 5 years |
| ❖ Special protection   | 2 years |

International protection permits for both refugee status and subsidiary protection are granted for a period of 5 years.<sup>915</sup>

The application is submitted to the territorially competent Questura of the place where the person has a registered domicile.

The main problem for the issuance of these permits is, often, the lack of a domicile (registered address) which must be provided to the police. Domicile has to be attached to the application submitted to the Questura, but some beneficiaries of international protection do not have a fixed address to provide. Even if it is possible to have a registered address at an organisation's address – a legal, not an actual domicile – not all Questuras accept an organization's address as domicile and also the organisations not always allow beneficiaries of protection to use their address.

The renewal of the residence permit for asylum is done by filling out the appropriate form and sending it through the post office. After the application for renewal has been submitted, people have to wait a long time up to several months to know the outcome of the request and to obtain the new permit.

According to the law, the residence permit for **subsidiary protection** can be renewed after verification that the conditions imposed in Article 14 of the Qualification Decree are still satisfied.<sup>916</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.

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. To this regard it has to be underlined that L. 132/2018 which amended Decree Law 113/2018, introduced Article 15 (2 - ter) to the Qualification Decree, according to which, for the purpose of terminating the needs of subsidiary protection, "any return to the country of origin is relevant, if not justified by serious and proven reasons". Following legal action initiated by ASGI the refusal in these cases has been cancelled. The provision is still in place, however.

On 27 February 2019, the Civil Court of Naples accepted the appeal lodged by a Nigerian citizen to whom the Questura of Naples refused to issue the subsidiary protection status permit because she did not have a passport from her country of origin.<sup>917</sup>

<sup>915</sup> Article 23(1) and (2) Qualification Decree.

<sup>916</sup> Article 23(2) Qualification Decree.

<sup>917</sup> Civil Court of Naples, Decision 35170/2018, 27 February 2019.

Following the abolition of the humanitarian protection status upon entry into force of Decree Law 113/2018 on 5 October 2018 (see [Regular Procedure](#)), two-year residence permits for humanitarian protection reasons can no longer be renewed to those who had previously obtained such permit.

The government justified the abolition of humanitarian protection with the need to delimit the issuance of this residence permit, claiming to circumscribe the humanitarian reasons to certain hypotheses and introducing, for this purpose, some new residence permits that can be released directly by the Questuras in “special cases” (*casi speciali*): the permit for medical treatment,<sup>918</sup> the permit for particular civil value,<sup>919</sup> the permit for natural calamity.<sup>920</sup>

However Decree Law 130/2020 and L 173/2020 reintroduced the need to consider, in rejecting permits to stay, the existence of constitutional and international obligations, and changed the substance of the special protection (*protezione speciale*) permits which can be granted when the hypothesis of non-expulsion or refoulement rises.<sup>921</sup> Decree Law 130/2020 specified that the refoulement or expulsion of a person not admitted when there are good reasons to believe that the removal from the national territory involves a violation of the right to respect for his private and family life, unless that it is necessary for national security reasons, public order and safety as well as health protection. It also stated that the nature and effectiveness of the family ties of the person concerned, his effective social insertion in Italy, the duration of his stay on the national territory as well as the existence of family, cultural or social ties with his or her country of origin, has to be taken into account.<sup>922</sup>

These permits are granted for duration of two years and are renewable, subject to a favourable opinion by the Territorial Commission,<sup>923</sup> and changeable in labour residence permits, with the exception of cases in which such protection is recognized but conditions were found to exclude or deny international protection.<sup>924</sup>

The 2018 reform had provided for a transitional regime only for those who have been waiting for the issuance of the first residence permit for humanitarian protection or those to whom the Territorial Commissions had already granted, although not yet communicated, humanitarian protection before 5 October 2018. These persons received a residence permit for “special cases” granted for two years and convertible into a labour residence permit.<sup>925</sup> Upon expiry, if not converted into work permits, those “special cases” permits cannot be renewed. The only option for the holders of such permit is then to obtain a “special protection” permit if they meet the conditions.

Decree Law 130/2020 introduces another transitional regime stating that the new provisions on special protection permits apply to all pending cases before the Territorial Commissions, the Questore, and the specialised sections of Civil Courts.<sup>926</sup>

## 2. Civil registration

Beneficiaries of international protection or special protection can apply for registration.

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<sup>918</sup> Article 19(2)(d-bis) TUI, inserted by Article 1(1)(g) Decree Law 113/2018 and L 132/2018.

<sup>919</sup> Article 42-bis TUI, inserted by Article 1(1)(q) Decree Law 113/2018 and L 132/2018.

<sup>920</sup> Article 20-bis TUI, inserted by Article 1(1)(h) Decree Law 113/2018 and L 132/2018. It is issued when the country to which the foreigner should return has a situation of contingent and exceptional calamity that does not allow the return and the stay in safe conditions. The permit is valid for 6 months, only in national territory, and allow to work but it is not convertible into a work permit.

<sup>921</sup> Articles 19(1) as amended by Decree Law 130/2020 and L. 173/2020.

<sup>922</sup> Article 32 (3 ) Procedure Decree and Article 19 (1.1) TUI as amended by Decree Law 130/2020 and L 173/2020.

<sup>923</sup> Article 32(3) Procedure Decree, as amended by Decree Law 113/2018 and L 132/2018 and later by Decree Law 130/2020 and L 173/2020.

<sup>924</sup> Hypotheses ruled by Articles 10(2), 12 (1) (b) and (c) and 16 of the Qualification Decree.

<sup>925</sup> Article 1(9) Decree Law 113/2018 and L 132/2018.

<sup>926</sup> Article 15 (1) Decree Law 130/2020.

Decree Law 113/2018 repealed the rules governing civil registration (*iscrizione anagrafica*) of asylum seekers,<sup>927</sup> and stated that the residence permit issued to them did not constitute a valid title for registration at the registry office.<sup>928</sup>

Many organisations, including ASGI, raised the discriminatory aspect of this rule which, by denying a subjective right to one single category of foreigners, asylum seekers, would violate the principle of equality enshrined by Article 3 of the Italian Constitution. In fact, the TUI, which was not amended, states that the registration of personal data and changes to such data for legally residing foreigners are carried out under the same conditions as Italian citizens.<sup>929</sup>

On 31 July 2020 the Constitutional Court declared the denial of the civil registration for asylum seekers introduced by the legislative Decree 113/2018 contrary to the principle of equality enshrined in the Italian Constitution<sup>930</sup> Later, the Decree Law 130/2020, amended by L 173/2020, repealed the law introduced by the Decree Law 113/2018 again expressly allowing asylum seekers to obtain civil registration.

