

# Country Report: Italy



2022  
Update



## Acknowledgements & Methodology

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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 2022, 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, United Kingdom) 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 Provincial Police Office
<b>Questura</b>	Provincial Police Office
<b>Verbalizzazione</b>	Lodging of the asylum application through an official form entitled “C3”
<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>NAC</b>	National Asylum Commission   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>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>EUAA</b>	European Union Agency for Asylum
<b>Fumus boni iuris</b>	Requirement for the adoption of interim and precautionary measures in Italy, correspondent to the apparent validity of the claim
<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>Periculum In Mora</b>	requirement for the adoption of interim and precautionary measures in Italy, corresponding to the imminent risk of damage in the event of failure to adopt the requested measure
<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

Contrary to the previous year, data have been all collected from Eurostat Database.

### Applications and granting of protection status at first instance: year 2022

	Applicants in 2022	Pending at end 2022	Refugee status	Subsidiary protection	Special protection <sup>1</sup>	Rejection	Refugee rate	Sub. Prot. rate	Special protection rate	Rejection rate
<b>Total</b>	<b>77,200</b>	84,290	7610	7205	10,865	27,385	14.34%	13.57%	20.47%	51.61%

\* XXX Dublin cases were also pending at the end of the year

\*\* Include inadmissibility decisions

### Breakdown by countries of origin of the total numbers

	Examined (first instance)	Refugee status	Subsidiary protection	Special protection	Rejection	Refugee rate	Subsidiary protection rate	Special protection rate	Rejection rate
Syria	385	290	25	5	65	75.32%	6.49%	1.29%	16.88%
Tunisia*	2,095	110	5	370	1605	5.25%	0.24%	17.66%	76.61%
Afghanistan	4,215	3030	990	15	175	71.87%	23.49%	0.36%	4.15%
Pakistan	7,740	360	915	1420	5045	4.65%	11.82%	18.35%	65.18%
Iraq	700	160	350	85	100	22.86%	50%	12.14%	14.29%
Eritrea	190	125	40	0	25	65.79%	21.05%	0%	13.16%
Türkiye	445	105	20	125	190	23.60%	4.49%	28.09%	42.70%
Somalia	1,310	525	695	40	55	40.07%	53.05%	3.05%	4.20%
Egypt	3,665	55	15	285	3310	1.50%	0.40%	7.78%	90.31%
Morocco*	865	70	10	235	550	8.09%	1.16%	27.17%	63.58%
Ivory Coast	1,110	130	65	280	635	11.71%	5.86%	25.22%	57.21%
Guinea	570	35	25	150	360	6.14%	4.39%	26.32%	63.16%

<sup>1</sup> It is a national form of protection that includes non-refoulement cases - humanitarian grounds protection- cases of family links and integration.

Mali	1,710	70	720	680	240	4.09%	42.10%	39.77%	14.04%
Nigeria	5,965	750	320	1310	3585	12.57%	5.36%	21.96%	60.10%
Senegal*	1,070	35	55	375	605	3.27%	5.14%	35.04%	56.54%
El Salvador	1,020	195	170	355	295	19.12%	16.67%	34.80%	28.92%
Peru	840	70	0	325	445	8.33%	0%	38.69%	52.98%
Venezuela	705	90	425	100	85	12.77%	60.28%	14.18%	12.06%
China	150	10	0	50	90	6.67%	0%	33.33%	60%
Bangladesh	7,000	120	60	1440	5380	1.71%	0.86%	20.57%	76.86%

\* Designated as a safe country of origin in 2022, which implies the use of accelerated procedures.

Source: EUROSTAT, Migration and asylum, available at <https://bit.ly/41BaDfZ>.

#### Gender/age breakdown of the total number of applicants: 2022

	Number	Percentage
<b>Total number of applicants</b>	84,290	100%
Men	67,960	80.63%
Women	16,330	19.37%
Children	N/A	N/A
Unaccompanied children	1,655	1.96%

Source: Eurostat.

#### Comparison between first instance and appeal decision rates: 2022

Statistics on appeals are not publicly available.

## Overview of the legal framework

### Main legislative acts on asylum procedures, reception conditions, detention and content of international 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"	Decreto legislativo 25 luglio 1998, n. 286 "Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero"	TUI	<a href="http://bit.ly/1PYQbyL">http://bit.ly/1PYQbyL</a> (IT)
<i>Amended by:</i> Decree Law no. 13/2017, implemented by Law no. 46/2017	<i>Modificato:</i> Decreto Legge 17 febbraio 2017, n. 13, conversione in Legge di 13 aprile 2017, n. 46	Decree Law 13/2017	<a href="https://bit.ly/2ltXe3Y">https://bit.ly/2ltXe3Y</a> (IT)
<i>Amended by:</i> Decree Law no. 113/2018, implemented by Law no. 132/2018 <i>Amended by:</i> Law no. 238 /2021 Provisions to adequate to EU obligation - European Law	<i>Modificato:</i> Decreto Legge 4 ottobre 2018, n. 113, conversione in Legge di 1 dicembre 2018, n. 132 <i>Modificato:</i> LEGGE 23 dicembre 2021, n. 238, Disposizioni per l'adempimento degli obblighi derivanti dall'appartenenza dell'Italia all'Unione europea - Legge europea 2019-2020	Decree Law 113/2018 LAW 238/2021	<a href="https://bit.ly/2G8Bh7W">https://bit.ly/2G8Bh7W</a> (IT) <a href="https://bit.ly/3l7jl5Z">https://bit.ly/3l7jl5Z</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"	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"	Qualification Decree	<a href="http://bit.ly/1FOsckM">http://bit.ly/1FOsckM</a> (IT)
<i>Amended by:</i> Legislative Decree no. 18/2014	<i>Modificato:</i> Decreto Legislativo 21 febbraio 2014, n. 18	LD 18/2014	<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"	Decreto legislativo 28 gennaio 2008, n.25 "Attuazione della direttiva 2005/85/CE recante norme minime per le procedure applicate negli Stati membri ai fini del riconoscimento e della revoca dello status di rifugiato"	Procedure Decree	<a href="http://bit.ly/1PYQjOW">http://bit.ly/1PYQjOW</a> (IT) <a href="https://bit.ly/2XbAeem">https://bit.ly/2XbAeem</a> (IT)

<i>Amended by:</i> Legislative Decree no. 142/2015	<i>Modificato:</i> Decreto legislativo n. 142/2015	Reception Decree	<a href="http://bit.ly/1Mn6i1M">http://bit.ly/1Mn6i1M</a> (IT)
<i>Amended by:</i> Decree Law no. 13/2017, implemented by Law no. 46/2017	<i>Modificato:</i> Decreto Legge 17 febbraio 2017, n. 13, convertito con modificazioni dalla Legge del 13 aprile 2017, n. 46	Decree Law 13/2017	<a href="https://bit.ly/2ItXe3Y">https://bit.ly/2ItXe3Y</a> (IT)
<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>Amended by:</i> Law no. 238 /2021 Provisions to adequate to EU obligation - European Law	<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  <i>Modificato:</i> LEGGE 23 dicembre 2021, n. 238, Disposizioni per l'adempimento degli obblighi derivanti dall'appartenenza dell'Italia all'Unione europea - Legge europea 2019-2020	Decree Law 113/2018 Decree Law 130/2020 Law 173/2020 Law 238/2021	<a href="https://bit.ly/2G8Bh7W">https://bit.ly/2G8Bh7W</a> (IT)  <a href="https://bit.ly/3I7jl5Z">https://bit.ly/3I7jl5Z</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 on common procedures for the recognition and revocation of the status of international protection.”	Decreto legislativo 18 agosto 2015, n. 142 “Attuazione della direttiva 2013/33/UE recante norme relative all'accoglienza dei richiedenti protezione internazionale, nonché della direttiva 2013/32/UE, recante procedure comuni ai fini del riconoscimento e della revoca dello <i>status</i> di protezione internazionale.”	Reception Decree	<a href="http://bit.ly/1Mn6i1M">http://bit.ly/1Mn6i1M</a> (IT)
<i>Amended by:</i> Legislative Decree 220/2017	<i>Modificato:</i> Decreto legislativo 22 dicembre 2017, n. 220	LD 220/2017	<a href="http://bit.ly/2CJXJ3s">http://bit.ly/2CJXJ3s</a> (IT)
<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 Legge 4 ottobre 2018, n. 113, convertito con modificazioni dalla Legge di 1 dicembre 2018, n. 132 <i>Modificato da</i> Decreto Legge n. 130/2020,	Decree Law 113/2018 Decree Law 130/2020 Law 173/2020	<a href="https://bit.ly/2G8Bh7W">https://bit.ly/2G8Bh7W</a> (IT)

	convertito con modificazioni dalla Legge 173/2020		
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)
Decree Law no. 20/2023 Urgent provisions on the legal entry of foreign workers and fight against irregular migration;  Converted with amendments by Law 50 of 5 May 2023	Decreto Legge 20/2023 Disposizioni urgenti in materia di flussi di ingresso legale dei lavoratori stranieri e di prevenzione e contrasto all'immigrazione irregolare.  Convertito con modificazioni dalla Legge 50 del 5 Maggio 2023.	DL 20/2023  Converted into L 50/2023	<a href="http://bit.ly/3OICK9K">bit.ly/3OICK9K</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, guidelines and regulations on asylum procedures, reception conditions, detention and content of international protection

Title (EN)	Original Title (IT)	Abbreviation	Web Link
<p>Presidential Decree no. 394/1999 “Regulation on norms implementing the consolidated act on provisions concerning the immigration regulations and foreign national conditions norms”</p> <p><i>Amended by:</i> Presidential Decree no. 334/2004 “on immigration”</p> <p>Amended by: Presidential Decree no. 191/2022</p>	<p>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"</p> <p><i>Aggiornato con le modifiche apportate dal:</i> Decreto del Presidente della Repubblica 18 ottobre 2004, n. 334 “in materia di immigrazione”</p> <p>Aggiornato con le modifiche apportate dal Decreto del Presidente della Repubblica 4 ottobre 2022 pubblicato in Gazzetta Ufficiale il 13 Dicembre 2022, recante misure di protezione dei minori stranieri non accompagnati.</p>	<p>PD 394/1999</p> <p>PD 334/2004</p> <p>PD 191/2022</p>	<p><a href="http://bit.ly/1M33qIX">http://bit.ly/1M33qIX</a> (IT)</p> <p><a href="http://bit.ly/1KxDnsk">http://bit.ly/1KxDnsk</a> (IT)</p> <p><a href="http://bit.ly/3ZNB0NP">bit.ly/3ZNB0NP</a></p>
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. 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 Decree, 5 August 2019, published on 7 September 2019, Identification of border or transit areas for the implementation of the	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>

accelerated procedure for the exam of international protection applications			
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)
Ministry of Foreign Affairs Decree, 4 October 2019, <i>Identification of Safe Countries of origin, according to Article 2-bis of the Procedure Decree published on 7 October 2019 n.235.</i>	Ministero Degli Affari Esteri e della Cooperazione Internazionale, 4 Ottobre 2019, <i>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 Dipartimenti 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>

Ministry of Interior, Central Directorate on Immigration and Border Police, no. 20185 of 10 March 2022, "Temporary protection measures in favor of people displaced from Ukraine following the military invasion of the Russian armed forces	Ministero dell'Interno, Direzione Centrale dell'Immigrazione e della Polizia delle Frontiere, n. 20185 del 10 marzo 2022, "Misure di protezione temporanea in favore delle persone sfollate dall'Ucraina a seguito dell'invasione militare delle forze armate russe.	Mol Circular no. 20185, 10 March 2022	
Head of Civil Protection Department Ordinance, no. 881 of 29 March 2022, Further urgent civil protection provisions to ensure, on the national territory, the reception, rescue and assistance to the population as a result of the events taking place in the territory of Ukraine	Ordinanza del Capo del Dipartimento della Protezione Civile, n. 881 del 29 marzo 2022, Ulteriori disposizioni urgenti di protezione civile per assicurare, sul territorio nazionale, l'accoglienza, il soccorso e l'assistenza alla popolazione in conseguenza degli accadimenti in atto nel territorio dell'Ucraina	Head of Civil Protection Ordinance , no. 881, 10 March 2022	<a href="https://bit.ly/3LH2VJ0">https://bit.ly/3LH2VJ0</a>
Prime Minister Decree of 28 march 2022, Measures of temporary protection for people coming from Ukraine due to the ongoing war events	Decreto del Presidente del Consiglio dei Ministri, Misure di protezione temporanea per le persone provenienti dall'Ucraina in conseguenza degli eventi bellici in corso	DPCM 28 March 2022	<a href="https://bit.ly/38Wxyfw">https://bit.ly/38Wxyfw</a>



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

The previous report update was published in **May 2022**.

### International protection

#### *Asylum procedure*

- ❖ **Access to the territory:** In 2022, according to MOI data, 105,129 people disembarked in Italy, 37,652 more than the previous year, marking a 55,79% increase in the number of disembarkations. 53,310 came from Libya, more than 32,371 from Tunisia and 16,205 from Türkiye. Around 13,000 people arrived from the Balkan Route at the land border of Trieste. From 1 January 2022 to 14 November 2022, 1,917 third Country nationals have received a return order from the Border Police Office at the Adriatic ports cities and 81 people have been readmitted to Greece. In December 2022, informal readmissions procedures to Slovenia restarted but they did not involve anymore asylum seekers. However, the Slovenian government did not accept various people who Italian border police tried to send back to the country. According to the information obtained by Altreconomia through a FOIA request, out of 190 readmissions tried, only 23 were successful.
- ❖ **Relevant case law on access to the territory:** On 24 May 2022, the Civil Court of Rome, following an urgent appeal submitted by a Moroccan citizen who belongs to the Saharawi ethnic group, ordered the competent authorities to issue a visa that would allow the applicant to apply for protection in Italy and demonstrated the obligation on the part of the Italian authorities on the basis of the fact that the applicant, had previously resided in Italy for several years and that he had kept a strict link with Italy, due also to working reasons.
- ❖ **New legislation:** On 2 January 2023 the Government adopted the Law decree 1/2023 which was converted into Law 15/2023 on 24 February 2023. The law introduced rules of conduct for vessels (and their captains) carrying out search and rescue activities at sea, and consequent sanctions for those deemed responsible for non-compliance or erroneous compliance with those rules or orders issued by the Government. On 26 February, nearby the Calabrian coast -precisely in Steccato di Cutro - a tragic shipwreck took place, causing the death of at least 94 people, out of which several were children. The Government's response to the request from civil society organisations to expand safe and legal pathways to access Italy, was the adoption, on 10 March 2023, of an urgent decree on migration matters. While the government declared to have strengthened the criminal response to traffickers and increased channels to access Italy through labour permits, no significant improvements in national legislation on legal migration were observed by NGOs. Through the conversion of the so-called "Cutro Decree" into law no. 50 of 5 May 2023, several changes to national asylum provisions were introduced. Among these, there were the expansion of the scope of application of the border procedure and the increase in cases in which asylum seekers can be detained.
- ❖ **Access to the asylum procedure:** Throughout 2022, access to the asylum procedure remained challenging. While the hotspot approach continued, both for disembarkations and on the national territory, many Questure continued to deny access to procedure, asking for requirements not provided by law or putting numerical limits to the access at the offices or subjecting access to the use of the electronic procedure which in most cases fixed the first appointment of the formalization appointment after many months. In several cases, national courts upheld the urgent appeals submitted by third country nationals ordering Questure to allow access to the asylum procedure.
- ❖ **Dublin procedure:** In 2022, 27,928 requests (including both take charge and take back requests) were received in the incoming procedure. Regarding the outgoing procedure, there were 5,315, total requests. 12 family reunifications transfers towards other States took place, while 153 incoming transfers were realised based family criteria. Transfers in the outgoing procedure were

only 65. On 5 December 2022, the Italian Dublin Unit issued a letter to other countries bound by the Dublin system, informing that from the following day incoming transfers to Italy would be suspended due to the absence of places in the reception system. Italy specified that the suspension does not affect the reunification procedures for minors. Law 50/2023 introduced the possibility to detain asylum seekers awaiting the Dublin transfer in case they present risk of absconding. The Advocate General published her opinion regarding the pending case at the CJEU related to the information duties and the indirect refoulement.

- ❖ **Safe country concepts:** The 2023 reform introduced the possibility to carry out a border procedure for people making the application at the border or transit areas in case they come from safe countries of origin. On 17 March 2023 the list of Safe countries of origin has been changed excluding Ukraine and adding Ivory Coast, Gambia, Georgia and Nigeria. The safe countries procedure does not apply to applications submitted by citizens from these last four countries before the entry into force of the decree, entered into force on 9 April 2023.

#### *Reception conditions*

- ❖ **Reception capacity:** At the end of 2022, the total number of asylum seekers and beneficiaries of international protection accommodated in reception facilities was 107,677. On 8 May 2023, the Government declared the state of emergency as a result of the exceptional increase in the flows of migrant people accessing the national territory through the Mediterranean route.
- ❖ **Access to reception:** Law 50/2023, converting into law the Decree Law 20/2023 (Cutro Decree), of 5 May 2023, once again excluded asylum seekers from the possibility to access the SAI system, similarly to what was previously done through the “Salvini Decree”. Access to the SAI will only be granted to asylum seekers identified as vulnerable and to those who have legally entered Italy through complementary pathways (government-led resettlements or private sponsored humanitarian admission programs). The law also introduced the possibility for Prefectures to accommodate asylum seekers in provisional reception facilities in case places are not available in government centres or temporary facilities (CAS).
- ❖ **Conditions in reception centres:** Services in accommodation centres for asylum seekers have been strongly reduced and limited to health care assistance, social assistance and linguistic-cultural mediation while the legal support, the psychological support and Italian classes were cancelled. Law 50/2023 also amended the Reception Decree by cancelling the provision according to which a serious violation of the internal regulation of the reception centre or violent behaviour by the asylum seeker can motivate the withdrawal of the reception measures. According to the new law, this kind of behaviour can now motivate a reduction but never a withdrawal of the accommodation measures.

#### *Detention of asylum seekers*

- ❖ **Detention capacity:** In 2022 the number of pre-removal centres (CPR) grew to 10 and the number of hotspots to 4.
- ❖ **Relevant case law on detention:** On 30 March 2023, in the case *J.A. and Others v. Italy*, the European Court of Human Rights condemned Italy for violating Article 3 (prohibition of torture and inhuman and degrading treatment), Article 5 (right to liberty and security) and Article 13 (right to an effective remedy) of the Convention, on the complaint lodged by the four Tunisian nationals rescued and transferred to the Lampedusa hotspot and here victims of de facto detention.
- ❖ **Additional grounds for detention:** L. 50/2023 introduced additional grounds to order the detention of an asylum seeker. In particular, it allows the detention of applicants in the border procedure in case they are not in possession of passport and cannot prove to have the sufficient financial guarantees; it allows detention in case it is necessary to determine the elements on which it is based the international protection application (in case they cannot be

acquired without detention) and applicants present risk of absconding; it allows the detention of Dublin asylum seekers; enlarges detention for identification purposes, detailing it could be carried out also during fingerprinting operations and database checks also allowing that these operations are carried out in facilities similar to hotspots along the national territory.

#### *Content of international protection*

- ❖ **SAI centres:** As of February 2023, SAI comprised of a total of 934 smaller-scale decentralised projects. The projects funded a total of 43,923 accommodation places. Among the SAI projects currently funded, 36,821 are ordinary places, 6,299 for unaccompanied minors (including 1,506 AMIF places), and 803 for people with mental distress or physical disabilities.

#### **Temporary protection**

The information given hereafter constitute a short summary of the annex on Temporary Protection to this report. For further information, see [Annex on Temporary Protection](#).

#### *Temporary protection procedure*

- ❖ **Key statistics on temporary protection:** Between 8 March and 31 December 2022, temporary protection was issued in favour of 150,478 Ukrainian citizens, 260 Russian citizens, 179 Moldovan citizens, 63 Belarusian citizens and 455 to other nationalities.
- ❖ **Scope of temporary protection:** The scope of TPD is not restricted compared to the Council Decision, except with regard to displaced people who cannot prove they left Ukraine after 24 February 2022 through official documentation such as passport stamps or equivalent documents. This is being used as a strict time limit by Italian authorities as far as temporary protection is concerned.
- ❖ **Documentary evidence:** The main issues concerning documentary evidence were those related to the proof of having left Ukraine after 24 February 2022 (mainly by passport stamps). Those not in possession of an international passport were requested to address Ukrainian consulates in order to obtain a certificate of Ukrainian nationality containing also the date and place of birth and a photo.
- ❖ **Information provision:** On national territory and depending on the region or municipality, some organisations provided information to people fleeing from Ukraine. Information was also provided by the Italian government through a dedicated website, which links to a written booklet on temporary protection and rights of people fleeing from Ukraine in Italy. At the borders, emergency checkpoints were set up from March to December 2022. At these checkpoints, information points (Blue Dots) were implemented by UNHCR and UNICEF with the implementing partners Save the Children, Arci, D.i.r.e, Stella Polare (only in Ferneti), Terres des Hommes (only in Ugovizza -Tarvisio). At the same borders, UNHCR and Save the Children provided a brochure in Ukrainian, Russian and English informing about the right to asylum and to temporary protection.

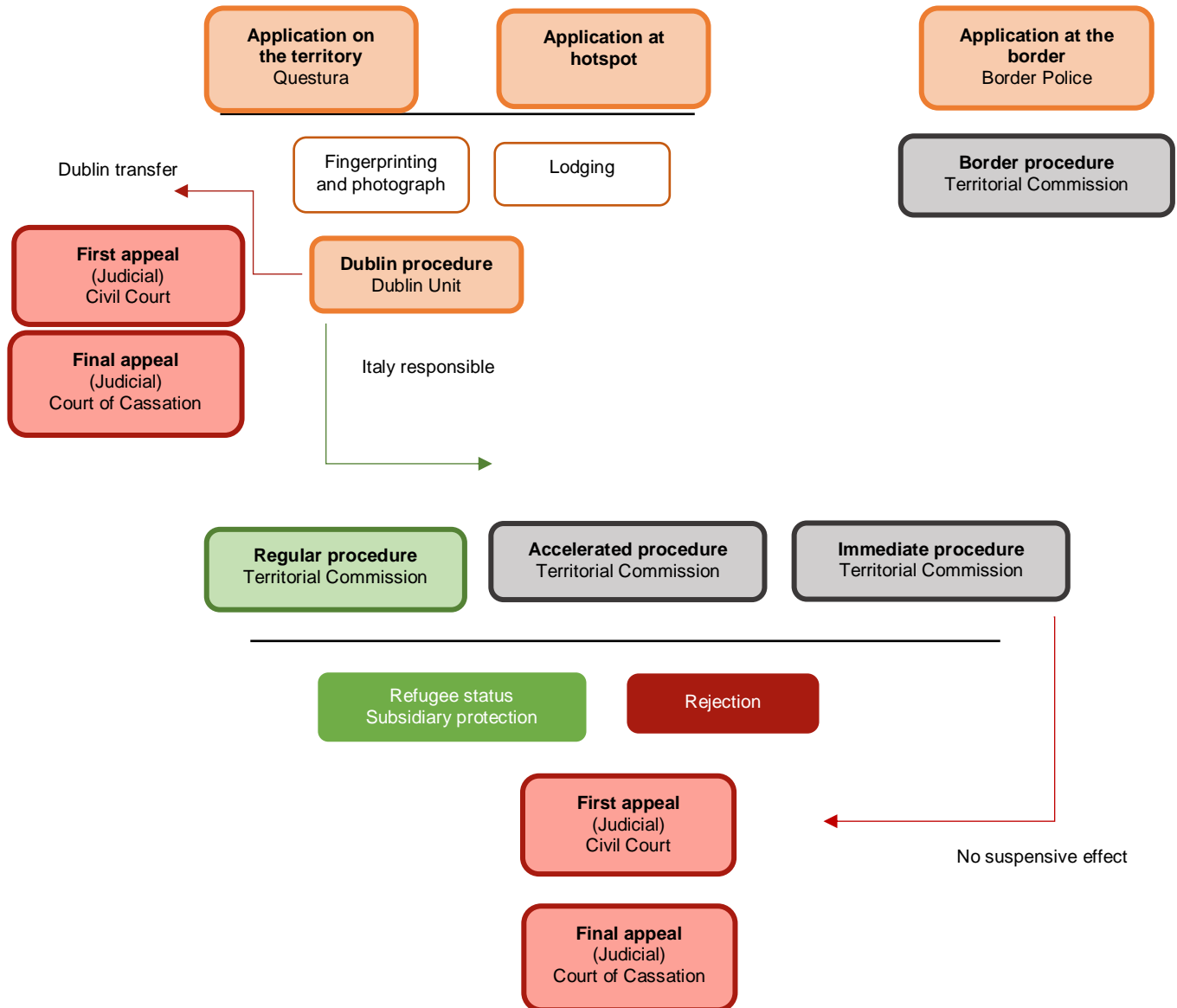
#### *Content of temporary protection*

- ❖ **Residence permit:** Starting from 11 March 2022, Italian Questure (provincial police offices) were entitled to release receipts for those coming from Ukraine who requested temporary protection. These receipts, free of charge, immediately indicated the tax code, gave access to the national health service, allowed work and were proof that the holder applied to obtain Temporary Protection in Italy. The first permit to stay for Temporary Protection indicated the wording "*Prot. Temporanea Emerg. Ucraina*" and was valid for one year, from 4 March 2022 to 4 March 2023. After that date the validity of that permit has been extended until 31 December 2023.

# 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>2</sup> | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ▪ Fast-track processing: <sup>3</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>4</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>5</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 that intervene in each stage of the procedure

Stage of the procedure	Competent authority (EN)	Competent authority (IT)
Application <ul style="list-style-type: none"> <li>❖ At the border</li> <li>❖ On the territory</li> </ul>	Border Police Immigration Office, Police	Polizia di Frontiera 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

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

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

<sup>3</sup> Accelerating the processing of specific caseloads as part of the regular procedure.

<sup>4</sup> Labelled as “accelerated procedure” in national law. See Article 31(8) recast Asylum Procedures Directive.

<sup>5</sup> Article 28-bis(1-ter) Procedure Decree, as amended by Article 9(1) Decree Law 113/2018.

of asylum, under the Ministry of Interior. The Territorial Commissions are established under the responsibility of Prefectures.<sup>6</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>7</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>8</sup> As of December 2022, there were 20 Territorial Commissions and 21 sub-Commissions across Italy.<sup>9</sup>

As amended by LD 220/2017, each Territorial Commission is composed at least by 6 members, in compliance with gender balance. These include:<sup>10</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 periodic public tenders.<sup>11</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>12</sup>

Before the appointment of the members of the Territorial Commissions, the absence of conflict of interests must be evaluated.<sup>13</sup> For the President and the UNHCR representative, one or more substitutes are appointed. The assignment is valid for 3 years, renewable.<sup>14</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>15</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>16</sup>

The CNDA has adopted a Code of Conduct for the members of the Territorial Commissions, the interpreters and the personnel supporting them.<sup>17</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>18</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 various

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<sup>6</sup> Article 4(1) Procedure Decree, as amended by LD 220/2017.

<sup>7</sup> Article 4(2) Procedure Decree.

<sup>8</sup> Article 4(2-bis) Procedure Decree.

<sup>9</sup> Ministero dell'Interno, Dipartimento per le libertà civili e l'immigrazione, Commissione Nazionale per il diritto di asilo, available in Italian at: <https://bit.ly/3iajZuc>.

<sup>10</sup> Article 4(3) Procedure Decree, as amended by LD 220/2017.

<sup>11</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>12</sup> Article 4(3) Procedure Decree, as amended by LD 220/2017.

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*

<sup>16</sup> Article 4(4) Procedure Decree.

<sup>17</sup> Article 5(1-ter) Procedure Decree.

<sup>18</sup> Articles 13 and 14 PD 21/2015.

cases, they received instructions from the Ministry of Interior. Some examples are the instructions given for the grounds of inadmissibility, manifestly unfoundedness, border procedure.<sup>19</sup>

## 4.2. Training and quality assurance

The law requires the CNDA to provide 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. 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>20</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

Throughout 2022, the support offered by the European Union Agency for Asylum (EUAA)<sup>21</sup> to the Italian Asylum Authorities continued at different stages of the procedure.

Italy has received operational support by the EASO/EUAA since 2013. The 2022-2024 plan was amended in May 2022 to take into account the changes in the operational context in light of the invasion of Ukraine.<sup>22</sup>

Throughout 2022, the EUAA deployed 277 different experts in Italy,<sup>23</sup> mostly temporary agency workers (159), as well as 83 external experts. The majority of the experts deployed were reception expert officers (60), research officers (43), intermediate asylum second instance support experts (31), asylum second instance support expert officers (24), intermediate asylum registration experts (21), followed by other support staff (e.g. reception and info system officers, operations assistants, asylum information provision expert officers, vulnerability expert officers, quality assurance officers).<sup>24</sup>

As of 20 December 2022, there were still 191 EUAA experts present in Italy, mostly reception expert officers (45), intermediate asylum second instance support experts (30), intermediate asylum registration experts (20), and operations assistants (15).<sup>25</sup>

### 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 their language with the assistance of a linguistic-cultural mediator.<sup>26</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>27</sup>

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<sup>19</sup> Circulars from the Minister of Interior: circular of 30.10.2020 on interpretation of LD no. 130 of 2020 available at <https://bit.ly/3MPpyMQ>; and Circular of 08.01.21 available at <https://bit.ly/3q1Oozk>.

<sup>20</sup> Article 15 Procedure Decree

<sup>21</sup> It should be noted that Regulation 2021/2023 entered into force on 19 January 2022, transforming EASO into the EU Agency for Asylum (EUAA).

<sup>22</sup> EUAA, *Operational Plan 2022-2024 agreed by the European Union Agency for Asylum and Italy*, May 2022, available at: <https://bit.ly/3yqqMbs>.

<sup>23</sup> EUAA personnel numbers do not include deployed interpreters by the EUAA in support of asylum and reception activities.

<sup>24</sup> Information provided by the EUAA, 28 February 2023. In the figures above, the same persons may have been included under different profiles, if a change of profile took place in the course of 2022.

<sup>25</sup> Information provided by the EUAA, 28 February 2023.

<sup>26</sup> Article 3(1) PD 21/2015.

<sup>27</sup> Article 3(2) PD 21/2015.



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 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. The law establishes that the lodging of the application should occur within 3 days from the expression of the will to apply – 6 days if the willingness is manifested at border – the time limit may be postponed up to 10 days in case of huge numbers.<sup>28</sup> In practice, however, these deadlines are rarely respected, and especially in big metropolitan areas such as Milan, Rome, and Naples, asylum seekers manage to lodge their applications only after some weeks or even a couple of months.

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. When there are doubts on the competence, under Dublin Regulation, the case is transmitted to the Dublin Unit and the person receives a permit that indicates “Dublin” or “richiesta asilo”. On the renewal of the permit, if the Dublin unit concludes for the Italian responsibility the person will get the request of asylum permit. If the Dublin Unit outcome is negative, the person will be notified the Dublin Unit negative decision.

After the lodging (*verbalizzazione*) of the application, if no issues regarding the application of the Dublin Regulation arise, or once they are solved, 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>29</sup> The asylum seeker is then notified by the Questura of the interview date at the Territorial Commission.

### **Regular procedure**

According to the Procedure Decree,<sup>30</sup> a member of the Territorial Commission should interview the applicant within 30 days; after having received the application and the Commission should decide on its result in the 3 following working days.

The decision shall be taken following a panel discussion between all members of the Commission. Should the Territorial Commission be unable to take a decision in the time limit, or in case it finds itself in need of new elements, the examination procedure should be 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>31</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 time limits are generally not respected in practice, and the asylum seeker is generally not informed about the authorities exceeding the deadlines.

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<sup>28</sup> Art. 26 Procedure Decree.

<sup>29</sup> Article 4 Procedure Decree, as amended by LD 220/2017.

<sup>30</sup> Article 27 Procedure Decree.

<sup>31</sup> Article 27 Procedure Decree.



## 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>32</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 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>33</sup>

The reform introduced by L. 50 of 5 May 2023, which converted with amendments the DL 20/2023, allowed to carry out the border procedure for people making the application at the border or transit areas in case they come from safe countries of origin.<sup>34</sup>

Border and transit areas for the accelerated examination of asylum applications were identified by ministerial decree of 5 August 2019,<sup>35</sup> and include areas in the provinces of Trieste and Gorizia (Balkan border); the provinces of Crotone, Cosenza, Matera, Lecce, Brindisi (southern coastal area); two areas in Sicily, one including the Provinces of Caltanissetta, Ragusa, Syracuse, Catania, Messina, the other including Trapani and Agrigento Provinces; and the Metropolitan city area of Cagliari (South Sardinia). The decree also instituted sections of the territorial commissions in charge to operate in these areas.

A 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 included: Albania, Algeria, Bosnia and Herzegovina, Cape Verde, Ghana, Kosovo, North Macedonia, Morocco, Montenegro, Senegal, Serbia, Tunisia and Ukraine.

Through the Decree published on 11 March 2022, the application to Ukraine has been suspended until 31 December 2022.<sup>36</sup> By decree of the Ministry of Foreign Affairs and International Cooperation of 17 March 2023, published in the Official Gazette on 25 March 2023,<sup>37</sup> the government updated the list of safe countries. With the decree, the government updated the list of safe countries by including the Gambia, Georgia, Ivory Coast and Nigeria and removed Ukraine. The safe countries procedure does not apply to applications submitted by citizens from these last four countries before the entry into force of the decree, entered into force on 9 April 2023.

### 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.

In case of a negative decision on the merits, the applicant is recognized the right to stay on the national territory pending the appeal.

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>38</sup> and they can be recognized the right to stay pending the appeal only upon request to the court.

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<sup>32</sup> Article 28(1) Procedure Decree.

<sup>33</sup> Article 28-bis(2) (b)) Procedure Decree, as amended by Decree Law 130/2020 and L 173/2020

<sup>34</sup> Article 28 bis (b bis) introduced by L. 50/2023.

<sup>35</sup> Available at: <https://bit.ly/3CJxWcm>.

<sup>36</sup> Inter-ministerial Decree of 9 March 2022, published on GU n. 59 of 11.3.2022, Article 1, available at: <https://bit.ly/3w3ViHW>.

<sup>37</sup> Ministry of Foreign Affairs Decree of 17 March 2023, published on GU n. 72 of 25.03.2023, available at <http://bit.ly/3KIFemk>.

<sup>38</sup> Article 19(3) LD 150/2011.

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.

Even if, according to rules introduced in 2017, proceedings before the civil courts should last a maximum of 4 months,<sup>39</sup> and 6 months before the Court of Cassation, the actual duration largely exceeds these terms, in some cases even tenfold.<sup>40</sup>

## Asylum and return

In case a negative decision is notified to an asylum seeker, it is not directly linked to a return decision. In most cases, rejected asylum seekers have the right to submit an appeal within 15 or 30 days and, when the appeal has not automatic suspensive effect, they have the right to stay until the Court issues a decision on the suspension. After that, people could receive an expulsion order if they do not attend the appointment set by the competent Questura, during which they are requested to provide evidence of having submitted an appeal.

## 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

In 2022, according to MOI data,<sup>41</sup> 105,129 people disembarked in Italy, 37,652 more than the previous year, marking a 55.79% increase in the number of disembarkations. Over 31,500 came from Libya, more than 20,000 from Tunisia and 13,000 from Türkiye. Around 13,000 people arrived from the Balkan Route at the land border of Trieste.<sup>42</sup>

#### 1.1. Arrivals by sea

In 2022, 105,129 persons disembarked in Italy,<sup>43</sup> with a relevant increase compared to 2021 (67,477) and an even more relevant increase when compared to 2020 (34,154) and 2019 (11,471), almost in line with the arrivals of 2017 (119,369). In 2022, there were a total of 77,200 asylum applicants.<sup>44</sup>

The number of unaccompanied minors (Minori Stranieri Non Accompagnati - MSNA) reached 13,386, compared to 10,053 in 2021.<sup>45</sup>

The main nationality of people disembarked was Egyptian (20,542 in total), which represented a change compared to 2021, when most of the people disembarked were Tunisian. The number of Egyptian nationals registered as asylum seekers in 2022 was 7,102.

<sup>39</sup> Article 35 bis (13) (14) (15) Procedure Decree

<sup>40</sup> See, in this sense and for an analysis of the functioning of the specialised court sections, L. Perilli, Le sezioni specializzate in materia di immigrazione a cinque anni dalla loro istituzione. Un'indagine sul campo, in *Diritto Immigrazione e Cittadinanza*, n. 1/2023, available in Italian at: <https://bit.ly/43fq6TS>.

<sup>41</sup> Cfr Ministry of Interior, Cruscotto statistico giornaliero available at: <https://bit.ly/3HdUq7M>.

<sup>42</sup> Ansa, Migranti: prefetto Trieste, si intensificano arrivi in Fvg, 28 February 2023, available at: [bit.ly/41VNWmk](https://bit.ly/41VNWmk).

<sup>43</sup> Cfr Ministry of Interior, Cruscotto statistico giornaliero available at: <https://bit.ly/3HdUq7M>.

<sup>44</sup> Eurostat data, available at: <https://bit.ly/41BaDfZ>.

<sup>45</sup> Cfr Ministry of Interior, Cruscotto statistico giornaliero available at: <https://bit.ly/3HdUq7M>.

Considering sea arrivals, 53,310 third country nationals came from Libya, 32,371 from Tunisia, 16,205 from Türkiye and 1,603 from Lebanon, a maritime route used in a significantly higher number of cases when compared to the past (in 2021, only 141 migrants left Lebanese shores to reach Italy).<sup>46</sup> In 2022, at least 24,684 persons were returned to Libya, normally after being intercepted by the so-called Libyan Coastguards in cooperation with EU's MRCC or with the cooperation of Frontex aerial assets,<sup>47</sup> which represented a 24% decrease compared to 2021 (when it was estimated that the total number was 32,425).<sup>48</sup>

Italy continues to play a key role in cases of indirect refoulement to Libya, continuing to equip and train the Libyan authorities thus preventing access to protection for thousands of people.<sup>49</sup> As reported by authoritative sources,<sup>50</sup> Libyan Coast Guards officers are often directly linked with smuggling networks, fostering a wicked chain of human rights violations.