After registration, asylum seekers get an identity card of three years validity.

As some provisions of social welfare are conditional upon registration at the registry office, in 2020, before the decision of the Constitutional Court, the lack of residence led in many cases to deny asylum seekers' access to social care services as public administration officials had not received instructions on how to guarantee these rights without civil registration.

Article 5(3) of the Reception Decree states that asylum seekers have access to reception conditions and to all services provided by law in the place of domicile declared to Questura upon the lodging of the application or subsequently communicated to Questura in case of changes.<sup>931</sup>

In some cases, the duration of the registry registration guarantees greater chances of obtaining access to welfare. The jurists have pointed out that after the sentence of the constitutional court all the applications for registration already rejected in force of the d. 113/2018 must be accepted retroactively, since those rejections cannot be considered as definitive because they can still be challenged under a ten-year term. Some municipalities, however, such as Trieste, have not accepted this interpretation and register asylum seekers from the date of the new request.

## 2.1. Registration of child birth

The childbirth can be registered at hospital within 3 days from the birth, or later at the municipality, with the presentation of a valid identification document.

## 2.2. Registration of marriage

According to the Italian Civil Code, foreign citizens who intend to contract a marriage in Italy must present a certification of the absence of impediments to contracting the marriage (*nulla osta*), issued by their embassy.<sup>932</sup> **Refugees** can substitute the *nulla osta* with a UNHCR certification. This practice was established following a formal note sent on 9 April 1974 by the Ministry of Justice to the Ministry of Foreign Affairs, copying UNHCR.

In order to obtain authorisation for the marriage, refugees must produce:

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<sup>927</sup> Article 5-bis Reception Decree was repealed by Article 13 Decree Law 113/2018 and L 132/2018.

<sup>928</sup> Article 4(1-bis) Reception Decree, inserted by Article 13 Decree Law 113/2018 and L 132/2018.

<sup>929</sup> Article 6(7) TUI.

<sup>930</sup> Decision no. 186/2020 of 31 July 2020, available at: <https://bit.ly/3y4Hfka>

<sup>931</sup> Article 5(3) Reception Decree, as amended by Article 13 Decree Law 113/2018 and L 132/2018.

<sup>932</sup> Article 116 Civil Code.

- A declaration (affidavit), signed before the Civil Court or before a notary and certified by two witnesses;
- The decision granting them refugee status;
- A valid residence permit; and
- A valid document of the future spouse.

The law does not provide a solution for beneficiaries of **subsidiary protection** who cannot request the *nulla osta* from their embassy with a view to registering a marriage. In this case, they can follow the procedure set out in the Article 98 of the Italian Civil Code, which entails a request for the marriage authorisation to the municipality and, after the refusal of the request for want of *nulla osta*, an appeal to the Civil Court, asking the Court to ascertain that there are no impediments to the marriage.

With a decree issued on February 2012, the Civil Court of Bari has authorised the marriage between a subsidiary protection holder and an asylum seeker even in the absence of authorisation from their country of origin. The Court observed that in relation to the certification needed for contracting a marriage, “refugees and subsidiary protection beneficiaries appear to have similar positions, but unjustifiably treated in a non-homogeneous way.”<sup>933</sup>

### 3. Long-term residence

#### Indicators: Long-Term Residence

1. Number of long-term residence permits issued to beneficiaries in 2020: Not available

According to Article 9(1-bis) TUI, refugees and subsidiary protection beneficiaries residing in Italy for at least 5 years can obtain a long-term resident status if they have an income equal or higher than the minimum income guaranteed by the State. The starting point to count the period of stay for beneficiaries of international protection is the date of submission of the application for international protection.<sup>934</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>935</sup>

The application to obtain the long-term residence permit is submitted to the Questura and must be issued within 90 days.<sup>936</sup> The issuance of the permit is subject to a contribution of €130,46.<sup>937</sup>

### 4. Naturalisation

#### Indicators: Naturalisation

1. What is the waiting period for obtaining citizenship?
  - ❖ Refugee status 5 years
  - ❖ Subsidiary protection 10 years
2. Number of citizenship grants to beneficiaries in 2020: Not available

<sup>933</sup> Civil Court of Bari, Decree of 7 February 2012, available in Italian at: <http://bit.ly/2GUUsJAR>.

<sup>934</sup> Article 9(5-bis) TUI.

<sup>935</sup> Article 9 (1-ter) and (2-ter) TUI.

<sup>936</sup> Article 9(2) TUI.

<sup>937</sup> Ministerial Decree of 8 June 2017.

Italian citizenship can be granted to **refugees** legally resident in Italy for at least 5 years.<sup>938</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>939</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. Moreover, following the entry into force of the Decree Law 113/2018, implemented by L 132/2018, registration at the registry could only be obtained after the grant of a protection status ([Civil Registration](#)).

The situation has changed after the decision of the Constitutional Court n. 186/2020 which declared the legal provision introduced to create a different legal regime for asylum seekers contrary to the principle of equality stated by the Italian Constitution. The Decree Law 130/2020 was amended and expressly recognises to asylum seekers the right to civil registration. However, under Decree Law 113/2018, many asylum seekers received a denial of civil registration and, at the moment of writing, many municipalities refuse to recognize the right to register them retroactively. Some cases have already been brought before the Civil Courts to obtain such retroactive registration.

The 2018 reform also introduced the requirement of good knowledge of the Italian language of at least B1 level, attested through specific certifications or through the qualification in an educational institution recognised by the Ministry of Education.<sup>940</sup> Applications presented after 5 December 2018 without meeting this requirement have been rejected.<sup>941</sup>

The amended Citizenship Act also provides that citizenship obtained by way of naturalisation can be revoked in the event of a final conviction for crimes committed for terrorist purposes.<sup>942</sup> The law does not provide any guarantee to prevent statelessness.

According to the ISTAT report published on 26 October 2020,<sup>943</sup> 127,001 foreigners acquired Italian citizenship in 2019. ; of these 113,979 (89.7%) were non-EU citizens, with a slight increase compared to 2018, when non-EU citizens who became Italian were just over 103,000.

In 2019, among the communities with the highest number of acquisitions, there were Macedonians (+ 42.4%), Pakistanis (+ 37.9%) and Ecuadorians (+ 31.9%). Compared to 2018, acquisitions by residence increased in 2019 ((+ 28.3%), which represented over 40% of the total acquisitions of citizenship. Also, they were increased citizenships by election, that is those of eighteen-year-olds born and resident in Italy, (+ 15.1%); and citizenships by descent (*ius sanguinis*), (+ 27.1%), while acquisitions by marriage decreased (-29.8%).

With respect to nationalities, more than half of the new Italians came from Moldova, Ecuador, Peru and Albania, i.e. countries from which asylum seekers tend not to come.

Minors were close to 30% of the population who acquired citizenship,

From a territorial point of view, almost two out of three new Italians reside in a northern region, while in the south there were greater citizenships by descent, also due to the fact that these territories were in the past "emigration lands" and that, currently, less affected by the permanent settlement of migrants from non-EU countries.

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<sup>938</sup> Articles 9 and 16 L 91/1992 (Citizenship Act).

<sup>939</sup> Article 9(1)(f) Citizenship Act.

<sup>940</sup> Article 9.1 Citizenship Act, inserted by Article 14 Decree Law 113/2018 and L 132/2018.

<sup>941</sup> Ministry of Interior Circular No 666 of 28 January 2019.

<sup>942</sup> Article 10-bis Citizenship Act, inserted by Article 14 Decree Law 113/2018 and L 132/2018.

<sup>943</sup> ISTAT Report, 26 October 2020, available at : <https://bit.ly/3ulkosF>

## 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 by law for beneficiaries of **subsidiary protection**. However, on 13 November 2019, the Civil Court of Rome recognized a woman of Sierra Leone with subsidiary protection status, the right to produce self-signed certificates, instead of a criminal record and birth certificates from the country of origin, to request the Italian citizenship, assessing the risk she would have incurred by turning to the authorities of her country of origin.<sup>944</sup>

The application is subject to the payment of a €250 (up from €200) contribution.

The evaluation of the citizenship application is largely discretionary. As consistently confirmed by the case law of the Administrative Courts,<sup>945</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 of social inclusion, it is usually requested that the income of the last 3 years be equal or higher than the minimum income guaranteed by the State.

Decree Law 113/2018, implemented by L 132/2018 extended the time limit for the completion of the procedure from 730 days to 48 months from the date of application.<sup>946</sup> The Administrative Court of Lazio decided that it also applies to cases brought to Court before the date of coming into force of the Decree Law, since the Decree Law was silent on the date of entry into force.<sup>947</sup>

The Decree Law 130/2020 has repealed the law of the Decree Law 113/2018, which extended the 48 months term applicable to citizenship applications pending at the time of the entry into force of that decree law.<sup>948</sup> Thus, the previous term of 730 days will be applied to the applications submitted before the entry into force of Decree Law 113/2018.<sup>949</sup>

The Decree Law 130/2020 and the L. 173/2002 have introduced a new time limit for the completion of the citizenship procedure, set in 24 months extendable up to a maximum 36 months, applying to applications submitted from 20 December 2020.<sup>950</sup>

Therefore, currently, there are several terms for the conclusion of the procedure, which depend on the circumstance that the application was presented before, during or after the end of validity of Decree Law 113/2018.

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<sup>944</sup> Civil Court of Rome, decision 21785 of 13 November 2019

<sup>945</sup> See e.g. Administrative Court of Lazio, Decision 8967/2016, 2 August 2016.

<sup>946</sup> Article 19-ter Citizenship Act, inserted by Article 14 Decree Law 113/2018 and L 132/2018.

<sup>947</sup> Administrative Court of Lazio, Decision 1323/2019.

<sup>948</sup> Article 4 of Decree Law 130/2020 repealed Article 14 (2) of the Decree Law 113/2018 which had set the deadline for the definition of the proceedings pending at the time of entry into force of the Decree Law 113/2018 in 48 months.

<sup>949</sup> According to Article 3 DPR 18.4.1964 n. 362.

<sup>950</sup> Article 9-ter Citizenship Act as amended by Decree Law 130/2020 and L 173/2020. According to Article 4(6) of Decree Law 130/2020 the provision applies to the applications submitted from the entry into force of the L 173/2020.

As before, these are a non-mandatory time limits.

The person concerned is notified about the conclusion of the procedure by the Prefecture. In case of approval, he or she is invited to give, within 6 months, the oath to be faithful to the Italian Republic and to observe the Constitution and the laws of the State. In case of denial, he or she can appeal to the Administrative Court.

## 5. Cessation and review of protection status

### Indicators: Cessation

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the cessation procedure? ☒ Yes ☐ No
2. Does the law provide for an appeal against the first instance decision in the cessation procedure? ☒ Yes ☐ No
3. Do beneficiaries have access to free legal assistance at first instance in practice? ☐ Yes ☐ With difficulty ☒ No

### 5.1. Grounds for cessation

According to Article 9 of the Qualification Decree, a third-country national shall cease to be a **refugee** if he or she:

- (a) Has voluntarily re-availed himself or herself of the protection of the country of nationality;
- (b) Having lost his nationality, has voluntarily re-acquired it;
- (c) Has acquired Italian nationality, or other nationality, and enjoys the protection of the country of his or her new nationality;
- (d) Has voluntarily re-established him or herself in the country which he or she left or outside which he or she remained owing to fear of persecution;
- (e) Can no longer, because the circumstances in connection with which he has been recognised as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of nationality; or
- (f) In the case of a stateless person, he or she is able, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, to return to the country of former habitual residence.

The change of circumstances which led to the recognition of protection is also a reason for the cessation of **subsidiary protection**.<sup>951</sup>

Decree Law 113/2018 has introduced a new provision to the Qualification Decree according to which any return of a beneficiary of international protection to the country of origin which is not justified by serious and proven reasons is relevant for the assessment of cessation of international protection.<sup>952</sup>

The circumstances taken into consideration to assess termination are: frequency of trips to the country of origin; length of stay in the country of origin; place of stay in the country of origin; reasons for travel to the country of origin.<sup>953</sup>

<sup>951</sup> Article 15(1) Qualification Decree.

<sup>952</sup> Articles 9(2-ter) and 15(2-ter) Qualification Decree, inserted by Article 8 Decree Law 113/2018 and L 132/2018.

<sup>953</sup> EMN, Studio del Punto di Contatto Italiano European Migration Network (EMN), 2020, available at : <https://bit.ly/3fiWCwP>

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>954</sup> Although the law provides that protection may cease in these cases, this does not happen in practice. The Qualification Decree states that, even when the situation in the country of origin has changed, the beneficiary of international protection can invoke compelling reasons arising out of previous persecution for refusing to avail him or herself of the protection of the country of nationality not to be returned.<sup>955</sup>

## 5.2. Cessation procedure

The CNDA is responsible for deciding on cessation.<sup>956</sup> According to the law, cessation cases of **refugees** have to be dealt individually.<sup>957</sup> No specific groups of beneficiaries in Italy specifically face cessation of international protection but, according to CNDA statistics most cessation decisions concern nationals of Pakistan and Mali.