In addition, Italian authorities classify arrivals of migrants in a way that lacks transparency. Out of the people arrived in Italy only one fifth is classified as rescued as part of SAR activities coordinated by the Maritime Rescue Coordination Centre (MRCC) of the Italian Coast Guard. According to the media, around 14,000 people were rescued by NGOs, which only amounted to 14% of the total number of people who arrived. Once more, this data highlights how inconsistent are the theories attributing a "pull factor" role to NGO vessels for what concerns departures from Libya.<sup>51</sup>

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>52</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 extremely decentralised 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>53</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>54</sup>

UNHCR data shows that in 2022, 105,131 refugees and migrants arrived in Italy by sea and 1,496 died or disappeared on the route.<sup>55</sup>

The highest number of monthly sea arrivals was recorded in August when 16,816 persons reached the Italian coasts.<sup>56</sup>

Regarding the external sea borders with Tunisia, on 9 December 2020 the Italian Ministry of Foreign Affairs signed a technical agreement with the UN Office for Services and Projects (UNOPS) to support

<sup>46</sup> UNHCR, Operational Data Portal - Mediterranean situation, available at: <http://bit.ly/3wWvsFq>.

<sup>47</sup> Watch the Med - Alarm Phone, "Rising arrivals, continuous struggles", August 15, 2022, available at <http://bit.ly/3YR56QI>.

<sup>48</sup> See: Infomigrants, "IOM: Migrants repatriated to Libya decreased by 24% in 2022", 5 January 2023, available at <https://bit.ly/3DEOOCy>.

<sup>49</sup> See: Altreconomia, Nuovi affari dell'Italia sulla frontiera per respingere le persone in Libia, 1 February 2022, available in Italian at: <https://bit.ly/3F35IzE> and The New Humanitarian, Interactive: the European approach to stopping Libya migration, June 16, 2022, available at: <http://bit.ly/3JmESzJ>.

<sup>50</sup> See: Report of the Independent Fact-Finding Mission on Libya of the Human Rights Council, 27 June 2022 available at: <https://bit.ly/3RaqBJQ>.

<sup>51</sup> Vita, Navi Umanitarie: oltre 14 mila migranti salvati nel 2022, December 27, 2022, available in Italian at: <http://bit.ly/40ebBOt>.

<sup>52</sup> Chamber of Deputies, Emergenza COVID-19: le misure in materia di immigrazione, 11 March 2021, available at: <https://bit.ly/2RsUUAA>.

<sup>53</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>54</sup> Council of Europe Commissioner for Human Rights, Report: "A distress call for human rights", March 2021, available at: <https://bit.ly/2QX5ikh>.

<sup>55</sup> UNHCR, Operational Data Portal, available at: <https://bit.ly/3t8Msaf>.

<sup>56</sup> UNHCR, Operational Data Portal, available at: <https://bit.ly/3y74dtj>.

the North African country in border control activities and in fighting migrant trafficking.<sup>57</sup> With at least 1,922 Tunisians repatriated in 2020 and 1,872 in 2021, which made Tunisia the main destination for repatriation from Italy (73.5% of the total number of migrants repatriated).<sup>58</sup>

As of 26 October, according to FTDES (Tunisian Forum for social and economic rights) data for 2022, more than 29,000 migrants were intercepted at sea and 544 died. MRCC Tunisia is independently managing Coastal guard activities and search and rescue operations even if a Search and Rescue area has not been communicated to IMO so far. Between 2020 and 2021, six projects funded by the Italian government through the so-called “Rewarding Fund for Repatriation Policies<sup>59</sup>” have been implemented within the framework of actions aiming at strengthening borders and providing economical support to return. An estimated amount of 19 million Euro has been granted by Italy. In 2021, the project called “Support to border control and management of migratory influx to Tunisia” received a second tranche of 7 million euros, that will be assigned as a result of concrete results in border control activities. According to a journalistic enquiry, the Italian Ministry of Foreign Affairs appears to be effectively cooperating with UNOPS to obtain the assignment of funds aimed at requiring maintenance interventions for patrol boats.<sup>60</sup>

On 26 February, nearby the Calabrian coast - precisely in Steccato di Cutro -, a tragic shipwreck took place.<sup>61</sup> A boat originally departing from Izmir in Türkiye got stranded at a hundred fifty metres from the coast after a five-day journey. By 16 April 2023, the number of deaths amounted to 94, including 35 minors; survivors were only 80, and around 15 people were missing.<sup>62</sup> Since the morning of the shipwreck, the dynamic of the event appeared unclear. According to declarations released by the different authorities involved in the following days, an aerial Frontex asset was present on the scene the night before the tragedy and sent an alert to the Italian Finance and Coast Guard (*Guardia di Finanza* and *Guardia Costiera*) and the Italian Maritime Rescue Coordination Center to inform having spotted a boat which, according to thermal camera data appeared to carry several people and was lacking life vests. Apparently, *Guardia di Finanza* took the lead of the operation; this entailed, however, that the operation was classified as a law enforcement operation, in accordance with a practice established in 2019.<sup>63</sup> Around 02am, two patrol boats left Crotone and Taranto’s harbours to reach the vessel but, due to the marine conditions, were not able to do so. Up to this moment, the operation was still considered as law enforcement operation instead of a search and rescue one, even if the sea conditions had worsened and there were indicators of the presence of multiple people onboard. Around 3.40am, staff from the *Guardia di Finanza* reached out to the port authority (*Capitaneria di porto*) of Reggio Calabria to ask if any vessel of the Coast guard was available, receiving a negative answer. After an emergency phone call, police authorities at land were informed about the emergency conditions of the boat and started patrolling the shores waiting for the boat to dock. A new emergency call reached the Coast guard around 4am; only at this stage, the operation was classified as a search and rescue operation. An official declaration from the Minister of Interior Matteo Piantedosi stated that the accident took place at 5.30am. The first rescue operation was carried out by some fishermen and personnel from the military force of *Carabinieri*, but the situation immediately appeared tragic.

On 9 March, ASGI and other 41 associations submitted a collective complaint/report to the Public Prosecutor Office in the form of a report, asking to open extensive investigation aimed at ascertaining

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<sup>57</sup> See ASGI, Sciabaca Oruka, Strengthening the operational capacities of Tunisian authorities in monitoring the maritime borders: 8 million from the Rewarding Fund for Repatriation Policies, 13 April 2021, available at: <https://bit.ly/3MF4TKK>.

<sup>58</sup> See ASGI, Sempre più politiche securitarie: lo studio sui rimpatri in Tunisia, 30 march 2022, available at: <https://bit.ly/3yvnpnS9>.

<sup>59</sup> ASGI Sciabaca Oruka, “Strengthening the operational capacities of Tunisian authorities in monitoring the maritime borders: 8 million from the Rewarding Fund for Repatriation Policies”, 13 April 2021 available at: <https://bit.ly/3YY5ooO>.

<sup>60</sup> See Irpi Media, “Tunisia, il muro della Guardia costiera”, available in Italian at: <http://bit.ly/3xaiQud>.

<sup>61</sup> Al Jazeera, “Mediterranean shipwreck: Stories of tragedy emerge after 62 drown”, February 27 2023, available at <http://bit.ly/3LBRICw> and LaStampa, “Naufragio di Cutro, la ricostruzione ora per ora di quello che è accaduto la notte del 26 febbraio”, March 17 2023, available at: <http://bit.ly/3n5QGia>.

<sup>62</sup> LaStampa, “Cutro due mesi dopo: inchieste congelate e sette cadaveri ancora senza nome”, 5 May 2023, available at: <https://bit.ly/3MTFCsP>.

<sup>63</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>.

the public responsibilities of the authorities involved in the management of the operation.<sup>64</sup> At the same time ASGI and other CSOs supported survivors and family member of the missing and deceased migrants for the identifications of victims and the right to truth, reporting the lack of a procedural correct management by Public authorities on this specific issue and reported as well about the unlawful and inhumane treatment of the survivors both in term of reception conditions and access to legal information.<sup>65</sup>

### The “closure of ports”

The Decree Law 130/2020 repealed the law provision introduced by Decree 53/2019<sup>66</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>67</sup> thus leaving the risk of penalization of rescues at sea to persist.

According to Decree Law 130/2020 as amended by L 173/2020 the Minister of the Interior, 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>68</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. The Decree further foresees that the authorities must give indications to the rescue ships in respect for the conventions and laws under which they operate.

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 materialises. On the other hand, entrusting people to an unsafe destination cannot be considered compliant with the aforementioned rules, which could be the case when the Libyan authority is indicated as the competent authority.<sup>69</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>70</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).

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<sup>64</sup> See Watch the Med - Alarm Phone, “Cutro shipwreck: Associations file a collective complaint with the Office of the Public Prosecutor”, 10 March 2023, available at: <http://bit.ly/3Jw06uS> and ASGI, “Naufragio Cutro: Associazioni depositano esposto collettivo in Procura”, 9 March 2023, available in Italian at: <https://bit.ly/3LvHJcp>.

<sup>65</sup> ASGI, “Naufragio di Cutro, ASGI: ritardi nell’attivazione dell’accoglienza per i superstiti”, March 11 2023, available in Italian at <https://bit.ly/3JsByTM>.

<sup>66</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>67</sup> Article 1 (2) DL 130/2020, converted with amendments by L 173/2020.

<sup>68</sup> The provision refers to Article 83 of Navigation Code, according to which the Ministry of Transports 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>69</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>70</sup> *Corriere della Sera*, *Migranti, Lamorgese ha bloccato più navi Ong di Salvini*, 14 March 2021, available at: <https://bit.ly/3xFLEKI>.



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>71</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>72</sup>

The Administrative Court decision however was declared as void by the High Administrative Court of Sicily,<sup>73</sup> following the appeal submitted by the Minister of Interior.<sup>74</sup>

The policy to block the rescue ships for administrative reasons continued in 2021. The ship Sea Eye 4 was again stopped in the Port of Palermo in June 2021 following an inspection.

In December 2021, the Geo Barents of Doctors Without Borders (MSF) and Sea-Watch had to wait a long time offshore before being assigned a safe landing place after complicated rescues. In January 2022, the Ocean Viking of SOS Mediterranée was blocked in Trapani after an 11-hour inspection by the Coast Guard for “malfunction of the on-board power supply” and “presence of flammable liquids stored in unsuitable premises of the ship” and then subjected to administrative detention.<sup>75</sup>

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<sup>71</sup> Administrative Court of Sicily, decision no. 2974 of 23 December 2020, available at: <https://bit.ly/3uldPvN>.

<sup>72</sup> Administrative Court of Sicily, interim decision no. 145 of 2 March 2021.

<sup>73</sup> Consiglio per la giustizia Amministrativa della Regione Siciliana is the appeal body exercising, only for Sicily, the same functions as the Council of State.

<sup>74</sup> Consiglio per la giustizia Amministrativa della Regione Siciliana, Ordinanza 00322/2021, 8 May 2021, available at: <https://bit.ly/3ORME6r>.

<sup>75</sup> Altreconomia, Sbarchi, i numeri non tornano. E per il Viminale i naufraghi diventano “persone scortate”, 25 March 2022, available at: <https://bit.ly/3NsufwE>.

For what concerns the Gregoretti case,<sup>76</sup> the former Minister of Interior, Matteo Salvini, faced a criminal trial,<sup>77</sup> but in May 2021 the Court of Catania decided not to indict him for kidnapping.<sup>78</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 that started on September 15, 2021 is still pending at the moment of writing.<sup>79</sup>

On 10 August 2020, the Court of Rome ordered new investigation in a case in which it 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>80</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>81</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 taking refugees on board from the Etienne oil tanker on 11 September 2020 and having later accepted a donation from it.<sup>82</sup> In January 2022, another investigation against Mar Jonio concerning the rescue and transportation of 30 migrants in 2019 was archived by the Judge for preliminary Investigation (GIP) of Agrigento.<sup>83</sup>

On 15 December 2022, the Court of Rome ruled on a case regarding the death of 286 people, including at least 60 minors, following a shipwreck that occurred near the island of Lampedusa, but within Malta search and rescue region. Despite six verbal communications between a doctor on-board and the Italian MRCC and the presence of various commercial ships in the vicinity of the distress area, the Italian authorities did not take responsibility for the coordination of the SAR operation, nor informed Maltese authorities. The Coordination centre ordered the commercial ships to move away from the distress area, which in turn led to the death of the migrants onboard. The criminal procedure against the General Commander for the port Authority and the Chief of the branch of CINCNV control room indicted for refusal of acts of duty (art. 328 penal code) and involuntary manslaughter (art. 589 penal code) was concluded when the Court dismissed the claim on the ground that it was statute barred., even if it ascertained the criminal responsibilities of the indicted, observing that the attempt to avoid the obligation of coordination and assistance to search and rescue operation constitutes a reason for criminal

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<sup>76</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>77</sup> Adnkronos, Gregoretti, nuova udienza per Salvini a Catania, 5 March 2021, available at: <https://bit.ly/3xNLY9W>.

<sup>78</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>79</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>; Androkronos, Open Arms, rinviata al 4 marzo udienza processo a Salvini, 21 January 2022, available in Italian at: <https://bit.ly/3CUigmJ>.

<sup>80</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>81</sup> Nuovi Desaparecidos, "Strage di Lampedusa prime condanne ma non basta, occorre indagare sui soccorsi", 10 December 2020, available at: <https://bit.ly/37mZBnz>.

<sup>82</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/3eWVsLh>.

<sup>83</sup> Il Fatto quotidiano, Migranti, archiviata dal gip l'indagine sulla Mare Jonio che salvò 30 migranti, 28 January 2022, available at: <https://bit.ly/3t9Nxyl>.

accountability.<sup>84</sup> The case was previously scrutinised by the UN Committee for Human Rights, that condemned Italy and Malta for the violation of art. 2 (par 3) and art. 6 of the ICCPR.<sup>85</sup>

By the end of 2022, after the appointment of the new government, the “closed ports” policy made a comeback. On 24 October, the new Ministry of Interior, Matteo Piantedosi, issued a Directive (prot. 0070326)<sup>86</sup> denying access to Italian ports to the Ocean Viking and Humanity 1, ships which had been involved in SAR operations in the Mediterranean. The Italian government instructed the involved ships to refer to the flag States (Norway and Germany) for the indication of a place of safety.<sup>87</sup> On 4 November 2022, the government issued a decree allowing the Geo Barents and Humanity 1 ships to enter the territorial waters only with the purpose to disembark migrants in critical health conditions. The selective approach followed by the government failed due to the principles of international and maritime law which, as previously underlined, impose the duty to rescue people in distress and to grant a place of safety to the passengers.<sup>88</sup> In particular, European institutions raised their concerns<sup>89</sup> and appeals was submitted to local Courts<sup>90</sup> in order to get a decision of illegitimacy with regards to the selective approach introduced by the Directive.

Following the same purpose to prevent disembarkation of migrants rescued at sea by hindering NGO's search and rescue activities, the government adopted the Law decree 1/2023 which was converted into Law 15/2023 on 24 February 2023. The new law<sup>91</sup> once again modifies the prerequisites for the exercise of the faculties attributed to the Government and, at the same time, introduces rules of conduct for vessels (and their captains) carrying out search and rescue activities at sea, and consequent sanctions for those deemed responsible for non-compliance or erroneous compliance with those rules or orders issued by the Government by means of a specific inter-ministerial measure. With regards to the prerequisites, it is foreseen that the Italian government could limit or deny the transit or staying in its territorial waters of NGO ships when one of the following conditions is not respected:

- a) the vessel systematically carrying out search and rescue activities has the authorizations issued by the authorities of the flag state and possesses the technical-nautical eligibility requirements for safe navigation;
- b) timely information is immediately provided to the rescued persons about the possibility of seeking international protection;
- c) the assignment of the port of disembarkation is requested in the immediacy of the event; and
- d) the port of disembarkation is reached without delay;
- e) complete and detailed information on the rescue operation is provided to the maritime or police authorities;
- f) the search and rescue strategy did not contribute to dangerous situations on board or prevent the port of landing from being reached in a timely manner.

In the practice of SAR operations conducted by NGO ships, most conditions imposed by the law decree are already fulfilled. Humanitarian vessels already immediately refer to the Maritime Rescue Coordination Centre (MRCC) to obtain support and indication with regards to a place of safety. Moreover, they always immediately inform maritime or police authorities. It is interesting to note that the Law decree, with reference to letter a) does not take into consideration the recent CJEU decision on the joined cases C-

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<sup>84</sup> ASGI, “Strage di bambini dell’11 ottobre 2013: le responsabilità e la cronaca della tragedia nella sentenza sul naufragio”, available in Italian at: <https://bit.ly/3WRnzeV>.

<sup>85</sup> OHCHR, “Italy failed to rescue more than 200 migrants, UN Committee finds”, available at: <https://bit.ly/3JsyqZu>.

<sup>86</sup> Ministero dell’Interno, “Direttiva Piantedosi su due navi Ong in navigazione nel Mediterraneo”, October 25 2023, available in Italian at: <https://bit.ly/3JQuZvB> and Infomigrants, “New Italian interior minister says ‘governing migration’ priority”, 25 October 2022, available at: <https://bit.ly/3ZZzRnU>.

<sup>87</sup> Guardian, “Giorgia Meloni faces first migration test from two NGO rescue boats”, 26 October 2022, available at: <http://bit.ly/3n5l63e>.

<sup>88</sup> European Parliament Briefing, “Search and rescue efforts for Mediterranean migrants”, October 24 2022, available at: <https://bit.ly/40lxPOq>.

<sup>89</sup> Infomigrants, “EU Parliament chief: Don’t forget solidarity toward migrants”, 1 November 2022, available at <https://bit.ly/40lURVJ>.

<sup>90</sup> AlJazeera, “Rescue charity to take Italy to court over migrant boats standoff”, 7 November 2022, available at <http://bit.ly/3YZw6gl>.

<sup>91</sup> For a legal analysis of the law, see ASGI, “Una prima lettura di ASGI del Decreto Legge 1/2023 convertito in Legge”, available in Italian at: <https://bit.ly/3n5gwmJ>.



14/21 and C-15/21,<sup>92</sup> in which the Court stated that the disembarkation State cannot require different certifications from the ones of the flag State, nor more restrictive or different requirements than the ones provided for the International Conventions.

Based on the previous observations, it can be inferred that the most evident aim of the law decree is to prevent, or at least significantly limit, the possibility for humanitarian vessels to dock on Italian territory, and consequently to prevent Italy to be the competent Country for international protection applications according to Regulation 2013/604. In this sense appear to have been designed letters d) and f), establishing that NGOs' vessels are required to reach without delay the place of safety and implement actions at sea that do not contribute to dangerous situations onboard. The clear consequence of this timely performance seems to imply the duty not to rescue other people than the ones already onboard and to forbid the trans-shipment from a humanitarian vessel to another. It is immediately clear the unlawfulness of this provision according to international customary law, the SOLAS Convention (art. 98) and to domestic law (art. 1113 - which introduces a specific type of offence for failure to render assistance in cases requested by Maritime Authorities - and 1158 – establishing sanctions for failure to assist ships or persons in distress - of the Navigation Code). In conclusion, the State must require the captain of the ship to provide for rescue assistance in case of shipwrecks or dangers for lives at sea. The most ambivalent requirement is the one referred to the obligation to provide information on international protection to people rescued while still on-board (let. b)). Such obligation cannot fall on the captain of a ship sailing under the flag of another State, as the relevant powers and duties are indicated by the national law of that State (Article 8 of the Code of Navigation R.D. 327/42); therefore, the Italian State cannot impose rules that go beyond the law of the flag State. Furthermore, in terms of access to the international protection procedure within a European Union member State, it has to be underlined that art. 4 of Directive 2013/32 established that each state shall appoint specific authorities responsible for examining applications for international protection, for dealing with cases subject to the Dublin Regulation or for refusing entry under border examination procedures. In the light of the above, Italy, according to Legislative decree 25/2008, appointed the Territorial Commissions for the evaluation of the applications (also for applications at the border), the Dublin Unit (at the Ministry of the Interior) for ascertaining the competence of the State according to the criteria of Regulation 604/2013 (Art. 3) and the border police or the police headquarters territorially competent for receiving applications (Art. 26). It clearly appears that the competence of Italian authorities is triggered only when the asylum seeker is on national territory, and would not apply to that of another State, as in the case of foreign-flagged vessels. In addition, one of the principles enshrined within the *Hirsi Jamaa vs. Italy's* decision was the necessity of an individual examination of the single cases by expert professionals, which cannot be the case of crew members of a humanitarian vessel. Taking the above into consideration, the attempt of the Italian government to introduce new principles and criteria in relation to the competence to examine international application appears to be conflicting with regards to domestic, European and international law.

The impact of Law 15/2023 started resulting evident already from the first months of 2023, especially concerning search and rescue activity performed by NGO vessels. On 23 February, the Geo Barents vessel operated by Doctor without Borders - after a rescue operation concluded on 17 February - received a custody administrative order ending after 20 days and a 10,000-euro fine for not having shared some information not strictly related to the rescue activity.<sup>93</sup> On 25 March 2023, the Louise Michel boat was seized after being accused of obstructing search and rescue operations. The boat had been ordered to reach the Trapani port after a first rescue operation, but decided to carry out three further rescue operations and was consequently accused by the Italian Coast Guard of "obstruction to search and rescue activities".<sup>94</sup>

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<sup>92</sup> See EUR-Lex Access to European Union Law, Document 62021CJ0014 - Judgment of the Court (Grand Chamber) of 1 August 2022. *Sea Watch eV v Ministero delle Infrastrutture e dei Trasporti and Others*", available at <http://bit.ly/3Xp4QaM>.

<sup>93</sup> *Corriere della Sera*, "Migranti, Medici senza Frontiere: fermo di 20 giorni e multa da 10mila euro alla nave Geo Barents", 23 February 2023, available in Italian at: <http://bit.ly/3Ki0WvJ>.

<sup>94</sup> *ILSussidiario.net*, "Ong Louise Michel, perché è stata sequestrata - 'Ha disobbedito alla Guardia Costiera'", 29 March 2023, available in Italian at: <http://bit.ly/3ZS2Vwu>.

On 6 February 2023, the Civil Court of Catania ruled on an appeal promoted by Humanity 1,<sup>95</sup> concerning the standoff ordered in accordance with the Inter-ministerial Decree of 4 November 2022. The Court ruled on the unlawfulness of the decree, remarking that all people rescued from the ship Humanity 1 had the right to reach a place of safety ashore and to seek asylum in Italy. This decision concerns people who had been defined as "residual cargo" by the Italian government, and who, unlike minors and shipwrecked people in critical sanitary conditions, had not been disembarked immediately after the ship docked in the port of Catania.

## **Refoulement to Libya**

On 2 February 2023, the Memorandum of Understanding between Italy and Libya was renewed for the second time after February 2020.<sup>96</sup> The agreement, originally signed by Italian Prime Minister Gentiloni and his Libyan counterpart Fayez El Serraj on 2 February 2017, aimed at strengthening cooperation on Libyan border management, "to ensure the reduction of illegal migration flows". The agreement provides funding, equipment and technical support to the Libyan authorities, primarily the Libyan coastguard, for patrolling and rescuing boats in international waters. A naval blockade policy that, according to ASGI, should be balanced out by the implementation of evacuation programmes from Libya through the UNHCR-managed resettlement mechanism<sup>97</sup> and humanitarian corridors. Recent experience has showed the great efficiency of the blockade system that led to the creation of the Libyan coastguard and its respective apparatus for managing SAR interventions and the complete ineffectiveness of the evacuation mechanisms to which 'voluntary' return interventions coordinated by IOM and proposed to vulnerable individuals who are not in a position to make a free choice about returning to their countries of origin have instead been included.<sup>98</sup> In fact, the internal migration management system has continued to be based on the systematic detention of foreigners, without any kind of administrative authorisation or judicial validation and protracted indefinitely under conditions of systematic torture and deprivation of fundamental rights (see chapter on [Detention conditions](#)).<sup>99</sup>

Evidences regarding the dramatic effects of this mechanism and policy has been reported by different institutions such, among others, IOM and UNHCR.<sup>100</sup> From a domestic perspective the Criminal Court of Trapani ruled that the agreement was in contrast with the Italian Constitution and international laws.<sup>101</sup> The Memorandum was heavily criticised by numerous associations including ASGI,<sup>102</sup> and the Council of Europe Commissioner for Human Rights.<sup>103</sup>

On 9 of December 2022, the Special Representative for Libya of the UN Secretary General, issued a report<sup>104</sup> alleging that "many migrants and refugees continued to endure widespread human rights

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<sup>95</sup> ASGI, "Sbarco e domanda di asilo devono essere garantiti senza distinzioni. Commento all'ordinanza su SOS Humanity", available in Italian at: <https://bit.ly/40T6G6M>.

<sup>96</sup> "Memorandum d'intesa sulla cooperazione nel campo dello sviluppo, del contrasto all'immigrazione illegale, al traffico di esseri umani, al contrabbando e sul rafforzamento della sicurezza delle frontiere tra lo Stato della Libia e la Repubblica Italiana", available on ASGI website at: <https://bit.ly/3l6ND8t>.

<sup>97</sup> ASGI Sciabaca Oruka, "The Emergency Transit Mechanism (ETM) programme from Libya to Niger: an update as of December 2021", available at: <https://bit.ly/3XdtTgS>.

<sup>98</sup> ASGI Sciabaca Oruka, "Voluntary returns from Libya in the EU externalisation strategy: a critical analysis in the light of ASGI's strategic litigation", 2 February 2021, available at: <https://bit.ly/3Yujyhy>.

<sup>99</sup> OHCHR, "Report of the Independent Fact-Finding Mission on Libya", 27 March 2023, available at <https://bit.ly/3RaqBJQ>.

<sup>100</sup> IOM and UNHCR Press Release, "IOM and UNHCR condemn the return of migrants and refugees to Libya", 16 June 2021, available at: <https://bit.ly/414CAwZ>.

<sup>101</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>102</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>103</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>.

<sup>104</sup> UNMSIL, "Report of the Secretary General", 9 december 2022, available at: <https://bit.ly/3DFSaFh>.

violations and faced serious humanitarian and protection concerns in Libya". In the same report, the Special Representative mentioned that between January and 29 October 2022, a total of 19,308 individuals were intercepted and returned to Libya by the Libyan Coast Guard, while 1,286 were reported dead or missing at sea. The dramatic conditions of migrants and refugees in Libya has been as well highlighted by Mohamed Aujjar, head of the Fact-Finding Mission on Libya of the Human Rights Council, who defined migrant detention centres as "places of terrible and systematic abuse, that may amount to crimes against humanity".<sup>105</sup>

In February 2022, many associations subscribed an appeal to reject the Memorandum.<sup>106</sup> According to the agreement, as anticipated,<sup>107</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.

With regards to the financial support, for the two-year period 2020-2021, the Ministry of Interior had foreseen an additional 1.2 million euros in naval supplies.<sup>108</sup>

On July 2021, the Italian Parliament approved the re-financing and support to the Libyan coast guard.<sup>109</sup> In the same days, Amnesty International reported the grave abuses connected with pushbacks and detention in Libya in 2021.<sup>110</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>111</sup> to provide to Libya technical assistance and training.<sup>112</sup> Nave Capri and Caprera also coordinated Libyan naval units in the tracking of boats at sea.<sup>113</sup>

As of December 2021, a new mobile "search and rescue" coordination centre (MRCC) was handed over to the Libyans. It was set up to be able to connect to the surface surveillance radar installed at the Abu Sitta naval base in Libyan territory (where Italian Navy assets are also moored). The small centre's purpose is - on paper - to "monitor" the Libyan "search and rescue" (SAR) area that Italy itself contributed to be established in 2017-2018 and recognised before the International Maritime Organization.

The funds for the MRCC come from the "Support to integrated Border and Migration Management in Libya" (Sibmmil) project coordinated by the Italian Ministry of the Interior since 2017 and linked to the Trust Fund for Africa, set up by the European Commission at the end 2015, with the intended objective of "addressing the root causes of instability, forced displacement and irregular migration and to contribute to a better migration management". The Sibmmil project is divided into two phases: the first has a budget of 46.3 million euros, the second of 15 million.<sup>114</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

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<sup>105</sup> UN News "Libya detention centres remain places of violations and abuse", 28 March 2022, available at: <http://bit.ly/3lbXCcW>.

<sup>106</sup> Available in English at: <https://bit.ly/36mt4Og>; see also: <https://bit.ly/3i8ke9c>.

<sup>107</sup> A copy of the agreement is published in Italian at: <https://bit.ly/3ciy1FS>.

<sup>108</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>109</sup> Internazionale, A. Camilli, 'Aumentano i fondi italiani per la guardia costiera libica', 15 July 2021, available at: <https://bit.ly/364KIWQ>; see also Wired, 'L'Italia continuerà a finanziare la cosiddetta guardia costiera libica', 16 July 2021, available at: <https://bit.ly/3wge7lj>.

<sup>110</sup> Amnesty International, Libya: 'No one will look for you': Forcibly returned from sea to abusive detention in Libya, 15 July 2021, available at: <https://bit.ly/3Jnfetn>.

<sup>111</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>112</sup> ASGI, ASGI chiede l'immediato annullamento del Memorandum con la Libia, 2 February 2020, available in Italian at: <https://bit.ly/2zlh1QB>.

<sup>113</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>114</sup> Altreconomia, Nuovi affari dell'Italia sulla frontiera per respingere le persone in Libia, 1 February 2022, available in Italian at: <https://bit.ly/3F35lzE>.

2017 by the Libyan coastguard through a patrol boat donated by Italy and with the coordination of the Italian MRCC.<sup>115</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>116</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>117</sup>

Confirming what was previously mentioned regarding the number of people returned to Libya, Amnesty International recently reported that “in 2021, the Libyan coastguards, with the support of Italy and the European Union, captured 32,425 refugees and migrants at sea and brought them back to Libya: by far the highest number recorded so far, three times higher than the previous year. 1,553 people died or disappeared at sea in the central Mediterranean in 2021”.<sup>118</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>119</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>120</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 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>121</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.

In June 2021, IOM and UNHCR, confirmed that over 270 migrants and refugees were handed over to the Libyan Coast Guard by the ship "Vos Triton". The two organisations made a joint declaration: "Vos Triton had rescued the group in international waters during their attempt to reach Europe on 14 June. On 15 June, the Libyan Coast Guard returned them to the main port of Tripoli, from where they were taken into detention by the Libyan authorities.

The two organizations reiterate that no one should be returned to Libya after being rescued at sea. Under international maritime law, rescued individuals should be disembarked at a place of safety."<sup>122</sup>

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<sup>115</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>.

<sup>116</sup> Report of Fondazione Migrantes, *Il diritto d'asilo*, 2020.

<sup>117</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>, 26.

<sup>118</sup> Amnesty International, *Cinque anni dal memorandum Italia-Libia: condizioni infernali per migranti e richiedenti asilo*, 31 January 2022, available at: <https://bit.ly/37Fq8gb>.

<sup>119</sup> Communication to the United Nations Human Rights Committee in the case of SDG against Italy, available at: <https://bit.ly/41zjt7>.

<sup>120</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://bit.ly/3pBldEN>.

<sup>121</sup> Forensic Oceanography Nivin report, affiliated to the Forensic Architecture agency, Goldsmiths, University of London, December 2019, available at: <https://bit.ly/3Msp9Sk>.

<sup>122</sup> Available at: <https://bit.ly/3F96BBj>. See also: Analysis of ECRE available at: ECRE, *Med: UN Condemnation of Returns to Unsafe Libya by Merchant Ship, Survivors Rescued in Maltese SAR Zone Accepted by Italy*, Parliament President Urges EU Lead on Rescues at Sea, 18 June 2021, available at: <https://bit.ly/3Jb1bap>.



On 14 October 2021, the criminal Court of Naples sentenced a commercial vessel captain, Asso28, to a one-year imprisonment, due to having returned migrants to Libya. On 30 July 2018, the vessel intercepted a rubber dinghy with 101 people on board and, having taken on board a Libyan customs officer, he let him carry out the rescue and return operations to Libya of the migrants. The captain was acquitted of the charge of "disembarkation and arbitrary abandonment of persons", pursuant to art. 1155 of the navigation code, and of "abandonment of minors" pursuant to art. 591 of the penal code. For the first time, the return to Libya led to the condemnation of a private boat.<sup>123</sup> The conviction of the ship's captain was confirmed by the Court of Appeal of Naples on 10 November 2022. The Court has confirmed the grounds of the first instance decision.<sup>124</sup>

### **Attempt to criminalise migrants' refusal to be returned to Libya**

As reported in [2020 AIDA report](#), in June 2020 the Criminal Appeal Court of Palermo overturned the decision of the Criminal Court of Trapani that had acquitted two migrants rescued at sea by Vos Thalassa ship in 2018 who had rebelled aboard the ship threatening the captain and the crew once they realized that it was bringing them back to Libya. The judge had recognized they acted in self-defence, and that the act of bringing them back to Libya would have been a crime.<sup>125</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>126</sup>

Through Decision n. 15869/2022,<sup>127</sup> adopted on 16 December 2021, and published on 26 April 2022, the Court of Cassation overturned the decision issued by the Court of Appeal of Palermo, reaffirming the principle that the migrants rescued at sea, asserting their right not to be refouled to Libya, were justified in resisting return procedures, as soon as their reaction to the risk of refoulement was proportionate and there were no prove of collusion with the traffickers.<sup>128</sup>

On 25 November 2022, the Criminal Court of Trieste acquitted a man accused of having provided false personal details to the authorities, to be registered as a minor. The Court recognized that the man was justified as he had acted in a state of necessity, to protect himself from the danger of serious harm that was the chain refoulement from Italy to Bosnia, which, in any case, he then suffered, being victim of inhuman treatment in Croatia, before being able to return to Italy and obtain refugee status.<sup>129</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, based on the bilateral agreement signed by the Italian and Greek government in 1999, which became operational in

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<sup>123</sup> ASGI, Condanna di Asso 28, un precedente che può scardinare la prassi dei respingimenti in Libia, 19 October 2021, available in Italian at: <https://bit.ly/3vHe5HF>. See also Infomigrants, Ship captain sentenced to prison for returning migrants to Libya, 15 October 2021, available at: <https://bit.ly/3vK0b7s>.

<sup>124</sup> ASGI, Asso 28, la corte di appello di Napoli conferma: il respingimento verso la Libia è illegittimo, 18 January 2023, available in Italian at: <https://bit.ly/3XYMA8Q>.

<sup>125</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://bit.ly/42CrUWO>.

<sup>126</sup> Criminal Court of Appeal of Palermo, Decision no. 1525/2020, of 3 June 2020, available at: <https://bit.ly/3vIWwFg>.

<sup>127</sup> Decision available in Italian at: <https://bit.ly/3vzvZgz>.

<sup>128</sup> Espresso, "I migranti hanno il diritto di opporsi alla riconsegna in Libia": storica sentenza della Cassazione", 17 December 2021, available in Italian at: <https://bit.ly/3t9BxNz>.

<sup>129</sup> Criminal Court of Trieste, decision of 25 November 2022. See Altreconomia, "Fingersi minore per sfuggire ai respingimenti italiani a catena fino in Bosnia non è reato" available at [bit.ly/3J0Lipe](https://bit.ly/3J0Lipe).

2001, even if it was never ratified by the Italian Parliament.<sup>130</sup> In 2022, readmissions and refoulements were still recorded also to Albania.<sup>131</sup>

As provided in the readmission agreement with Slovenia, the readmission agreement with Greece excludes the informal transfer between the two countries of illegally staying third-country nationals only for those recognized as refugees by the state requesting readmission.<sup>132</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. On 18 January 2023, Lighthouse Reports, in collaboration with SRF, ARD Monitor, Al Jazeera, Domani and Solomon, published an online investigation on the illegal readmissions of asylum seekers to Greece that take place at the Adriatic seaports and the illegal detention to which third Country nationals undergo are subjected in unofficial places of detention on-board ships and ferries.<sup>133</sup> Despite the existence of a bilateral agreement between Italy and Greece, dated 1999, this procedure is adopted also to asylum seekers and minors.

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 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>134</sup>

On 7 February 2022, the Adriatic Ports Network sent a new communication to the Committee of Ministers of Europe,<sup>135</sup> requesting the continuation of the procedure to oversee the implementation of the Sharifi ruling, denouncing, contrary to the Government's claim in the Action Report of 15 December 2021, the persistence of illegitimate practices. The Government declared, instead, to have taken all necessary measures to prevent the recurrence of the alleged violations and to demonstrate compliance with the requirements of the ECtHR and called for the definitive closure of the procedure.<sup>136</sup> However, as the Network highlighted in its communication, the profiles of illegitimacy persist and the rejections and readmissions of foreign nationals traced onboard ships or in the immediate landing area of the main Italian Adriatic ports continue. Readmissions and rejections also occur many hours after apprehension, as intercepted foreign nationals are held in transit areas, where no individual assessment is carried out by border police nor legal assistance is provided, or inside the ferries themselves, where migrants are detained in a condition of total invisibility. The testimonies collected report incidents of mistreatment and behavior detrimental to personal dignity both during the tracing phase on board the ship or ashore, and during and at the end of readmission procedures, such as confiscation and destruction of personal belongings, forcing them to undress, and exposure to extreme temperatures. On 15 August 2021, an Afghan national and a Kurd from Iraq, despite their intention to seek asylum and the alert sent to the relevant authorities by the network, were readmitted to Greece; on 6 October 2021, a Kurdish citizen from Iraq was granted access to the territory and asylum claim, following the network's intervention that interrupted the readmission procedure already in place. In January 2022, a family with a minor in need of health care was turned away from the port of Bari, despite presenting relevant documentation attesting said health needs. From April to November 2022, the Network received 21 calls from nationals of different countries (i.e. Iraq, Türkiye, Afghanistan), mostly from Bari and Brindisi, while 1 was from Ancona. Most

<sup>130</sup> Available in Italian and Greek at <https://bit.ly/3qHhuVf>.

<sup>131</sup> According to Altreconomia FOIA, from January 2022 to 14 November, 1827 Third Country Nationals have been refouled from Bari, Brindisi, Ancona, Trieste to Albania. See Altreconomia, "L'ossessione di respingere anche ai confini interni. Via terra e per mare" February 2023, available in Italian at: <https://bit.ly/3loKGtc>.

<sup>132</sup> Readmission agreement between Italy and Greece, Article 6.

<sup>133</sup> Lighthouse Reports, "Detained below deck", 18 January 2023, available at: <http://bit.ly/3kgpOLp>.

<sup>134</sup> See: Committee of Ministers of the Council of Europe, Communication from an 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>135</sup> Available at: <https://bit.ly/3KQTUg1>.

<sup>136</sup> Available at: <https://bit.ly/3MMKzHf>.

of them were adult men, two were unaccompanied minors. All these cases had a positive outcome, as access to the territory was ensured after an individual intervention.

The network also received three reports of people already readmitted to Greece.

The support provided by the network changes a lot depending on the single case but generally the timing is quite tight and some legal assistance is provided.

Through a F.O.I.A request sent to public administrations by Altreconomia it has been made public that,<sup>137</sup> from 1 January 2022 to 14 November 2022, 1,917 third Country nationals have received a return order from the Border Police Office at the Adriatic ports cities and that 81 people have been informally readmitted to Greece. Among these, 29 Afghan citizens, 15 Iraqi citizens and 11 Albanian citizens.

## 1.2. Arrivals by air

As reported to the Parliament on 25 November 2020 by the Central Director of the 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>138</sup>

Different cooperatives are entrusted by public tender or other temporary contracts to provide information services in the main airports, directly by the local Prefectures.

At the Fiumicino airport of Rome, the Prefecture of Rome entrusted the social cooperative Albatros1973 with informing and managing foreign people arriving at the air border who want to seek asylum or who are Dublin returnees in 2020. For 2021 and 2022, the service was in charge of ITC cooperative. As of 31 October 2022, 980 third country nationals were not granted access to the Italian territory at the airport borders, and only 105 asylum applications were lodged at air borders.<sup>139</sup>

At the airport of Milan 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, in charge of the service until December 2021. Pending a new public tender to entrust the service for the year 2022, through different extensions of the exchange, the Prefettura di Varese has granted them the service for the whole year. According to Inlimine ASGI project's FOIA, as of 31 October, 2022, 909 third Country nationals have been pushed back from Malpensa airport, while only 128 people were able to seek asylum at the airport. Among people refouled, according to the same information, it is clear that persons coming from countries with critical security situations (such as Syria, Palestine, Democratic Republic of Congo or Pakistan) did not have access to the international protection procedure.<sup>140</sup>

In Venice, the cooperative Giuseppe Olivotti was responsible, up to January 2022, under the agreement with the Prefecture of Venice, of arrivals of asylum seekers and Dublin returnees.

## 1.3 Arrivals at the Slovenian land border

In 2022, 13,000 migrants coming from the border between the province of Trieste and Slovenia were traced by the Border Police of Trieste or spontaneously presented themselves to the authorities of the municipalities.<sup>141</sup> Such numbers highlight the increase in arrivals throughout the year, considering that in 2021, the Border Police of Trieste traced 5,181 migrants coming from the border between the province of

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<sup>137</sup> Altreconomia, "L'ossessione di respingere anche ai confini interni. Via terra e per mare", 1 February 2023, available in Italian at: <http://bit.ly/3loKGtc>.

<sup>138</sup> See Massimo Bontempi's audition at Parliament, Schengen Committee, 25 November 2020, available at: <https://bit.ly/3i46CM7>.

<sup>139</sup> ASGI InLimine, La frontiera di Fiumicino: i riscontri della pubblica amministrazione, 10 November 2022, available in Italian at: <https://bit.ly/3l3RJGk>.

<sup>140</sup> ASGI InLimine, "La frontiera di Malpensa: alcuni riscontri dalla pubblica amministrazione", available in Italian at: <https://bit.ly/3k23MMf>.

<sup>141</sup> Ansa, "Migranti, il Prefetto di Trieste: si intensificano arrivi in FVG", 28 February 2023, available in Italian at [bit.ly/41VNWmk](http://bit.ly/41VNWmk).

Trieste and Slovenia,<sup>142</sup> and, as of October 2021, the total number of migrants traced at the Italian-Slovenian border was 8,600.<sup>143</sup> In 2020, 1,301 cases of re-admissions to Slovenia from Trieste Udine and Gorizia, **Friuli-Venezia Giulia**, were registered, and were conducted without any formal procedure or decision being issued to the persons involved.<sup>144</sup> The readmissions were carried out based on the Readmission Agreement signed by Italian and Slovenian Government in 1996,<sup>145</sup> never ratified by the Italian Parliament, contrary to what Article 80 of Italian Constitution dictates for the ratification of international treaties that are of a political nature.<sup>146</sup>

On 18 January 2021, the Civil Court of Rome declared that the informal readmission procedures were contrary to the law, as they violated the right to access the asylum procedure and in contrast with the Dublin Regulation. The Court also considered that those procedures were contrary to the administrative internal law and to the right to receive a written document informing about the procedure and that the bilateral readmission agreement was never ratified by the Italian government. This decision was later reformed by the Civil Court of Rome which accepted the appeal submitted by the MoI considering not proved the involvement of the applicant in the procedure. However, the Court confirmed the illegitimacy of the readmission procedures that was at the base of the motivation of the first court.<sup>147</sup>

Following the Court of Rome decision of 18 January 2021, in 2021, only 6 people were readmitted to Slovenia.

However, starting from 31 July 2021, mixed patrols involving Italian and Slovenian police were resumed at the eastern Italian border for a total number of 10 monthly services, out of which 7 carried out in Slovenia (Koper and Nova Gorica) and 3 in Italy (Trieste and Gorizia).<sup>148</sup>

On several occasions, the Government outlined the imminent resumption of readmission procedures.<sup>149</sup> In January 2022, the Friuli Venezia Giulia Region announced that it had purchased, on request of the Prefecture of Trieste, 65 camera traps, to be allocated to the border police and to be placed on the Italian-Slovenian border to intercept arrivals and act as a "technological wall".<sup>150</sup>

On March 2022, the Governor of the region Friuli Venezia Giulia publicly expressed his solidarity and his intentions to welcome Ukrainian citizens who come to the region from the border, but affirmed the need to block "other" arrivals coming from the Balkan route.<sup>151</sup>

During the summer and autumn of 2022, partly as a result of changed entry policies at the Bosnia Herzegovina-Croatia border and the political change of government in Slovenia, there has been a major increase in foreign national arrivals from the Balkan route. Although there is no official data on entries, press articles have pointed to increased interceptions of foreign nationals who are irregularly present.<sup>152</sup>

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<sup>142</sup> Triesteprima, "Arresti, denunce, Covid e molto altro: il 2021 della questura in numeri", 8 January 2022, available at: <https://bit.ly/3Lifryh>.

<sup>143</sup> Il Gazzettino.it, Clandestini dai Balcani, il Friuli Venezia Giulia compra 65 fototrappole: «Un muro tecnologico», 21 January 2022, available at: <https://bit.ly/3ILHC7v>.

<sup>144</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>145</sup> Readmission agreement between the Italian and Slovenian Government, available at: <https://bit.ly/3vwPuGF>.

<sup>146</sup> Italian Constitution, Article 80 states: "Le Camere autorizzano con legge la ratifica dei trattati internazionali che sono di natura politica, o prevedono arbitrati o regolamenti giudiziari, o importano variazioni del territorio od oneri alle finanze o modificazioni di leggi."

<sup>147</sup> Civil Court of Rome, decision of 3 May 2021, available at: <https://bit.ly/3KlswAZ>.

<sup>148</sup> Written response provided to the question made by the member of the Italian Parliament Riccardo Magi, signed by the undersecretary of the Ministry of the Interior, Nicola Molteni, on 13 October 2021, attached to the bulletin of Constitutional Affairs n. 5-06810.

<sup>149</sup> Rai news, «"Stop ai cortei, sì alle riammissioni informali", dice il prefetto Vardè», 9 November 2021, available at: <https://bit.ly/3w6N9CS>.

<sup>150</sup> Il Gazzettino.it, 'Clandestini dai Balcani, il Friuli Venezia Giulia compra 65 fototrappole: "Un muro tecnologico"', 21 January 2022, available at: <https://bit.ly/3ILHC7v>.

<sup>151</sup> La Repubblica, "Lega, Fedriga avverte: fermare gli altri migranti", 29 March 2022, available at: <https://bit.ly/3M6hTJo>.

<sup>152</sup> See Radio Capodistria "In aumento i flussi di migranti fra Italia e Slovenia", August 22 2022 available in Italian at: <http://bit.ly/3xWVOHW>.



The high number of new arrivals is also confirmed by the systematic difficulties that the Prefecture of Trieste and Gorizia have faced in relation to granting reception measures for asylum seekers in the territory.<sup>153</sup> This situation has created obvious unease and led to a new intensification of police controls on the Slovenian side, starting from 2 September 2022.<sup>154</sup> After the change of government, more focus was put on enhancing border controls, and on 28 November, Interior Ministry Chief of Staff issued a directive calling on public administrations at the borders to intensify actions to curb arrivals.<sup>155</sup> NGOs, such as ASGI, ICS and the network Rivolti ai Balcani regard it as a de facto reinstatement of informal readmissions,<sup>156</sup> which were previously declared illegitimate by the Rome Civil Court decision. On 6 December, the Undersecretary of the Ministry of Interior Emanuele Prisco, during a visit in Trieste, confirmed the political intention of the Government to re-start informal readmission at the border with Slovenia.<sup>157</sup>

According to recent information,<sup>158</sup> for the purpose of limiting arrivals from the Balkan Route, the Region Friuli Venezia Giulia purchased 65 photo traps mobile cameras to place in the border areas of Trieste and Gorizia province. This will constitute a sort of technological wall, meant to curb the number of irregular arrivals. From initial information collected by ASGI and Altreconomia the camera model GDPR WN-42CM branded Wilnex, cost 34,710 euro, and the tool should exclusively be aimed at locating people crossing the border irregularly.

In December 2022 informal readmissions re-started, but they did not involve asylum seekers. However, the Slovenian government refused many people that the Italian border police tried to send back. According to the information obtained by Altreconomia through a FOIA request, out of 190 readmission requests, only 23 were successful. The Slovenian Government did not dispute the validity of the agreement, but it claimed there was no evidence of the previous passage of those people from Slovenia.<sup>159</sup>

#### 1.4 The situation at the French land borders

In 2022, the situation at Italian French internal border remains unchanged: since November 2015 and due to the reintroduction of border controls by France, many migrants attempting to cross the borders with France 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 on Italy](#), and in the [AIDA Report on France](#).<sup>160</sup>

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>161</sup> providing for conjunct actions and cooperation between Italian and French police<sup>162</sup> Police checks, which can be considered lawful in internal border areas only if conducted in a manner that police powers doesn't have an equivalent effect to border

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<sup>153</sup> Rainews, "Le strutture per l'accoglienza dei migranti a Trieste sono al collasso, available in Italian at <http://bit.ly/3ED2aQg>, Ansa, "Migranti: Ics a Governo, non si violi accoglienza a Trieste", October 23 2022, available in Italian at: <http://bit.ly/3SyAx0w>.

<sup>154</sup> IlFriuli.it, "Migranti, ripartono le pattuglie miste al confine", September 6 2022, available in Italian at: <http://bit.ly/3lxupAZ>.

<sup>155</sup> Il fatto quotidiano, "Migranti, il governo riattiva i respingimenti sul confine Sloveno. Erano stati dichiarati illegittimi dal tribunale di Roma nel 2021", 12 December 2022, available in Italian at: <http://bit.ly/3Z3wmfv>.

<sup>156</sup> MeltingPot Europa, "Trieste, nuova direttiva Piantedosi: ripartono le riammissioni illegali in Slovenia", 9 December 2022, available in Italian at: <https://bit.ly/3YZQtDR> and Altreconomia, "Sulla sconcertante ripresa delle 'riammissioni informali' al confine italo-sloveno", 12 December 2022, available in Italian at: <http://bit.ly/3TsuniU>.

<sup>157</sup> RAI - TGR Friuli Venezia Giulia, "Il Governo ha deciso: tornano i respingimenti di migranti in Slovenia", 6 December 2022, available in Italian at: <http://bit.ly/3n8ZnZq>.

<sup>158</sup> Il Gazzettino, "Clandestini dai Balcani, il Friuli Venezia Giulia compra 65 fototrappole: «Un muro tecnologico»", 21 January 2022, available in Italian at: <https://bit.ly/3zDbMb1>.

<sup>159</sup> Altreconomia, Respingimenti alla frontiera con la Slovenia, i dati che smontano gli annunci del governo, 9 May 2023, available at: [bit.ly/3Mr215M](http://bit.ly/3Mr215M).

<sup>160</sup> AIDA, Country Report Italy, 2017 Update, March 2018, available at: <https://bit.ly/2Ga01zb>, 22-24.

<sup>161</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>162</sup> The text of the Agreement is available at: <https://bit.ly/39wdS2v>.

checks<sup>163</sup>, take indeed place only towards people of foreign appearance and systematically especially at Ventimiglia train station where migrants are prevented from getting on the train platform in order not to catch a train headed to France.<sup>164</sup> This practice, started in 2020, is still widely implemented.

Regarding pushbacks, as reported by ASGI,<sup>165</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.

Italian media realised some interviews with migrants having been readmitted to Italy or blocked at the border, and with NGOs operators at Ventimiglia. The migrants involved declared having been intercepted and sent back by French police, after all the efforts to reach France. NGOs' operators observed that about 60 people per day attempted to reach France, and only 10 would succeed, as all the others - including UAMs - were pushed back. Volunteers regret the closure of the red cross Ventimiglia Camp that constituted a support for all the people on the move.<sup>166</sup> Notwithstanding the decision of the Court of Justice of the European Union in the cases C-368/20 and C-369/20<sup>167</sup> in relation to the unlawfulness of prolonging internal border checks without new reasons that justify the reintroduction of such controls, the French Government continued with the temporary reintroduction of border controls,<sup>168</sup> the last extension being notified on 1 of November 2022. In May 2022, Anafé and other French C.S.O's, with the support of ASGI, submitted an appeal against the decision of the French government to prolong border checks at internal borders, but the French Council of State rejected the appeal on 27 July.<sup>169</sup>

Since 2020, 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 flow, local associations have aided about 250 people a day. On 31 July 2020, the Roja Camp, managed by the Italian Red Cross, was closed,<sup>170</sup> after a previous period of quarantine due to two positive cases of COVID-19, which prevented new entries. Being the only formal place of accommodation for people in transit, its closure led to the proliferation of informal settlements and the occupation of public spaces to face the arrival of winter. Facilities provided by the local Caritas office 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>171</sup>

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<sup>163</sup> Article 23 of the Regulation 399/2016 (Schengen border Code).

<sup>164</sup> Regarding ethnic profiling procedure carried out at Ventimiglia train station, see Anna Dotti and Serena Chiodo, The brutal side of Riviera available at: <http://bit.ly/3ZZhWy5>.

<sup>165</sup> ASGI, La situazione al confine tra Italia e Francia: effetti della pandemia e tendenze consolidate, 22 February 2021, available in Italian at: <https://bit.ly/2RDidb9>; 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>166</sup> La7, "Ventimiglia, continuano i respingimenti francesi", 26 June 2021, available in Italian at: <https://bit.ly/3q7LTew>.

<sup>167</sup> ASGI, "EU Court of Justice – It is illegitimate to renew internal border controls on the basis of reasons already given", available in Italian at: <https://bit.ly/3R9JPiW>.

<sup>168</sup> European Commission. 2022. Temporary Reintroduction of Border Control. Available at: <http://bit.ly/3DmVntw>.

<sup>169</sup> ASGI, "The French Council of State ignores the principles on free Schengen circulation reaffirmed by the European Court of Justice", available in Italian at: <https://bit.ly/3kOeFI2>.

<sup>170</sup> Parole sul confine, "Il Campo Roja di Ventimiglia ha definitivamente chiuso", 24 August 2020, available at: <https://bit.ly/3uFs7YE>.

<sup>171</sup> Ansa, Due immigrati travolti da un treno nel savonese, 23 December 2020, available at: <https://bit.ly/2QYDOLr>.

In 2021, readmissions from France continued. According to a FOI request, taking into consideration the three-month period from February to April 2021, 8,958 pushbacks took place; 2,516 at the Bardonecchia-Briançon crossing point, and 6,442 at the Ventimiglia-Mentone crossing point.<sup>172</sup>

In 2021, based on data obtained by Altreconomia, there were a total of 24,589 readmissions from France, the majority of which involved nationals from Tunisia (3,815), followed by Sudan (1,822) and Afghanistan (1,769). The number increased compared to 2019 (16,808) and 2020 (21,654).<sup>173</sup>

As the practice of pushback from France to Italy was systematically implemented, humanitarian conditions registered in the Italian towns nearby remained dramatic. No public response was given since the closure of the Roya centre.<sup>174</sup> Hundreds of people remained stranded in town without access to the most basic rights such as shelter and health care. The humanitarian crisis was faced only by NGO's, while local authorities seemed to criminalise the situation by introducing local rules against homeless people.<sup>175</sup>

At the end of 2021, it was announced the imminent opening of a centre for people in transit,<sup>176</sup> but, despite public statements following one another<sup>177</sup>, still no public intervention has been done and migrants continue living stranded under bridges with the only support of civil society organisations and volunteers.<sup>178</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>179</sup> an organization granting medical assistance to migrants at Oulx, between September and December 2020 over 4,700 people attempted to cross the border.<sup>180</sup> MEDU registered an increase in arrivals in 2021 (around 1,000 per month), in particular since October, involving in most cases Afghans and Iranians.<sup>181</sup>

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 COVID-19 epidemic.

MEDU has recently reported the death of migrants that tried to cross the border walking through the Alps, underlining the increase in deaths of very young migrants or MSNA. Many NGO signed an appeal consequently the death of migrants at this border.<sup>182</sup> Concerning migrants' deaths at the French border, 2022 has been a crucial year for the development of the investigation on the Blessing Matthews case. The case concerned a young Nigerian woman, who was found dead on the 9 of May 2018 at Prelles Dam, in the municipality of Saint-Martin-de-Queyrières, at ten kilometres from Briançon. On the night between 6 and 7 May 2018, Blessing Matthews crossed the Alps from Claviere - Italy but was discovered by some police agents who started chasing her nearby the village of La Vachette. In a desperate attempt not to be caught by police officers who had reached her at the edge of the river Durance, she fell into the water and drowned. With the support of the organisation Tous Migrant, Blessing's sister filed different legal actions

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<sup>172</sup> ASGI FOI request, June 2021, available at: <https://bit.ly/39vHgpC>.

<sup>173</sup> Altreconomia, "Al confine di Ventimiglia, dove i controlli rendono i passeur l'ultima speranza dei migranti", 2 February 2022, available in Italian at: <https://bit.ly/3KMe5Ma>.

<sup>174</sup> See ASGI, Medea project, Ventimiglia, un territorio che resiste? October 2021, available at: <https://bit.ly/3vYAVdl>.

<sup>175</sup> Sanremo news, Ventimiglia: firmate stamattina dal Sindaco e subito operative le ordinanze anti degrado e alcol, 21 October 2021, available in Italian at: <https://bit.ly/3s3VXXv>.

<sup>176</sup> Stranieri in Italia, Il progetto. A Ventimiglia un centro di transito per accogliere i migranti, 26 November 2021, available at: <https://bit.ly/3vYoS02>.

<sup>177</sup> Riviera24.it, Migranti a Ventimiglia, centro di transito: spunta di nuovo l'ipotesi Parco Roja, 4 April 2022, available in Italian at: <http://bit.ly/3JiY5Uw>, and Ansa, "Migranti: a Ventimiglia sit-in bipartisan per riaprire centro", 16 November 2022, available in Italian at: <http://bit.ly/3HDcERO>.

<sup>178</sup> Il Fatto Quotidiano, "Nel limbo di Ventimiglia tra i migranti respinti dalla Francia e accampati al confine. Associazione: "Serve centro di transito", 25 December 2022, available in Italian at: <http://bit.ly/405tUGq>.

<sup>179</sup> MEDU, Ancora critica la situazione dei migranti sulla rotta nord ovest delle Alpi, 4 February 2021, available at: <https://bit.ly/33u6GNZ>.

<sup>180</sup> Medici per i diritti umani, Frontiera solidale, available in Italian at: <https://bit.ly/3ldo7Ey>.

<sup>181</sup> Altreconomia, "Rotta alpina: il presidio medico di Medu in Val di Susa per assistere i migranti", 1 December 2021, available in Italian at: <https://bit.ly/35S82ap>.

<sup>182</sup> Medici per i diritti umani, "Si ritorna a morire alla frontiera nord ovest delle Alpi", 4 February 2022, available in Italian at: <https://bit.ly/3KHwp9m>. See also ASGI, Medea project, Confine italo-francese: una frontiera dove si continua a morire. Appello alle autorità, 11 February 2022, available at: <https://bit.ly/3KzYFdE>.

to ascertain the responsibilities of the public authority, but all actions were dismissed both by the Tribunal of Gap and the Court of Appeal of Grenoble.<sup>183</sup> Due to a counter investigation conducted by Border Forensic,<sup>184</sup> the case was submitted to the Public Prosecutor in May 2022, but again dismissed. On 25 October 2022, an appeal on the case was presented to the European Court of Human Rights.<sup>185</sup>

On 9 May 2021, Moussa Balde, a 22-year-old boy, was attacked in the streets of Ventimiglia by three Italian men. After being shortly hospitalized, Moussa was ordered to be confined at the CPR of Turin waiting to be deported. At the CPR he was placed in solitary confinement and was found dead on 23 May 2021.<sup>186</sup> On 10 January 2023, the Criminal Court of Imperia convicted three Italian citizens for the aggression, specifically for aggravated injury due to the use of a blunt object.<sup>187</sup> Regarding the responsibilities for the suicide of the young migrant, a criminal proceeding is still pending to ascertain whether it was caused by the lack of medical and psychological care provided to the victim and to his isolation. Indeed, after the confinement, competent authorities denied that Moussa Balde had been present in the CPR, preventing any kind of legal assistance and support. Moreover, despite the brutal aggression suffered in Ventimiglia, the managing authority of the centre decided to put him in isolation, in a separate building called “Ospitaletto” within the detention centre without any kind of human support even if in a critical psychological and physical condition.

The criminal proceeding against the NGO Baobab, accused of aiding illegal immigration for helping 9 asylum seekers to buy train tickets to reach Ventimiglia after the eviction of an informal reception centre in Rome in 2016,<sup>188</sup> was considered unfounded by the Criminal Court of Rome (Judge for the preliminary hearing, GUP) who acquitted the NGO on May 2022.<sup>189</sup>

## 2. Hotspots

Being part of the European Commission's 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 Union Agency for Asylum (EUAA), 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. This instrument enabled the relocation of more than 2,100 international protection seekers from Italy and Malta between 2019 and September 2021.<sup>190</sup>

Under the French six-month Council presidency, on 22 June 2022, twenty-one among EU Member States and associated countries signed a declaration of solidarity, containing a mechanism for voluntary solidarity contributions, in the form of relocation or other types of contributions, particularly financial contributions.<sup>191</sup>

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<sup>183</sup> Altreconomia, “Le nuove prove sulla morte di Blessing Matthew al confine italo-francese”, 1 giugno 2022, available in Italian at: <http://bit.ly/3DiZQ06>.

<sup>184</sup> Border Forensic, “The death of Blessing Matthews - a counter investigation on violence at the alpine frontier”, available at: <http://bit.ly/3wzK25t>.

<sup>185</sup> Border Forensic, “25.10.2022 - Death of Blessing Matthew: Facing impunity in France, we file an application before the European Court of Human Rights”, available at: <http://bit.ly/3Df5a4L>.

<sup>186</sup> See Black book on Pre-Removal Detention Centre (CPR): when EU denies the human, 23 September 2021, available at: <https://bit.ly/3vxhQAx>.

<sup>187</sup> Il Fatto Quotidiano, “Moussa Balde, condannati a due anni gli autori del pestaggio. La famiglia del migrante: “Ora verità sulla sua morte in isolamento nel Cpr”, 10 January 2023 available in Italian at: <http://bit.ly/3HcKn2T>.

<sup>188</sup> Roma today, Baobab, il presidente rischia fino a 18 anni per favoreggiamento dell'immigrazione clandestina, 19 April 2022, available at: <https://bit.ly/3kp6qZ9>.

<sup>189</sup> Ansa, Migranti: assolto il presidente di Baobab, 3 May 2022, available at: <https://bit.ly/39HDJy4>.

<sup>190</sup> EUAA, Annual Asylum Report (2022), available at: <https://rb.gy/e1xyjt>.

<sup>191</sup> Politiche dell'UE in materia di migrazione e asilo, Camera dei Deputati, Ufficio Rapporti con l'Unione Europea, available in Italian at: <https://rb.gy/uyozqo>.



Italy is expected to be the first beneficiary of this mechanism, with approximately 3,500 asylum seekers expected to be relocated to the participating member states. Despite this, just 117 asylum seekers were relocated to third countries in 2022.<sup>192</sup>

“Hotspots” managed by the competent authority have not required the construction and equipment of new reception facilities, operating instead from already existing ones.

By the end of 2022, four hotspots were operating in: **Apulia** (Taranto) and **Sicily** (Lampedusa, Pozzallo, and Messina). In 2020 and 2021, hotspots were temporarily partially or completely converted to quarantine facilities, with varying capacity and conditions. Messina's hotspot was reopened in December 2022 after a period of being non-operational.

As of 28 of February 2023, the hotspots hosted 945 people in Sicily and 168 in Apulia.<sup>193</sup> At the same time, quarantine boats continued to be used as de facto hotspots during the year.<sup>194</sup> Use of quarantine vessels ended at the beginning of June 2022.<sup>195</sup>

The hotspot approach is used beyond hotspots centres. In October 2020, ASGI reported that the first line reception facility of Monastir, in Sardinia, was being used as a de facto detention facility; a further visit in April 2021 confirmed persisting criticalities.<sup>196</sup> In 2021, ASGI reported many criticalities at the “new border” of Pantelleria, where landed migrants are also channelled in hotspot-like procedures (see [Place of Detention](#)).<sup>197</sup>

In 2021, 44,242 persons entered the hotspots, compared to 28,884 in 2020, 7,757 in 2019 and 13,777 in 2018. People were mainly originating from Tunisia (14,562), Bangladesh (3,426) and Egypt (4,113). 8,934 were children, of which 1,645 unaccompanied minors.<sup>198</sup> Data on 2022 is not available at the moment of writing.

The monitoring of hotspots by NGOs was particularly difficult in 2020 and 2021 due to the limitations in the access to the structures, connected with the pandemic, that prevent access of external people to the facilities.<sup>199</sup>

In March 2022, ASGI's delegation working on the InLimine Project visited Lampedusa's hotspot, finding that overcrowding was so severe that people in the centre were forced to sleep on the ground due to the lack of available beds; the food provided resulted insufficient for the number of people hosted in the facility, and healthcare services were lacking; sanitary conditions were also below standard, thus compromising the protection of individual and collective health.<sup>200</sup>

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<sup>192</sup> Ministry of Interior, Accoglienza migranti, Piantedosi: «I Paesi di primo ingresso non possono da soli supportare l'onere esclusivo nella gestione dei flussi», 11 November 2022, available in Italian at: <https://rb.gy/k35ep>.

<sup>193</sup> Ministry of Interior, Cruscotto statistico giornaliero, 28 February 2023, available in Italian at: <https://rb.gy/dzzw8l>.

<sup>194</sup> Borderline Sicilia, “Approccio Hotspot e navi quarantena”, 9 December 2021, available in Italian at: <https://bit.ly/3tblilR>. It should also be noted that the Government presented a tender in July for 5 ships to be operative until 31.12.2021, see: <https://bit.ly/3MLsJFk>.

<sup>195</sup> ADIF, Dalle navi quarantena alla detenzione amministrativa informale, 2 June 2022, available in Italian at: <https://rb.gy/82ov6>; see also Euronews, Migranti: verso lo stop alle navi quarantena, 30 May 2022, available in Italian at: <https://rb.gy/1z6qg>.

<sup>196</sup> ASGI, Un resoconto della visita di ASGI al Centro di accoglienza di Monastir, April 2021, available in Italian at: <https://bit.ly/3CKQecX>.

<sup>197</sup> ASGI, La frontiera di Pantelleria: una sospensione del diritto. Report del sopralluogo giuridico di ASGI, June 2021, available in Italian at: <https://bit.ly/3tcSwyD>.

<sup>198</sup> Report to Parliament Annexes to the yearly report of the National Guarantor for the rights of detained persons, June 2022, available at: <https://rb.gy/alzvet>.

<sup>199</sup> Borderline Sicilia, *La Sicilia non dimentica – La situazione dei migranti e dei rifugiati alle frontiere esterne dell'Europa*, March 2022, available at: <https://bit.ly/3MMMIrT>.

<sup>200</sup> ASGI, Report Lampedusa 2022: le criticità, August 2022, available in Italian at: <https://rb.gy/litjw5>.

The organisation also collected relevant data on hotspots at the beginning of 2022,<sup>201</sup> based on which it filed urgent appeals to the European Court of Human Rights, demanding the immediate transfer from the Lampedusa hotspot of three family units; the Court issued interim measures ordering the Italian government to immediately transfer one of the family units.<sup>202</sup>

As highlighted in a recent report by ASGI and other organisations, due to contractual terms such as the express obligation of confidentiality, the organizations active in the hotspots do not render public any information on critical issues that may arise in the implementation of the hotspot approach.<sup>203</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>204</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>205</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>206</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>207</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>208</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>209</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>210</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 informally considered as safe e.g. Tunisia are classified as economic migrants, prevented from accessing the asylum procedure (see [Registration](#)) and issued return decisions.<sup>211</sup>

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<sup>201</sup> ASGI, L’hotspot di Lampedusa: alcuni riscontri dalla pubblica amministrazione, May 2022, available in Italian at: <https://rb.gy/bdh5l0>; see also ASGI, Report Lampedusa 2022: le criticità, August 2022, available in Italian at: <https://rb.gy/litjw5>.

<sup>202</sup> ASGI, Diritti violati nell’ hotspot di Lampedusa: per la CEDU il trattamento è disumano e degradante solo per le famiglie con minori, November 2022, available in Italian at: <https://rb.gy/v0k8qw>.

<sup>203</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>204</sup> Article 10-ter TUI, inserted by Decree Law 13/2017.

<sup>205</sup> Article 6(3-bis) Reception Decree, as amended by Decree Law 113/2018.

<sup>206</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>207</sup> Article 10-ter(3) TUI, inserted by Decree Law 13/2017.

<sup>208</sup> Article 28-bis(2) (b) Procedure Decree, as amended by Decree Law 130/2020.

<sup>209</sup> MoI Decree 5 August 2019, Article 2

<sup>210</sup> See the *foglio notizie* at: <http://bit.ly/1LXpUKv>.

<sup>211</sup> See ASGI, In Limine report Ombre in Frontiera, March 2020. available in Italian at: <https://bit.ly/3bYpTJF>.

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 2021 and 2022.

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>212</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>213</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>214</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>215</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>216</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>217</sup>

In 2020 and 2021, hotspots were used as places for quarantine. ASGI has monitored and reported situations of overcrowding and de facto detention beyond the terms set by the quarantine. Problems concerning health risks in the hotspot arises also in newspapers in 2021.<sup>218</sup>

Other unlawful practices and violations were recorded in the most recent visit to the Lampedusa hotspot, conducted in March 2022 by ASGI’s delegation: legal information is not provided on an individual basis, but rather through a paper brochure delivered to the person without specific instructions being given. While waiting for the photo identification, groups of people stop in a designated area of the centre where, through the use of two monitors other information is provided. These tools in the presence of the usual large number of people do not ensure adequate information as imposed by Article 3, Legislative Decree 142/2015.<sup>219</sup>

Concerns have been expressed in a 2021 document by “InLimine” on the lack of gender related measures in the hotspots, specifically regarding Lampedusa hotspot.<sup>220</sup>

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<sup>212</sup> See the *foglio notizie* at: <https://cutt.ly/Kyv9KMr>.

<sup>213</sup> See *scheda informativa* at: <https://cutt.ly/Wyv9LQt>.

<sup>214</sup> Article 10 (2) TUI Consolidated Act on Immigration.

<sup>215</sup> See ASGI, In Limine, La determinazione della condizione giuridica in hotspot, 29 April 2019, available in Italian at: <https://cutt.ly/Iyv9XmV>.

<sup>216</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>217</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>.

<sup>218</sup> IlSicilia, “Migranti, esito vertice Procura di Agrigento: rischio sanitario in hotspot”, 30 August 2021, available in Italian at: <https://bit.ly/36Qj7pM>.

<sup>219</sup> ASGI, Report Lampedusa 2022: le criticità, August 2022, available in Italian at: <https://rb.gy/litjw5>.

<sup>220</sup> ASGI – InLimine, “A gender perspective on the Lampedusa Hotspot: the systematic and culpable violation of women’s rights”, 3 January 2022, available at: <https://bit.ly/3la6gOJ>.



On 30 March 2023, the European Court of Human Rights published its judgement in the case *J.A. and Others v. Italy*, condemning Italy for violating Articles 3, 5 and 13 of its Convention. The facts from which the appeal stemmed originated from the arrival of four Tunisian citizens who, in October 2017, had been rescued at sea and transferred to the hotspot on the island of Lampedusa, where they had remained ten days in *de facto* detention: the applicants had not received any information about their legal status or right to seek asylum, and were held in conditions of extreme discomfort, sleeping in the open, with no respect of their privacy, without sufficient functioning toilets, as the number of people present in the hotspot exceeded its maximum capacity. Classified as irregular migrants through pre-identification and the 'information sheet' filled upon arrival, the four Tunisian citizens were forced to sign the notification of a deferred rejection decision, whose meaning they did not understand, and were subsequently transferred to Palermo's airport and forcibly repatriated to Tunisia.

In the judgement, the Court condemned Italy and ruled that the conditions of overcrowding and lack of guarantees and services inside the Lampedusa hotspot constituted a violation of the prohibition of torture and inhuman and degrading treatment, as set out in article 3 of ECHR. On this point, the Court stated that the possible situation of contingent and frequent arrivals of foreign nationals on the island did not justify the degrading conditions in which the applicants were detained.

Since it was not possible for the applicants to leave the facility - except illegally through a hole in the fence of the centre at the time of the events - there was no full freedom of movement, with the result that the prolonged detention inside the hotspot in the absence of a legal basis produced a violation of the right to liberty and security under article 5 of ECHR.

Lastly, the Court condemned Italy on the ground of lacking evidence that the applicants' individual circumstances were adequately taken into account or that they had the opportunity to defend themselves against the removal order. On this point, the Court noted that the signing of the notification of the return order and the completion of the information sheet are not sufficient elements to satisfy the guarantee provided by Article 4 prot. 4 ECHR prohibiting collective expulsions, thus violated by the Italian authorities.<sup>221</sup>

The Decree law 20/2023 introduced a new hypothesis for the detention of asylum seekers in hotspots, ruled by the new Article 6-bis of the Reception Decree. According to this provision, the applicant can be detained within a hotspot (or CPR) during the border procedure for the sole purpose of ascertaining their right to access the State's territory. Detention may take place where the applicant has not presented a valid passport or other equivalent document, or does not provide for suitable financial guarantees.<sup>222</sup>

Among the modifications introduced by Decree-Law 20/2023, converted into Law 50/2023, is also the new formulation of article 10-ter, par. 1-bis, of TUI, which is part of the provisions for the identification of foreign nationals found to be illegally present in the national territory or rescued during rescue operations at sea. The first paragraph of the article already provided for the operational procedures regarding detention within the hotspots of foreign nationals found illegally crossing the internal or external border or reaching national territory following rescue operations at sea. The same can be applied for rescue and first assistance within these centres, where the photo-dactyloscopic and signal data are then taken and where information on the right to asylum, on the relocation program within other EU Member States and on the possibility of recourse to assisted voluntary return should be guaranteed.

The new paragraph 1-bis, expands the possibility of *de facto* detention, within "similar facilities", providing that for the "optimal performance of the fulfilment of the tasks referred to in this Article, the third country nationals hosted at the crisis points referred to in paragraph 1 may be transferred to similar facilities on the national territory, for the performance of the activities referred to in the same paragraph", specifying that the identification of these facilities will be made in agreement with the Ministry of Justice.

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<sup>221</sup> Case of *J.A. and Others v. Italy*, application n. 21329/2018, 30 March 2023, available at: <https://rb.gy/8uq8v>.

<sup>222</sup> Article 6 bis Reception Decree as amended by the DL 20/2023 converted into L. 50/2023.

## Legal access to the territory

Under Italian Law, it is not possible to apply for international protection from abroad, nor a specific visa is provided for people in need of protection that need to access the country.

In consideration of specific humanitarian crisis, such as the one existing in Afghanistan in 2021, the Italian Government implemented a measure known as “humanitarian corridors”, subscribing agreements with international organisations such as UNHCR and IOM, as well as NGOs, in order to allow a certain amount of people in need of protection to legally access the country. Humanitarian corridors are however not regulated by law, but only by Protocols created between the Minister of Interior, the Ministry of Foreigners affair and selected organizations, to which the Ministry delegates operations and the power to select the applicants that will be admitted. No official procedure that applicants should follow to be selected for the corridors is established, nor is there a procedure to challenge the non-admission to the list.

On 23 April 2021 a similar protocol was signed with the Community of Sant'Egidio, the Waldensian table and the Federation of Evangelical Churches for the arrival of 500 people from Libya. As of March 2022, 99 persons arrived in Italy through this procedure,<sup>223</sup> and 93 more arrived by November 2021.<sup>224</sup> From 2016 to 15 March 2023 through the mechanism of humanitarian corridors, Italy received 5,248 third country nationals, mainly from Lebanon (2486), Ethiopia (859) and Afghanistan (750).<sup>225</sup>

In 2021 humanitarian corridors to admit 1,000 refugees hosted in Lebanon were renewed.

The ones from Jordan, Niger and Ethiopia will be concluded as of May 2022. According to information collected by ASGI, at the time of writing, of the 600 people admitted to access the corridors, 530 were actually included in the programme and arrived in Italy.

In 2021, in some selected cases of Afghans escaping from their country of origin after August 2021, the Ministry of Foreign Affairs allowed the persons involved to apply for a humanitarian visa to access the territory in application of Article 25 of the Visa Code EU Regulation 810/2009. The Civil Court of Rome also issued an interim measure in December 2021 ordering to release a humanitarian visa to two young Afghans. However, following a complaint filed by the Ministry of Foreign Affairs, the Civil Court radically revised its position,<sup>226</sup> considering to revoke the previous order, for the following reasons: first of all art. 10, para. 3 of the Italian Constitution (the article which introduces the concept of Constitutional asylum) has no direct judicial application because the norm refers to the conditions for the exercise of the right. The Italian legal system already provides for rules on asylum. Furthermore, Italian law does not provide for individual humanitarian visas or the right of a foreigner outside the Republic to be admitted to receive international protection or asylum unless they are on a ship flying an Italian flag; finally, Article 25 of the Visa Code cannot be applied to a subsequent application for protection and the humanitarian visa is neither provided for by Italian law nor imposed by European legislation.

Regardless, with reference to the issue of entry visas for humanitarian reasons in situations of need for extraterritorial protection, on 24 May 2022, the Civil Court of Rome,<sup>227</sup> following an urgent appeal submitted by a Moroccan citizen who belongs to the Saharawi ethnic group, ordered the competent authorities to issue a visa that would allow the applicant to apply for protection in Italy. The court ruled that Italian authorities had such obligation based on the fact that the applicant had previously resided in Italy for several years and that he had maintained a strict link with Italy, *inter alia* due to working reasons.