However, several cases of cessation of **subsidiary protection** have been started by the CNDA since 2017 regarding people who were found at airports or borders with stamps on their passports attesting they had returned to their country of origin. The new provision introduced by Decree Law 113/2018 on the relevance of any return of the beneficiary to the country of origin for cessation, will likely result in automatically initiating the cessation procedure in such cases, as confirmed by the practice recorded by ASGI in 2020.

The person concerned must be informed in writing of the specific reasons why the Commission considers whether to review of his or her legal status. The person has the right to take part in the proceedings, to request to be heard and to produce written documentation, but has not access to free legal assistance. The CNDA sets a hearing only if it is deemed as necessary. If the person, duly notified, fails to appear, the decision is made on the basis of the available documentation.

The Commission should decide within 30 days after the interview or after the expiration of time allowed for sending documents.

An appeal against the decision can be lodged before the competent Civil Court, within 30 days from notification. The appeal has automatic suspensive effect and follows the same rules as in the [Regular Procedure: Appeal](#).<sup>958</sup>

The person who has lost refugee status or subsidiary protection may be granted a residence permit on other grounds, according to the TUI. The CNDA can approve an international protection status different from the status ceased or, if it considers that the foreigner cannot be expelled nor refouled, it can transmit the documents to the *Questura* for the issuance of a residence permit of special protection.<sup>959</sup> 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>960</sup>

In practice, cessation is not applied on the basis of changed circumstances. The CNDA starts cessation procedures after receiving information from the *Questura* or the Territorial Commission that the beneficiary has returned to his or her country of origin. Statistics from the CNDA referring to number of cessation and withdrawal procedures are not available for 2020.

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<sup>954</sup> Articles 9(2) and 15(2) Qualification Decree.

<sup>955</sup> Articles 9(2-bis) and 15(2-bis) Qualification Decree.

<sup>956</sup> Article 5 Procedure Decree; Article 13 PD 21/2015.

<sup>957</sup> Article 9(1) Qualification Decree.

<sup>958</sup> Article 35-bis(3) Procedure Decree.

<sup>959</sup> Article 33(3) Procedure Decree, referring to the Article 32(3), now amended by Decree Law 130/2020.

<sup>960</sup> Article 33 Procedure Decree; Article 14 PD 21/2015.

## 6. Withdrawal of protection status

### Indicators: Withdrawal

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the withdrawal procedure? ☒ Yes ☐ No
2. Does the law provide for an appeal against the withdrawal decision? ☒ Yes ☐ No
3. Do beneficiaries have access to free legal assistance at first instance in practice?  
☐ Yes ☐ With difficulty ☒ No

Cases of withdrawal of international protection are provided by Article 13 of the Qualification Decree for **refugee status** and by Article 18 of the same Decree for **subsidiary protection**.

Both provisions state that protection status can be revoked when it is found that its recognition was based, exclusively, on facts presented incorrectly or on their omission, or on facts proved by false documentation.

Withdrawal is also imposed when, after the recognition, it is ascertained that the status should have been refused to the person concerned because:

- (a) He or she falls within the exclusion clauses.

Decree Law 113/2018, implemented by L 132/2018, has extended the list of crimes triggering exclusion and withdrawal of international protection, including violence or threat to a public official; serious personal injury; female genital mutilation; serious personal injury to a public official during sporting events; theft if the person wears weapons or narcotics, without using them; home theft.<sup>961</sup>

- (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>962</sup> and the appeals against it,<sup>963</sup> are subject to the same procedure foreseen for **Cessation** decisions.

## 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

<sup>961</sup> Articles 12(1)(c) and 16(d-bis) Qualification Decree, as amended by Article 8 Decree Law 113/2018 and L 132/2018.

<sup>962</sup> Article 33 Procedure Decree; Article 14 PD 21/2015.

<sup>963</sup> Article 19(2) LD 150/2011.

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 at Prefecture 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>964</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>965</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, including the DNA test, and through UNHCR involvement. The application cannot be rejected solely for lack of documentation.

In 2020, because of the health emergency, the validity of the authorizations for family reunification issued by the prefectures (*nulla osta*) normally issued for six months, has been extended until 30 April 2021.<sup>966</sup>

## 2. Status and rights of family members

According to the law,<sup>967</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>968</sup> notwithstanding whether they were previously irregularly present.<sup>969</sup> These provisions do not apply to family members who should be excluded from the international protection.<sup>970</sup>

Minor children, present with the parent at the moment of the asylum application, also obtain the same status recognised to the parent.<sup>971</sup>

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<sup>964</sup> Article 29-bis TUI, citing Article 29(3) TUI.

<sup>965</sup> Article 29(1) TUI.

<sup>966</sup> Article 103 (2 quarter, e) DL 18/2020 converted by L. 27/2020, extended the validity up to 30 August 2020; later, L 159/2020, converting the Decree Law 125/2020, extended it up to 30 December 2021, and the Decree Law 2/2021, converted by L 29/2021 extended it up to 30 April 2021.

<sup>967</sup> Article 22 Qualification Decree.

<sup>968</sup> Article 30 TUI.

<sup>969</sup> Article 30 TUI.

<sup>970</sup> Occurring cases governed by Articles 10 and 16 Qualification Decree.

<sup>971</sup> Article 6(2) Procedure Decree; Article 31 TUI.

## C. Movement and mobility

### 1. Freedom of movement

Refugees and beneficiaries of subsidiary protection, like asylum seekers, can freely circulate within the Italian territory, without prejudice to the limits established by Article 6(6) TUI, for the stay in municipalities or localities affecting the military defence of the State. They can also settle in any city if they can provide for themselves.

If accommodated in a government reception centre (see [Reception Conditions: Freedom of Movement](#)), they could be requested to return to the structure by a certain time, in the early evening. More generally, in order not to lose their accommodation place, they are not allowed to spend days out of the structures without authorisation.

Once obtained a place in a SAI project, beneficiaries have to accept it even if it implies to be moved to a different city. If they refuse the transfer, they have to leave the reception system definitively.

### 2. Travel documents

Travel documents for beneficiaries of international protection are governed by Article 24 of the Qualification Decree.

For **refugees**, the provision refers to the 1951 Refugee Convention and states that travel documents (*documenti di viaggio*) issued for refugees are valid for 5 years, renewable. They could be refused for serious reasons related to public order and national security. These are usually automatically given to refugees.

**Beneficiaries of subsidiary protection** can get a “travel permit” (*titolo di viaggio*), as opposed to a travel document (*document di viaggio*), explaining in a note to the *Questura* the reasons why they cannot ask or obtain a passport from their country's embassy. They can get a travel document if they have no representative authorities of their country in Italy.