Between 2021 and 2022, a total of 4,797 Afghans were evacuated by the Italian Government through the following operations: Operation “Aquila 1”, in June 2021 (involving 228 persons); Operation “Aquila Omnia”, between August and September 2021 ( 4,493 persons) Operation “Post Aquila” , September

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<sup>223</sup> UNHCR, Arrivati in Italia 99 rifugiati e richiedenti asilo evacuati dalla Libia, available at: <https://bit.ly/3w3l79M>.

<sup>224</sup> Ministry of Interior, 93 richiedenti asilo in Italia dalla Libia in attuazione degli accordi sui corridoi umanitari, 25 November 2021, available at: <https://bit.ly/38wLop1>.

<sup>225</sup> Data on humanitarian corridors available in Italian at: <https://bit.ly/3pZsfV8>.

<sup>226</sup> ASGI, “Se i corridoi diventano l'unico strumento possibile di ingresso per motivi umanitari”, 3 June 2022, available in Italian at: <https://bit.ly/41RHL2C>.

<sup>227</sup> Civil Court of Rome RG 15094/2022, 24 of May 2022, available in Italian at: <https://bit.ly/42LQftD>.

2021, (16 persons); Operation Aquila Omnia BIS between November 2021 and December 2022 (60 persons).<sup>228</sup>

### 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?  | <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>229</sup>

The Decree also provides for training for police authorities appropriate to their tasks and responsibilities.<sup>230</sup>

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

Under the Procedure Decree,<sup>231</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>232</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>233</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, NGOs working on the borders 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 days in presence of a significant number of asylum applications due to consistent and tight arrivals of asylum seekers.<sup>234</sup>

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

<sup>228</sup> Report to Senate of the Minister of Interior, Piantedosi, communicated to the Presidency on 29 November 2022, available at: [bit.ly/3yV5brW](https://bit.ly/3yV5brW), 12.

<sup>229</sup> Article 1 Procedure Decree, as amended by the Reception Decree.

<sup>230</sup> Article 10(1-bis) Procedure Decree, as amended by the Reception Decree.

<sup>231</sup> Article 6 Procedure Decree.

<sup>232</sup> Article 3(1) PD 21/2015.

<sup>233</sup> Article 3(2) PD 21/2015.

<sup>234</sup> Article 26(2-bis) Procedure Decree, as amended by the Reception Decree.

### 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. The EUAA has also provided support in this process since 2017.

The formal registration of the application (*verbalizzazione or formalizzazione*) is conducted through the “C3” form (*Modello C3*).<sup>235</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.

Since 2017, the EUAA supports the Questure in the *verbalizzazione* process.

In 2022, the EUAA carried out 10,171 registrations in Italy. Of these, 66% related to the top 10 citizenships of applicants, mainly from Bangladesh (1,462), Pakistan (870), Egypt (863) and Peru (719).<sup>236</sup>

In 2022, the EUAA carried out 1,862 registrations for temporary protection in Italy.<sup>237</sup>

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>238</sup>

### 3.3. Access to the procedure in practice

Reports of denial of access to the asylum procedure recorded by ASGI continued in the last three years. However, from the early months of 2022, the situation reached unprecedented critical levels.

Where they prevent access to the procedure, Questure 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.

In recent years, this problem mainly affected people who disembarked, as they had to face the so-called hotspot procedure, being channelled to the asylum procedure or to a deportation procedure (being sent to a CPR) mainly depending on their nationality and on the base of a “*foglio notizie*” not translated in their language and fulfilled without an effective assistance from cultural mediators. This still happened in 2022, and such practices were still reported mainly concerning Tunisian and Moroccan nationals.

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).

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<sup>235</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>236</sup> Information provided by the EUAA, 28 February 2023.

<sup>237</sup> Information provided by the EUAA, 28 February 2023.

<sup>238</sup> Article 4(1) Reception Decree.

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>239</sup> (See Information at the border and in detention).

As for the eastern border, the practice of readmissions to Slovenia was suspended but re-started by November 2022, even if involving a limited number of individuals who declared not being interested in seeking asylum in Italy. In these cases, often Slovenia refused to apply the readmission agreement and sent back people to Italy.

As previously mentioned, readmissions of asylum seekers were recorded also at Adriatic ports.

In 2022, there were numerous reports of cases in which access to the asylum procedure was hindered even on national territory, and practices widely differed among different areas of the territory.

As detailed in the report published by Altreconomia,<sup>240</sup> many Questure declared having set several conditions, not established by national law that potential asylum seekers are asked to satisfy before being allowed to access the asylum procedure.

Some Questure, for example, ask to apply by certified mail, others personally, others by lawyer. Several reported accepting only a limited number of asylum requests per day or per week and that, often, lawyers are not allowed to access the competent office together with their clients.

Moreover, even though the Reception Decree provisions make it clear that the unavailability of a domicile cannot be a barrier to access international protection,<sup>241</sup> the following Questure declared to request evidence of a domicile:

- Caltanissetta Siracusa, Messina, Palermo (Sicily)
- Pordenone (Friuli Venezia Giulia)
- Alessandria, Novara (Piedmont),
- Reggio Emilia, Ferrara, Forlì, Modena (Emilia Romagna)
- Rovigo,
- Sassari, Nuoro (Sardinia)
- Siena (Tuscany)
- Taranto, Lecce (Apulia)
- Aosta (Val d'Aoste)
- Como (Lombardy)
- Pesaro Urbino (Marche)
- Naples (Campania)
- Rome (Lazio)

The Questura of Milan indicated to allow asylum seekers to be represented and assisted by a lawyer during the procedure and not to request any domicile to access the asylum procedure. Additionally, it declared to guarantee assistance to asylum seekers awaiting the access to the procedure. Regardless of the answer, which does not properly reflect the reality verified by Naga, ASGI and other associations

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<sup>239</sup> Court of Cassation, decision no. 18189/2020 dd. 25.6.2020.

<sup>240</sup> Altreconomia, L'asilo negato in questura: ecco le prove degli ostacoli alla procedura, 1 November 2022, available at: [bit.ly/3kxCRbJ](https://bit.ly/3kxCRbJ).

<sup>241</sup> Article 1 Reception Decree, which entitles destitute asylum seekers to access the housing measure from the manifestation of the will to seek asylum; Article 4(4) which 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; Article 5(1) Reception Decree, which 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. Article 5(2), according to which 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).



involved in the protection of migrants and asylum seekers, the situation in the competent Questura was and is at the moment of writing extremely worrying. The system adopted by the Questura in the last months of 2022 and still valid at the time of writing, consists of the collection of names for the appointment to express the intention to apply for international protection, only on Mondays, admitting a maximum of around 120 people each time.

There are no rules for standing in line and people have therefore started sleeping in front of the police station since Sunday night with serious risks for the personal safety of people, even recently victims of repressive violence by the police. Police staff usually selected people that would obtain the date for the appointment.<sup>242</sup> The situation has been reported on in various press articles.<sup>243</sup>

On 28 March 2023, the Civil Court of Milan upheld the urgent appeal submitted by an Egyptian asylum seeker who had tried several times to access the Questura and finally had expressed his intention to seek asylum through a certified mail sent by his lawyer. The Court ordered Questura to register his intention to seek asylum.<sup>244</sup> As of April 2023 the Questura of Milan decided to allow access to the asylum procedure through a telematic system (Prenotafacile) which, however, requires the possession of a passport or of an identification document to be used.<sup>245</sup> On 9 May 2023, the Civil Court of Milan upheld the urgent appeal submitted by another Egyptian asylum seeker ordering Questura to process his asylum request evaluating the inadequacy of the Prenotafacile system as it was actually not allowing people to request an appointment.<sup>246</sup>

The Questura of Sassari and Siracusa declared to ask to submit legalised documents to prove the family bond among parents and children who are, otherwise, prevented from applying.

Regarding the requests of evidence of family bonds, in 2022 some Questura - such as those of Caserta and Rome - started, as reported to ASGI, to ask for a DNA test to prove the family bond.

As reported to ASGI, the Questura of Bologna refused to formalise an asylum request of a family lacking family documents.

The Civil Court of Rome, with a decision of 31 March 2023, ordered the immediate access to the asylum procedure of a Georgian citizen, deeming the new practice established in recent weeks by the Questura of Rome of setting appointments for the formalisation of the application months after the request did not comply with regulatory provisions.<sup>247</sup>

Moreover, the Civil Court of Trieste ordered, on 24 March 2023, to the Questura of Udine, to register within 30 days the international protection request of a Nigerian woman, 62 aged, who, since October 2022, was trying to obtain access to the asylum procedure but had only obtained an expulsion order.<sup>248</sup>

Also, with an important decision, the Civil Court of Bologna, on 18 January 2023, recognised the right to access the procedure to a group of asylum seekers who, helped by the CIAC association, since August 2022 were denied access to the procedure and accommodation lacking a domicile.<sup>249</sup>

## Access to the procedure from detention

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<sup>242</sup> See Meltingpot, Milano, in via Cagni il diritto di asilo è ostacolato e selettivo", 13 February 2023, available at: [bit.ly/3ZspwJB](https://bit.ly/3ZspwJB).

<sup>243</sup> Corriere, "Milano, il caso via Cagni: migranti in coda ogni lunedì per la richiesta di asilo, risse e malori. Sala: «Situazione indegna»", 21 February 2023, available at: [bit.ly/3ZaXSYG](https://bit.ly/3ZaXSYG); Repubblica, Le code infinite per i richiedenti asilo in via Cagni ora sono un caso: interverranno questore e prefetto", available at: [bit.ly/3II02rO](https://bit.ly/3II02rO).

<sup>244</sup> Civil Court of Milan, decision of 28 March 2023.

<sup>245</sup> Information provided by the Questura available at: [bit.ly/42QXP63](https://bit.ly/42QXP63).

<sup>246</sup> Civil Court of Milan, decision of 9 May 2023.

<sup>247</sup> Civil Court of Rome, Decision of 31 March 2023

<sup>248</sup> Civil Court of Trieste, Decision of 24 March 2023

<sup>249</sup> See Meltingpot, I richiedenti asilo hanno diritto a documenti e accoglienza, January 2023, available at [bit.ly/42MnRad](https://bit.ly/42MnRad).

In practice, the possibility of accessing the asylum procedure inside a pre-removal detention centre (CPR) results limited 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>250</sup>

As recorded by ASGI, in 2022, as in previous years, 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 in some cases they were able to submit the asylum request thanks to their lawyers after the detention order had been issued. This was possible, however, mainly in the CPRs, such as that of Gradisca, where mobiles are not seized.

Regarding the possibility to apply for asylum by applicants serving prison terms, ASGI recorded ample difficulties in recent years (see chapter on [Detention of asylum seekers](#)).

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>251</sup>

On 14 October 2022, the Civil Court of Turin accepted the appeal lodged by an asylum seeker from Morocco who had obtained access to the asylum procedure just a few days before the end of his prison sentence. The Territorial Commission applied an accelerated procedure and evaluated the asylum request to be manifestly unfounded. Judging on the appeal presented by the applicant, the Court of Turin established that the applicant should be granted special protection, due to his long stay in Italy and to the family ties created in the country.<sup>252</sup>

## 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>253</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 2022:   | 84,290  |
| 4. Average length of the first instance procedure in 2022:  | Not available   |

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

<sup>250</sup> Article 6(4) Reception Decree.

<sup>251</sup> Civil Court of Turin, Order 4 April 2020.

<sup>252</sup> Civil Court of Turin, decision of 14 October 2022.

<sup>253</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.



- (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>254</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, the entire procedure is generally longer and takes from 6 up to 12 months.

Statistics on the average duration of the procedure are not available.

In 2022, 77,200 asylum requests were registered in Italy, compared to 56,388 in 2021<sup>255</sup> and 53,060 were the first instance decisions issued on asylum applications ( compared to 52,987 in 2021).<sup>256</sup> Of these, 7,610 (14%) were decisions granting a refugee status, 7,205 a subsidiary protection (13%) and 10,865 (20%) a national protection (protezione speciale). Overall, the recognition rate stood at 47%, a slight increase compared to 2021 when it was 44%.

### 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 should suspend the examination of the application on the basis that the applicant is not reachable (*irreperibile*).<sup>257</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>258</sup>

Subsequent applications submitted after the termination of the 12-month suspension period are subject to a preliminary admissibility examination.<sup>259</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>260</sup> In the recent years, ASGI received several reports of suspension of procedures for people whose accommodation had been revoked.

The Procedure Decree also provides for a different procedure in cases where the untraceable person lived privately. In this case, according to Article 12 (5), the Commission establishes a new hearing and the reopening of the procedure if the not reachable people present themselves within 10 days from when they learned of the hearing, explaining the reasons why they had not been aware of it.

However, through a note sent to the Territorial Commission of Ancona on 19 December 2022, the CNDA indicated that, in the case of unreachable persons, it must apply the - different - rule provided for notifications in cases where the addressee is not found and that, if the applicant wants to restart the

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<sup>254</sup> Article 27(2)(3) Procedure Decree.

<sup>255</sup> Eurostat, Final decisions on asylum applications, available at: [bit.ly/41jIZ7A](https://bit.ly/41jIZ7A).

<sup>256</sup> Eurostat, First instance decisions on asylum applications by type of decision, available at: [bit.ly/3MUJwZ4](https://bit.ly/3MUJwZ4).

<sup>257</sup> Article 23-bis Procedure Decree, inserted by Article 25 Reception Decree.

<sup>258</sup> Article 2(1)(b-bis) Procedure Decree, inserted by Article 9 Decree Law 113/2018 as amended by L 132/2018.

<sup>259</sup> This is a preliminary examination governed by Article 29(1-bis) Procedure Decree, to which Article 23-bis expressly refers.

<sup>260</sup> Article 23-bis Procedure Decree, inserted by Article 25(r) Reception Decree.

procedure, the rules providing its suspension (for people accommodated)( Article 23 bis Procedure Decree) and the ones providing the possibility to restart it within 10 days from the discovery of the hearing date ( Article 12(5) Procedure Decree), should be residual, because once the notification has been completed the only way to restart the procedure is to submit a subsequent application.

According to what was reported to ASGI, the same directive was also followed, at the beginning of 2023, by the Commission of Cagliari which refused to reopen the procedure for an asylum seeker who was no longer untraceable and informed the applicant that he would have to submit a subsequent application.

In fact, Decree Law 13/2017 introduced a new procedure to notify interview appointments and decisions taken by the Territorial Commissions.<sup>261</sup>

The Procedure Decree, 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>262</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>263</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 and a copy of the notified deed is made available for the applicant's collection at the Territorial Commission.<sup>264</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

Even if the rules applicable are the same, the outcome of decisions may vary depending on the region. The absence of analytical territorial statistics, however, does not allow to provide a more detailed analysis in this respect.

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<sup>261</sup> Article 11(3) Procedure Decree et seq, as amended by Article 6 Decree Law 13/2017 as amended by L 46/2017.

<sup>262</sup> Article 11(3) Procedure Decree, as amended by Article 6 Decree Law 13/2017 and L 46/2017.

<sup>263</sup> Article 11(3-bis) Procedure Decree, as amended by Article 6 Decree Law 13/2017 and L 46/2017.

<sup>264</sup> Article 11(3-ter) and (3-quater) Procedure Decree, as amended by Article 6 Decree Law 13/2017 and L 46/2017.

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>265</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>266</sup>

Following the reform carried out by the L. 50/2023 special protection permits are now granted to persons who, according to the law, cannot be expelled or refouled.<sup>267</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>268</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. Significantly, the decree law 20 of 10 March 2023, converted with amendments into Law 50 of 5 May 2023, cancelled the possibility to directly request this kind of permit to a Questura and to consider, in releasing such permits to stay, if 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.<sup>269</sup> Even if the amendment does not exclude the application of international and European guarantees, such as the application of Article 8 of ECHR, the new wording of the law will lead, according to ASGI, to a significative limitation in the number of cases in which this form of protection will be recognised.

Additionally, the DI 20/2023 and the conversion L. 50/2023 changed the provisions related to the renewal of this permit. These permits will still be granted for two years and they are renewable but, according to the new law, beneficiaries will not be able to transform them in work permits (see [Residence Permit](#)).<sup>270</sup>

The new provisions however do not apply to the procedures already pending as of 10 March 2023.<sup>271</sup> The law also specifies that for those titles which were released directly from Questura, the permits to stay will be renewed only for one time and for one year after which they can only be converted, including in a permit to stay for job reasons.<sup>272</sup>

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

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<sup>265</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>266</sup> Article 5 (6) as amended by Decree Law 130/2020 and L 173/2020.

<sup>267</sup> Article 32(3) Procedure Decree, as amended by Decree Law 130/2020 and L 173/2020.

<sup>268</sup> Articles 19(1) as amended by Decree Law 130/2020 and L. 173/2020.

<sup>269</sup> Article 19 (1.1) TUI as amended by DL 20/2023 converted into L. 50 of 5 May 2023.

<sup>270</sup> Article 32 of the Procedure Decree and 6 of the TUI both as amended by DL 20/2023 converted into L. 50/2023.

<sup>271</sup> Article 7 (2) DL 20/2023.

<sup>272</sup> Article 7 (3) DL 20/2023.

pathologies could cause significant damage to the health of the applicant in case of return to the country of origin or provenance.<sup>273</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. They are renewable but not 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>274</sup>

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>275</sup>

6. Reject the asylum application as unfounded;
7. Reject the application as manifestly unfounded;<sup>276</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>277</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>278</sup>

8. Reject the application on the basis that an internal protection alternative is available.<sup>279</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

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<sup>273</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>274</sup> Article 32 (3.2) Procedure Decree introduced by Decree Law 130/2020 and L 173/2020 and referring to Article 31 (3) TUI.

<sup>275</sup> Article 6 (1 bis) TUI introduced by Decree Law 130/2020 and L 173/2020.

<sup>276</sup> Article 32(1)(b-bis) Procedure Decree, as amended by Decree Law 113/2018 and L 132/2018.

<sup>277</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>278</sup> Article 28-ter(g) Procedure Decree, citing Article 6(2)-(3) Reception Decree.

<sup>279</sup> Article 32(1)(b-ter) Procedure Decree, inserted by Decree Law 113/2018 and L 132/2018.

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>280</sup>
- 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>281</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>282</sup> That said, according to ASGI's experience, the prioritised procedure has not been widely applied to unaccompanied children.

## 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

<sup>280</sup> Before the reform the law stated that it applied to applications likely to be well founded.

<sup>281</sup> Article 28(2) C Procedure Decree, as amended by Decree Law 130/2020 and L. 173/2020.

<sup>282</sup> Article 6(3) L 47/2017.

The Procedure Decree provides for a personal interview of each applicant, which is not public.<sup>283</sup> During the personal interview the applicant can disclose exhaustively all elements supporting his or her asylum application.<sup>284</sup>

The Decree Law 130/2020, by amending Article 12 (1), provided for the possibility of hearings conducted by audio-visual means.<sup>285</sup> From the information available as of April 2022, none of the Commissions have adopted such procedure.

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>286</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>287</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>288</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. 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>289</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 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 languages.

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.

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<sup>283</sup> Article 12(1) Procedure Decree; Article 13(1) Procedure Decree.

<sup>284</sup> Article 13(1-bis) Procedure Decree, inserted by the Reception Decree.

<sup>285</sup> Article 12 (1) as amended by Decree Law 130/2020 and L 173/2020.

<sup>286</sup> Article 12(3) Procedure Decree, as amended by the Reception Decree.

<sup>287</sup> Article 5(4) PD 21/2015.

<sup>288</sup> Article 12(2-bis) Procedure Decree, read in conjunction with Article 5(1-bis).

<sup>289</sup> Article 10(4) Procedure Decree, as amended by the Reception Decree.



### 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>290</sup> Following Decree Law 13/2017, implemented by L 46/2017, 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>291</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 them. The transcript itself is signed only by the interviewer – or the President of the Commission – and by the interpreter.<sup>292</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>293</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>294</sup> This decision cannot be appealed.<sup>295</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>296</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.

In the 2021 EASO Asylum Report, there is a mention of a pilot project for video and audio recording of the interview with the prior agreement of the applicants being implemented in Rome. However, after EASO left the Commissions, from the information gathered by practitioners, there were no follow-ups to the project.

In the experience of ASGI members, many Commissions received the technical material necessary for recording and transcribing the interview in 2021, but the system was not yet in use at the end of April 2023.

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.

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<sup>290</sup> Article 14(2-bis) Procedure Decree, inserted by the Reception Decree.

<sup>291</sup> Article 14(1) Procedure Decree, as amended by Article 6 Decree Law 13/2017 and L 46/2017.

<sup>292</sup> Article 14(2) Procedure Decree, as amended by Article 6 Decree Law 13/2017.

<sup>293</sup> Article 14(5) Procedure Decree, as amended by Article 6 Decree Law 13/2017.

<sup>294</sup> Article 14(6-bis) Procedure Decree, as amended by Article 6 Decree Law 13/2017 and L 46/2017.

<sup>295</sup> Article 14 (6 bis) Procedure Decree.

<sup>296</sup> Article 14(7) Procedure Decree, as amended by Article 6 Decree Law 13/2017 and L 46/2017.



## 1.4. Appeal

### Indicators: Regular Procedure: Appeal

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

<ul style="list-style-type: none"><li>❖ If yes, is it</li><li>❖ If yes, is it suspensive</li></ul>	<ul style="list-style-type: none"><li><input checked="" type="checkbox"/> Yes</li><li><input checked="" type="checkbox"/> Judicial</li><li><input type="checkbox"/> Yes</li></ul>	<ul style="list-style-type: none"><li><input type="checkbox"/> No</li><li><input type="checkbox"/> Administrative</li><li><input checked="" type="checkbox"/> Some grounds <input type="checkbox"/> No</li></ul>
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2. Average processing time for the appeal body to make a decision as of 31 December 2022:  
3 years<sup>297</sup>

### 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>298</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>299</sup> Judges to be included in the specialised sections should be appointed on the basis of specific skills acquired through professional experience and training. EUAA and UNHCR are entrusted with training of judges, to be held at least annually during the first three years.<sup>300</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>301</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>302</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>303</sup>

The appeal has automatic suspensive effect, except where:<sup>304</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 an irregular stay on the national territory and for the sole purpose of avoiding an imminent removal;

<sup>297</sup> Information concerning 2020 extracted from tables of the article: L. Minniti, 'L'ufficio per il processo nelle Sezioni distrettuali specializzate di immigrazione e protezione internazionale: una straordinaria occasione di innovazione a supporto della tutela dei diritti fondamentali degli stranieri', 28 October 2021, available at: <https://bit.ly/37VFUEi>.

<sup>298</sup> Articles 35(1) and 35-bis(1) Procedure Decree.

<sup>299</sup> Article 1 Decree Law 13/2017, as amended by L 46/2017.

<sup>300</sup> Article 2(1) Decree Law 13/2017, as amended by L 46/2017.

<sup>301</sup> Article 4(3) Decree Law 13/2017, as amended by L 46/2017.

<sup>302</sup> Article 35-bis(2) Procedure Decree, as amended by Decree law 130/2020.

<sup>303</sup> *Ibid.*

<sup>304</sup> Article 35-bis(3) Procedure Decree, as amended by Decree Law 130/2020.

- 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>305</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>306</sup>

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

Moreover, a MoI Circular of 30 October 2020 ambiguously stated that before the 5 days given to Court to decide on suspension have elapsed, the applicant cannot be repatriated.<sup>307</sup> 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 practises were registered in Rome.

Additionally, 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>308</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>309</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>310</sup>

In application of EU NEXT Generation Project, D.L. 80 of June 2021 - as amended by conversion Law n. 113 of August 2021 - provided for the reinforcement of the Courts Office personnel, with the implementation of the "Judicial Office" (Ufficio del Processo), a support office for judges and Courts

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<sup>305</sup> Article 35-bis (4) Procedure Decree.

<sup>306</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.

<sup>307</sup> MoI Circular of 30 October 2020 no. 9075580

<sup>308</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>309</sup> Article 35-bis(7) and (12) Procedure Decree.

<sup>310</sup> Article 35-bis(8) Procedure Decree.

administrations to which law clerks shall be deployed for 3 years starting from February 2022. They are also deployed to support the judges assigned to the Specialised sections on migration, with the objective of help reducing second instance backlog. According to an initial analysis, the UPP personnel provided substantial assistance to the specialised sections: they were tasked with identifying cases to be treated with priority; to carry out jurisprudential research and prepare models of decisions or motivation points; to catalogue decisions in databases; to research COI information and prepare the questions, together with EUAA personnel, in view of the applicant's hearing. In some cases, the UPP staff also took the minutes of the hearing and supported the preparation of draft measures. In the court sections observed, these workers handled two to five cases a week.<sup>311</sup>

## 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>312</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>313</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 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 to understand the actual extent of applicants' statements.

Since 2017, given that Territorial Commissions did not proceed by video-recording interviews, some courts held oral hearings with asylum seekers, as set out in the law in case the interview is not video-recorded.<sup>314</sup> However, many Civil Courts such as those of **Naples and Milan** interpreted the law as leaving discretion to the court to omit a hearing even if the videotape is not available.

In 2018, the Court of Cassation clarified that in such cases the oral hearing is mandatory and cannot be omitted,<sup>315</sup> but the same Court later established that it is not mandatory for the judge to interview the applicant, and the hearing can be limited to the apparition in Court of the lawyer.

Consequently, each specialised section has taken its own orientation regarding the need or not to hear the appellant again in cases where the law does not consider it mandatory.<sup>316</sup>

When the appellant is summoned to the hearing, the questions for the hearing are prepared by a researcher of the EUAA or UPP staff member assigned to the section, under the supervision of the judge.<sup>317</sup>

As far as cultural mediation in the hearing is concerned, only some courts allow the presence of cultural mediators provided by EUAA, while others never use this service and rely on voluntary interpreters identified and brought by the appellant; others make use of the EUAA cultural mediators service only for cases with a high level of complexity.

Since 2020, some Judges - applying Covid emergency rules that made it possible for civil proceedings<sup>318</sup> - substituted the oral hearing with written notes, some other Judges hold the hearing by remote connections.

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<sup>311</sup> L. Perilli, *Le sezioni specializzate in materia di immigrazione a cinque anni dalla loro istituzione. Un'indagine sul campo*, in *Diritto Immigrazione e Cittadinanza*, n. 1/2023, available in Italian at [bit.ly/3mtqXRa](https://bit.ly/3mtqXRa).

<sup>312</sup> Article 35-bis Procedure Decree, introduced by Article 6(10) Decree Law 13/2017 and L 46/2017.

<sup>313</sup> Article 6(11) Decree Law 13/2017.

<sup>314</sup> CSM, *Monitoraggio sezioni specializzate*, October 2018, 27-28.

<sup>315</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, 27 June 2018, no. 28424, available at: <https://bit.ly/36vKlAn>.

<sup>316</sup> Art. 35-bis, (10) Procedure Decree

<sup>317</sup> L. Perilli, mentioned available in Italian at: [bit.ly/3mtqXRa](https://bit.ly/3mtqXRa).

<sup>318</sup> Law Decree 17 March 2020, n. 18, available in Italian at: <https://bit.ly/3GkdteG>.

The provisions allowing for written or remote hearings have been extended until the end of 2022.<sup>319</sup> Then, from the beginning of 2023, the entry into force of the civil procedure reform (the so-called Cartabia reform) allowed the replacement of the hearing with written notes in each procedure.<sup>320</sup> It is up to the judge in charge of the case to decide how to run the hearing, so different practices are observed even in the same Court. In any case, it is possible for the lawyer to require for the hearing to be held in presence, justifying the reasons for such a request.

## Decision

Practitioners report that decision-making at second instance is not consistent throughout the territory, and visible discrepancies can be observed regarding outcomes of appeals depending on the Court responsible. The absence of statistics concerning the outcome of second instance cases, however, does not allow to elaborate a detailed analysis regarding the issue.

The Civil Court can either reject the appeal or grant a form of protection to the asylum seeker. Under the law, the decision should be taken within 4 months.<sup>321</sup>

No statistics on the average length of international protection proceedings are available, but one analysis published by Ministry of Justice referred to the period between 1 January 2016 and 30 June 2020 provides some insights on the topic.<sup>322</sup>

According to what the Courts reported, in the first five years of operation of the specialised sections, the objective of the reasonable duration of international protection proceedings was not met, mostly due to a lack of resources. In fact, the number of proceedings for international protection was considerable: between 2017 and 2020, an average of over 49,500 cases were registered per year, representing around 20% of the total number of civil cases. Out of these, a decision was issued on around 32,800 proceedings per year.<sup>323</sup>

Consequently, ASGI lawyers registered an increase in the duration of the judicial procedure, with some Courts that in 2021 and 2022 have scheduled the hearing even 4 years after the introduction of the case (e.g. Turin) and others leaving the pending cases waiting for a hearing to be scheduled even more than 3 years (eg. Milan and Trieste).<sup>324</sup>

In the period between 2016 and the first half of 2020, 37.5% of the appeals were upheld.<sup>325</sup>

According to Eurostat data, the total number of final decisions on asylum applications in 2022 was 19,335, out of which 5,360 (27%) were rejections.<sup>326</sup>

### 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.

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<sup>319</sup> Extension to the end of 2022 was provided by Decree Law n. 228 of 30 December 2021 available in Italian at: <https://bit.ly/38Ulwna>.

<sup>320</sup> Article 127-ter of the Code of Civil Procedure, introduced by Legislative Decree no. 149 of 10 October 2022

<sup>321</sup> Article 35-bis(13) Procedure Decree.

<sup>322</sup> Ministry of Justice, *Analisi procedimenti in materia di protezione internazionale*, available in Italian at: <https://bit.ly/3CMzIcp>.

<sup>323</sup> L. Perilli, *Le sezioni specializzate in materia di immigrazione a cinque anni dalla loro istituzione. Un'indagine sul campo*, in *Diritto Immigrazione e Cittadinanza*, n. 1/2023, available in Italian at: [bit.ly/3mtqXRa](https://bit.ly/3mtqXRa).

<sup>324</sup> The information are confirmed in the publication "L. Minniti, 'L'ufficio per il processo nelle Sezioni distrettuali specializzate di immigrazione e protezione internazionale: una straordinaria occasione di innovazione a supporto della tutela dei diritti fondamentali degli stranieri', 28 October 2021, available at: <https://bit.ly/37VFUEi>.

<sup>325</sup> M. Giovannetti, *I perimetri incerti della tutela: la protezione internazionale nei procedimenti amministrativi e giudiziari*, in *Questione Giustizia*, 3 May 2021, available at: [bit.ly/3L1TiHo](https://bit.ly/3L1TiHo).

<sup>326</sup> Eurostat, *Final decisions on asylum applications*, available at: [bit.ly/41CRnPb](https://bit.ly/41CRnPb).

In case of a negative decision of the Court, the asylum seeker can only lodge an appeal before the Court of Cassation for matters of law within 30 days, compared to 60 days granted before the reform.<sup>327</sup>

The onward appeal is not automatically suspensive. Nevertheless, the Court of Justice of the European Union (CJEU) found in its *F.R.* judgement 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>328</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>329</sup>

The 2017 reform sparked strong reactions from NGOs,<sup>330</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 report on the administration of justice in 2020 published in 2021, the President of the Court underlined how the most recent problem in the activity of the Court of Cassation was 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, decreasing again to 935 in 2020<sup>331</sup> and 3,679 in 2021.<sup>332</sup> However, in 2022 there was a substantial decrease, with 1,495 new cases registered.<sup>333</sup>

Regarding the outcomes, in 2022 the acceptance percentage rate of appeals related to international protection was lower than the general average (21.1% in 2022 compared to the general figure equal to 27.8%), while the figure of inadmissibility was extremely high, reaching 71.9% in 2022.<sup>334</sup>

The Court of Cassation ruling at United Sections, with decision n. 15177 published on 1 June 2021,<sup>335</sup> gave a very formalist interpretation of the provision of Article 35 bis c.13 of LD 25/2008 - as amended in 2017 - concerning the power of attorney for the Cassation procedure in international protection cases.<sup>336</sup>

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<sup>327</sup> Article 35-bis(13) Procedure Decree.

<sup>328</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>329</sup> Article 35-bis(13) Procedure Decree.

<sup>330</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>331</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>332</sup> Court of Cassation report on administration of justice in the year 2021, available at: <https://bit.ly/3ycmqG1>.

<sup>333</sup> Court of Cassation, report on administration of Justice in the year 2022, available at: [bit.ly/3L5w2sn](https://bit.ly/3L5w2sn).

<sup>334</sup> Ibid.

<sup>335</sup> Court of Cassation, decision n. 15177 of June 2021, available in Italian at: <https://bit.ly/3Jf43TH>.

<sup>336</sup> Art 35 bis c. 13 in the relevant part reads "The power of attorney for litigation for the proposition of the appeal for cassation must be conferred, under penalty of inadmissibility of the appeal, after the communication of the contested decree; to this end, the defender certifies the release date in his favour of the same power of attorney".



The interpretation given by the Court will affect the admissibility of many pending cases, as it established that when bringing a case to the Court of Cassation, the lawyer has to expressly certify not only the client's signature on the specific power of attorney, but also that the date is posterior to the judgement appealed.

The third Section of Court, however, submitted a question regarding the constitutionality of the interpretation given to the provision by the United Sections to the Constitutional Court.<sup>337</sup>

The Constitutional Court, with Decision n. 13 of 2022, rejected the question and declared that said interpretation was in line with constitutional provisions, ruling that "In the case of the contested provision, however, it cannot be considered that the declaration of inadmissibility of the appeal in the hypothesis of a special power of attorney, the date of which, after the pronouncement of the contested provision, has not been certified by the defender, constitutes an expression of excessive formalism in the application of the procedural rule."<sup>338</sup>

ASGI Lawyers are concerned that the application of this provision as interpreted by the United Sections of the Court of Cassation, also to cases pending well before this formal interpretation came out, will cause the declaration of inadmissibility of many pending appeals, regardless of their well-foundedness.

A direct effect of this provision was that, as mentioned, the inadmissibility decisions issued by the Court of Cassation in 2022 was very high, and exceeded 70% of the total decisions.

In 2022, the Court of Cassation structured the collaboration with EUAA researchers in preparing periodic reviews of jurisprudence and started a collaboration with UNHCR relating to the circulation in Europe of most significant Italian rulings on the international protection topics.<sup>339</sup>

Regarding appeals lodged before the entry into force of L 46/2017, a second appeal on the merits can still be brought before the Court of Appeal. The Court of Cassation has clarified that these second-instance appeals follow the former procedure.<sup>340</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?  
☐ Yes      ☐ With difficulty      ☒ No  
❖ Does free legal assistance cover:  
☐ Representation in interview  
☐ Legal advice
2. Do asylum seekers have access to free legal assistance on appeal against a negative decision in practice?  
☐ Yes      ☒ With difficulty      ☐ No  
❖ Does free legal assistance cover  
☒ Representation in courts  
☒ Legal advice

### 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.

<sup>337</sup> The III section Court of Cassation application is available – commented – at: <https://bit.ly/3tbN1jt>.

<sup>338</sup> Constitutional Court, Decision n. 13 of 2022, available in Italian at: <https://bit.ly/36nS8Ec>.

<sup>339</sup> Court of Cassation, report on administration of Justice in the year 2022, available at: [bit.ly/3L5w2sn](https://bit.ly/3L5w2sn).

<sup>340</sup> Court of Cassation, Decision 669/2018, 12 January 2018.

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>341</sup> However, a difference exists between first accommodation centres (CAS and governmental centres) 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>342</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, detailing which questions that may be asked by the Territorial Commission members and supporting the asylum seeker in preparing for presenting 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 to pay for legal assistance 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.

### 1.5.2. Legal assistance in appeals

With regard to the appeal phase, free state-funded legal aid (*patrocinio a spese dello Stato*), is provided by law to asylum seekers who declare an annual taxable income below a certain amount, in 2022 €11,746 and whose case is not deemed manifestly unfounded.<sup>343</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>344</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>345</sup> Regarding asylum seekers, Article 8 PD 21/2015 clarifies that, in order to be admitted to free legal

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<sup>341</sup> Article 10(2-bis) Procedure Decree.

<sup>342</sup> Article 11(6) TUI.

<sup>343</sup> Article 16(2) Procedure Decree.

<sup>344</sup> Article 79(2) PD 115/2002.

<sup>345</sup> Article 94(2) PD 115/2002.



assistance, the applicant can present a self-declaration instead of the documents prescribed by Article 79 PD 115/2002.

## 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>346</sup> In the last years no particular impediments were reported in accessing legal aid at this stage.

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>347</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>348</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>349</sup> The evaluation of the merits in order to grant legal aid at Cassation stage is generally stricter.

A declaration of inadmissibility of the appeal constitutes reason to revoke legal aid. As many Cassation appeals are rejected on inadmissibility grounds, due to the formalism connected with such kind of proceeding, legal aid is often revoked once the case is rejected on these grounds.

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.

## 2. Dublin

### 2.1. General

#### Dublin statistics: 2022

Outgoing procedure			Incoming procedure		
	Requests	Transfers*		Requests	Transfers
<b>Total</b>	<b>5,315</b>	65	<b>Total</b>	<b>27,928</b>	2,331

Source: Ministry of Interior, Dublin Unit.

\*Transfers refers to the number of transfers actually implemented, not to the number of transfer decisions.

In 2022, 27,928 requests (including both take charge and take back requests) were received in the incoming procedure, which marked a significant increase when compared to the 19,936 incoming requests Italy received in 2021. Regarding the outgoing procedure, there were 5,315, total requests, also considerably higher than in 2021 when 3,318 requests were sent. In 2022, 12 family reunifications transfers towards other States under took place, while 153 incoming transfers were realised based family

<sup>346</sup> Article 126 PD 115/2002.

<sup>347</sup> Article 136 PD 115/2002.

<sup>348</sup> Court of Cassation, Decision 26661/2017, 10 November 2017.

<sup>349</sup> Article 35-bis(17) Procedure Decree.

criteria.<sup>350</sup> According to a report published by the Ministry of Labour,<sup>351</sup> however, incoming transfers under the family criteria were 145, and involved 140 minors and 5 adults.

Transfers in the outgoing procedure were only 65, similarly to 2021 when they were 53, but significantly less than the 431 realised in 2020, and 579 in 2019.

On 5 December 2022, the Italian Dublin Unit issued a letter to other countries bound by the Dublin system, informing that from the following day incoming transfers to Italy would be suspended due to the absence of places in the reception system. Italy specified that the suspension does not affect the reunification procedures for minors.

### 2.1.1. Application of the Dublin criteria

#### *Family unity*

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 2022 the Dublin Unit dealt with 196 cases of unaccompanied minors eligible for transfers under Articles 8 and 17 (2) of the Regulation.

Between July and December 2022, transfers based on family unit were 66, out of which only one was an outgoing request, while the others were all related to incoming requests.<sup>352</sup>

Between January and June 2022, the reunification procedures involving minors were 130 (of these 128 were male), out of which 4 were outgoing requests.<sup>353</sup>

A report published by the Ministry of the Labour highlighted how no negative impact due to the COVID-19 pandemic was registered for cases of transfers of minors based on family unit criteria under the Dublin Regulation.

From 2019, UNHCR Italy together with the social cooperative Cidas, run the EFRIS European Family Reunion Innovative Strategies project with the aim of improving the effectiveness of family reunification procedures for unaccompanied foreign minor asylum seekers under the Dublin III Regulation.<sup>354</sup>

The project staff has drawn up and disseminated the Guidelines for operators,<sup>355</sup> containing operating procedures standards and best practices for family reunification of minors under the Dublin III Regulation and Multilingual information leaflets (in Pashto, Tigrinya, Italian, Urdu, Somali, Farsi, English, French, Arabic) aimed at providing unaccompanied minors with information on the right to family unity and on family reunification under the Dublin procedure.<sup>356</sup>

#### **Outgoing procedure**

Of the 5 outgoing practices examined by the Dublin Unit in 2022, 4 were started between January and June 2022 and just one in the second half of the year.

3 minors have requested reunification with a family member residing in France and one with a family member residing in Finland.

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<sup>350</sup> Response of the Dublin Unit to the public access information request sent by ASGI.

<sup>351</sup> Ministry of Labour, Monitoring report on unaccompanied foreign minors, 31 December 2022, available at: [bit.ly/3kol1b5](https://bit.ly/3kol1b5).

<sup>352</sup> Ministry of Labour, Monitoring report on unaccompanied foreign minors, 31 December 2022, available at: [bit.ly/3kol1b5](https://bit.ly/3kol1b5).

<sup>353</sup> Ministry of Labour, Monitoring report on unaccompanied foreign minors, 30 June 2022, available at: [bit.ly/41pamxp](https://bit.ly/41pamxp).

<sup>354</sup> Project webpage, available at: <https://bit.ly/3kxuY24>.

<sup>355</sup> Guidelines available at: <https://bit.ly/3vwqe34>.

<sup>356</sup> Multilingual materials accessible and downloadable at: <https://bit.ly/3OS7P8I>.

Regarding the degrees of kinship, 3 minors applied to be reunited with one parent and one with a sibling  
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With respect to the single outgoing procedure started between July and December 2022, the minor, who had been considered eligible to be reunited with his uncle in Germany, disappeared during the procedure.<sup>358</sup>

The breakdown of outgoing requests of unaccompanied children in 2022 was as follows:

Outgoing procedure of children under the Dublin family reunification in 2022	
Country	Number of requests
France	3
Finland	1
Germany	1

Source: Ministry of Labour, Monitoring report on unaccompanied foreign minors, 31 December 2022, available at: [bit.ly/3kol1b5](https://bit.ly/3kol1b5).

### Incoming procedure

In 2022, the Dublin Unit dealt with 191 incoming procedures, out of which 126 in the first half of the year and 65 in the second.

Of the 65 incoming practices dealt with between July and December:

- 30 were accepted and 22 were transferred in the second half of 2022, while 8 were still awaiting transfer;
- 20 were rejected;
- 15 were still pending by the end of December.

63 unaccompanied minors were male and only two female. As of 31 December 2022, 14 minors reached the age of majority pending the procedure, 49 were between the age of 14 and 17 and only 2 were younger than 14.

The most represented country of origin of the minors was Pakistan (36 minors), followed by Bangladesh (15 minors).

Regarding family ties, 28 minors applied to be reunited with an uncle or an aunt, 26 with a brother or sister, 6 with a cousin and 5 with their father or mother.

Regarding the geographical distribution on the Italian territory of the family members or relatives of unaccompanied minors, 40 lived in the Northern regions, 7 in those of the Centre, and 17 in the South and in the Islands.

54 requests came from Greece, 6 from Cyprus, 2 from Bulgaria, one from the Netherlands, one from Spain and one from Switzerland.

Regarding the period between January and June 2022:

- 51 practises were accepted, and 40 already transferred;
- 27 were rejected.

One minor became unreachable and two others autonomously reached Italy. 41 reached the age of majority during the procedure, 84 were between 14 and 17 years of age and only 1 was younger than 14.

<sup>357</sup> Ministry of Labour, Monitoring report on unaccompanied foreign minors, 30 June 2022, available at: [bit.ly/41pamxp](https://bit.ly/41pamxp).

<sup>358</sup> Ministry of Labour, Monitoring report on unaccompanied foreign minors, 31 December 2022, available at [bit.ly/3kol1b5](https://bit.ly/3kol1b5).

Minors were predominantly from Bangladesh (63) and Pakistan (50).

Concerning the degree of kinship between the minors involved in incoming practices and their respective family members resident in Italy, 79 minors applied to be reunited with an uncle or an aunt, 43 with a brother or sister and 4 with a cousin.

Regarding the geographical distribution, 67 family members of the minors live in Northern Italian regions, 28 in those of the Centre, and 28 in the Southern Regions and on the Islands.

Finally, as for the requesting State, almost all of the applications (119 out of 126) came from the Greek Dublin Unit. The remaining 7 applications were sent by Cyprus.

As reported by the Ministry of Labour, they mainly reached Europe through the Balkan route, most of them entering from the EU eastern border, mainly from Greece.

### 2.1.2. The discretionary clauses

In 2022, the Italian Dublin Unit, replying to a FOIA request submitted by ASGI, informed that “in the incoming procedure, the sovereignty clause (Article 17(1) Dublin Regulation) was applied in around 20 cases. Regarding the humanitarian clause, Article 17 (2), the Italian Dublin Unit informed that, in 2022, it was applied in around 100 cases in the incoming procedure, while, in the outgoing procedure, it article 17 (2) was applied in around 250 cases (including the so-called voluntary relocations).”

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>359</sup> as in “take back” cases the court is not required to assess risks of *refoulement* upon potential return to the country of origin.<sup>360</sup> 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>361</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>362</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>363</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>364</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>365</sup>

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<sup>359</sup> See e.g. Civil Court of Bologna, Decision 1796/2018.

<sup>360</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>361</sup> Civil Court of Rome, Decision 7899/2018, 5 June 2018, EDAL, available at: <https://bit.ly/2DbUCEq>.

<sup>362</sup> Civil Court of Rome, Decision 15246/2019, 10 May 2019.

<sup>363</sup> Civil Court of Rome, Decision of 20 January 2021, number of the procedure 16422/2019.

<sup>364</sup> Civil Court of Milan, Decision of 14 October 2020, procedure no. 27034/2020.

<sup>365</sup> Civil Court of Trieste, decision 605/2019, 15 March 2019.

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.

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>366</sup>

In 2021 and 2022, many Civil Courts - including that of Rome - suspended decisions related to the principle of no refoulement pending the CJEU preliminary rulings on questions raised by some courts regarding Article 17 (1) of the Dublin Regulation.

The Civil Courts of Rome and Florence asked the CJEU to clarify if Courts are entitled to order the application of the sovereignty clause in cases where the non-refoulement principle could be violated because the applicant could be repatriated to his or her country of origin, considered unsafe.

In both cases, the applicants are Afghan citizens who appealed against the transfer to, respectively, Germany and Sweden, where their asylum application was already rejected. They claim that the execution of their transfer, would expose them to an irreparable damage because of the consequent repatriation to Afghanistan.<sup>367</sup>

ASGI observed that, while in the previous years the assessment of the individual risk for the applicant led to an annulment of the transfer based on the discretionary clause, in 2022 Courts applied Article 3 (2) of the Dublin Regulation as interpreted by the CJEU.

Moreover, on 20 October 2022, the Civil Court of Venice ruled that the practice, based on a note spread by the Dublin Unit, to impede Dublin asylum seekers to apply for national protection (*protezione speciale*) was to be considered in contrast with national law.<sup>368</sup>

## 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. In 2019, EASO interim staff supported the Italian Dublin Unit.<sup>369</sup> In 2020, only 3 EASO experts remained in the Unit while, for 2021, other EASO experts supported the Dublin Unit.

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>370</sup> However, no peripheral units have been implemented in 2020 nor in 2021 and 2022.

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 contact 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

<sup>366</sup> Civil Court of Rome, Decision 15643/2020, 5 May 2020.

<sup>367</sup> Court of Justice of European Union, joined cases, Case C-254/21 and C-297/21, together with Cases C-228/21, C-328/21 and C-315/21 on information obligations (Articles 4 and 5 of the Dublin Regulation).

<sup>368</sup> Civil Court of Venice, Decision of 20 October 2022, available at: [bit.ly/3Z3ZTG5](https://bit.ly/3Z3ZTG5).

<sup>369</sup> Information provided by EASO, 13 February 2019.

<sup>370</sup> Article 3(3) Procedure Decree, as amended by Article 11 Decree Law 113/2018.

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>371</sup> instead of “applicants for international protection” (“Category 1”).<sup>372</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>373</sup>

In 2020, the procedure recorded in 2019 in Friuli Venezia Giulia was overcome by the COVID-19 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>374</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>375</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>376</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 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>377</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>378</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>379</sup>

The hearing took place on 8 June 2022 but the CJEU did not issue a decision on the preliminary ruling so far.

On 20 April 2023, the Advocate General delivered her opinion. The Advocate General concluded that infringements of the information obligation can lead to the annulment of the transfer decision only if it is demonstrated how it concretely affected the rights of the asylum seeker and if those defects cannot be remedied in the procedure for the judicial review of that decision.<sup>380</sup>

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<sup>371</sup> Article 17 Eurodac Regulation.

<sup>372</sup> Article 9 Eurodac Regulation.

<sup>373</sup> Article 17(3) Eurodac Regulation.

<sup>374</sup> Civil Court of Rome, decision of 18 January 2021, available in English at: <https://bit.ly/3hgKr6b>.

<sup>375</sup> See for example, Civil Court of Rome, Decision 15643/2020, 5 May 2020.

<sup>376</sup> See for example Civil Court of Milan, Decision of 14 October 2020, procedure no. 27034/2020.

<sup>377</sup> Court of Cassation, Decision 17963/2020 of 27 August 2020.

<sup>378</sup> Court of Cassation, Decision 23587/20 of 27 October 2020.

<sup>379</sup> Court of Cassation, decision no. 8668 of 23 February - 29 March 2021.

<sup>380</sup> Opinion of Advocate General Kokott delivered on 20 April 2023, available at: [bit.ly/42LeWWS](https://bit.ly/42LeWWS).



### 2.1.3. 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.

### 2.1.4. Transfers

In case another Member State is considered responsible under the Dublin Regulation, the asylum procedure is terminated.<sup>381</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>382</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 if the suspension had been requested and was accepted.<sup>383</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 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.

On 12 January 2023, the Civil Court of Rome annulled the transfer of an asylum seeker to Romania, on the basis of the Article 29 of the Regulation. According to the Court, the terms for the transfer (6 months) had to be considered expired since it could not apply the longer term of 18 months, valid according to the Dublin Unit, because the applicant could not be considered untraceable: indeed, according to the Court, there was no proof that the applicant had been searched by the authorities. The Court also considered Romania an insecure country, as according to the Court the Romanian reception system presents, today, critical issues due to the crisis originated by the war in Ukraine, with thousands of refugees and an exponential increase in requests for protection.<sup>384</sup>

In 2022, the Civil Court of Catanzaro, annulled the decision taken by the Italian Dublin Unit to transfer an asylum seeker to the UK as the court considered that the Dublin Regulation would no longer apply to the country, even if it had recognised its responsibility.<sup>385</sup>

While waiting for the result of their Dublin procedure, asylum seekers cannot be detained, as Italy never included this discretionary provision in its national legal system.

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

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<sup>381</sup> Article 30(1) Procedure Decree.

<sup>382</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>383</sup> Article 3(3-octies) Procedure Decree, as amended by L 46/2017.

<sup>384</sup> Civil Court of Rome, Decision of 12 January 2023, available at: [bit.ly/3lyzWaH](https://bit.ly/3lyzWaH).

<sup>385</sup> Civil Court of Catanzaro, Decision of 10 December 2022.

to go through the whole Dublin procedure. When necessary, the NGOs contact the authorities to obtain 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>386</sup> According to ASGI’s experience, the duration of the procedure is much longer in practice, and the procedure may last over one year. As previously mentioned, in 2021, more than half of the practices required more than a year for definition in the outgoing procedure. In 2022, no significant changes were recorded in the majority of the cases, but in Friuli Venezia Giulia, it was observed a concrete acceleration of procedures related to the transfer of asylum seeker to Austria: many asylum seekers from Gorizia and Trieste were notified of the transfer decision within 4 or 5 months. In general, in 2022 the COVID-19 pandemic situation did not affect the length of the procedures. This was expressly confirmed by the Ministry of Labour regarding the Dublin family reunification of minors.<sup>387</sup>

Law 50/2023, which came into force on 5 May 2023 converting with amendments DL 20/2023, introduced the possibility to detain asylum seekers during the Dublin procedure.

The new Article 6-ter of the Reception Decree foresees the possibility to detain asylum seekers awaiting the Dublin transfer when there is a significant risk of absconding and unless alternative measures to detention can apply.<sup>388</sup> The risk is assessed on a case-by-case basis and can be considered to exist when the applicant has escaped a first transfer attempt or when one of the following conditions occurs;

- a) lack of a travel document;
- b) lack of a reliable address;
- c) failure to present to the authorities;
- d) lack of financial resources;
- e) systematic false declarations about personal data.

Detention cannot last beyond the time strictly necessary for the execution of the transfer. The detention validation decision allows the stay in the centre for a total period of six weeks. In the event of serious difficulties concerning the execution of the transfer the judge, upon request from the Questore, can extend the detention for a further 30 days, up to a maximum of six weeks. Also before the expiry of this term, the Questore can carry out the transfer by notifying the judge without delay.<sup>389</sup>

### 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.

<sup>386</sup> Ministry of Labour, *I minori stranieri non accompagnati in Italia*, 31 December 2017, available in Italian at: <http://bit.ly/2FvU6Aj>, 14.

<sup>387</sup> Ministry of Labour, Monitoring report on unaccompanied foreign minors, 31 December 2022, available at: [bit.ly/3kol1b5](http://bit.ly/3kol1b5).

<sup>388</sup> Article 6 ter (1) of the Reception Decree introduced by L. 50/2023 converting into law with amendments the DL 20/2023.

<sup>389</sup> Article 6 ter (2 and 3) of the Reception Decree introduced by L. 50/2023 converting into law with amendments the DL 20/2023.

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>390</sup>

In 2021 and 2022, many Courts suspended the Dublin transfers pending the CJEU's preliminary rulings raised by some Courts also on the information obligations. The Court of Cassation,<sup>391</sup> the Civil Court of Trieste<sup>392</sup> and the Civil Court of Milan<sup>393</sup> asked the CJEU to clarify if a violation of the information obligations ruled by Articles 4 and 5 of the Dublin Regulation could cause in any case the cancellation of the transfer or such cancellation could be ordered only in case the applicant proves how the fulfilment of the information obligations and consequently their participation in the procedure could have changed the procedure.<sup>394</sup> The hearing took place on 8 June 2022. The Advocate General delivered her opinion on 20 April 2023.<sup>395</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            | <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"/> 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>396</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 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. In 2016, however, administrative courts expressed the position that the Dublin procedure should be understood as a phase of the asylum procedure and, consequently, asylum seekers channelled in the Dublin procedure should be considered 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. Decree Law 13/2017,

<sup>390</sup> Civil Court of Rome, decision n. 1855/2020 of 8 January 2020.

<sup>391</sup> Case C-228/21.

<sup>392</sup> Case C-328/21.

<sup>393</sup> Case C-315/21.

<sup>394</sup> See also A. Di Pascale, Garanzie informative e partecipative del richiedente protezione internazionale e limiti al sindacato giurisdizionale nella procedura di ripresa in carico di cui al reg. (UE) n. 604/2013. Nota a margine dei rinvii pregiudiziali alla Corte di giustizia, in *Diritto Immigrazione e Cittadinanza*, Fascicolo 3/2021 available in Italian at: <https://bit.ly/3y5O9IC>.

<sup>395</sup> Opinion of Advocate General Kokott delivered on 20 April 2023, available at: [bit.ly/42LeWWS](https://bit.ly/42LeWWS).

<sup>396</sup> Article 3(3-ter) Procedure Decree, as amended by Article 6 Decree Law 13/2017 and L 46/2017.

implemented by L 46/2017, has designated the specialised section of the Civil Courts as competent to decide on appeals against transfer decisions.<sup>397</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>398</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>399</sup> Afterwards however, it expressed an opposite orientation 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>400</sup>

In case of appeals brought by people not accommodated at the time they were notified with the transfer decision the jurisdiction is indisputably that of 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>401</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.

To the knowledge of ASGI, in 2022, as in the previous three years, 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>402</sup> In ASGI's experience, the Civil Courts never complied with these timeframes in 2020, 2021 and 2022.

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>403</sup> The court will set a hearing only if it considers it useful for the purposes of the decision.<sup>404</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.

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<sup>397</sup> Article 3(3-bis) Procedure Decree, as amended by Article 6 Decree Law 13/2017 and L 46/2017.

<sup>398</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>399</sup> Court of Cassation, decisions 18755/2019; 18756/2019 and 18757/2019, issued on 12 July 2019.

<sup>400</sup> Court of Cassation, decision 31127/2019 of 14 November 2019.

<sup>401</sup> Article 3(3-quater) and (3-octies) Procedure Decree, as amended by Article 6 Decree Law 13/2017 and L 46/2017.

<sup>402</sup> Article 3(3-quater) Procedure Decree, as amended by Article 6 Decree Law 13/2017 and L 46/2017.

<sup>403</sup> Article 3(3-quinquies) and (3-sexies) Procedure Decree, as amended by Article 6 Decree Law 13/2017 and L 46/2017.

<sup>404</sup> Article 3(3-septies) Procedure Decree, as amended by Article 6 Decree Law 13/2017 and L 46/2017.

The appeal brought before the Court of Cassation has no suspensive effect and the law does not expressly provide for the possibility of requesting such a suspension. On 2 September 2022, the Civil Court of Rome accepted the urgent appeal submitted by an asylum seeker whose appeal against the Dublin transfer to Austria had been accepted in 2021 and who, after one year and half, was still waiting for Italy's declaration on having competence to examine his asylum request. The Civil Court rejected the arguments presented by the Dublin Unit, according to which the submission of an appeal before the Court of Cassation in the Dublin procedure would entail the automatic suspension of the procedure itself.<sup>405</sup>

## 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

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

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's experience, no Dublin transfers to Greece were carried out in 2020 and 2021, nor in 2022. However, readmissions from Adriatic ports were carried out (see [Access to the territory](#)).

**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 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>406</sup>

**Bulgaria:** In September 2016 the Council of State suspended several transfers to Bulgaria on the basis that the country is unsafe.<sup>407</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>408</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>409</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>410</sup>

<sup>405</sup> Civil Court of Rome, Decision of 2 September 2022, available at: [bit.ly/3KHoCMA](http://bit.ly/3KHoCMA).

<sup>406</sup> Council of State, Decision 4004/2016, 27 September 2016, available in Italian at: <http://bit.ly/2kWIO1d>.

<sup>407</sup> Council of State, Decisions 3998/2016, 3999/2016, 4000/2016 and 4002/2016, 27 September 2016, available in Italian at: <http://bit.ly/2IIJzAR>.

<sup>408</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>409</sup> Council of State, Decision 5085/2017, 3 November 2017, available in Italian at: <http://bit.ly/2GKtcVA>.

<sup>410</sup> Civil Court of Turin, decree 29 September 2020, procedure no. 12340/2020, available in Italian at: <https://bit.ly/3uzpA1S>.

With a Decision of 14 July 2021, the Civil Court of Turin confirmed its orientation cancelling the transfer of an Afghan asylum seeker to Bulgaria, considering the serious shortcomings of the country's asylum system. The decision, also referring to the [AIDA reports on Bulgaria](#) of 2018, 2019 and 2020, underlines, among other reasons, the low rates of recognition of international protection for certain nationalities in that country.<sup>411</sup>

**Romania:** in October 2022, the Civil Court of Rome annulled an applicant's transfer to Romania according to Article 3(2) of the Dublin Regulation and to Article 4 of the EU Charter of Fundamental Rights, considering the systemic deficiencies existing in that country. The Court observed that the country was already unprepared to accommodate asylum seekers before the Ukrainian crisis and that with the arrival of thousands of people from Ukraine the situation reached an extremely critical level.<sup>412</sup> On 12 January 2023, the Civil Court of Rome confirmed its previous orientation, annulling the transfer to Romania considered unsafe.<sup>413</sup>

**Slovenia:** on 21 February 2023, the Civil Court of Rome cancelled a transfer to Slovenia on the basis of Article 3(2) of the Dublin Regulation considering that, as reported by many NGOs and highlighted in the AIDA report, that country could not be considered a safe country due to the pushbacks and readmission practices, to the obstacles in accessing the asylum procedure, to the detention measures often applied to asylum seekers, to the detention conditions and to the obstacles for asylum seekers to be properly represented by lawyers during the asylum procedure.<sup>414</sup>

**Germany:** on 3 November 2022, the Civil Court of Bologna cancelled a transfer to Germany on the basis of Article 3(2) of the Dublin Regulation and Article 4 of the Charter, considering the transfer unsafe for the individual risk of the applicant, vulnerable as disabled and as possible victim of trafficking for begging. The Court, recalling the jurisprudence of the CJEU related to the Article 4 of the Charter of Fundamental Rights of the European Union (CJEU 16.2.2017 C-587/16 PPU, C.K. v. Rep. Slovenia – CJEU 21.12.2011 C-411/10 and C-493/10 N.S. et al.) affirmed that even in the absence of serious reasons to consider that there are systemic deficiencies in the Member State responsible of the asylum application, the Dublin transfer of an asylum seeker can only be carried out in conditions in which it is excluded that the said transfer entails a risk of inhuman or degrading treatments. In this case, according to the Court, the psychophysical conditions of the applicant would have exposed him, at a real and established risk of deterioration of his health, such as to constitute a inhuman and degrading treatment because the transfer in Germany would have stopped the sociopath -started in Italy -of emancipation from the probable situation of exploitation in which he found himself since his departure from Nigeria, as well as the health care path, also undertaken in Italy.<sup>415</sup>

As previously mentioned, Law 50/2023 introduced the possibility to detain asylum seekers in Dublin procedure.<sup>416</sup>

## 2.2. The situation of Dublin returnees

In 2022, Italy received 2,331 incoming Dublin transfers.

### Reception guarantees and practice

Replying on 1 March 2023 to ASGI's information request, the Ministry of Interior informed that "Dublin returnees access the accommodation system at the same conditions than the other asylum seekers".<sup>417</sup>

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<sup>411</sup> Civil Court of Turin, Decision of 14 July 2021.

<sup>412</sup> Civil Court of Rome, Decision of 13 October 2022

<sup>413</sup> Civil Court of Rome, Decision of 12 January 2023, available at: [bit.ly/3lyzWaH](https://bit.ly/3lyzWaH).

<sup>414</sup> Civil Court of Rome, Decision of 21 February 2023.

<sup>415</sup> Civil Court of Bologna, Decision of 3 November 2022, available at: [bit.ly/3m80szY](https://bit.ly/3m80szY).

<sup>416</sup> Article 6 ter of the Reception Decree, introduced by L. 50/2023 converting into law the DL 20/2023.

<sup>417</sup> Answer to the FOIA request, sent on 1 March 2023.



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>418</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>419</sup> in practice the guarantees requested were ensured mainly to families and vulnerable cases through a list of dedicated places in the SAI system (former Sprar/Siproimi system (see [Types of Accommodation](#)), communicated since June 2015 to other countries' Dublin Units.<sup>420</sup> Following the 2020 reform of the reception system, Dublin returnees as asylum seekers had again access to second-line reception SPRAR, renamed SAI but, due to the drastic reform brought by L. 50 of 5 May 2023, access to SAI is again denied to asylum seekers.<sup>421</sup> It will be only allowed to vulnerable people as defined in the Reception Decree, Article 17.<sup>422</sup>

In an answer (March 2023) 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>423</sup> In practice, Dublin returnees face the same problems as other asylum seekers in Italy in accessing the asylum procedure and housing in SAI and in the reception system.

In December 2021, an Afghan citizen, evacuated from Afghanistan by the Italian authorities at the end of August, who was a Dublin returnee from France where he had applied for asylum, was reached by an expulsion decree and held in the CPR of Gradisca d'Isonzo for over a month without having access to asylum. Transferred by flight to Venice he was asked, at the airport, to fill the *foglio notizie* and, without any examination of his individual situation, was sent to the CPR. After having had access to the asylum procedure, his detention was not validated by the Civil Court of Trieste on 8 January 2022.<sup>424</sup>

In 2022, the Civil Court of Trieste annulled the expulsion notified in August 2021 to an Iraqi asylum seeker who had already applied for asylum in Germany and had afterwards autonomously moved to Italy to join her partner. The Prefecture of Udine first accommodated him in a reception centre but, on the day scheduled for the formalisation of his asylum request (C3), notified him an expulsion order. According to the Court, there was no doubt that the man was an asylum seeker from the first moment he arrived in Italy also due to the content of the first "foglio notizie" he was asked to fulfil at his arrival in Tarvisio (on the Austrian border). In Udine, he was asked to fulfil a "second" foglio notizie where his intention to seek asylum was not further detailed. The applicant was not channelled in the Dublin procedure.<sup>425</sup>

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<sup>418</sup> Ministry of Interior Circular of 14 January 2019, available in Italian at: <https://bit.ly/2P7G5OZ>.

<sup>419</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, Judgement of 4 November 2014, para 120.

<sup>420</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/2OwbIGT>.

<sup>421</sup> Article 5 ter L. 50/2023 converting into Law with amendments the Decree Law no. 20/2023 (the so-called "Cutro Decree").

<sup>422</sup> Article 17 Reception Decree to whom Article 9 of the Reception Decree as amended by L. 50/2023 refers.

<sup>423</sup> FOIA answer from the Dublin Unit in the availability of the writer.

<sup>424</sup> *Altrecronomia*, "La storia di Abdul, evacuato da Kabul e finito nel Cpr di Gradisca d'Isonzo", 19 January 2022, available at: <https://bit.ly/3w62Av6>.

<sup>425</sup> Civil Court of Trieste, Decision of 12 August 2022.

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 they have to go.

The information desk for asylum seekers in Milan Malpensa since 2021 is no longer operated by the Waldensian Diakonia but by the cooperative Ballafon.<sup>426</sup>

According to information provided by the Ballafon cooperative responding to the Foia request sent by ASGI (In Limine project), from February 2022 to November 2022, the asylum seekers that arrived at the Malpensa airport were sent to the cooperatives of the territorial reception system or to relatives, while most Dublin returnees were sent to the Questura of Varese to determine their position in the national territory.<sup>427</sup>

At the Fiumicino airport of Rome, the Prefecture of Rome has entrusted in 2022 the I.T.M. society (Interpreti Traduttori Mediatori) for informing and managing foreign people arriving at the air border who want to seek asylum or who are Dublin returnees.<sup>428</sup>

According to the reply to the FOIA request, ITC is also in charge of organising a transport service from Fiumicino to the reception centres for the categories of people who, suffering from specific pathologies, are unable to independently use the train to Termini and/or Tiburtina.<sup>429</sup>

Also, information provided by ITC, from February 2022 to October 2022, 1,121 Dublin returnees arrived at Fiumicino airport. Of these: 195 persons were sent to CAS centers; 18 to CPR; 497 were invited to present themselves to Questura to clarify their position on the national territory; 399 received an expulsion decision; 123 were left free to reach the national territory to find an accommodation; 41 were addressed to the social services.<sup>430</sup>

At Venice airport, Marco Polo, the cooperative Giuseppe Olivotti, was responsible, up to January 2022 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>431</sup>

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<sup>426</sup> See ASGI, In Limine FOIA access, La frontiera di Malpensa: alcuni riscontri dalla pubblica amministrazione, 13 November 2022, available at: [bit.ly/3UPzz15](https://bit.ly/3UPzz15).

<sup>427</sup> See ASGI; Ballafon relation on activities carried out from February to November 2022, available at: [bit.ly/43JowdO](https://bit.ly/43JowdO).

<sup>428</sup> See ASGI, In Limine, La frontiera di Fiumicino: i riscontri della pubblica amministrazione, 10 November 2022, available at: [bit.ly/3GZzbav](https://bit.ly/3GZzbav).

<sup>429</sup> See ASGI, In Limine FOIA request, ITC relation on activities carried out at Fiumicino airport, available at: [bit.ly/43O8jUD](https://bit.ly/43O8jUD).

<sup>430</sup> See, ASGI In Limine, FOIA request, Detailed information on ITC activities, available at [bit.ly/43C4z8G](https://bit.ly/43C4z8G).

<sup>431</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, // *sistema Dublino e l'Italia, un rapporto in bilico*, March 2015.

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>432</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, for Dublin returnees and for other applicants, as detailed in the section of the report on [Registration](#). 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>433</sup> The competent Questura is often located very far from the airport and asylum seekers have only a few days to reach it; reported cases refer of 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>434</sup>

In early 2023, ASGI also received reports regarding some Territorial Commissions which, applying a directive received from the CNDA, started not to suspend the asylum procedure for 12 months in case of people who become unreachable after leaving the accommodation centres, a decision liable to directly affect the Dublin returnees situation.

Therefore the cases can be summarised as follows:

- ❖ In “take charge” cases where the person had not applied for asylum during their initial transit or stay in Italy before moving on to another country,<sup>435</sup> they should be allowed to lodge an application under the regular procedure. However, the person could be considered an irregular migrant by the authorities and notified an expulsion order.
- ❖ In “take back” cases where the person had already lodged an asylum application and escaped from the accommodation centre before being informed of the hearing for the personal interview, the Territorial Commission may have suspended the procedure on the basis that the person is unreachable (*irreperibile*).<sup>436</sup> The applicant 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 had already lodged an asylum application and become unreachable while living in a private living place, the procedure could have been closed with a rejection due to the absence of the applicant. In this case the procedure could be reopened if the applicant provides within 10 days justified reasons proving the lack of knowledge of the convocation (calculated from the cessation of the cause that did not allow the applicant to attend the interview). Otherwise, the applicant will have to submit a subsequent application.<sup>437</sup>
- ❖ In take back cases when the person, being regularly convoked for the personal hearing, failed to present themselves to the appointment without giving any justified reason, the Territorial Commission

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<sup>432</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>433</sup> Danish Refugee Council and Swiss Refugee Council, *Mutual Trust is still not enough*, December 2018.

<sup>434</sup> For more details, see ASGI, *Il sistema Dublino e l'Italia, un rapporto in bilico*, 2015, available in Italian at: <https://bit.ly/3IE3GrH>, 28.

<sup>435</sup> Article 13 Dublin III Regulation.

<sup>436</sup> Article 18(1)(c) Dublin III Regulation.

<sup>437</sup> Article 12( 5) Procedure Decree

could consider their absence as a tacit renunciation and 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>438</sup> if the applicant has been notified of the decision and lodged no appeal, they may be issued an expulsion order and 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>439</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 refugee or subsidiary protection status<sup>440</sup> by a state party according to the 1951 Refugee Convention and can still enjoy such protection;<sup>441</sup>
2. Has made a [Subsequent Application](#) after a decision has been taken by the Territorial Commission, without presenting new elements or new evidence concerning his or her personal condition or the situation in his or her country of origin which make it significantly more likely that the person will benefit from international protection, unless the applicant allege to have been unable – without fault - to present such elements or evidence at the previous application or during the appeal procedure.<sup>442</sup>
3. Has made a [Subsequent Application](#) during the execution of an imminent removal order (Article 29-bis).<sup>443</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 centres 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>444</sup>
5. Has made a subsequent application after the previous application has been terminated with a reject by the Territorial Commission in case the applicant was privately accommodated and they failed to explain, within 10 days from the discovery of the hearing date, the justified reasons for which they had not been aware of the hearing.<sup>445</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>446</sup>

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<sup>438</sup> Article 18(1)(d) Dublin III Regulation.

<sup>439</sup> Article 11(3-ter) and (3-quater) Procedure Decree, as amended by Article 6 Decree Law 13/2017 and L. 46/2017.

<sup>440</sup> Art. 29 (1)(a) as amended by Law 23 December 2021, n. 238 (in G.U. 17/01/2022, n.12) includes subsidiary protection holders.

<sup>441</sup> Article 29(1)(a) Procedure Decree.

<sup>442</sup> Article 29(1)(b) Procedure Decree as amended by L. 50/2023.

<sup>443</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>444</sup> Article 23 bis (2) Procedure Decree.

<sup>445</sup> Article 12 (5) Procedure Decree.

<sup>446</sup> Article 29(1-bis) Procedure Decree, inserted by the Reception Decree.

If the applicant has already been recognised as a refugee or subsidiary protection status holder, the law provides that the President of the Territorial Commission shall set the hearing of the applicant.<sup>447</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 Questura 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>448</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>449</sup>

In this regard, the CNDA Circular of 3 November 2020 refers the need to transmit documents to the Commission that assesses the inadmissibility.<sup>450</sup> 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 inadmissibility.<sup>451</sup>

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>452</sup> Moreover, worryingly, the law now provides that in the event of an application declared inadmissible, the applicant can be detained.<sup>453</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>454</sup>

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<sup>447</sup> Article 29 (1 bis) Procedure Decree.

<sup>448</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>449</sup> It appears not consistent with the provision of Articles 4 and 29 of the Procedure Decree.

<sup>450</sup> CNDA Circular no. 8414 of 3 November 2020.

<sup>451</sup> MOI Circular no. 79839 of 13 November 2020.

<sup>452</sup> The Court of Cassation will rule on this issue following the order no. 11660/2020.

<sup>453</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>454</sup> Article 35 bis (4) Procedure Decree.



### 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 an interview.

### 3.3. Appeal

#### Indicators: Admissibility Procedure: Appeal

☐ Same as regular procedure

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

For applications dismissed as inadmissible, the time limit for appealing a negative decision is 30 days, as in the [Regular Procedure: Appeal](#). However, the appeal has no automatic suspensive effect.<sup>455</sup>

### 3.4. Legal assistance

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

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

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

#### Indicators: Border Procedure: General

1. Do border authorities receive written instructions on the referral of asylum seekers to the competent authorities? ☒ Yes ☐ No
2. 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>456</sup> The law still refers to the issuance of a Mol decree,

<sup>455</sup> Article 35-bis(3) Procedure Decree, as amended by Decree Law 113/2018 and L 132/2018.

<sup>456</sup> Article 28-bis (2)(b) Procedure Decree, as amended by Decree Law 130/2020 and L 173/2020



which was issued on August 5, 2019 and published on 7 September 2019, for the definition and implementation of the procedure.<sup>457</sup>

The MoI Decree designated the transit and border areas where the accelerated procedure applies.<sup>458</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>459</sup>

Many of these areas correspond to hotspots (Taranto, Messina and Agrigento (Lampedusa hotspot), or places affected by landings, such as Cagliari, or by land arrivals, such as Trieste and Gorizia, 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>460</sup> the MoI 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>461</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. Law 50/2023 added the possibility to apply the border procedure for the case of applicants making an application at the border or transit areas and coming from safe countries of origin.<sup>462</sup>

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>463</sup>

Asylum seekers channelled in the border procedure can now face detention according to the new provision laid down in Article 6 bis of the Reception Decree introduced by L. 50 of 5 May 2023.<sup>464</sup>

Detention can last a maximum of 4 weeks;<sup>465</sup> it can apply only during the border procedure and up to the judicial decision on the suspensive effect in case of appeal.<sup>466</sup>

It can also apply only where the applicant lacks a passport and economic guarantees, the last to be defined by a MOI Decree.<sup>467</sup>

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<sup>457</sup> MoI Decree, 5 August 2019, published on Gazzetta Ufficiale as of 7 September 2019: <https://bit.ly/3e8wXES>.

<sup>458</sup> Article 28 bis (1) (1-ter) and (1 – quater) of the Procedure Decree.

<sup>459</sup> MoI Decree 5 August 2019, Article 2.

<sup>460</sup> Article 28 bis (4) Procedure Decree.

<sup>461</sup> Article 28-bis(2)(2) Procedure Decree, as amended by Decree Law 130/2020.

<sup>462</sup> Article 28 bis (2 b) bis) of the Procedure Decree introduced by L. 50 of 5 May 2023 converting the DL 20/2023.

<sup>463</sup> Article 28-bis(2) (b) Procedure Decree as amended by Decree Law 130/2020 and L 173/2020.

<sup>464</sup> Article 6 bis Reception Decree introduced by L. 50 of 5 May 2023 converting the DL 20/2023.

<sup>465</sup> Article 6 bis (3) Reception Decree introduced by L. 50 of 5 May 2023 converting the DL 20/2023.

<sup>466</sup> Article 6 bis (1) Reception Decree introduced by L. 50 of 5 May 2023 converting the DL 20/2023.

<sup>467</sup> Article 6 bis (2) Reception Decree introduced by L. 50 of 5 May 2023 converting the DL 20/2023.

In two circulars issued on 16 October 2019 and 18 October 2019,<sup>468</sup> the Mol 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 time limits imposed by the procedure, the Circulars state that the application for international protection presented at the border and transit areas has to be formalised 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>469</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>470</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 authorised 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 Mol decree 5 August 2019.

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

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>471</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 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>472</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

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<sup>468</sup> Mol Circular, 16 October 2019 available at: <https://bit.ly/3cYKrTs>; MOI Circular, 18 October 2019, available at: <https://bit.ly/3cZWXSX>.

<sup>469</sup> Article 28 (1 bis) Procedure decree.

<sup>470</sup> Pursuant to Article 28 bis (1-ter).

<sup>471</sup> Article 28-bis(5) Procedure Decree, citing Article 27(3) and (3-bis).

<sup>472</sup> ASGI note, Le zone di transito e di frontiera, September 2019, available at: <https://bit.ly/3gmYOmX>.

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 realised they had crossed the border only from the licence 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, no more border procedures were applied to people coming from the eastern land border. Nevertheless, according to ASGI, the 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. That was not the case in 2021 and 2022. The situation is likely to change due to the recent extension of the border procedure to people coming from safe countries of origin, as now provided by the Procedure Decree as amended by the L. 50/2023.<sup>473</sup>

## 4.2. Personal interview

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

## 4.3. Appeal

### Indicators: Border Procedure: Appeal

☐ Same as regular procedure

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

❖ If yes, is it

❖ If yes, is it suspensive

☒ Yes

☐ No

☒ Judicial

☐ Administrative

☐ Yes

☐ 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>474</sup> However, the appeal does not have automatic suspensive effect.<sup>475</sup>

When the applicant is detained according to the new Article 6 bis of Reception Decree the appeal has to be presented within 14 days from the notification.<sup>476</sup>

## 4.4. Legal assistance

<sup>473</sup> Article 28 bis (2 b) bis) of the Procedure Decree introduced by L. 50 of 5 May 2023 converting the DL 20/2023.