Therefore, they can invoke reasons linked to their status and to their asylum stories. However, the Council of State has clarified in a case on travel permits for **beneficiaries of humanitarian protection** that the reasons to be adduced are not implicit in the reasons why the protection has been recognised and that it is not enough to generally declare that, because of the problems faced in the country of origin, it is impossible to contact the diplomatic authorities of that country in Italy.<sup>972</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 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 (only in case of subsidiary protection). 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

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<sup>972</sup> Council of State, Section III, Decision No 451, 4 February 2016, available at: <http://bit.ly/2k5xcFS>.

to deny, on this basis, the travel document to someone who has obtained a residence permit on international protection grounds.<sup>973</sup>

On 10 October 2019 the Administrative Court of Sardinia accepted an appeal lodged against the refusal of the Questura of Cagliari to issue a travel document to a Malian citizen, subsidiary protected, whose embassy had refused to issue a passport due to the lack of some documents. The Court considered the doubts of the Questura regarding the applicant's identity unfounded as he had corrected his personal data during the hearing before the competent Territorial Commission.<sup>974</sup>

The same Court issued a similar decision on 26 February 2020, again ordering to the Questura of Cagliari to issue a travel document to a subsidiary protected who could not get a passport from his embassy.<sup>975</sup>

In case of rejection, the beneficiary concerned can appeal to the Administrative Court.

However, on 23 February 2020, the Civil Court of Florence recognized its jurisdiction over an appeal filed against the delay in issuing a travel document to a refugee. The Court ordered the Questura of Florence to release the travel document requested by the applicant two years earlier, considering the right to obtain the travel document an individual right of international protected, not a mere legitimate interest. Therefore, the Court found the case correctly attributed to the jurisdiction of an ordinary court, meaning "natural judge" of individual rights.<sup>976</sup>

Acting against the widespread practice of some Questura not to respond to applications for travel documents submitted by holders of subsidiary protection, an ASGI lawyer has lodged an appeal against the administrative silence of the Questura of Turin, **Piedmont**. The case concerned a Senegalese holder of humanitarian protection but the rules applied and referred to by the Administrative Court of Piedmont which upheld the appeal are the same as for subsidiary protection holders.<sup>977</sup> The Court accepted the appeal and ordered the Questura to adopt a reasoned decision on the request within 30 days.<sup>978</sup>

Italian law does not prohibit beneficiaries of **subsidiary protection** from using the Italian travel permit to go back to their country of origin. However, after the 2018 reform each return to the country of origin can cause the starting of a cessation procedure (See cessation).

## D. Housing

### Indicators: Housing

1. For how long are beneficiaries entitled to stay in SIPROIMI/SAI?	6 months
2. Number of beneficiaries staying in reception centres as of 31 December 2020:	25,574 <sup>979</sup>

As underlined in the reception condition chapter, Decree Law 130/2020 converted into Law 173/2020 has, at least in theory, reformed the reception system back to a single system for asylum seekers and beneficiaries of international and special protection, even if organised in progressive phases. Nevertheless, despite the reform, the SAI system is still conceived and indicated as primarily intended for

<sup>973</sup> Administrative Court of Lazio, Decision 11465/2015, 30 September 2015, available at: <http://bit.ly/2kgkOFB>.

<sup>974</sup> Administrative Court of Sardinia, interim decision 260/2019, 10 October 2019.

<sup>975</sup> Administrative Court of Sardinia, interim decision 44/2020, 26 February 2020.

<sup>976</sup> Civil Court of Florence, decision of 23 February 2020.

<sup>977</sup> Article 24(2) Qualification Decree.

<sup>978</sup> Administrative Court of Piedmont, Decision 34/2018, 8 January 2018.

<sup>979</sup> Ministry of Interior, Cruscotto Statistico giornaliero, 31 December 2020, available in Italian at: <https://bit.ly/3hx9eD9>; the data could also refer to some asylum seekers accommodated as, since the entry into force of the Decree Law 130/2020 (20 October 2020) asylum seekers were again entitled to access the accommodation system.

beneficiaries of international protection and unaccompanied foreign minors. Other foreign nationals can only access SAI in case of available places.<sup>980</sup> The system remains based on the voluntarily adhesion of the municipalities. They do not have enough places to meet the reception needs of all those who are entitled to it.

ASGI claims that mainstreaming reception into the obligations of municipalities in the context of social services, in line with the Italian constitutional settlement, would have been a better solution.<sup>981</sup>

## 1. Stay in first reception centres and CAS

A protection status does not allow the holder to remain in first reception facilities or CAS. This creates a protection gap in practice, given the scarcity of places in the SAI-SIPROIMI. Already before the 2018 reform, some public administration offices considered that material conditions may immediately cease after the status recognition.

Although depending on the discretionary decisions of the responsible Prefectures and on bureaucratic delays, beneficiaries of international protection, after obtaining protection status, could be allowed to stay in the reception centre a few months or a few days after the notification.

## 2. Accommodation in SAI

Following the 2020 reform, accommodation of beneficiaries of international protection is properly performed in SAI system, System of accommodation and integration (*Sistema di accoglienza ed integrazione*) the former SPRAR established by L 189/2002. SAI is a publicly funded network of local authorities and NGOs which accommodates unaccompanied children, also under some conditions after the coming of age (see Reception of Unaccompanied Children), beneficiaries of international protection and, in case of available places, asylum seekers and people who have obtained some other residence permits for specific reasons.

Unaccompanied children have immediate access to SAI. Local authorities can also accommodate in SAI: victims of trafficking; domestic violence and particular exploitation; persons issued a residence permit for medical treatment, or natural calamity in the country of origin, or for acts of particular civic value.<sup>982</sup> Moreover, Decree Law 130/2020 states that local authorities can also accommodate in these facilities asylum seekers, holders of special protection, holders of special cases protection (former humanitarian protection),<sup>983</sup> and adults, former unaccompanied minors, who obtained a prosecution of assistance.<sup>984</sup> Holders of special protection permits, in case of application of the international protection exclusion clauses<sup>985</sup>, are excluded from the SAI.<sup>986</sup>

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<sup>980</sup> Article 1 sexies (1) DL 516/1989 according to which in the SAI system, dedicated to beneficiaries of international protection and unaccompanied minors, municipalities can also accommodate asylum seekers and holders of specified permits to stay.