<sup>474</sup> Article 35-bis(2) Procedure Decree, as amended by Decree Law 130/2020 and L 173/2020.

<sup>475</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>476</sup> Article 35-ter Procedure Decree introduced by L. 50/2023 which converted with amendments the DL 20/2023.

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>477</sup>

1. The applicant makes a [Subsequent Application](#) without presenting new elements.<sup>478</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>479</sup> when grounds for detention arise among those provided by Article 6 (2, a, b, c) of the Reception Decree,<sup>480</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>481</sup>

3. The asylum application is made by a person detained in a CPR or in a hotspot or first reception centre;<sup>482</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;
5. The applicant comes from a [Safe Country of Origin](#);<sup>483</sup>
6. The application is manifestly unfounded.<sup>484</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 accelerated procedure for persons investigated or convicted for some crimes which may trigger to the exclusion of international protection, some issues of consistency can be observed, 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 offences 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.

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<sup>477</sup> Article 28-bis(1) Procedure Decree, as amended by Decree Law 130/2020

<sup>478</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>479</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>480</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>481</sup> Article 28 bis (2) as amended by Decree Law 130/2020 and L 173/2020.

<sup>482</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.

<sup>483</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>484</sup> Pursuant to Article 28 ter Procedure Decree.

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.

Furthermore, 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>485</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>486</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.

On this topic, the Civil Court of Florence, by decision issued on 30 March 2023, decided that failure to comply with the terms of the accelerated procedure (concluded in that case in 20 days instead of 9) would cause the effects connected to this procedure to lapse, with the consequence that the appeal became automatically suspensive.<sup>487</sup>

## 5.2. Personal interview

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

## 5.3. Appeal

### Indicators: Accelerated Procedure: Appeal

☐ Same as regular procedure

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

- |                            |  |  |
|----------------------------|--|--|
| ❖ If yes, is it            | <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 |

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) and 35 ter Procedure Decree<sup>488</sup>**

<sup>485</sup> Article 28-bis(5) Procedure Decree, citing Article 27(3)-(3-bis).

<sup>486</sup> *Ibid.*

<sup>487</sup> Civil Court of Florence, decision of 30 March 2023.

<sup>488</sup> Article 35 bis Procedure Decree as amended by Decree Law 130/2020 and L 173/2020.

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) (b bis)	15
Border procedure in case of detention	Article 6 bis Reception Decree	14
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 35-ter and corresponding provisions of the Procedure Decree raise issues of consistency following the 2018 , the 2020 and 2023 reform.

The Court of Cassation, with Decision no. 18518 of 30 June 2021,<sup>489</sup> ruled that the time limit of 15 days to appeal is applicable only in case the accelerated procedure was actually applied. The Court clarified that the subsistence of the legal grounds to apply the accelerated procedure is not – by itself – sufficient to apply the 15 days' time limit if the accelerated procedure was not applied in practice, and a decision on the merits was issued after an ordinary procedure. In its most recent decision on the issue (no. 26670/22 of 9 September 2022),<sup>490</sup> the Court of Cassation confirmed that the decision of the manifest unfoundedness can be considered adopted on the basis of an accelerated procedure only when the President of the competent Territorial Commission has decided in this sense and consequently the procedure has respected the terms of art. 28 bis, Decree n. 25/2008, because the peculiar qualification of the procedure as "accelerated" cannot derive from the mere formula of manifest unfoundedness contained in the decision of the Commission to reject the application. Just in case of declaration adopted by the President of Territorial Commission and respect of terms there will be fifteen days for appealing against the decision, while in all the other cases we will have ordinary term under penalty of violation of the right of defence of the applicant, who has the right to know in advance the procedural model with which his application will be examined.

Accordingly, in 2022, the Civil Court of Bologna<sup>491</sup> and the Civil Court of Naples<sup>492</sup> established in two cases that, since the competent Territorial Commission had not respected the terms of the accelerated procedure, the procedure to apply in the cases at hand was the regular one.

Interestingly, the last case was related to an asylum application submitted by a Ukrainian asylum seeker, which was rejected in 2021 and notified after more than one year not taking into account the changed situation in Ukraine.

The automatic suspensive effect of the appeal depends on the ground for applying the accelerated procedure.<sup>493</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](#).

<sup>489</sup> Sentenza Cassazione Civile n. 18518, 30 June 2021, available in Italian at: <https://bit.ly/3P0hmuy>.

<sup>490</sup> Sentenza Cassazione Civile n. 26670, 9 September 2022; in the same sense Sentenza Cassazione Civile 6745, 10 March 2021, Sentenza Cassazione Civile n. 7520, 25 March 2020, Sentenza Cassazione Civile 23021 del 21 October 2020.

<sup>491</sup> Civil Court of Bologna, decree of 15 September 2022, available at: [bit.ly/3Z7w7PK](https://bit.ly/3Z7w7PK).

<sup>492</sup> Civil Court of Naples, decree of 18 November 2022, available at: [bit.ly/3JE1eNa](https://bit.ly/3JE1eNa).

<sup>493</sup> Article 35-bis(3) Procedure Decree, as amended by Decree Law 130/2020 and L 173/2020.



## 6. The 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>494</sup>

- ❖ Is subject to investigation for crimes which may trigger exclusion from international protection, and the [Grounds for Detention](#) in a CPR apply;<sup>495</sup>
- ❖ Has been convicted, including by a non-definitive judgement, 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>496</sup>

In case of rejection, the law does no 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>497</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>498</sup>

#### 1.1. Screening of vulnerability

<sup>494</sup> Article 28-bis (1) (b) of the Procedure Decree, as amended by Decree Law 130/2020 and L 173/2020.

<sup>495</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 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>496</sup> Before the Decree Law 130/2020 this possibility was provided by Article 32(1-bis) Procedure Decree, now repealed.

<sup>497</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>498</sup> Article 2(1)(h-bis) Procedure Decree.

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.

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>499</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 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>500</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>501</sup>

The Presidential Decree 191/2022 of 4 October 2022,<sup>502</sup> published on 13 December 2022 introduced an important change for unaccompanied foreign minors who seek asylum while under 18 years of age. According to the Article 14 (1bis) of PD no. 394/99 as amended by PD 191/2022, in case the international protection request is denied, the residence permit for asylum request issued to the unaccompanied minor may be converted into a permit to stay for study or work reasons, pursuant to Article 32 (1 and 1 bis) of the Consolidated Act on Immigration, even after reaching the age of majority.

The request must be presented within thirty days from the expiring date provided for the appeal against the refusal issued by the Territorial Commission or, in case of appeal, within thirty days from the notification of the decree by which the Court denies the suspension of the effects of the denial challenged, or within thirty days from the communication of the Court decree rejecting the appeal pursuant to article 35-bis, (4 and 13), of the Procedure Decree.

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<sup>499</sup> Article 8(3-bis) Qualification Decree.

<sup>500</sup> Article 19(7) Reception Decree.

<sup>501</sup> Article 13(3) Procedure Decree.

<sup>502</sup> Presidential Decree no. 191/2022 of 4 October 2022, published on 13 December 2022, available in Italian at: [bit.ly/3ZNB0NP](https://bit.ly/3ZNB0NP). The Presidential Decree has been issued pursuant to Article 22 of Zampa Law, L. no. 47/2017.

In 2022, the Ministry of Labour traced the arrival in Italy of 28, 237 unaccompanied minors in the country, a significant growth compared to 2021, (when 16,575 UAMs arrived,) influenced by the presence of many minors from Ukraine, who were 7,034 in total, out of which 6,300 arrived in the first semester of 2022. . 13,386 UAMs (45%) arrived by sea throughout the year.

The most represented nationalities were Ukraine, Egypt, Tunisia, and Afghanistan.

The Region with most arrivals was Sicily (9,58948%) followed by Lombardy (3,696) Calabria ( 2, 827) Friuli Venezia Giulia (1,801)12%), and Emilia Romagna ( 1,782) .

In 2022, 1,661 unaccompanied minors applied for international protection, a significant decrease when compared to 2021, when international protection requests submitted by UAMs were 3,373. Of these, 67% were recognised international protected.

Unaccompanied asylum-seeking children: 2022	
Nationality	Number
Bangladesh	244
Pakistan	236
Egypt	179
Somalia	155
Gambia	135
Afghanistan	99
Tunisia	87
Ivory Coast	71
Mali	65
Guinea	56
Others	344
Total	1,671

Source: Ministry of Labour, Report on unaccompanied minors, first semester of 2022, available at: [bit.ly/41pamxp](https://bit.ly/41pamxp) and second semester 2022, available at: [bit.ly/3kol1b5](https://bit.ly/3kol1b5).

In 2022, one third of unaccompanied minors reached Italy by sea; 13% of minors found in the territory or in airports or at land borders absconded.<sup>503</sup>

As of 31 December 2022, 7,526 unaccompanied children absconded after having accessed reception. Of these, 22% were Tunisians, 21.8% Egyptians, and 18.4% Afghans.

### Gender based violence

On 31 March 2022, the National Commission for the Right to Asylum presented, together with UNHCR, the Standard Operating Procedures for the identification and referral of survivors of - or those at risk of - gender-based violence within the asylum procedure, which had been published on 31 December 2021.<sup>504</sup>

### Survivors of torture

<sup>503</sup> Ministry of Labour, Report on unaccompanied minors, 31 December 2022, available in Italian at: [bit.ly/3kol1b5](https://bit.ly/3kol1b5). Summary available in English at: [bit.ly/3YWNnXQ](https://bit.ly/3YWNnXQ).

<sup>504</sup> Standard Operating Procedures, 31 December 2021, available in Italian at: [bit.ly/3Lk71Kq](https://bit.ly/3Lk71Kq).

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>505</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 issued by the Ministry of Health. To this end, health personnel shall receive appropriate training and must ensure privacy.<sup>506</sup>

Guidelines were issued on 22 March 2017,<sup>507</sup> but their application is still limited according to ASGI experience.

## Victims of trafficking

Where during the examination procedure, well-founded reasons arise to believe the applicant has been a victim of trafficking, the Territorial Commissions may suspend the procedure and inform the Questura, the Prosecutor's office or NGOs providing assistance to victims of human trafficking thereof.<sup>508</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>509</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>510</sup>

In January 2021, UNHCR Italy issued its Guidelines addressed at Territorial Commissions for the recognition of international protection,<sup>511</sup> aimed at contributing to the correct identification of victims of trafficking in human beings in the context of the procedures for assessing asylum applications, and at ensuring they are given them assistance and protection.<sup>512</sup>

The Reception Decree clarifies that trafficked asylum seekers shall be channelled into a special programme of social assistance and integration.<sup>513</sup> Recognised victims of trafficking can also be accommodated in SAI reception facilities during the asylum procedure, as they belong to the vulnerable asylum seekers groups allowed, according to L. 50/2023, to access this accommodation system before they have been recognised international protection.<sup>514</sup> (see [Special Reception Needs](#)).

## 1.2. Age assessment of unaccompanied children

<sup>505</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>506</sup> Article 17(8) Reception Decree.

<sup>507</sup> Ministry of Health, Guidelines for the planning of interventions assistance and rehabilitation as well as for treatment of mental disorders of international protected who suffered torture, rape or other serious forms of psychological, physical or sexual violence, 22 March 2017, available at: [bit.ly/422OPK8](http://bit.ly/422OPK8).

<sup>508</sup> Article 32(3-bis) Procedure Decree.

<sup>509</sup> Article 13 L 228/2003; Article 18 TUI.

<sup>510</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>511</sup> UNHCR Guidelines "L'identificazione delle vittime di tratta tra i richiedenti protezione internazionale e procedure di referral" available at <https://bit.ly/3KwhQoD>

<sup>512</sup> EC, EMN Bulletin, May 2021, available at: <https://bit.ly/3s2wrBY>, 16.

<sup>513</sup> Article 17(2) Reception Decree in conjunction with Article 18(3-bis) LD 286/1998 and LD 24/2014.

<sup>514</sup> Article 9 (1 bis) introduced by L 50/2023 which converted with amendments the DL 20/2023.

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>515</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>516</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>517</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>518</sup> However, to date, such a decree has not yet been adopted.

In 2021, as reported by the Guarantor for the rights of detained persons in his last report to Parliament, four years after the entry into force of L. 47/2017, the procedure established for the age assessment of unaccompanied foreign minors still required interventions for its full and timely application.<sup>519</sup>

In June 2022, the NGOs Defence for Children and Cespi published the second monitoring report on the situation of unaccompanied minors in four Italian regions (Sicily, Apulia, Marche and Liguria).<sup>520</sup>

The report shows that the correct application of the legislation is still limited.

Due to the structure of the Italian health system and regional autonomy in the provision of health services, the protocol on the age assessment has a variety of different applications throughout the national territory. The report also highlights that – according to a survey conducted by the INMP (National Institute for the promotion of the health of migrant populations and for the fight against the diseases of poverty)- there are territories where the multidisciplinary team has not even been established and where old practices non in line with the current law are still used (64% municipalities); in territories where the multidisciplinary team has been created (36%), generally the age assessment is conducted according to the provisions of the Protocol (78%) but, in 21% of cases, the concrete application of the protocol is still a challenge, as not all territories invested the sufficient resources to finance them.<sup>521</sup>

### Identification documents and methods of assessing age

The law states that, in the absence of identification documents,<sup>522</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>523</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>524</sup>

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<sup>515</sup> Article 19(2) Procedure Decree.

<sup>516</sup> *Ibid.*

<sup>517</sup> Article 19-bis Reception Decree, inserted by Article 5 L 47/2017.

<sup>518</sup> Article 5 L 47/2017.

<sup>519</sup> Guarantor for the rights of detained persons, Report to Parliament, June 2021, available at: <https://bit.ly/35UHwx5>, 229.

<sup>520</sup> Defence for Children and Cespi Report for 2021, Minorenni stranieri non accompagnati, Legge 47/2017, published on June 2022, available in Italian at: [bit.ly/3li1SI0](https://bit.ly/3li1SI0).

<sup>521</sup> *Ibidem*, 134.

<sup>522</sup> Article 19-bis(3) Reception Decree.

<sup>523</sup> Article 19-bis(4) Reception Decree.

<sup>524</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 they can understand taking into account their 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>525</sup>

Pending the outcome of the procedure, the applicant benefits from the provisions on reception of unaccompanied children.<sup>526</sup> The benefit of the doubt shall be granted if doubts persist following the examination.<sup>527</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>528</sup>

Currently, however, according to ASGI's experience, L 47/2017 is not applied uniformly on the national territory. In some areas, the multidisciplinary teams required by law have been established. Consequently, age assessment is still conducted through wrist X-ray, with results not indicating the margin of error.<sup>529</sup>

In 2020, a national protocol on multidisciplinary age assessment was signed by the Conference State region,<sup>530</sup> providing for uniform criteria and inviting to the conclusion of local protocols.

In some areas, starting from 2020, the recommended local protocols were also signed; as an example, this was the case in Milan,<sup>531</sup> Messina,<sup>532</sup> and Ancona.<sup>533</sup>

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 authorities not entitled to carry out such proceedings.

As reported 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>534</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, the judicial authority did not receive information regarding their presence "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>535</sup>

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<sup>525</sup> Article 19-bis(5) Reception Decree.

<sup>526</sup> Article 19-bis(6) Reception Decree.

<sup>527</sup> Article 19-bis(8) Reception Decree.

<sup>528</sup> Article 19-bis(7) Reception Decree.

<sup>529</sup> The different praxis not always in conformity with law have been reported by UNHCR in a report of 2020 available in Italian at: <https://bit.ly/3MQDMwk>.

<sup>530</sup> Available in Italian at: <https://bit.ly/384KZtJ>.

<sup>531</sup> Milan Protocol available in Italian at: <https://bit.ly/3LYxqLr>.

<sup>532</sup> Available in Italian at: <https://bit.ly/3OVDUfP>.

<sup>533</sup> Available in Italian at: <https://bit.ly/37YepKj>.

<sup>534</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>535</sup> Information collected by ASGI within the Inlimine project, available at: <https://bit.ly/3c66k4W>.



As mentioned, and reported by several organizations belonging to the network Tavolo Minori Migranti,<sup>536</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 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>537</sup> Through the implementation of this practice the informal readmission procedure to Slovenia was also applied to migrants declaring themselves as minors.

According to what was reported to ASGI, these directives ceased to be implemented and, with the arrival of minors from Ukraine, many Juvenile Courts recalled the need to follow the age assessment procedures dictated by the Zampa law.<sup>538</sup>

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>539</sup>

As of September 2021, both in Friuli Venezia Giulia and in Apulia region, ASGI reported on various cases of minors who were asked to prove being underage with legalised birth certificates. This practice was not reported for what concerned 2022.

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, together 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.

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 Ombudsperson 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-dactyloscopy surveys at the offices of the Scientific Police.<sup>540</sup>

In their final report of the programme jointly implemented, UNHCR and the Children's Ombudsperson 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>541</sup>

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<sup>536</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. Created after the approval of L. 47/2017 aiming at monitoring its full implementation regarding the effective defence of minors.

<sup>537</sup> See Ansa, Migranti: 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>538</sup> See for example, the letter sent by the Juvenile Court of Milan to all the municipalities of Milan district, to Questure of Lombardy, to the border police of Lombardy, and to Prefectures of Lombardy, available at: [bit.ly/3J9Vjzg](https://bit.ly/3J9Vjzg).

<sup>539</sup> Guarantor for the rights of detained persons, report of 18 December 2020, available in Italian at: <https://bit.ly/3tCXNwr>.

<sup>540</sup> Children's Ombudsperson 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>541</sup> UNHCR and the Children's Ombudsperson, report, May 2019.

## 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>542</sup> Before this law, in the absence of a specific provision, children were often prevented from challenging the outcome of age assessments.

The ECtHR communicated a case against Italy on 14 February 2017 concerning alleged violations of Articles 3 and 8 ECHR, stemming from the absence of procedural guarantees in the age assessment procedure.<sup>543</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.

On 20 January 2020, the Criminal Court of Rome acquitted a man whose declaration of being a minor had been contradicted by the health check made by the Roman military hospital Celio which, on the other hand, declared him adult.

The Court acquitted the accused, deeming he had not committed the crime because the age assessment carried out using wrist radiography within the commonly used method Greulich and Pyle could not be considered reliable.<sup>544</sup>

## 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>545</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>546</sup>

<sup>542</sup> Article 19-bis(10) Reception Decree.

<sup>543</sup> ECtHR, *Darboe and Camara v. Italy*, Application No 5797/17, Communicated 14 February 2017.

<sup>544</sup> Criminal Court of Rome, Decision published on 20 January 2020, available at: [bit.ly/3Tphnun](https://bit.ly/3Tphnun).

<sup>545</sup> Article 13(2) Procedure Decree.

<sup>546</sup> Article 18(2-bis) Reception Decree.

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>547</sup>

## 2.2. Prioritisation and exemption from special procedures

Vulnerable persons are admitted to the prioritised procedure.<sup>548</sup> The Territorial Commission must schedule the applicant's interview "in the first available seat" when that applicant is deemed as vulnerable.<sup>549</sup> In practice, when the police have elements to believe that they are dealing with vulnerable cases, they inform the Territorial Commissions which fix the personal interview as soon as possible, prioritising their case over the other asylum seekers under the regular procedure. Moreover, this procedure is applied also in case the Territorial Commissions receive medico-legal reports from specialised NGOs, reception centres and Health centres.

Children can directly make an asylum application through their parents.<sup>550</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>551</sup>

## 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>552</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>553</sup> The applicant can also ask for the postponement of the personal interview providing the Territorial Commission with pertinent medical documentation.<sup>554</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>555</sup> When no medical examination is provided by the Territorial Commission, the

<sup>547</sup> Article 32(3-bis) Procedure Decree.

<sup>548</sup> Article 28(2) (b) Procedure Decree.

<sup>549</sup> Article 7(2) PD 21/2015.

<sup>550</sup> Article 6(2) Procedure Decree.

<sup>551</sup> Article 28 bis (6) Procedure Decree, as amended by Decree Law 130/2020 and L 173/2020.

<sup>552</sup> Article 3 Qualification Decree.

<sup>553</sup> Article 12(2) Procedure Decree.

<sup>554</sup> Article 5(4) PD 21/2015.

<sup>555</sup> Article 27(1-bis) Qualification Decree.

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>556</sup>

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

Medical reports are provided to asylum seekers free of charge. NGOs may guarantee 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>557</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>558</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>559</sup>

The individuals working with children shall possess specific skills 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>560</sup>

The Reception Decree provides that the unaccompanied child can make an asylum application in person or through their legal guardian on the basis of the evaluation of the situation of the child concerned.<sup>561</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>562</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>556</sup> Article 8(3-bis) Procedure Decree.

<sup>557</sup> Article 343 et seq. Civil Code.

<sup>558</sup> Article 18(2-bis) Reception Decree, inserted by L 47/2017.

<sup>559</sup> Article 18(2-ter) Reception Decree, inserted by L 47/2017.

<sup>560</sup> Article 18(5) Reception Decree.

<sup>561</sup> Article 6(3) Procedure Decree.

<sup>562</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>563</sup> As clarified by the CNDA, however, the guardian remains responsible for representing the child in the next steps of the procedure.<sup>564</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>565</sup> For this reason, the guardian escorts the child to the police - where they are fingerprinted in case of being over 14 years of age - 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>566</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, their degree of maturity and development, and in line with their best interest.<sup>567</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>568</sup>

The Regional Children's Ombudsperson is responsible for selecting and training guardians. The National Children's Ombudsperson has established specific guidelines on the basis of which calls for selection of guardians have already been issued in each region.<sup>569</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 Ombudsperson (Italian Independent Authority for children and adolescents - Agia).<sup>570</sup> The Regional Children's Ombudsperson and the one of the autonomous provinces of Trento and Bolzano have to cooperate regularly with the Children's Ombudsperson, 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 Ombudsperson published five reports, dated November 2020 on the voluntary guardianship system for unaccompanied minors in Italy.<sup>571</sup>

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<sup>563</sup> Article 26(5) Procedure Decree, as amended by L 47/2017.

<sup>564</sup> CNDA Circular No 6425 of 21 August 2017, available in Italian at: <http://bit.ly/2Fn38Um>.

<sup>565</sup> Article 19(1) Procedure Decree.

<sup>566</sup> Article 13(3) Procedure Decree.

<sup>567</sup> *Ibid.*

<sup>568</sup> Article 11 L 47/2017.

<sup>569</sup> Children's Ombudsperson, *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>570</sup> Article 11 L. 47/2017 as amended by Article 2 (3) LD 220/2017.

<sup>571</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 regions: Friuli Venezia Giulia, Liguria, Tuscany, Abruzzo and Sicily. The last is a quantitative survey updated



As emerged from the fifth 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.

Critical issues regarding the guardians were reported in the survey published in December 2020 by Defence for Children, Cespi and the Observatory on unaccompanied foreign minors, which focused on a monitoring exercise carried out in the cities of Genoa, Rome, Bologna Ancona and Palermo.<sup>572</sup>

In general, the figure of the guardian appeared worryingly absent in the identification procedures of the minor, and significant gaps emerged between the number of volunteer guardians and the number of minors present. Moreover, critical issues regarded the difficulties for guardians to participate in specific trainings, as well as the timeliness of the appointment with respect upon arrival of the minor on the national territory.

Up to the time of writing, the Children's Ombudsperson published 4 general monitoring reports on voluntary guardianship.<sup>573</sup>

In November 2022, within the voluntary guardianship system monitoring project, the Children's Ombudsperson published the fourth general survey,<sup>574</sup> reporting that, as of 31 December 2021, there were 3,457 voluntary guardians appointed by the Juvenile Court, slightly decreasing compared to the 3,469 present at the end of 2020. In March 2023, the Children's Ombudsperson stressed the importance of training new volunteer guardians since the number of UAMNs at the end of 2021 was 12,284.<sup>575</sup>

As emerges from the report, by the end of 2021, Italian guardians were mainly female (67%), with a university degree (65.18%) and aged between 46 and 60 (41.70%). In 2021, guardians under the age of 36 increased, in particular those between 18 and 24 who went from zero to 11.55%. During the year 2021, after the reduction in number linked to the 2020 pandemic, 13 courses were held by the regional guarantors and the autonomous provinces.

A total of 5,737 tutor-foreign minor pairings were accepted in 2021. The most frequent reasons due to which the volunteer guardians did not accept the matching proposals were work problems (73.31% of the guardians are employed), personal and/or health reasons, lack of personal resources, distance from the domicile of the minor.<sup>576</sup>

Additionally, as highlighted in the mentioned regional report published by Defence for Children and Cespi,<sup>577</sup> the concentration of minors in some regions (such as Sicily) more than in others has a concrete impact on the possibility of finding enough guardians.

Similar to the conclusions reached by the Children's Ombudsperson, the survey conducted by these organisations highlighted how often the guardians refused the guardianship if the minors were accommodated in places far from their domicile, or in cases in which they did not feel supported by social services.<sup>578</sup>

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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://bit.ly/3a4nmCq>.

<sup>572</sup> Defence for Children, Cesp, Observatory on unaccompanied foreign minors, available at: [bit.ly/3lqFQD5](https://bit.ly/3lqFQD5).

<sup>573</sup> All reports are available at the Children's Ombudsperson (AIGIA) page, available at: [bit.ly/3ZXZfds](https://bit.ly/3ZXZfds).

<sup>574</sup> Fourth monitoring report on the voluntary guardianship, November 2022, available at: [bit.ly/3ZXZkxM](https://bit.ly/3ZXZkxM), with a synthesis "Tutela volontaria. IV rapporto monitoraggio: aumentano Msna e calano leggermente tutori, available at: [bit.ly/3JsRKUZ](https://bit.ly/3JsRKUZ).

<sup>575</sup> Children's Ombudswoman assessment, "Migranti minorenni, l'Autorità Garante: prepariamoci ad accoglierli con più tutori volontari, 14 March 2023, available at: [bit.ly/3JQgE2e](https://bit.ly/3JQgE2e).

<sup>576</sup> See Tutela volontaria. IV rapporto monitoraggio: aumentano Msna e calano leggermente tutori, 30 November 2022, available at: [bit.ly/3JsRKUZ](https://bit.ly/3JsRKUZ).

<sup>577</sup> Defence for Children and Cespi Report for 2021, Minorenni stranieri non accompagnati, Legge 47/2017, rapid survey on Apulia, Marche, Liguria, Sicily, published on June 2022, available in Italian at: [bit.ly/3li1SI0](https://bit.ly/3li1SI0).

<sup>578</sup> Defence for Children and Cespi Report for 2021, Minorenni stranieri non accompagnati, Legge 47/2017, published on June 2022, available in Italian at: [bit.ly/3li1SI0](https://bit.ly/3li1SI0).



However, possibly the new regulatory provision regarding the recognition of expense reimbursements to guardians for the assignment performed could change the situation: on 19 September 2022 it entered into force the Decree of the Ministry of Interior and the Ministry of Economy and Finance of 8 August 2022 concerning the discipline of reimbursements and interventions in favour of the voluntary guardians of unaccompanied minors.<sup>579</sup>

The decree provides for the reimbursement to private employers of voluntary tutors up to 60 hours per year.<sup>580</sup> Furthermore, it provides for the total reimbursement of transport costs in case of use of public transport and a reimbursement per kilometre in case of use of private vehicles.<sup>581</sup> Also, the decree provides that, upon termination of the role, the guardian can apply to the juvenile court for the assignment of a fair indemnity when the activities carried out in the course of guardianship were particularly complex and onerous, subject to the presentation of a specific report. In such cases, the court may award an indemnity of up to 900 euros. This indemnity is excluded if the assignment was carried out in the three months prior to coming of age. Any refusal can be complained of before the juvenile court.<sup>582</sup>

## E. Subsequent applications

### Indicators: Subsequent Applications

- |  |   |  |
|--|---|--|
| 1. Does the law provide for a specific procedure for subsequent applications?                      | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| 2. Is a removal order suspended during the examination of a first subsequent application?          |   |  |
| ❖ At first instance  | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ❖ At the appeal stage  | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No |
| 3. Is a removal order suspended during the examination of a second, third, subsequent application? |   |  |
| ❖ At first instance  | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No |
| ❖ At the appeal stage  | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> 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>583</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>584</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>585</sup>
- The previous application was rejected because the applicant was privately accommodated and became unreachable (*irreperibile*) without providing, within 10 days after having become aware of the appointment for the personal interview, the justified reasons for not having known about it.<sup>586</sup>

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

However, pursuant to the 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>587</sup>

<sup>579</sup> Decree of 8 August 2022 on the reimbursements in favour of the voluntary guardians of unaccompanied minors, available at [bit.ly/3JKExXZ](https://bit.ly/3JKExXZ).

<sup>580</sup> Decree of 8 August 2022, Article 2.

<sup>581</sup> Ibid. Article 3.

<sup>582</sup> Ibid. Article 4.

<sup>583</sup> Article 2(1)(b-bis) Procedure Decree, introduced by Article 9 Decree Law 113/2018 and L 132/2018.

<sup>584</sup> Article 23 Procedure Decree.

<sup>585</sup> Article 23-bis(2) Procedure Decree.

<sup>586</sup> Article 12 (5) Procedure Decree.

<sup>587</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

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>588</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>589</sup> Where no new elements are identified, the application is dismissed as inadmissible (see [Admissibility Procedure](#)).

The procedure differentiates depending on the case:

- In cases of applicants already recognised as refugees in other Countries the law provides that the President of the Territorial Commission sets the hearing of the applicant.<sup>590</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>591</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 Questura 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>592</sup>

As stated by decree Law 130/2020, in this case, if the application is declared inadmissible, the applicant can be detained.<sup>593</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>594</sup>

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<sup>588</sup> Article 28-bis(1-bis) Procedure Decree.

<sup>589</sup> Article 29(1)(b) Procedure Decree.

<sup>590</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>591</sup> Article 23 bis (2) Procedure Decree.

<sup>592</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>593</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>594</sup> Article 23(1) Reception Decree.

## 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:

- a. Made a first subsequent application for the sole purpose of delaying or preventing the execution of an imminent removal decision;<sup>595</sup>
- b. Wishes to make a further subsequent application following a final decision declaring the first subsequent application inadmissible, unfounded or manifestly unfounded.<sup>596</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 and later by DL 20/2023, amended by the conversion Law no. 50/2023, provides, however, that suspensive effect is not granted for appeals against a decision rejecting or declaring inadmissible another subsequent application following a final decision rejecting or declaring inadmissible a first 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>597</sup> However, the appellant can request a suspension of the decision of inadmissibility, based on serious and well-founded reasons, to the competent court.

The assessment on the admissibility of the reiterated application for international protection must also include a careful analysis on the prerequisites for the recognition of special protection as introduced by Decree Law 130/2020. On this point, the Court of Cassation has ruled that "in the matter of a reiterated application for international protection, the subject of the proceedings brought before the court is not the administrative measure of inadmissibility, but the establishment of a subjective right, which also includes the prerequisites of the invoked special protection".<sup>598</sup>

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 |
| f) Is there a national list of safe countries of origin?                             | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| g) 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>599</sup>

#### 1.1. Definition and list of safe countries of origin

<sup>595</sup> Article 7(2)(d) Procedure Decree.

<sup>596</sup> Article 7(2)(e) Procedure Decree, as amended by Article 9 Decree Law 113/2018 and L 132/2018.

<sup>597</sup> Article 35-bis(5) Procedure Decree, as amended by L. 50/2023.

<sup>598</sup> Court of Cassation, decision n. 37275 of 20 December 2022; see also Court of Cassation, decision n. 6374, 25 February 2022.

<sup>599</sup> Article 2-bis Procedure Decree, inserted by Article 7 Decree Law 113/2018 and L 132/2018.

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>600</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>601</sup>

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

The assessment shall be based on information provided by the CNDA, as well as on other sources of information, including in particular those provided by other Member States of the European Union, EUAA, UNHCR, the Council of Europe and other competent international organisations.<sup>602</sup>

A list of safe countries of origin is adopted by decree of the Ministry of Foreign Affairs, in agreement with the Ministry of Interior and the Ministry of Justice. The list must be periodically updated and notified to the European Commission.<sup>603</sup>

The list, adopted by decree of 4 October 2019 and entered into force on 22 October 2019,<sup>604</sup> includes the following countries: Albania, Algeria, Bosnia and Herzegovina, Cape Verde, Ghana, Kosovo, North Macedonia, Morocco, Montenegro, Senegal, Serbia, Tunisia and Ukraine.

Following the invasion on Ukraine on 24 February 2022, a Decree was adopted on 9 March 2022 and published on 11 March 2022, suspending the application of the decree on safe country of origin to Ukraine until 31 December 2022.<sup>605</sup>

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>606</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>607</sup> categories of persons or parts of the country for which the presumption of safety cannot apply.<sup>608</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>609</sup>

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<sup>600</sup> Article 2-bis(2) Procedure Decree.

<sup>601</sup> Article 2-bis(3) Procedure Decree.

<sup>602</sup> Article 2-bis(4) Procedure Decree.

<sup>603</sup> Article 2-bis(1) Procedure Decree.

<sup>604</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>605</sup> Available at: <https://bit.ly/3v2cexZ>.

<sup>606</sup> Article 2 bis (2) Procedure Decree.

<sup>607</sup> This is the case of Algeria, Ghana, Morocco, Senegal, Ukraine and Tunisia.

<sup>608</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>609</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>.

In any case, as highlighted by ASGI,<sup>610</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.

ASGI's challenge of the decree at the TAR did not obtain positive results, and the negative decision has been recently upheld by the Council of State in its decision n. 118 of 2022.<sup>611</sup>

More specifically, the Council of State did not consider ASGI could introduce such a case representing the interest of the asylum seekers coming from the countries included in the Safe countries list. The Council of State reasoned that ASGI can act in representation of the interest of all third country nationals. In a such a case, however, the interest of persons coming from countries not included in the list may contrast with the interest of asylum seekers coming from "safe" countries. For this reason, ASGI could only represent one of the two groups. The Council of State also stated that the Decree is in conformity with EU law.

The new decree adopted by the Ministry of Foreign Affairs on 17 March 2023 and entered into force on 25 March 2023<sup>612</sup> repealed the previous decree of 2019, excluding Ukraine from the list of safe countries of origin, but expanding it to four new countries (Ivory Coast, Gambia, Georgia and Nigeria). The following nations are thus currently considered safe countries: Albania, Algeria, Bosnia and Herzegovina, Cape Verde, Ivory Coast, Gambia, Georgia, Ghana, Kosovo, North Macedonia, Morocco, Montenegro, Nigeria, Senegal, Serbia and Tunisia.

Article 4 of the Ministerial Decree stipulates that the notion of safe country and the consequent possibility of applying the accelerated procedure in the case of asylum seekers from Ivory Coast, Gambia, Georgia and Nigeria, does not apply to asylum applications submitted before 25 March 2023.

Although the decree mentions the note No. 181962 of the Ministry of Foreign Affairs and International Cooperation, which forwarded the fact sheets containing the determinations for the following countries, to date there has been no publication of the aforementioned fact sheets, thus precluding any verification of the legitimacy and reliability of the sources of information on the countries of origin that founded the decision to extend the list.

## 1.2. Procedural consequences

An applicant can be considered coming from a safe country of origin only if they are citizens of that country or a stateless person who previously habitually resided in that country and they have not invoked serious grounds to believe that the country is not safe due to their particular situation.<sup>613</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>614</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>615</sup>

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<sup>610</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/3edVet>.

<sup>611</sup> Council of State, Decision n. 118 of 2022, available at: <https://bit.ly/3MLTeui>.

<sup>612</sup> Ministry of Foreign Affairs Decree, 17 March 2023, Regular updating of the list of safe countries of origin for international protection applicants, according to Article 2-bis of the Procedure Decree published on 25 March 2023 n. 72.

<sup>613</sup> Article 2-bis(5) Procedure Decree.

<sup>614</sup> Article 10(1) Procedure Decree, as amended by Article 7 Decree Law 113/2018 and L 132/2018.

<sup>615</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>616</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 their particular situation.<sup>617</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.

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>618</sup>

In practice, according to ASGI's experience, Territorial Commissions did not reject as manifestly unfounded all asylum applications in case of safe country of origin in 2021 nor in 2022.

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>619</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>620</sup>

As a general rule, the concept of safe country of origin is applicable only to asylum application introduced after the publication of the Safe Country of Origin list. The concept has been confirmed by the Court of Cassation in Judgement no. 25311/2020.

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 generalised 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>621</sup>

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<sup>616</sup> Article 28-ter(1)(b) Procedure Decree, inserted Article 7 Decree Law 113/2018 and L 132/2018.

<sup>617</sup> Article 9(2-bis) Procedure Decree, inserted by Article 7 Decree Law 113/2018 and L 132/2018.

<sup>618</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>619</sup> Civil Court of Florence, interim decision of 22 January 2020, cited above; see also: <https://bit.ly/3bWqjA4>.

<sup>620</sup> Article 35 -bis (3) Procedure Decree.

<sup>621</sup> Court of Cassation, judgment 19252/2020, mentioned in Court of Cassation decision ceiling of 2020, available at: <https://bit.ly/3eDGDdS>.



On 18 November 2022, the Civil Court of Naples<sup>622</sup> suspended the effects of a denial decision from 2021 notified more than one year later to an Ukrainian asylum seeker, noting that the situation in Ukraine had notoriously changed and therefore the applicant could not be expelled pending the Court decision on the merit.

By Decree of 7 October 2022, the Civil Court of Rome suspended the effects of the denial notified to an asylum seeker from Tunisia whose asylum request was considered manifestly not founded due to the country of origin of the applicant, stating that Tunisia cannot be considered a safe country of origin for those who complain of fear of persecution due to sexual orientation.<sup>623</sup>

The Court of Naples by decree of 12 September 2022 reached the same conclusions regarding an applicant from Senegal, who declared being homosexual.<sup>624</sup>

Moreover, with reference to the situation in Tunisia, the Court of Catania, with a decree of 12 July 2022, reiterated that although Article 2-bis of the Procedure decree introduces a burden of proof for the applicant coming from a safe country of origin to explain the subjective or objective reasons for which the country cannot be considered safe, the judge has the powers-duties of acquisition updated information on the situation of the country (Articles 3 of Legislative Decree No. 251 of 2007 and 8 of Legislative Decree No. 25 of 2008), and, in the light of the most pertinent and updated sources of information on the socio-political situation of the country, considered that there were serious reasons to suspend the effects of the negative provision.<sup>625</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 where the applicant has already been recognised as a refugee or subsidiary protection status holder<sup>626</sup> by a state party to the 1951 Refugee Convention and can still enjoy such projection.<sup>627</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>628</sup> when a person makes an asylum application, the Questura shall inform the applicant about the asylum procedure and their rights and obligations, and of time limits and any means (i.e. relevant documentation) at their disposal to support the application. In this regard, police authorities should hand over an information leaflet. The amended Procedure Decree adds that the Questura informs the applicant that if they come from a [Safe Country of Origin](#), their application may be rejected.<sup>629</sup>

<sup>622</sup> Civil Court of Naples, decree of 18 November 2022, available at: [bit.ly/3JE1eNa](https://bit.ly/3JE1eNa).

<sup>623</sup> Civil Court of Rome, Decree of 7 October 2022, available at: [bit.ly/40agRTM](https://bit.ly/40agRTM).

<sup>624</sup> Civil Court of Naples, Decision of 12 September 2022, available at: [bit.ly/42wPODD](https://bit.ly/42wPODD).

<sup>625</sup> Civil Court of Catania, decision of 7 July 2022, available at: [bit.ly/3yWJoAe](https://bit.ly/3yWJoAe).

<sup>626</sup> Art.29 of Procedure Decree as amended by Law 238/2021 in order to fulfilment of the obligations deriving from Italy's membership to the European Union, extended to subsidiary protection holders the inadmissibility.

<sup>627</sup> Article 29(1)(a) Procedure Decree.

<sup>628</sup> Article 10(1) Procedure Decree.

<sup>629</sup> *Ibid*, as amended by Article 7 Decree Law 113/2018 and L 132/2018.

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>630</sup>

Regarding information on accommodation rights, the Reception Decree provides that Questure shall provide information related to reception conditions for asylum seekers and hand over information leaflets accordingly.<sup>631</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 Questure 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 centres within a maximum of 15 days from the making of the asylum application.<sup>632</sup>

PD 21/2015 provides that unaccompanied children shall receive information on the specific procedural guarantees specifically provided for them by law.<sup>633</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](#). In 2020, the Civil Court of Rome cancelled Dublin transfer measures not preceded by adequate information. However, during 2022 the same Court, such as other courts, 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>634</sup>

On 20 April 2023, the Advocate General delivered her opinion according to which, in summary, infringements of Article 4 of the Dublin III Regulation can lead to the cancellation of the transfer decision with assumption of responsibility by the defaulting state where the applicant is present, only if it is demonstrated how that violation has concretely affected the rights of the asylum seeker and only in case those rights cannot find protection thanks to the appeal.<sup>635</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>636</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,

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<sup>630</sup> Article 28 (1) Procedure Decree as amended by DL 130/2020.

<sup>631</sup> Article 3 Reception Decree.

<sup>632</sup> Article 3 (3) Reception Decree.

<sup>633</sup> Article 3(3) PD 21/2015.

<sup>634</sup> Court of Cassation, decision no. 8668 of 23 February - 29 March 2021.

<sup>635</sup> Opinion of Advocate General Kokott delivered on 20 April 2023, available at: [bit.ly/42LeWWS](https://bit.ly/42LeWWS).

<sup>636</sup> Article 10-bis(1) Procedure Decree, inserted by the Reception Decree.

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.

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 they know, or, if not possible, in French, English or Spanish.<sup>637</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>638</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>639</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>640</sup>

In 2020 and in the following years, 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 and similarly in 2021, 2022 and early 2023, was able to observe how the “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>641</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.

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<sup>637</sup> Article 10 ter (3) as amended by DL 130/2020.

<sup>638</sup> Article 6(4) Reception Decree.

<sup>639</sup> Article 7 (4) Reception Decree.

<sup>640</sup> Article 10 (4) Procedure Decree, to which Article 7 (4) reception decree expressly refers to.

<sup>641</sup> Civil Court of Trieste, decision of 15 September 2020.

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>642</sup>

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 2021, 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>643</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

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

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>644</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>645</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

<sup>642</sup> Civil Court of Trieste, decision 3882/2020 of 2 December 2020, procedure no. 3733/2020; see also: Civil Court of Trieste, decision of 23 February 2023, procedure no. 721/2023.

<sup>643</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>644</sup> Article 10(3) Procedure Decree.

<sup>645</sup> SOPS, paragraph B.2.

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, EUAA 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 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>646</sup>

This considered, 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 to 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>647</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 and, with the decision n. 2473 of 24 August 2021, the Administrative Court of Palermo definitively accepted ASGI's appeal against the Prefecture of Agrigento's refusal to grant access to the Lampedusa hotspot. The Court specified that Article 7 LD 142/2015 aims at allowing access to facilities where the asylum seeker can be detained, including the centres referred to in Article 10 ter of the TUI, i.e. the hotspot and that "limit the right of access only to international organizations, or to those with which the Ministry has entered into specific agreements, would integrate an unjustified circumvention of the principle of transparency of the administrative action carried out within the places of detention of migrants".<sup>648</sup>

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>649</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: N/A
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.

<sup>646</sup> Article 7 (3) Reception Decree.

<sup>647</sup> Administrative Court of Sicily, interim decision no. 943 of 24 September 2020.

<sup>648</sup> See ASGI: "Hotspot di Lampedusa: dal Tar Sicilia ulteriore conferma del principio di accessibilità della società civile ai luoghi di trattenimento", 6 September 2021, available in Italian at: <https://bit.ly/3lc5L6P>.

<sup>649</sup> Article 10-bis(2) Procedure Decree.

Statistics on decisions in asylum applications in 2022 show high recognition rates for certain nationalities, in particular around 95% for Afghans, 95% for Somalis, 88% for Venezuelans, 87% for Eritreans, 86% for Malians, 85% for Iraqis, 83% for Syrians, 71% for Salvadorians.<sup>650</sup>

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 the CNDA directive allows Territorial Commissions to issue rejections for manifestly unfounded applications.

The same considerations are valid about the Ministry of Abroad Decree of 17 March 2023 which included, among the safe countries of origin, Nigeria, Ivory Coast, the Gambia and Ghana.

Tunisia is among the top ten main countries of origin of applicants for international protection in 2022 (over 5,500 applicants, representing 7% of applications lodged) and is one of the countries with the highest rejection rate (76% of the 2,095 applications lodged by Tunisians examined in 2022 were rejected). Many concerns have been recently raised regarding the future treatment of Nigerian applicants, the fifth nationality of asylum application in 2022; despite the positive recognition rate of around 60% for Nigerian citizens, the country has been included in the safe countries of origins' list, which will lead to applications to be treated in the accelerated procedure. Due to the reduced procedural guarantees it entails, this change will most likely also affect recognition rates.

In practice, as already highlighted in the section regarding [Registration](#), some nationalities face more difficulties in accessing the asylum procedure, both at hotspots, at Questure and, in the context of the COVID-19 pandemic, aboard quarantine vessels. ASGI has reported in 2021 as in previous years, that people from Tunisia were notified expulsion orders despite having expressly requested international protection with the practice of the “double information paper”.<sup>651</sup> Serious criticalities in access to the procedure, due to lack of information provision and legal assistance as well as *de facto* detention, were reported by ASGI with specific regard to Tunisians arriving in the island of Pantelleria, where landed migrants are channelled in hotspot-like procedures (see in [Detention](#)).<sup>652</sup>

On 30 March 2023, the ECHR condemned Italy for the violation of Article 4 Protocol 4 for the removal to Tunisia of 4 Tunisian nationals who were removed to Tunisia after being placed in *de facto* detention in the Lampedusa hotspot without proper regard to their individual situation.<sup>653</sup>

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<sup>650</sup> Ministry of Interior, *I numeri dell'asilo*, available in Italian at: <https://bit.ly/3kvl29h>.

<sup>651</sup> ASGI reports that with the practice of the “double information paper” implemented in Lampedusa's hotspot, police authorities have foreign nationals – and especially those coming from Tunisia – sign a second information paper in which they formally “renounce” international protection declaring that there are no impediments to their repatriation, even if they had previously expressed their will to request international protection. Rights on the skids. The experiment of quarantine ships and main points of criticism, ASGI, March 2021, available at: <https://bit.ly/3tWEK25>.

<sup>652</sup> ASGI, *La frontiera di Pantelleria: una sospensione del diritto*. Report del sopralluogo giuridico di ASGI, June 2021, available in Italian at: <https://bit.ly/3tcSwyD>.

<sup>653</sup> J. and others v. Italy, Application no. 21329/18, 30 March 2023, available at HUDOC: [bit.ly/42TBqVD](https://bit.ly/42TBqVD).



### Short overview of the Italian reception system

The Italian reception system for asylum seekers and beneficiaries of national/international protection is governed by Legislative Decree 142/2015 (from now on “Reception Decree”), which transposed into national law the recast Reception Directive. Since 2015, the regulatory text has undergone several reforms. However, the model outlined by the law, conceiving the reception system as a single system, articulated in phases but centred on the S.A.I. (Reception and Integration System, former SPRAR, then SIPROIMI) has significantly failed in reaching its full realisation, because of structural problems, such as the merely voluntary participation of the municipalities in the SAI network, that were never properly addressed.<sup>654</sup>

The drastic changes brought to the design of the reception system by Decree Law 113/2018, implemented by Law 132/2018, (also known as “Salvini Decree” or “Security Decree”) still have an impact on the present situation, although two years later the Decree Law 130/2020 (also known as “Lamorgese Decree”), converted into Law 173/2020, partially restored the model that had been originally outlined by the Legislative Decree no. 142 of 2015), reintroducing a single reception system for both asylum seekers and beneficiaries of national/international protection.

After the 2020 reform, LD 142/2015 articulates the reception system distinguishing between:<sup>655</sup>

1. First aid and identification activities, which take place in centres set up close to the main disembarkation points<sup>656</sup> (First Aid and Reception Centres - Centri di Primo Soccorso e Assistenza, CPSA),<sup>657</sup> created in 2006 for the purposes of first aid and identification and now formally operating as Hotspots.<sup>658</sup>
2. First assistance to be implemented in existing collective centres or in centres to be established by specific Ministerial Decrees.<sup>659</sup> This includes the centres previously known as Governmental Reception Centres for Asylum Seekers (Centri di Accoglienza per Richiedenti Asilo, CARA) and Reception Centres (Centri di Accoglienza, CDA). The law states that first assistance can also take place in Temporary Reception Centres (Centri di Accoglienza Straordinari, CAS).<sup>660</sup>
3. Reception to be carried out in the SAI system (Reception and Integration System, Sistema di Accoglienza e Integrazione, formerly known as SPRAR, then SIPROIMI), operated in small centres, not far from the city centre or in any case well connected to it.

Decree Law 130/2020 significantly changed – at least on paper – two fundamental aspects of the reception system for asylum seekers:

<sup>654</sup> For a detailed analysis on the 2015 reception model, see AIDA 2016 and the following updates (For a better understanding of its strengths and weaknesses, see the following. Morandi and Schiavone, *Analisi delle norme in materia di accoglienza dei richiedenti protezione internazionale e di procedura per il riconoscimento della protezione internazionale alla luce dell'entrata in vigore del d.lgs. n. 142/2015*, in *Diritto, immigrazione e cittadinanza* XVII, 3-4.2015. Penasa, *L'accoglienza dei richiedenti asilo: sistema unico o mondi paralleli?*, in *Diritto, Immigrazione e Cittadinanza*, 1/2017, available at: <https://bit.ly/3yyBcpC>. Campomori, *Il sistema di accoglienza dei richiedenti asilo in Italia*, Osservatorio Internazionale per la Coesione e Inclusione Sociale, Policy memo, September 2016. Marchetti, *Le sfide dell'accoglienza. Passato e presente dei sistemi istituzionali di accoglienza per richiedenti asilo e rifugiati in Italia*, in *Meridiana*, n. 86, 2016. *Il diritto di asilo tra accoglienza e esclusione* (various authors), 2015.

<sup>655</sup> For a description of the current model, see the following. Conti, *La protezione umanitaria e il nuovo Sistema di accoglienza e integrazione nel d.l. N. 130/2020*, in *Federalismi.it*, n. 35/2020, ISSN 1826-3534. Giovannetti, *Giro di boa. La riforma del sistema di accoglienza e integrazione per richiedenti e titolari di protezione internazionale*, in *Diritto, Immigrazione e Cittadinanza*, n. 1/2021, ISSN 1972-4799.

<sup>656</sup> Article 8(2) Reception Decree, as amended by DL 130/2020, which now directly recalls Article 10-ter TUI.  
<sup>657</sup> L. 563/1995.

<sup>658</sup> Article 10-ter TUI, inserted by Article 17 Decree Law 13/2017 and L. 46/2017.

<sup>659</sup> Article 8 (2) Reception Decree, as amended by DL 130/2020, and Article 9 Reception Decree.

<sup>660</sup> Article 8 (2) as amended by DL 130/2020.

- ❖ The possibility for asylum seekers to have access to the reception system (SAI);
- ❖ The kind and level of services provided in governmental centres, in CAS and in SAI reception facilities.

In case of unavailability of places due to a large number of close-set arrivals of asylum seekers, first reception may be implemented in “temporary structures” (*strutture temporanee*), also known as Extraordinary Reception Centres (*Centri di accoglienza straordinaria, hereafter CAS*), established by Prefectures.<sup>661</sup> When reception is provided in a CAS, it should be limited to the time strictly necessary for the transfers of the applicant in SAI reception centres.<sup>662</sup>

From the entry into force of LD 142/2015, the possibility for asylum seekers to access the so-called second reception facilities has often not turned into reality. Extraordinary centres (CAS, whose activation was - and is - ordered by the local Prefectures, in case of lack of places in the ordinary system, represented - and still represent - over 66% of all facilities where asylum seekers were - and are - accommodated in Italy<sup>663</sup>. Therefore, only a limited number of asylum seekers were able to access the second level reception system (SAI), whose projects have been chronically insufficient to cover the reception needs.

In May 2023, Law 50/2023, which converted Decree Law 20/2023, came into force. Among the many changes contained in the measure, all marked by a strongly restrictive and penalising approach towards asylum seekers, one of the most significant concerns is that, once again, asylum seekers have been excluded from the possibility to access the SAI system, so that the reception system will return to a situation in which applicants will only have access to collective government centres and temporary facilities, while the SAI will become a sub-system reserved exclusively to protection holders. This is the same approach envisaged by the so-called Salvini Decree from 2018 (DL 113/2018). The only novelty compared to said Decree is the provision establishing that access to the SAI will only be granted to asylum seekers identified as vulnerable and to those who have legally entered Italy through complementary pathways (government-led resettlements or private sponsored humanitarian admission programs).

### **Access to the reception system**

Access to the Reception System is reserved to applicants for international protection and third-country nationals holding international or national complementary protection permits. According to the law, admission to reception should take place immediately after the expression of the intention to seek asylum,<sup>664</sup> and the access to the SAI system within the short time necessary to verify compliance with the requirements and identify the adequate place, with a priority procedure for vulnerable cases.

However, at least three factors, which permanently characterise the reception system, affect the functioning of the system and the possibility for asylum seekers to access reception centres. As better detailed in the next dedicated paragraph, they could be summarised as follows:

1. Although the provision of reception measures is mandatory, the activation of SAI facilities has a voluntary nature: Municipalities can decide whether to adhere to the SAI network and have discretionarily as to the extension, increase or reduction of the existing places, regardless of the reception needs that emerge on the national territory and in the single territories;
2. The chronic unavailability of places in SAI results in the need for local Prefectures to prepare temporary measures and set up government reception centres (CAS), but the drastically lowered costs provided by the tender specifications schemes for the reception in these facilities de facto favoured the creation of large centres managed by multinationals or for-profit organisations and excluded many of the small non-profit and professional organisations and cooperatives from the accommodation landscape;

<sup>661</sup> Article 11(1) Reception Decree, as amended by Decree Law 130/2020.

<sup>662</sup> Article 11(3) Reception Decree, as amended by Decree Law 130/2020.

<sup>663</sup> Mol, Cruscotto statistico giornaliero, 28 February 2023, available at: <https://bit.ly/3nw6H1m>.

<sup>664</sup> Article 1 (2) Reception Decree.

3. The conception of the reception duties as an emergency to be faced in the short term - and the unconcealed intentions to limit arrivals - have so far prevented serious and reasoned interventions on the implementation of an efficient accommodation system able to face the numbers of arrivals which periodically and systematically increase.

As a direct consequence, the number of places in the reception system is largely insufficient when compared to the existing needs, including those dedicated to vulnerable individuals, therefore access to the reception system for all those entitled to it is a utopia.

Basically, entry into reception develops differently for those who disembark after search and rescue operations - directly moved to hotspot facilities (eventually facing the hotspot procedure, see Hotspots) and all other "spontaneous" sea or land arrivals, who must wait months even to access the asylum procedure (See Access to procedure).

## Reception facilities

As mentioned, the 2018 tender specifications schemes for reception services in governmental centres and CAS<sup>665</sup> had drastically lowered the costs of the first reception phase, eliminated core services and provided for a negligible number of staff, in relation to the number of guests (1 operator for 50 asylum seekers). In light of this, tender specification schemes *de facto* favoured the creation of large collective centres, managed by multinationals or for-profit organisations, while many small non-profit organisations and social cooperatives were excluded and withdrew from the reception system, thereby cancelling the positive effects on local territories, in terms of employment and income.<sup>666</sup>

As highlighted by ActionAid and Openpolis in their last report,<sup>667</sup> between 2018 and 2021, over 3,500 reception facilities have been closed (-29,1%) throughout the country, while available places fell from 169,471 to 97.670 in the same period. The centres that underwent closure were mainly small-medium sized ones, while at the same time, larger CAS facilities have often seen an increase in their capacity.

As in the past, however, the strong limit posed by the rule of the voluntary adhesion of the municipalities to the SAI reception system remains, and it is the root cause of the limited availability of places in these projects. The law, as amended by Decree Law 130/2020, provides that the stay in first reception facilities must be limited to the period strictly required for identification, registration and vulnerability assessment activities to be completed<sup>668</sup>, and that the person must then be transferred into a SAI centre. The fact, however, that access to SAI for asylum seekers is subject to availability of places<sup>669</sup> and that the regulatory provision is extremely vague in defining what is meant by "the time strictly necessary",<sup>670</sup> guarantees a wide discretion to the public administration, to the point that even in 2022 the vast majority of asylum seekers have spent the entire period of the asylum procedure within a government centre or a temporary centre (CAS) and never made it to the SAI system. Although prioritised access to the SAI is to be given to vulnerable applicants,<sup>671</sup> an actual swift transfer into the SAI system is still a rare occurrence.

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<sup>665</sup> As per Ministerial Decree 28 November 2018.

<sup>666</sup> For a detailed analysis of the effects of Decree Law 113/2018 on the reception system, see: Acocella, The evolution of the Italian reception system for asylum seekers into a "non-place" for "non-subjects", in *Mondi migranti*: 1, 2022, DOI: 10.3280/MM2022-001011. Franzè, The '(In)security Decree': Undermining Practices of Reception in the Italian Hosting Mechanism, Refugee Law Initiative, Working Paper No. 66, October 2022. Giovannetti, La frontiera mobile dell'accoglienza per richiedenti asilo e rifugiati in Italia, in *Diritto, Immigrazione e Cittadinanza*, n. 1/2019, ISSN 1972-4799. Vettori, Servizio pubblico di accoglienza e diritti fondamentali dei richiedenti asilo. Profili di illegittimità della riforma introdotta dal D.L. n. 113/2018, in *Diritto, Immigrazione e Cittadinanza*, n. 3/2019, ISSN 1972-4799. See also: Guella, Sistema di accoglienza dei richiedenti asilo e disposizioni in materia di iscrizione anagrafica nel c.d. Decreto Sicurezza, in *Osservatorio Costituzionale*, 1-2/2019, ISSN: 2283-7515.

<sup>667</sup> Actionaid and Openpolis, Centri d'Italia. Report 2022. Il vuoto dell'accoglienza, available at: <https://bit.ly/3KZSaVo>.

<sup>668</sup> Article 11 (3) Reception Decree as amended by DL 130/2020.

<sup>669</sup> Article 8 (3) Reception Decree, as amended by DL 130/2020 and Article 9 (4 bis) regarding the passage from governmental centres to SAI.

<sup>670</sup> Article 11 (3) Reception Decree as amended by DL 130/2020.

<sup>671</sup> Article 9 (4-bis) regarding the passage from governmental centres to SAI and Article 11 (3) Reception Decree regarding the passage from CAS to SAI.

This is because, even after the reform, the SAI system is conceived as primarily intended for beneficiaries of international protection and unaccompanied minors. All the others eligible to access can do it insofar as there are still vacant posts at that specific time.<sup>672</sup>

### **Services provided**

Another important effect of the Decree Law 130/2020 was the reconfiguration of many of the services to be provided to asylum seekers within the reception system. In fact, by restoring the possibility for asylum seekers to access SAI, the Government also provided them the opportunity to benefit from enhanced services. At the same time, Decree Law 130/2020 restored a number of important services that had been previously removed from the government centres and CAS tender specification schemes in 2018: social and psychological assistance, cultural mediation, Italian language courses, legal information service and information on territorial services.<sup>673</sup> This is particularly important, because in the period 2018-2020 asylum seekers, with the exception of the few who remained within the SAI system, had been arbitrarily deprived of services essential in view of their permanence in Italy, thus creating a situation for which they had to remain for years in centres without any real support, not even language courses.

That said, the situation regarding the actual quality of services provided for asylum seekers remains critical:

- If applicants are now admitted into SAI centres, they have access only to so-called "first level" services, that do not include support for integration on the territory, job search, job orientation and professional training. These services, that are completely absent within the governmental and temporary centres (CAS), in SAI are restricted only to beneficiaries of national or international protection.<sup>674</sup>
- The vast majority (>60%) of asylum seekers in Italy still have to remain in CAS for the entire duration of their asylum procedure, due to the chronic shortage of posts within the SAI system<sup>675</sup>, therefore without ever being able to enjoy SAI quality services.
- Finally, while it is true that some essential services have been restored within these CAS, it cannot be overlooked that the provisions of the new specifications for the award of services, while slightly increasing some of the fees for the operators, continue to be marked by the low quality of services provided. This is e.g. demonstrated by the widely inadequate hourly forecast for the work of the operators involved in the services themselves, which are so limited that such services become a provision with no actual content. The specifications seem to underlie the limited interest national authorities have in seeing the above-mentioned services effectively implemented in CAS and governmental facilities.

Moreover, in 2021 and 2022, many asylum seekers accommodated in CAS were withdrawn reception measures, and requested large reimbursements on the basis of presumed sufficient economic resources; additionally, many beneficiaries of international protection were notified of the termination of reception conditions in CAS immediately after receiving the residence permit, without a previous check for available places in SAI being carried out.

Unaccompanied children who, on paper, should have immediate access to SAI, still spend most of their accommodation period in first governmental centres, temporary structures or in residential care facilities (see Reception for unaccompanied minors).

Law 50/2023, which converts Decree Law 20/2023, adopted by the new Government, provides that within governmental centres and CAS, health care, social assistance and linguistic-cultural mediation will no longer be provided. These new regulations will be followed by a new set of tender schemes specifications for these centres.

<sup>672</sup> Article 1 sexies (1) DL 416/1989 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>673</sup> Article 10 (1) Reception decree, as amended by DL 130/2020.

<sup>674</sup> Article 1 sexies (2 bis) DL 416/1989, introduced by DL 130/2020.

<sup>675</sup> See Mol, Cruscotto statistico giornaliero, 31 March 2023, available at: <https://bit.ly/410Z8ht>.

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The 2018 “Security Decree” marked a net change in the reception approach, preferring a system based on big CAS centres, attracting for-profit companies and effectively cutting out small local cooperatives from participating in public calls for the management of centres. The very low numbers of operators benefitting from available funds, compared to the number of guests, led to the loss of many jobs,<sup>676</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 social and labour integration.<sup>677</sup>

Moreover, as mentioned before, tender specification schemes published on 24 February 2021, brought no significant change to the first reception scenario that emerged after the 2018 reform.

Additionally, the distinction made by Decree Law 130/2020 between a range of services addressed to asylum seekers and others reserved exclusively to beneficiaries of protection replicates the erroneous logic of restricting high level services only to protection holders - or at least to migrants having obtained a more stable residence permit-, contrary to a logic of generalised protection, ultimately slowing down considerably the process of regaining self-sufficiency by asylum seekers.

### **Accommodation for people escaping the Ukrainian conflict**

See [Annex on Temporary Protection](#).

### **COVID-19: Quarantine ships**

In the period between April 2020 and the summer of 2022, the Italian Government chartered a number of private vessels, to be used in the quarantine of migrants rescued in the Mediterranean Sea, with the Italian Red Cross’ support.<sup>678</sup> This was done because Italy was temporarily declared to “not be a Place/Port of Safety” because of the pandemic. After the first rescue at sea and disembarkation, migrants were to be moved back on these vessels, where they had to carry out a mandatory quarantine period of 5 to 15 days (depending on the legislation in force at that specific time). When said period was completed, migrants were then disembarked and sent to reception centres around the country.

The use of quarantine ships has been severely criticised by a number of civil society bodies as being unnecessary and of a discriminatory nature, since it was being enforced upon only migrants coming from North Africa<sup>679</sup>. Net of these critical issues, the presence on board of medical personnel, legal informants and psychologists has allowed the creation of a mechanism for the first identification of vulnerabilities and the referrals of vulnerable cases to the Ministry and the Prefectures concerned. This mechanism, though far from perfect,<sup>680</sup> has been an unprecedented element in the Italian first aid and reception system, often characterised by the complete absence of attention and care relating to the special needs of newly disembarked people. These good practices died out when, between spring and summer 2022, the use of quarantine ships was gradually reduced and finally phased out completely.

Finally, two very important points must be made:

- 1) Although the law allowed the use of quarantine vessels only until 30 April 2022, the date on which the obligation of quarantine for anyone (Italian and non-Italian) entering Italy without a Covid-free certification came to an end, the Government continued the use of such ships until the late Summer, without any regulatory framework in place.
- 2) The use of quarantine vessels has not affected people fleeing Ukraine, although they also entered Italy in very large numbers and generally without Covid-19 certifications. This further confirms the arbitrary and discriminatory nature of this provision.

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<sup>676</sup> Avvenire, Decreto Sicurezza. Accoglienza migranti in crisi, 15mila operatori rischiano il lavoro, 6 May 2019, available in Italian at: <https://bit.ly/3edXbWMM>.

<sup>677</sup> Valori, Accoglienza migranti: i quattro fallimenti del decreto Sicurezza, 31 July 2019, available in Italian at: <https://bit.ly/3c0VIBs>.

<sup>678</sup> For more information on the Italian Red Cross’ role on quarantine vessels, see ASGI, Navi quarantena: la richiesta di asilo e il ruolo della Croce Rossa Italiana, 22 April 2022, available in Italian at: <https://bit.ly/402wFXD>.

<sup>679</sup> See ASGI, Per un’accoglienza delle persone migranti sicura e dignitosa. Basta con le navi quarantena, 3 March 2022, available in Italian at: <https://bit.ly/3zXMnZF>.

<sup>680</sup> Visit on Rhapsody, quarantine ship, on 17 September 2020, available at: <https://bit.ly/3hIDCAj>.



(See [AIDA Country Report on Italy – 2021 Update](#) for further information and reference on the topic.)

## Financing, coordination and monitoring

### *Financing*

Research carried out by Openpolis showed that reception funds belong to the “mission no. 27” of expenditure, dedicated to “immigration, reception and guarantee of rights”.<sup>681</sup>

This mission is divided into three programs, each assigned to a different Ministry. The program including funds for reception is the no. 2, attributed to the Ministry of the Interior and entitled “Migratory flows, interventions for the development of social cohesion, guarantee of rights, relations with religious denominations”. The program is allocated 1.9 billion euros, which represents almost two thirds of the entire mission (60.7%). Out of these, around 95% (or 1.8 billion) is used for activities related to asylum seekers, but the items of expenditure are very different and not all are related to reception.

In 2020, 845.83 million were spent for CAS and first reception services, 412.82 million € for Siproimi / SAI and 118.72 million € for unaccompanied minors’ accommodation, overall decreasing values from 2019 when 1,277.69 million € were spent for Cas and first accommodation, € 385.25 million for Siproimi and € 201.54 for unaccompanied minors. Compared to 2018, when the total spending was € 2.77 billion, the amount of expenses was reduced in half. The expenditure, which saw considerable savings on Cas and first reception centres from 2018, did not however result in any increased investment in SAI / Siproimi centres.

The expenditure forecast for 2021 is a total of 1.75 billion, out of which 1,068.59 million for Cas and first accommodation facilities but the actual expenditure is not known at the time of writing.

### *Funding for the reception system expansion due to the Ukrainian and Afghan crisis*

For the activation of 3,000 additional SAI places, initially programmed for asylum seekers from Afghanistan and later also for people fleeing from Ukraine, DL no. 139 of 8 October 2021 established an increase in the funds allocated to the National Fund for Asylum,<sup>682</sup> of 11,335.320 euros for 2021 and of 44,971,650 euros for each year in 2022 and 2023,<sup>683</sup> taken from the MOI resources relating, for the respective years, to the activation, rental and management of detention and reception centres for migrants.

Then, to face the need to accommodate Afghan nationals evacuated after the Taliban’s takeover of the country – and later similar needs for people fleeing from the Ukrainian conflict<sup>684</sup> - and allow for the opening of 2,000 additional SAI places, the budget Law of 30 December 2021 no 234<sup>685</sup> provided for an increase in the endowment of the National Fund for Asylum of 29,981.100 euros for each of the years 2022, 2023 and 2024.<sup>686</sup>

To cover the costs for the creation of 3,000 new S.A.I. places, to be granted to people escaped from Ukraine, the L 28/2022 provides for the use of a portion of the National Fund for asylum,<sup>687</sup> and precisely: 37,702,260 € for the year 2022 and 44,971,650 € for each of the years 2023 and 2024.<sup>688</sup>

To cover the 54,162,000 euros needed for activating new CAS and first governmental reception facilities it is provided to reduce the Fund for economic policy interventions.<sup>689</sup>

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<sup>681</sup> Openpolis, Il ministero dell’interno e il bilancio dell’accoglienza, July 2021, available at: <https://bit.ly/3vP8gYP>.

<sup>682</sup> Article 1-septies of Legislative Decree 416/1989 converted into Law 39/1990.

<sup>683</sup> Article 7 DL 139/2021, as amended by Article 5 quarter DL 14/2022 converted with modification into L 28/2022.

<sup>684</sup> Article 5-quater (6) extended the provision also to people fleeing from Ukraine.

<sup>685</sup> Article 1 (390) L 234/2021 as amended by Article 5 quater (6) DL 14/2022 converted with modification into L 28/2022.

<sup>686</sup> Article 1-septies of Legislative Decree 416/1989 converted into Law 39/1990.

<sup>687</sup> Article 1-septies LD no. 416/1989.

<sup>688</sup> Article 5-quater (3) DL 14/2022 as modified by the conversion L 28/2022.

<sup>689</sup> Article 5-quater (9) DL 14/2022 as modified by the conversion L 28/2022.



Article 44 (3) of DL 50 of 17 May 2022 converted by L. 91 of 15 July 2022, allocated 112,749.000€ for the response to displacement from Ukraine in 2022.

Moreover, the same DL authorised an expenditure of 40 million to be distributed to municipalities whose social services were most affected by the presence of temporary protection holders.<sup>690</sup>

To cover the former expenditure and the one related to the empowerment of the reception measures for people fleeing from Ukraine the LD states to increase the resources of the National Emergency Fund.<sup>691</sup>

Article 31 (4) LD 21 of 21 March 2022 provides that, until 31 December 2022, MOI resources allocated to the activation, rental and management of the reception centres are increased by an additional 7,533,750 euros, also to be allocated to the activation of new first reception centres and CAS facilities.<sup>692</sup>

The law also provides not to apply, for the year 2022, the provision according to which savings achieved in accommodation of migrants have to be allocated to the international cooperation fund and to the repatriation fund,<sup>693</sup> and authorises changes among the funds assigned to the single budget chapters under the MOI program "Migratory flows, interventions for the development of social cohesion, guarantee of rights, relations with religious confessions".<sup>694</sup>

#### *Funding for alternative forms of assistance for Ukrainian asking for temporary protection*

To face the assistance measures within the total limit of 348 million euros for the year 2022, LD 21 of 21 March 2022, at Article 31, provides the possibility to draw additional resources from the National Fund for emergencies,<sup>695</sup> that is consequently increased.

In order to cover these costs, LD 21/2022 provides an increase of 40 million for 2022 and of 80 million for 2023 the fund of the Ministry of Economy and Finance fed with share of tax and contribution revenues and aimed at equalising tax measures.<sup>696</sup>

LD 21/2022 foresees that the expenses, including those for reception of people fleeing from Ukraine, will be covered for 2022 by the higher revenues deriving from the contributions paid by the subjects who exercise, in Italy, for the subsequent sale, the activity of production of electricity, methane gas or extraction of natural gas, and of the subjects who carry out the production activity, distribution and trade of petroleum products.<sup>697</sup>

#### *Management and Coordination*

The Ministry of Interior is responsible for the overall management of the national reception system,<sup>698</sup> while its peripheral administrations, Prefectures or Local Government Bureaus, are in charge of managing reception on a local level, in their own Province.

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<sup>690</sup> Article 44 (4) DL 50 of 17 May 2022 converted by L. 91 of 15 July 2022.

<sup>691</sup> LD 1/2018 Article 44.

<sup>692</sup> Article 31 (4) LD 21/2022.

<sup>693</sup> Article 5-quater (8) dl 14/2022 as modified by the conversion L 28/2022 which states not to apply the second sentence of Article 1(767) L 145/2018.

<sup>694</sup> Article 5-quater (8) dl 14/2022 as modified by L 28/2022 which refers to the budget of the Moi program belonging to the "Mission 27" "Immigration, reception and guarantee of rights", to be adopted pursuant to article 33, paragraph 4, of the law 31 December 2009, n. 196. The Mission 27 expending has been reported by the Senate in the publication Una analisi per missioni, programmi e azioni: la pubblica amministrazione, l'ordine pubblico e l'immigrazione available at: <https://bit.ly/3uYeQwG>. More in general, regarding funds addressed to the reception system, see also Openpolis at: <https://bit.ly/3vP8gYP>.

<sup>695</sup> Article 31 (4) LD 21/2022, which refers to the fund ruled by Article 44 LD 1/ 2018.

<sup>696</sup> Article 38 LD 21/2022 which refers to the fund ruled by Article 1 quarter DL 137/ 2020 converted into L 176/2020.

<sup>697</sup> Article 38 (2) and Article 37 LD 21/2022.

<sup>698</sup> The management and supervision of the entirety of the reception system are entrusted in particular to the Central Directorate of Immigration and Asylum Civil Services.

The law provides for a National Coordination Table to be set up at the Ministry of the Interior (Department for Civil Liberties and Immigration) and for Regional Coordination Tables to be established at every Prefecture of the regional capitals.<sup>699</sup> The National Table is responsible, among others, for defining the guidelines and planning the interventions aimed at optimising the reception system. This includes the criteria for regional allocation of posts to be allocated to reception. The Table develops, on a yearly basis, a National reception plan that identifies national reception needs, based on projections for new arrivals.<sup>700</sup> Guidelines and programming prepared by the Table are then to be implemented at territorial level through the Regional coordination tables, which identify the location criteria for CARA and CAS facilities as well as the distribution criteria within the Region of the places to be allocated to reception purposes, taking into account the places already activated, in the territory of reference, within the SAI system. In the perspective of national coordination and multi-level governance of reception, several institutional acts have also been taken, beginning with the approval of a National Operational Plan by the Unified Conference<sup>701</sup> of 10 July 2014,<sup>702</sup> which represented a first attempt to develop a system of planning, organisation and national management of the reception of migrants and refugees. The fundamental aspect on which the implementation of the Plan was based was the progressive overcoming of the emergency-focused management that had characterised the Italian reception system until then.

In practice, at least as regards the reception of applicants and protection holders, the Italian Government has often distinguished itself not only for a chronic lack of foresight in terms of needs and the consequent necessary planning, but also for the tendency to centralise most choices, reducing to the bone concertation and co-decision with others stakeholders. Proof of this is the fact that, in 2022, not only was the Government reception system once again unprepared for the growing numbers of asylum seekers to be received -with the consequence that new centres had to be opened in a rush, while an incalculable number of people was left homeless without any assistance-<sup>703</sup>, but also most decisions in this sense were taken by the central government, without consultation with other relevant actors.<sup>704</sup> These two levels influence each other: if proper multiannual planning is not carried out, coordinating with local realities, the reception system as a whole cannot be stabilised, let alone enhanced. Conversely, as the Government frequently finds itself in urgent and unforeseen need for thousands of new places, which cannot wait for the lengthy process of consulting and involving local actors.<sup>705</sup> The most recent example of a proposed solution to this problem is the declaration of the state of emergency of 11 April 2023; according to the national Government, such measure was necessary to ensure the proper management of reception needs following disembarkations: the Italian regions were not involved in the decision-making process, so much so that, when it came to signing a formal agreement, all the regions governed by a political majority different from the central Government's one (Valle d'Aosta, Emilia-Romagna, Tuscany, Apulia and Campania) refused to sign it, arguing against the necessity to declare the state of emergency. As a consequence, while the national emergency should be valid at the national level, its rules cannot be applied in those 5 regions. Similarly, the most important representative body of Italian municipalities (ANCI) declared that it would be of paramount importance to involve Municipalities when making decisions that impact on the territories.<sup>706</sup>

<sup>699</sup> The National Coordination Table is established pursuant to Article 29(3) of Legislative Decree 251/2007 (transposition of the recast Qualification Directive). As regards the reception, its duties are regulated by Article 9(1) and 16 of the Reception Decree, by Ministerial Decree 16 October 2014 and by the National Agreement of the Unified Conference of 10 July 2014.

<sup>700</sup> This plan was developed only once, in 2016, and has been largely unapplied. Source: Mol, Piano Accoglienza 2016, available at: <https://bit.ly/3UaCv81>.

<sup>701</sup> The Unified Conference (Conferenza Unificata) is a permanent body where the Central Government, Regions, Provinces and Municipalities are represented. It participates in decision-making processes involving matters for the State and the Regions, in order to foster cooperation between the State activity and the system of autonomies, examining matters and tasks of common interest, also carrying out advisory functions.

<sup>702</sup> The text of the agreement is available at: <https://bit.ly/3Kq3ZDx>.

<sup>703</sup> See Altreconomia, Scarsa programmazione, posti vuoti e persone al freddo: così ai migranti è negata l'accoglienza, 8 February 2023, available at: <https://bit.ly/3ZFHJe5>.

<sup>704</sup> Concerning the poor use of coordinating tables, see ANCI, Biffoni: "Ampliare capienza rete Sai per minori e riattivare tavolo di coordinamento", available at: <https://bit.ly/3Lk9gxc>.