<sup>981</sup> According to Article 118 of the Italian Constitution, administrative functions are attributed to the municipalities. See ASGI, *Manifeste illegittimità costituzionali delle nuove norme concernenti permessi di soggiorno per esigenze umanitarie, protezione internazionale, immigrazione e cittadinanza previste dal decreto-legge 4 ottobre 2018, n. 113*, 15 October 2018, available in Italian at: <https://bit.ly/2W4am3n>. For a more detailed analysis, see Gianfranco Schiavone, 'Le Prospettive Di Evoluzione Del Sistema Unico Di Asilo Nell'unione Europea E Il Sistema Di Accoglienza Italiano. Riflessioni Sui Possibili Scenari' in Fondazione Migrantes, *Il diritto d'asilo, minori rifugati e vulnerabili senza voce, Report 2017*, February 2017.

<sup>982</sup> Article 1 sexies (1) DL 416/1989, as amended by DL 130/2020, citing Articles 18, 18-bis, 19(2)(d-bis), 20, 22(12-quater) and 42-bis TUI. The statuses in Articles 20 and 42-bis had been inserted by Decree Law 113/2018.

<sup>983</sup> Ibid, mentioning Articles 1 (9) DL 113/2018 (special cases); Article 19, (1, 1.1) TUI, amended by DL 130/2020, special protection.

<sup>984</sup> Article 1 sexies (1 bis) DL 416/1989, introduced by DL 130/2020.

<sup>985</sup> Articles 10(2), 12 (1) (b) and (c) and 16 of the Qualification Decree.

<sup>986</sup> Article 1 sexies (1) (a) DL 416/1989, as amended by DL 130/2020.

SAI system is formed by small reception structures where assistance and integration services are provided. SAI projects are run by local authorities and together with civil society actors such as NGOs. According to the Ministry of Interior Decree of 18 November 2019, 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>987</sup>

Decree Law 130/2020 introduced two different levels of services:

- ❖ **First level services:** asylum seekers who are accommodated in SAI (before being granted international or special protection) will be able to benefit from "first level" services. First level services include, in addition to material reception services, health care, social and psychological assistance, linguistic-cultural mediation, the teaching of Italian language courses and legal and territorial guidance services.<sup>988</sup>
- ❖ **Second level services** – which are only available for holders of an international or special protection status - include support for integration, job research, job orientation and professional training.<sup>989</sup>

In contrast to the large-scale buildings provided in Governmental centres (former CARA and CDA) CPSA and CAS, SAI is comprised of 760 smaller-scale decentralised projects as of January 2021.<sup>990</sup> The projects funded a total of 30,049 accommodation places.<sup>991</sup> This is a decrease of the 809 projects with 31,284 places that existed at the beginning of 2020. Of those, 145 reception projects with 4,369 financed places are dedicated to unaccompanied children, while 42 reception projects with 623 financed places are destined to persons with mental disorders and disabilities.

The Decree issued on 18 November 2019<sup>992</sup>, including the Guidelines for the Siproimi system adopted by the Ministry of Interior has not been replaced at the time of writing by a new one reflecting the actual new configuration of the SAI.

The Moi Decree of 18 November 2019 stated that reception in Siproimi lasts six months.<sup>993</sup>

Only in some cases, indicated by the Decree, the reception conditions could be extended with a total of six months, with adequate motivation and prior authorization. In particular, the decree allows the extension for the conclusion of expiring integration paths, or for extraordinary circumstances related to health reasons. Furthermore, the extension of six months could be authorized in case of vulnerabilities, as indicated in Article 17 of the Reception decree. In this case the request for extension must contain the explicit indication and evidence of the vulnerability.

A further six months could be granted in case of persistent serious health reasons or to allow the completion of the school year.<sup>994</sup>

Law Decree 130/2020 does not specifically regulate the duration of the reception in the SAI. However, it states that at the expiry of the period of stay, all the people accommodated are included in further

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<sup>987</sup> Article 34 Mol Decree 18 November 2019.

<sup>988</sup> Article 1 sexies (2 bis, a) DL 416/1989, introduced by DL 130/2020.

<sup>989</sup> Article 1 sexies (2 bis) DL 416/1989, introduced by DL 130/2020.

<sup>990</sup> SAI, *I numeri del SAI*, January 2021, available at: <https://www.retesai.it/i-numeri-dello-sprar/>

<sup>991</sup> *Ibid.*

<sup>992</sup> Decree of the Ministry of Interior, 18 November 2019, published on 18 November 2019 on Gazzetta Ufficiale, available in Italian at: <https://cutt.ly/ayPqqeE>.

<sup>993</sup> Article 38 Mol Decree 18 November 2019.

<sup>994</sup> Article 39 Mol Decree 18 November 2019.

integration paths, up to the competent municipalities but within the limits of human, instrumental and financial available resources.<sup>995</sup>

More in detail, with regard to beneficiaries of international protection, the National Plan drawn up by the National Coordination Table set up at the Ministry of the Interior - Department for Civil Liberties e immigration,<sup>996</sup> identifies interventions about:

- linguistic training aimed at the knowledge of Italian language at least at A1 level;
- knowledge of the fundamental rights and duties enshrined in the Constitution of the Italian Republic;
- orientation to essential public services;
- orientation to job placement.<sup>997</sup>

Even though the accommodation system should be considered as a unique system, the withdrawal of reception conditions ruled by the Accommodation Decree only refers to first accommodation facilities.

The MoI Decree also dictated specific rules for the withdrawal of reception conditions which could be ordered in the event of:

- a) serious or repeated violation of the house rules, including damages to the facilities or or serious and violent behaviour;
- b) unjustified failure to present in the structure identified by the Central Service;
- c) unjustified abandonment of the facility beyond 72 hours, without prior authorization from the local authority;
- d) application to the beneficiary of the measure of pre-trial detention in prison.

The withdrawal of the reception measures is disposed by the local authority.<sup>998</sup>

Article 14 of Decree Law 130/2020 sets a financial invariance clause for all the changes made by the decree and, as for the SAI, it states that this also applies to any increase in places in the related projects. This implicates that the government will not put in place more resources.

Furthermore, the Decree provides that financial invariance is also ensured, where necessary, through compensatory variations in the Ministry of the Interior's budget dedicated to the management of migratory flows.<sup>999</sup>

As observed by some studies,<sup>1000</sup> this clause makes it unlikely that the SAI will actually be able to accommodate the categories of people, including asylum seekers, to whom the decree gives the right to access this system.

### 3. Access to public housing

Refugees and beneficiaries of subsidiary protection have a right to access public housing units under the same conditions as nationals.<sup>1001</sup> The plan focused on accompaniment towards housing solutions for both those who leave CAS and those who leave SAI centres, and highlights the importance of starting measures for residence in time in order for beneficiaries to access public housing within the limits of availability in each region.

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<sup>995</sup> Article 5 (1) Decree Law 130/2020 converted by L 173/2020.

<sup>996</sup> According to Article 29 (3) of the Qualification Decree.

<sup>997</sup> Article 5 (2) Decree Law 130/2020 converted by L 173/2020.

<sup>998</sup> Article 40 MoI Decree 18 November 2019.

<sup>999</sup> Article 14 (3) Decree Law 130/2020 converted by L 173/2020.

<sup>1000</sup> See Francesca Biondi Dal Monte, I percorsi di accoglienza e integrazione e il loro finanziamento, in *Immigrazione, protezione internazionale e misure penali*, commento al decreto legge 130/2020, conv. In L 173/2020, Pacini Giuridica.

<sup>1001</sup> Article 29 Qualification Decree; Article 40(6) TUI.

In some regions, access to public housing is subject to a minimum residence requirement on the national territory. In **Friuli-Venezia Giulia**, for example, access has been limited to those who can prove 5 years of uninterrupted residence in the region.

## 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>1002</sup> However, the Navigation Code states that enrolment of cadets, students and pupils is reserved only for EU or Italian citizens, a rule that appears to be discriminatory.<sup>1003</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.

According to the law, the Prefects, in agreement with the Municipalities, promote any initiative for the voluntary involvement of asylum seekers and beneficiaries of international protection in activities of social utility in favour of local communities. The activities are unpaid and financed by EU funds.<sup>1004</sup>

### 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 enrolment can be requested at any time of the school year.<sup>1005</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>1006</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>1007</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.

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<sup>1002</sup> Article 25 Qualification Decree.

<sup>1003</sup> Article 119 Navigation Code.

<sup>1004</sup> Article 22-bis Reception Decree, as amended by Article 8 Decree Law 13/2017 and L 46/2017, amended by L 173/2020 in order to include asylum seekers.

<sup>1005</sup> Article 38 TUI; Article 45 PD 394/1999.

<sup>1006</sup> Article 45(2) PD 394/1999.

<sup>1007</sup> Article 192(3) LD 297/1994.

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>1008</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>1009</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. Social welfare

Article 27 of the Qualification Decree specifies that beneficiaries of international protection are entitled to equal treatment with Italian citizens in the area of health care and social security.<sup>1010</sup>

Social security contributions in Italy are mainly provided by the National Institute of Social Security (*Istituto Nazionale di Previdenza Sociale*, INPS), the National Institute for Insurance against Accidents at Work (*Istituto Nazionale Assicurazione Infortuni sul Lavoro*, INAIL), municipalities and regions.

The provision of social welfare is not conditioned on residence in a specific region but in some cases is subject to a minimum residence requirement on the national territory. This is namely the case for income support (*Reddito di Cittadinanza*), to be paid from 1 April 2019, which is subject to 10 years of residence on the national territory out of which at least 2 years' uninterrupted residence.<sup>1011</sup>

This can entail serious obstacles for beneficiaries of international protection in practice, due to the difficulties in obtaining housing after leaving the reception system.

## G. Health care

Article 27 of the Qualification Decree specifies that beneficiaries of international protection are entitled to equal treatment with Italian citizens in the area of health care and social security.

Like asylum seekers, beneficiaries of international protection have to register with the national health service.<sup>1012</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.

Registration is valid for the duration of the residence permit and it does not expire in the renewal phase of the residence permit.<sup>1013</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

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<sup>1008</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>1009</sup> Article 26 Qualification Decree.

<sup>1010</sup> Article 27 Qualification Decree.

<sup>1011</sup> Article 2(1)(a)(2) Decree Law 4/2019.

<sup>1012</sup> Article 34 TUI; Article 16 PD 21/2015; Article 21 Reception Decree.

<sup>1013</sup> Article 42 PD 394/1999.

the permit of stay and many health services (such as the choice of a general doctor) are connected with the place of domicile given for the renewal of the residence permit.<sup>1014</sup>

Beneficiaries of international protection are placed on equal footing as Italians in the Covid-19 vaccination scheme.

## 1. Contribution to health spending

Similar to asylum seekers after their right to work is provided, in some regions – such as **Lazio** and **Tuscany**, beneficiaries of international protection are no longer exempted from contribution to health spending (*partecipazione alla spesa sanitaria*), also known as “sanitary ticket”, because they are considered inactive and not unemployed. In other regions such as **Piedmont** and **Lombardy**,<sup>1015</sup> the exemption is extended until asylum seekers do actually find a job. However, only a few regions such as **Friuli-Venezia Giulia** and **Apulia** apply the same principle to beneficiaries.

On 18 April 2016, ASGI and other NGOs sent a letter to the Ministry of Health, asking it to give effect to Article 17(4) of the recast Reception Conditions Directive, according to which asylum seekers may be required to contribute to the costs for health care only if they have sufficient resources, for example if they have been working for a reasonable period of time. ASGI also asked the Ministry to consider that, following the adoption of the LD 150/2015 for granting the right to exemption from participation in health spending, distinctions can no longer be drawn between unemployed and inactive persons.<sup>1016</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.

While waiting for the Government to take an official position on the matter, ASGI lawyers have lodged an appeal against the refusal to exempt an Iraqi female refugee from contribution to health spending on the ground that she was inactive and not unemployed, since she was entitled to access the labour market. The Civil Court of Rome upheld the appeal and stated that, after the entry into force of LD 150/2015, the distinction between unemployed and inactive persons is no longer valid. Therefore even beneficiaries of international protection are entitled to the aforementioned exemption.<sup>1017</sup>

In 2018, the Civil Court of Rome confirmed the previous decision and upheld the appeal filed by a Sudanese citizen with subsidiary protection status, reaffirming the right to the exemption from the “sanitary ticket” provided to the benefit of people without employment and income.<sup>1018</sup>

Unfortunately, the law is not equally applied across the national territory. In 2018, ASGI filed numerous appeals in **Lombardy** against the denial of the right to exemption for inactive beneficiaries of international protection. In a ruling of 22 October 2018, the Court of Appeal of Milan upheld the appeal stating that under the law it is not possible to make any distinction between those who have already had a job and who lost it (unemployed) and those who have never had it such as, for example, asylum seekers and refugees (inactive people).<sup>1019</sup> The Civil Court of Brescia ruled on 31 July 2018 in a similar way.<sup>1020</sup>

As the problem persisted in 2019, the Court of Appeal of Venice has once again clarified that the distinction between inactive and unemployed cannot be placed for the purpose of access to health services.<sup>1021</sup>

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<sup>1014</sup> MSF, *Fuori campo: Richiedenti asilo e rifugiati in Italia: insediamenti informali e marginalità sociale*, March 2016, available in Italian at: <http://bit.ly/1S5IHGh>.

<sup>1015</sup> See Note of Piedmont Region, Health Office, 4 March 2016.

<sup>1016</sup> Article 19 LD 150/2015 states that “unemployed” are workers who declare, in electronic form, their immediate availability to exercise work activities.

<sup>1017</sup> Civil Court of Rome, Decision 33627/16, 17 February 2017, available at: <http://bit.ly/2nIv0HF>.

<sup>1018</sup> Civil Court of Rome, Decision 5034/2018, 13 June 2018.

<sup>1019</sup> Court of Appeal of Milan, Decision 1626/2018, 22 October 2018, available at: <https://bit.ly/2uTd5kx>.

<sup>1020</sup> Civil Court of Brescia, Order 5185/2018, 31 July 2018, available in Italian at: <https://bit.ly/2GdgbVJ>.

<sup>1021</sup> Court of Appeal of Venice, decision 15/2020 of 27 April 2020.

## 2. Specialised treatment

To implement Article 27(1-bis) of the Qualification Decree, the Ministry of Health published on 22 March 2017 the Guidelines for the planning of assistance and rehabilitation as well as for treatment of psychological disorders of refugees and beneficiaries of international protection victims of torture, rape or other serious forms of psychological, physical or sexual violence.<sup>1022</sup> The Guidelines, adopted by the Ministry of Health by a Decree issued on 3 April 2017, specify that they also apply to asylum seekers.

The Guidelines highlight the importance of early detection of such vulnerable cases in order to provide probative support for the asylum application, to direct the person to appropriate reception facilities and to a path of protection even after the grant of protection, but also to provide for rehabilitation itself. According to the Guidelines, the recognition of a traumatic experience is the first step for rehabilitation. The work of multidisciplinary teams and the synergy of local health services with all those who in various ways come into contact with protection holders or asylum seekers – reception operators, educators, lawyers – is deemed decisive in these cases.

According to the Guidelines, the medical certification, to be understood not as a merely technical act but as the result of a network collaboration, must follow the standards set out by the Istanbul Protocol and maintain maximum impartiality, without expressing any judgment on the veracity of the individual's narrative but only being limited to an assessment of the consistency of the person's statements with the verified outcomes. The Guidelines also propose templates of health certificates to be adopted in cases of torture, trauma, psychiatric or psychological disorders and propose the use of the final formulas suggested by the Istanbul Protocol; evaluation of non-compatibility, compatibility, high compatibility, typicality, specificity.

The organisation of a network collaboration as required by the Guidelines has not yet started in all the health care institutions across the national territory. However, since 2017, the Guidelines have not been effectively implemented.<sup>1023</sup>

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<sup>1022</sup> Ministry of Health, *Linee guida per la programmazione degli interventi di assistenza e riabilitazione nonché per il trattamento dei disturbi psichici dei titolari dello status di rifugiato e dello status di protezione sussidiaria che hanno subito torture, stupri o altre forme gravi di violenza psicologica, fisica o sessuale*, 22 March 2017, available in Italian at: <http://bit.ly/2EaINAY>.

<sup>1023</sup> Altreconomia, *L'assistenza negata alle invisibili vittime di tortura*, 1 April 2021, available at : <https://bit.ly/2S35EG8>

## ANNEX I – Transposition of the CEAS in national legislation

The following section contains an overview of incompatibilities in transposition of the CEAS in national legislation:

Directive	Provision	Domestic law provision	Non-transposition or incorrect transposition
<b>Directive 2011/95/EU</b> Recast Qualification Directive	Article 16	Article 15 (2 - ter) Qualification Decree	According to Article 15 (2 ter) iany return to the country of origin is relevant for cessation of subsidiary protection, if not justified by serious and proven reasons. This relevance is not accorded by the Recast Qualification Directive
<b>Directive 2013/32/EU</b> Recast Asylum Procedures Directive	Article 40  Article 41 and Article 46 (5) (6) and (8)  Articles 43 and 31 (8)	Article 29 bis Procedure Decree  Article 35 bis (5) Procedure Decree  Article 28 bis (1 ter) Procedure Decree	Article 29 bis allows to automatically avoid the exam of the subsequent asylum application in cases not included in the Procedures Directive  Need to leave the national territory after inadmissibility decision issued on a first subsequent application: Article 41 of Directive 2013/32 / EU does not include this hypothesis in cases where it is not possible to await on the national territory the judge's decision on the suspension request. Article 46 states the right to an effective remedy does not exclude the right to await the decision on the request for suspension in these cases.  Border procedure: the attempt to evade border controls is not included in the acceleration grounds laid down in Article 31(8) of the Directive which could lead to the application of a border procedure. Also, the requirement of Article 43 of the Directive to allow the applicant to enter the territory if the determining authority has not taken a decision within 4 weeks has not been incorporated in the Procedure Decree.  In case of asylum seekers coming from a safe country of origin, the decision rejecting the application is based on the fact that the person concerned has not shown that there are serious reasons to believe that the designated safe country of origin is not safe in relation to his or her particular situation. The law allows TC not to motivate the reasons of rejections but to only refer to the country of origin

	Article 11 (2)	Article 9(2-bis) Procedure Decree	
<b>Directive 2013/33/EU</b> Recast Reception Conditions Directive	Article 20 (1)  Article 20 (4)  Article 20 (5) and (6)  Article 8 (1) and (3)	Article 23 Reception Decree    Article 6 (3 bis) Reception Decree	<p>The law only provides for the withdrawal of reception conditions without any progression and proportion to the contested behaviour.</p> <p>Moreover the law provides for the withdrawal of reception conditions even in case of violation of the house rules while Article 20(4) of the Directive does not allow the withdrawal of reception conditions in these cases</p> <p>Also, the Italian law does not oblige authorities to ascertain, before issuing the withdrawal decision, that the asylum seeker can maintain dignified standards of living (Article 20 (5) of the Directive)</p> <p>The law allowing detention of asylum seekers for identification purposes does not specify in which cases the need for identification arises, thus linking detention not to the conduct of the applicant but to an objective circumstance such as the lack of identity documents. According to ASGI, the new detention ground represents a violation of the prohibition on detention of asylum seekers for the sole purpose of examining their application under Article 8(1) of the recast Reception Conditions Directive. Also, it seems to violate Article 8(3) of the recast Reception Conditions Directive, according to which the grounds for detention shall be laid down in national law.</p>
<b>Regulation (EU) No 604/2013</b> Dublin III Regulation	Article 28	-	Asylum seekers cannot be detained for the purpose of Dublin transfers