<sup>705</sup> On the topic, see: Campomori and Ambrosini, Multilevel governance in trouble: the implementation of asylum seekers' reception in Italy as a battleground, in *Comparative Migration Studies*, (2020) 8:22, available at: <https://doi.org/10.1186/s40878-020-00178-1>. Campomori, Asylum seekers reception policies in Italy: Weaknesses and contradictions, in *Politiche Sociali*, 2018, available at: <https://doi.org/10.7389/91920>.

<sup>706</sup> ANSA, Sui migranti Regioni divise, 'il Governo ci incontri', 19 aprile 2023, available at: <https://bit.ly/3NyYSCS>.

## Monitoring

The legislation provides that the Ministry of Interior (Department of Civil Liberties and Immigration) is responsible for supervising and monitoring the management of reception facilities, both directly and via local Prefectures. As far as they are concerned, Prefectures may also avail themselves of the services of the social services of the relevant Municipality.<sup>707</sup> Monitoring activities concern the verification of the quality of the services provided, as well as the procedures for the award of reception services. While the Ministry is obliged to present the results of said monitoring activity in the comprehensive report on reception it must submit to Parliament at the latest by 30 June every year, there have been major delays recently, so much so that the 2020 report was only presented in October 2022, while the 2021 report was presented at the end of November 2022.<sup>708</sup>

From the most recent data available, it emerges that in 2021, 1,081 inspection controls were carried out in presence (which involved 950 facilities) and 2,224 (which involved 561 facilities) were carried out remotely. Said 3,305 controls would therefore have concerned 1,511 structures, out of a total of 4,225 structures active in 2021 (less than 36% of the total).<sup>709</sup> Remote monitoring was considered necessary, as was the case for 2020, as a result of distancing and isolation measures derived from the Covid-19 pandemic.<sup>710</sup>

The issue of inspection checks on reception is characterised by a certain lack of transparency. Actionaid submitted, in July 2020, a request for access to the documents concerning the inspections carried out by the Ministry of the Interior, which rejected the request on grounds of confidentiality and protection of managers. Following two appeals, only in June 2022 the Council of State ordered the Ministry of the Interior to make the 2019 data available.<sup>711</sup> Subsequent requests for access to the documents, relating to the years 2020 and 2021, saw a new refusal by the Government, which denied the release of the aggregated detail of the data relating to inspections in the centres, necessary to be able to provide insights and analysis on the subject.

In addition to transparency issues, the subject of inspections presents at least two other important weaknesses, relating to whether the controls are actually performed and to the quality with which they are carried out. Available data shows that some Prefectures carried out an adequate number, at least numerically, of inspection checks in their own structures, while others carried out a significantly smaller number, or none at all. This figure seems to be transversal to the total number of reception facilities in the province concerned, indeed, paradoxically often the greater the number of facilities, the fewer the number of controls. This figure can only be explained on the one hand by a difference in sensitivity to the issue of controls by certain Prefectures, on the other hand with the fact that offices that have to manage multiple facilities are already under pressure with the management work and have neither time nor staff to carry out inspections.<sup>712</sup>

The other key aspect is the quality of the controls themselves. While it is true that the specifications scheme is the common reference at national level for services, it remains an administrative tender document, which establishes only quantitative indications, therefore inadequate as a reference for a minimally thorough inspection. Italian Prefectures have historically lacked a qualitative-quantitative tool

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<sup>707</sup> Article 20(1) Reception Decree.

<sup>708</sup> The 2020 and 2021 reports available at: <https://bit.ly/3y8bRCN>.

<sup>709</sup> The information made public by the Ministry in its reports to Parliament does not reach such a level of detail that it is possible to determine which structures have been visited and how many inspections, if any, have been repeated on the same structures. Moreover, it is not possible to understand how many of them have been carried out directly by the Ministry, how many by the Prefectures and how many by the officials of the SAI Central Service. Furthermore, the Government's report deals exclusively with the controls carried out under Article 20, while there is little to none evidence about any other kind of controls, e.g. by health authorities, EU/international organisations (UNHCR, IOM, EUAA...), or as part of court proceedings.

<sup>710</sup> See Circular Letter Ministry of Interior, n. 12498, 26 June 2020.

<sup>711</sup> For data about inspection controls in 2019, see ActionAid, Centri d'Italia, Report 2022, available at: <https://bit.ly/3Je6et6>.

<sup>712</sup> This is for example the case of the Prefecture of Milan, which carried out only 20 inspections in 2019 and, in the face of an increase in its reception facilities in subsequent years, for a total capacity of over 2,000 people, made only 2 visits in the period 2021-2022.

aimed specifically at inspections, despite some attempts have been made over the years,<sup>713</sup> as well as uniform standards of evaluation. This leads to many elements of variability and therefore of criticality. Some Prefectures have formalised the creation of permanent inspection units, while others recruit officials on a time to time availability basis. The inspection team may include only Prefecture staff, who have only administrative responsibilities, while in other occasions it is enlarged to include other responsibilities and other administrations, including for example: social worker, fire brigade, health authorities, reporting experts. Furthermore, the Prefectures' staff is usually not trained before conducting inspections, nor are they familiar with the issues of forced migration, the right of asylum, and the handling of vulnerabilities. Finally, the presence of linguistic and cultural mediators in support of inspectors, who often do not even speak English, is extremely rare, with the consequence that it is not possible to interview the accepted people and collect complaints, reports and needs. All this results in a very wide heterogeneity and discretion in the quality of the controls, a general inability to carry out a qualitative evaluation of the effectiveness of the services offered. Especially as Prefecture-managed centres account for almost three quarters of the total number of reception centres in Italy, this continues to be a strong limit for the entire reception system.

The recent Decree-Law 20/2023 provides that, in cases where in government centres or in the CAS there is a serious breach of the obligations arising from the service contract, but concurrently said services cannot be interrupted as compelling for the protection of fundamental rights, the Prefect appoints a Commissioner for the extraordinary and temporary management of the enterprise. At the same time, the Prefect starts the procedures for the direct award of a new contract for the supply of goods and services.

Among the tasks that the law assigns to the Central Service SAI, one of the most important is to carry out monitoring activities of SAI reception projects and to provide technical assistance to the local authorities sponsoring these projects.<sup>714</sup> Specifically, the Ministerial Decree that regulates the SAI system provides that the activities of the Central Service accompany the entire life cycle of local reception projects; among these, on-site visits to support local authorities in the application of the relevant legislation and operational instructions can be carried out, also identifying the most appropriate corrective actions to increase the quality of reception services.<sup>715</sup> In practice, the Central Service mainly provides technical support in the realisation and in the practical management of the reception project, providing the local authority and the managing body of the project with advice, helping in the management of the most complex cases, facilitation in interfacing with other local and national realities. This activity is very important, as it allows project staff to receive specialised support on an ongoing basis.

In addition to this, the monitoring unit of the Central Service periodically carries out on-site monitoring visits, to directly verify the progress of the reception project, the actual provision and quality of services, and the adequacy of the accommodation used. These activities are carried out by qualified and trained personnel, who deal with the qualitative monitoring of projects as their main activity. The agreement signed with the Ministry of the Interior provides that, during each year, at least one monitoring visit is to be carried out for each individual project (the SAI network, in February 2023, consisted of 934 projects). Officials specialised in reporting and administration, as well as officials from the Ministry of the Interior, the Prefecture, UNHCR, etc., can participate in these missions based on existing needs. The SAI monitoring visits are particularly thorough and often last several days; a typical visit includes a visit to the reception facilities involved, interviews with the hosted beneficiaries with the help of cultural-linguistic mediators, a meeting with the staff directly managing the project and a final meeting with representatives of the local authority responsible for the project. After the visit, a follow-up report is produced, containing a descriptive part of its outcome, recommendations and tips for the services' improvement and mandatory

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<sup>713</sup> The reference is to the AMIF funded M.I.Re.Co. project (Monitoring and Improvement of Reception Conditions). The project's aim was to carry out a significant number of monitoring visits in reception centres of all kinds, throughout Italy, and to develop guidelines and standard qualitative-quantitative monitoring tools. The project took place between May 2017 and the end of 2019, but the Government has never made public neither the guidelines nor the results of the around 3,000 monitoring visits that have been supposedly carried out. Only a small part of this data has been made available in the Report on the operation of the reception system designed to meet extraordinary needs connected with the exceptional influx of foreigners into the country (year 2017), August 2018, available at: <https://bit.ly/3MyqffW>.

<sup>714</sup> Article 1-sexies (4 and 5) Decree Law 416/1989, converted with amendments into Law 39/1990, as last amended by Decree Law 130/2020, converted with amendments into Law 173/2020.

<sup>715</sup> Ministry of Interior Decree 18 November 2019.

requirements and requests for adjustment or correction, with respect to any findings on shortcomings detected during monitoring. Project managers are then given a date by which to submit their comments and provide evidence of the corrections that have been implemented. In this interlocution, which continues until a positive response is given by the Central Service, the Ministry of the Interior and the Prefecture responsible for the territory are involved. Data relating to monitoring visits carried out by the Central Service is not made public and no other information is available to the general public.

While existing legislation provides that the duty of conducting inspections regarding the entire reception system, including SAI projects, lies with the Ministry of Interior and its Prefectures,<sup>716</sup> in practice SAI monitoring has been carried out almost exclusively by the Central Service. In 2019, however, the Ministry gave orders to the Prefectures to carry out inspections in SAI projects (at that time SIPROIMI) pertaining to their territory of competence, "in coordination with the Central Service".<sup>717</sup> Since then, however, only few Prefectures have carried out inspections in the SAI; additionally, these were often conducted in a heterogeneous manner, sometimes carrying out joint missions with the Central Service, sometimes without any contact nor coordination, while often not doing them at all, on the grounds of limited staff availability.

## 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
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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>718</sup>

It provides that reception conditions apply from the moment a third-country national manifests their will to apply for international protection and declares that they have no economic means to guarantee theirs and their family's survival,<sup>719</sup> without establishing additional requirements to access to reception measures.<sup>720</sup> The criteria of destitution is to be evaluated by the Prefecture, by making a comparison between the financial resources of the applicant(s) and the amount of the annual social allowance (*assegno sociale annuo*).<sup>721</sup>

In practice, no assessment of financial resources is carried out when the asylum seeker makes his application, or even when he accesses the system; both Prefectures and the SAI Central Service customarily consider the self-declaration as sufficient. However, during the accommodation period,

<sup>716</sup> Article 20(1) Reception Decree.

<sup>717</sup> See Circular Letters from Mol DCLI no. 6021 of 23 May 2019 and no. 12246 of 12 July 2019.

<sup>718</sup> Article 1(1) Reception Decree.

<sup>719</sup> Article 1(2) Reception Decree.

<sup>720</sup> Article 4(4) Reception Decree.

<sup>721</sup> Article 14(1) and (3) Reception Decree. The Social Allowance is an economic contribution of a welfare nature provided by the National Institute for Social Security (Istituto Nazionale di Previdenza Sociale, INPS) for 13 months to all those who are in poor economic conditions. For the year 2022, the amount corresponded to € 6,097.39 and corresponds to € 6,542.51 for 2023.



Prefectures are required to verify that the conditions, including economic conditions, which have determined access still occur. In 2022, along with previous years, this has resulted in a worrying number of withdrawals of reception conditions (see below).

As already mentioned, government centres and temporary centres (CARA, CAS and CdA) can only accommodate asylum seekers. SAI facilities, instead, are opened to beneficiaries of international protection (refugee status and subsidiary protection), unaccompanied foreign minors and, in case of available places, to asylum seekers and to holders of the following national permits and complementary protections<sup>722</sup>:

- Special Protection (Consolidated Act on Immigration, Article 19 (1 and 1.1) a Legislative Decree 251/2007, Article 16)
- Medical treatment (Consolidated Act on Immigration, Article 19 (2 d-bis)
- Social protection for trafficking in human beings (Consolidated Act on Immigration, Article 18)
- Social protection for domestic violence (Consolidated Act on Immigration, Article 18-bis)
- Disaster (Consolidated Act on Immigration, Article 20-bis)
- Significant labour exploitation (Consolidated Act on Immigration, Article 22 (12-quater)
- Acts of exceptional civil value (Consolidated Act on Immigration, Article 42-bis)
- Special cases (D.L. 113/2018, Article 1 (9).

Applicants for international protection subject to a Dublin procedure (both incoming and outgoing) can access the reception system at the same conditions as the other asylum seekers.<sup>723</sup>

Access to the reception system may follow different procedures.

- In the case of an asylum seeker who has just landed on Italian territory after Search and rescue operations, access to the system is, so to speak, automatic. However, due to the so called hotspot approach and to the use of informative sheets (“foglio notizie”) not translated nor explained to migrants, it is not rare that people who would have expressed their intention to seek asylum are sent to CPRs<sup>724</sup>. When accommodated, the following placement of the host follows a national and regional dispersion policy, which should follow agreed criteria.<sup>725</sup>
- In cases where the asylum seeker interested in receiving reception is already present in the national territory, the request to access the system is processed by the State Police office where he is or where he has a domicile.
- Finally, in the event that the people who need access to the reception system are already holders of a permit for protection, they must contact the SAI Central Service, through the local Prefecture, or through the CAS/SAI managing bodies, by lawyers, or by other public or private bodies. However, the reporting procedures are far from perfect and the cases in which reports are made several times at once by different subjects, with the result that the Central Service is not able to work them correctly, are quite frequent. Moreover, the pace at which the Central Service works a request and assigns the place in reception is often very slow, mostly due to communication problems, to the point that migrants often opt to directly present themselves at a SAI project and ask for admission, rather than waiting for an assignment from the central offices. In fact, as has recently emerged,<sup>726</sup> the Central Service does not count the number of requests for access it receives, which makes allocating the available posts according to set priority criteria quite challenging given the large amount of requests. Besides this, not all Prefectures consider that they should report to the SAI the presence of beneficiaries of protection in their territory of competence, and, in the best case, Prefectures only report the transfer in SAI people that are already accommodated in CAS activated by them in their territories. The Ministry of the Interior

<sup>722</sup> Article 1-sexies(1) Decree Law 416/1989, as modified by Decree Law 130/2020.

<sup>723</sup> Article 1(3) Reception Decree. For more information about access to reception for Dublin transferees, please see the relevant paragraph in the Procedures chapter.

<sup>724</sup> The hotspot procedure, to which most people disembarked are subjected, is known to force some individuals into irregularity, to the extent that some migrants are systematically prevented from seeking asylum. This, of course, also produces an immediate exclusion from reception conditions. For more information, see the Procedures chapter.

<sup>725</sup> See paragraph 4.1 “Dispersal of asylum seekers”, page XXXX.

<sup>726</sup> See Altreconomia, Scarsa programmazione, posti vuoti e persone al freddo: così ai migranti è negata l'accoglienza, 8 February 2023, available at: <https://bit.ly/3oXlaUx>.



periodically (most recently in August 2022) sends operational indications to the Prefectures on reporting regarding reception in SAI.

### 1.1. Reception and obstacles to accessing the asylum procedure

Barriers to access to reception in Italy mostly depend on two main factors:

- A. Bureaucratic and administrative obstacles to access to the international protection procedure.
- B. Shortage of available places and management issues within the various levels of the reception system.

A. As described in detail in the [Procedures chapter](#), for years, the Italian Police Headquarters (Questure) have put in place various strategies aimed at limiting and delaying access to the asylum procedure for people who spontaneously show up at the offices. These practices, which intensify with increasing numbers of requests for protection (both at the general national level and at the level of the individual Questura), also have direct consequences on another right of applicants, namely the right to reception conditions. While applicants are often forced to wait months to file their asylum applications, the same if not worse applies to making a request for access to reception conditions. Indeed, the path to obtain accommodation is even longer and more tortuous, even though by law asylum seekers are entitled to material reception conditions immediately after manifesting the will to apply for asylum (making phase), access to reception facilities is often postponed at least after the actual registration and lodging of the application by State Police.<sup>727</sup> Only after being registered, migrants can request access to reception facilities; even then, they are frequently required to wait for some additional weeks, sleeping rough or in makeshift lodgings or resorting to members of the same community, if and when they can afford it.<sup>728</sup>

B. The shortage of places in the reception system is a recurring issue in Italy, especially as, due to policies aimed at reducing public spending and a strong lack of medium-long-term planning (see the Management and Coordination paragraph), the total number of places in the system continues to decrease, and emergency situations are registered each Summer. In particular in 2022, despite the system being close to full capacity at the beginning of the year -also due to the continuous arrival of refugees from Ukraine-, a sufficient increase in places was not foreseen. For this reason, the system quickly became saturated, and Prefectures started refusing requests for access to reception, or in some cases ignoring them and leaving them unattended. A recent inquiry by the magazine *Altreconomia*<sup>729</sup> estimated that, in a situation where thousands of asylum seekers are left without access to reception measures, as the Italian Government has declared on several occasions that “there are no more places available in the system(s)”, at least 5 thousands seats were being held unoccupied in 2022 as a reserve for unexpected arrivals through disembarkation events.

On 31 July 2020 the Roja Camp in Ventimiglia, managed by the Italian Red Cross at the land border with France, was closed.<sup>730</sup> Being the only formal place of accommodation for people in transit, its closure 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 were able to guarantee only a limited number of places for single parents and children.<sup>731</sup>

As reported by Refugees Rights Europe and Progetto 20K, after the closure of Roja Camp “no alternative solution has been put in place and people have once again started to gather in informal settlements around the city”.<sup>732</sup>

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<sup>727</sup> In Italy, the registration and lodging phases are integrated into one step.

<sup>728</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>729</sup> *Altreconomia*, *Inchiesta sull'accoglienza selettiva: chi arriva in Italia via terra resta fuori*, in *Altreconomia* 254, December 2022, available at: <https://bit.ly/42bf2XP>.

<sup>730</sup> *Parole sul confine*, “Il Campo Roja di Ventimiglia ha definitivamente chiuso”, 24 August 2020, available at: <https://bit.ly/3y5pnWA>.

<sup>731</sup> See ASGI, *Medea project*, 21 February 2021, available at: <https://bit.ly/3y0oJtr>.

<sup>732</sup> Refugees Rights Europe and Progetto 20K *the Exacerbation of a crisis, impact of the Covid19 on people on the move at the Italian- French border*, July 2021, available at: <https://bit.ly/3OR2lp6>, 12.

In November 2021, the imminent opening in Ventimiglia of a centre for people in transit was announced during a visit in Ventimiglia by the Chief of the Department for Civil Liberties and Immigration.<sup>733</sup> More than one year later, no reception centre has been opened and issues are still arising.<sup>734</sup> The situation at the Italian-French border was further complicated in November 2022, when the French Government, in response to the docking of the Ocean Viking in Toulon,<sup>735</sup> and again later in April 2023, in anticipation of a potential increase in arrivals in Italy,<sup>736</sup> decided to further strengthen internal border controls by increasing police presence, carrying out systematic checks on vehicles in transit from Italy<sup>737</sup> and increasing the number of pushbacks, also against the unaccompanied minors.<sup>738</sup>

While people took refuge in makeshift camps near the railroad, which are frequently cleared by police forces<sup>739</sup> and more recently were rendered illegal through a Decree from the responsible Mayor,<sup>740</sup> on 7 March 2023 local authorities and stakeholders established that a camp was no longer necessary; in its place, they decided to set up “points of widespread assistance” (*punti di assistenza diffusa*, PAD). According to the statements of the new Prefect of Imperia,<sup>741</sup> “a network of mini-centres should be established, scattered throughout the territory, within a system already in place, without creating other structures and facilities. The system could also be extended to include night opening, to guarantee to people who are rejected at the French border, above all women and children, at least temporary accommodation in more dignified conditions than the current ones”. Judging from what has emerged so far, these assistance points should be intended to provide temporary reception, for no more than a few nights. The first four “PADs” should be opened in April 2023 and work as pilots, with the collaboration of Caritas, the Red Cross and the Diocese of Ventimiglia and Sanremo, following the forthcoming signature of a formal agreement between the Prefecture and the Municipality of Ventimiglia, concerning the commitments, including economic, of both entities. These four facilities are to be specifically focused on the temporary reception of vulnerable migrants (families with children and fragile individuals) who have been pushed back by French Police.<sup>742</sup> It believed that these mini-facilities will be mostly insufficient to handle the large numbers of migrants camped in the area, forced to work illegally or prostitute themselves to pay *passeurs* to be able to cross the border; to address these criticalities, reopening a proper transit centre would be necessary.<sup>743</sup> According to data collected by Diaconia Valdese, more than 3,200 people passed through Ventimiglia between July and December 2022. The Diocese of Imperia provides thirteen beds per night, insufficient compared to the number of people present on the territory. Since 2020, after

<sup>733</sup> Ministry of Interior, A Ventimiglia un centro di transito per accogliere i migranti, 19 November 2021, available at: <https://bit.ly/3YxPpxF>.

<sup>734</sup> See Repubblica, Migranti, a Ventimiglia è di nuovo emergenza e la campagna elettorale si tiene a debita distanza, September 1st 2022, available at: <https://bit.ly/3ZOXUoX>. See also Il Fatto Quotidiano, Nel limbo di Ventimiglia tra i migranti respinti dalla Francia e accampati al confine. Associazione: “Serve centro di transito”, 25 December 2022, available at: <https://bit.ly/3SYs32U>. For a comprehensive study on the situation of Ventimiglia, see: Aru, *Abandonment, Agency, Control: Migrants’ Camps in Ventimiglia*, in Antipode, Vol. 53 No. 6 2021, available at: <https://doi.org/10.1111/anti.12738>.

<sup>735</sup> See Sky TG24, Migranti, Ocean Viking a Tolone per lo sbarco. Continua scontro Italia-Francia, November 11th 2022, available at: <https://bit.ly/3LaZcGP>. See also Euronews, Caso-migranti: a Ventimiglia la frontiera italo-francese è blindata, 14 November 2022, available at: <https://bit.ly/3F8K48U>.

<sup>736</sup> See Repubblica, Ventimiglia, Parigi blindo il confine e l'estate fa paura: “Così più guai per migranti e città, lo Stato ci ha dimenticato”, 27 April 2023, available at: <https://bit.ly/42mhgTC>.

<sup>737</sup> See Sky TG24, Migranti, Ocean Viking a Tolone per lo sbarco. Continua scontro Italia-Francia, November 11th 2022, available at: <https://bit.ly/3LaZcGP>. See also Euronews, Caso-migranti: a Ventimiglia la frontiera italo-francese è blindata, 14 November 2022, available at: <https://bit.ly/3F8K48U>.

<sup>738</sup> Source: Infomigrants, France sending unaccompanied minors back to Italy, MSF, 9 May 2023, available at: <https://bit.ly/3pYn0Fa>.

<sup>739</sup> See SanremoneWS, Ventimiglia, sgombero accampamento migranti sotto il cavalcavia di San Secondo: conclusi gli interventi di bonifica, February 14th 2023, available at: <https://bit.ly/3TeEo3n>. See also SanremoneWS, Ventimiglia: dopo il controllo straordinario delle forze dell'ordine operazione di pulizia alle Gianchette, 27 April 2023, available at: <https://bit.ly/44ojqnC>.

<sup>740</sup> See Riviera24, Lotta al degrado, il commissario De Lucia firma ordinanza anti-bivacco a Ventimiglia, 23 March 2023, available at: <https://bit.ly/3p7KNSB>.

<sup>741</sup> See Secolo XIX, Emergenza migranti a Ventimiglia, l'accoglienza diffusa è la nuova strategia, March 8th 2023, available at: <https://bit.ly/3ZRi91O>.

<sup>742</sup> See Prefettura di Imperia, Gestione migranti a Ventimiglia, il piano della prefettura di Imperia, 24 March 2023, available at: <https://bit.ly/3U1hBIH>.

<sup>743</sup> See SanremoneWS, Ventimiglia: il candidato dei progressisti Maria Spinosi ne è certa “Bisogna riaprire il campo Roya per i migranti”, available in Italian at: <https://bit.ly/40jfv0l>. See also Repubblica, Ventimiglia, manca ancora un centro di accoglienza e i migranti si accampano sotto i ponti, 13 April 2023, available in Italian at: <https://bit.ly/3mGepFW>.

the closure of the Roja Camp, families in transit and single women find shelter in a house provided by Caritas and managed by Diaconia Valdese and WeWorld, where migrants can remain up to four nights and decide whether to remain in Italy or try to cross into French territory.<sup>744</sup> This shelter has provided temporary accommodation to 787 families, for a total of 2,278 destitute migrants from 37 countries, between 2020 and November 2022.<sup>745</sup> The Caritas Centre, near which one of the PADs will be activated, records around 150 accesses of migrants in need per day.<sup>746</sup> Save the Children, which has been present and active in Ventimiglia since 2018, opened in March 2021, together with Caritas Intemelio, a “Child-Sized Space” to give children transiting through with their families a calm space for recreation.<sup>747</sup>

## 1.2. Reception of applicants subject to accelerated procedures

Italian legislation does not provide for specific or differentiated reception forms for asylum seekers who are subjected to one of the many forms of accelerated procedure. At the administrative level, however, it was possible to observe at least two practices.

- Asylum seekers subject to border procedures<sup>748</sup> should preferably be placed in reception centres located in the provinces within the territorial scope of the competent Territorial Commission (first instance deciding body). The Ministry of Interior has expressly provided for this possibility<sup>749</sup>, following the identification of border areas or transit, made by Ministerial Decree of 5 August 2019. The provinces affected by this mechanism are those identified as border or transit areas, namely Trieste, Gorizia, Crotone, Cosenza, Matera, Taranto, Lecce, Brindisi, Caltanissetta, Ragusa, Siracusa, Catania, Messina, Trapani, Agrigento, Metropolitan City of Cagliari, South Sardinia.
- Asylum seekers from non-EU countries on the list of Safe Countries of Origin<sup>750</sup> arriving by sea in Southern Italy are often excluded from ministerial transfers to other areas of the country and are instead placed in reception facilities situated close to the places of arrival, where the registration of the asylum application and the initiation of the accelerated procedure take place quickly. Moreover, it is quite rare for asylum seekers of certain nationalities, such as Tunisia or Morocco, who have also arrived in large numbers in certain periods, to be placed in reception centres in northern Italy, following ministerial transfers. The same would seem to be the case for asylum seekers of Egyptian nationality, who, although not coming from a country considered “safe” and therefore not generally subject to formal accelerated procedures, are often accommodated in southern Italy for the time necessary to assess their claim.<sup>751</sup> The areas affected by this practice of differential reception would once again be those close to the major landing points, namely the regions of Sicily and Calabria.

It appears clear that the rationale behind these practices is to avoid transfers of people who are likely to be returned or, if they initiate an asylum procedure, will rapidly receive a negative decision. On the

<sup>744</sup> See Vita, Ventimiglia, il buco nero di chi migra via terra, March 7th 2023, available at: <https://bit.ly/41VvZWg>.

<sup>745</sup> See Vie di Fuga, A Ventimiglia, “quando il sole cala e l’insicurezza si fa più forte”, 16 November 2022, available at: <https://bit.ly/3LNco4u>.

<sup>746</sup> Source: Il Secolo XIX, Centro per migranti fragili nell’ex Isola dei ragazzi, 28 March 2023, available at: <https://bit.ly/3G5TMtg>.

<sup>747</sup> See Save the Children, A Ventimiglia un nuovo spazio per bambini in transito, 26 March 2021, available at: <https://bit.ly/42liU8g>. For the news in English, see Infomigrants, Ventimiglia space for migrant children set up, 30 March 2021, available at: <https://bit.ly/3NysMak>.

<sup>748</sup> As per Article 28-bis (2 b) of Legislative Decree 25/2008, border procedures are due when requests for international protection are made by foreigners directly at the border or in transit zones, only where they have been apprehended for circumventing or attempting to circumvent the relevant controls. See the Procedures chapter.

<sup>749</sup> See Circular Letter from MoI DCLI n. 8560 of 16 October 2019.

<sup>750</sup> As per Article 28-bis (2 c) of Legislative Decree 25/2008, SCO accelerated procedures are due when the application for international protection is made by a foreigner from a non-EU country of origin designated as “safe”.

<sup>751</sup> Egyptian citizens were the most numerous nationality in terms of arrivals by sea in 2022, with a total of 20,542. See MoI Cruscotto Statistico Giornaliero, 31 December 2022, available at: <https://bit.ly/3A2q3Ok>. Egypt is also one of the main countries to which Italy has carried out forced returns in the last years, thanks to a particularly rapid and informal procedure provided for in the repatriation agreements between Italy and Egypt, see Vita, Rimpatri forzati: nel 2021 i charter partono soprattutto verso Tunisia ed Egitto, 1 October 2021, available in Italian at: <https://bit.ly/401eotS>. See also CILD, LasciateCIEntrare ci racconta l’orrore nei CPR italiani, 5 December 2022, available in Italian at: <https://bit.ly/3zVc7Wm>.

contrary, the concentration of these people in places identified for this purpose by the Administration can facilitate and speed up the procedures of identification and forced readmission.

In this sense, the Government seems to have intended to implement, by purely administrative means, and expanding its scope, the provisions of Article 43(3) of the recast Procedures Directive, where it is provided that *"In the event of arrivals involving a large number of third-country nationals or stateless persons lodging applications for international protection at the border or in a transit zone, which makes it impossible in practice to apply there the provisions of paragraph 1, those procedures may also be applied where and for as long as these third-country nationals or stateless persons are accommodated normally at locations in proximity to the border or transit zone."*

It is understood that these practices can be implemented when it is possible to maintain a certain number of places "reserved" for this type of reception. Considering the almost complete saturation of all reception centres in the country that occurred between the end of 2022 and the first months of 2023, they are likely to be suspended in the near future.

### 1.3. Reception at second instance

Regarding appellants, the Reception Decree provides that accommodation is ensured until a decision is taken by the Territorial Commission (the first instance deciding authority) and, in case of a 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 court gives judgement.

However, when appeals have no automatic suspensive effect, the applicant can request an ad hoc suspension to the Court and remain in the reception centre until a decision on the suspensive request is taken by the competent judge. If this request receives a positive answer, then, the applicant is authorised to stay in the Italian territory for the rest of the procedure and has the right to remain in the reception centre where he or she already lives.<sup>752</sup> Where the appeal is made by an applicant detained in a detention centre requesting the suspensive effect of the order, in case it is accepted by the judge, the person remains in detention or, if detention grounds are no longer valid, he or she is transferred to governmental reception centres.<sup>753</sup>

Concerning 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 Courts do not recognise the suspensive effect of the appeal in a short time frame; additionally, it is extremely difficult to obtain a positive decision in this respect (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 2022 (in original currency and in €): Approximately €75 in CAS<sup>754</sup> and 45 to 75 in SAI<sup>755</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 to guarantee uniform levels of reception across the territory, taking into account the peculiarities of each type of reception centre.<sup>756</sup>

<sup>752</sup> Article 14(4) Reception Decree.

<sup>753</sup> Article 14(5) Reception Decree.

<sup>754</sup> See attachment B, point 10, to the tender specification scheme, valid for first reception centres and CAS, available at: <https://bit.ly/3bkUEuM>.

<sup>755</sup> Manual for the reporting of projects SAI provides that each institution holding the project may provide for the disbursement per capita of an amount ranging between 1.5 and 2.5 euro. See Manuale Unico di Rendicontazione, available at: <https://bit.ly/3LMWVea4>.

<sup>756</sup> Article 12(1) Reception Decree.

The latest decree approving the tender specifications schemes (*capitolato d'appalto*) was adopted on 24 February 2021.<sup>757</sup>

Under the tender specification schemes issued following Decree Law 113/2018<sup>758</sup>, the daily amount per person awarded to the centres' management was reduced from approximately €35 to €21, *de facto* forcing contractors to opt for larger centres, reducing the number of operators and the services offered in said centres.<sup>759</sup>

As expected, government policies on the design of the reception system opened a market for large companies.<sup>760</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. This amount still does not appear sufficient to favour small facilities, even taking into account that additional services were brought back (Italian language courses, legal orientation, psychological support) albeit to a minimal extent. For collective structures, 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, a €5 phone card and also covers: Italian language courses; orientation to local services; psychological support. It confirms the replacement of legal support with a "legal information service"; it does not cover professional training, leisure activities and job orientation, services that are no longer covered for asylum seekers even within SAI facilities.

As detailed in 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 night-time 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

<sup>757</sup> Ministry of Interior Decree published on 24 February 2021, available in Italian at: <https://bit.ly/3tGSWtO>.

<sup>758</sup> Ministry of Interior Decree published on 20 November 2018, available in Italian at: <https://bit.ly/41srHEX>.

<sup>759</sup> For a detailed analysis of the 2018 tender specification scheme, see InMigrazione, La nuova (mala) accoglienza. Radiografia del nuovo schema per gli appalti dei centri di accoglienza straordinaria per i richiedenti asilo, available at: <https://bit.ly/2m9aCtO>. See also InMigrazione, Le vere conseguenze drammatiche del taglio dei 35 euro all'accoglienza, available at: <https://bit.ly/3mPaFBy>. On the topic of small civil society bodies opting out from providing services, considering the new discipline, see Avvenire, Centri di accoglienza straordinaria. È caos sui bandi: penalizzata l'integrazione, January 26th 2019, available at: <https://bit.ly/3J9MBRJ>.

<sup>760</sup> Valori, *Migranti gli sciacalli della finanza brindano a Salvini*, January 2019, available in Italian at: <https://bit.ly/2TE4TmV>.



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>761</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. Specific services for vulnerable people are not 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>762</sup> With the express purpose of dealing with deserted calls and smoothing 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>763</sup>

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>764</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>765</sup> In Rome and Milan the accommodation scene saw the prevalence of big social cooperatives (Medi hospes in Rome and Versoporobo in Milan) and the appearance of profit-making organisations without any social purpose such as Ospita Srl, Engel Italia Srl, Nova Facility and Ors Italia srl.<sup>766</sup>

<sup>761</sup> Mol website, Attachment A available at: <https://bit.ly/3tCYghX>.

<sup>762</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>763</sup> Mol Circular, 4 February 2020, available at: <https://bit.ly/36rb6WQ>.

<sup>764</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>765</sup> Actionaid, Openpolis, La sicurezza dell'esclusione, Second part, December 2019, available in Italian at: <https://bit.ly/3d0z65i>.

<sup>766</sup> Openpolis and Actionaid report that in Rome 83.5% reception places are located in large centres. Medi hospes 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>.



The appeals filed by small and specialised social cooperatives and non-profit organisations 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 amount of 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.

Italian law 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>767</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 lodged a subsequent asylum application in Italy after a final decision on a previous application has been taken;
- (d) The authorities find that the asylum seeker possesses sufficient financial resources;

Law 50/2023 amended the Reception Decree by cancelling the provision according to which a serious violation of the internal regulation of the reception centre or violent behaviour by the asylum seeker could motivate the withdrawal of reception measures.<sup>768</sup>

In recent years, several judicial decisions had underlined how the provision was contrary to the Reception Directive.

According to the new rules, this kind of behaviour can instead motivate a reduction of reception conditions.<sup>769</sup> In particular, the following measures can be put in place:

- a) temporary exclusion from participation in the activities organised by the managing body;
- b) temporary exclusion from one or more of the services required by law for asylum seekers, with the exception of material reception;
- c) suspension, from 30 days to six months, of economic benefits.

The law does not provide for any assessment of destitution risks when withdrawing reception. However, while assessing the withdrawal and the reduction of reception conditions, the Prefect must take into account the specific conditions of vulnerability of the applicant.<sup>770</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>771</sup> To this end, they can benefit from free legal aid.

<sup>767</sup> See also Article 13 Reception Decree.

<sup>768</sup> L. 50/2023 cancelled Article 23 (1) (e)

<sup>769</sup> Article 23 (2) Reception Decree as amended by L. 50/2023

<sup>770</sup> Article 23 (2 bis) Reception Decree introduced by L. 50/2023.

<sup>771</sup> Article 23(5) Reception Decree.

In recent years, available figures showed an overly broad use of withdrawal provisions. According to an investigation carried out by Altreconomia since 2017 and updated in 2019, based on 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 are available for the period 2020-2022 but, according to ASGI's experience, withdrawal decisions were not commonly adopted.

### 3.1. Departure from the centre

According to the Reception Decree, when asylum seekers fail to present themselves to the assigned centre or leave it without informing the authorities, the centre managers must immediately inform the competent Prefecture.<sup>772</sup> In case the asylum seeker spontaneously presents him or herself before police authorities or at the accommodation centre, the Prefect could decide to readmit them to the centre if the reasons provided are due to *force majeure*, unforeseen circumstances or serious personal reasons.<sup>773</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 organisation 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>774</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>775</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 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>776</sup>

**Lombardy:** As reported by NAGA,<sup>777</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>778</sup>

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<sup>772</sup> Article 23(3) Reception Decree.

<sup>773</sup> Article 23(3) Reception Decree.

<sup>774</sup> TAR Veneto, decision of 11 November 2020, case n. 851/2020, available at: <https://bit.ly/3y5uxli>.

<sup>775</sup> Council of State, decision 06454/2019 of 26 September 2019.

<sup>776</sup> Consiglio di Stato, decision 1322/2019, 14 May 2019, available in Italian at: <https://bit.ly/2Twonlk>.

<sup>777</sup> NAGA, Senza Scampo, December 2019, available in Italian at: <https://cutt.ly/byOB3Wr>.

<sup>778</sup> Administrative Court of Lombardy, decision 329/2020, 19 February 2020.

### 3.2. Violation of house rules and violent behaviour

As mentioned, the violation of the house rules of the centre or of violent behaviour cannot, according to the new legislation, motivate a withdrawal of reception measures but only a reduction of reception conditions. The manager of the reception facility informs the asylum seeker and sends a report to the Prefecture on the facts that can motivate the potential reduction of reception conditions.<sup>779</sup>

Referring to the previous rules, the duty to involve the asylum seeker in the procedure and to allow them to make submissions prior to the issuance of a decision was highlighted in a 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>780</sup>

Additionally, as the law did not clarify what was meant by “serious violations” of the centre’s house rules, in ASGI’s experience, this allowed Prefectures to misuse the provision, revoking reception measures on ill-founded grounds. As confirmed by the CJEU preliminary judgements,<sup>781</sup> such misuse of the provision amounted 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 infringed Article 20 of the Directive since it did not include rules through which the reception measures may be reduced without being completely withdrawn, and since it does not require the administration to ensure, in any case, a dignified standard of living for the applicants.

In August 2022, deciding on a preliminary ruling requested by the Italian Council of State, the CJEU<sup>782</sup> decided that seriously violent behaviour engaged outside an accommodation centre can justify the imposition of a sanction according to Article 20 (4) of the recast Reception Directive. However, it confirmed the orientation expressed in the Habqin case, ruling that Article 20 (4) and Article 20 (5) of the recast Reception Directive preclude the imposition of a withdrawal of material reception conditions relating to housing, food or clothing, as it would have the effect of depriving the applicant of the possibility of meeting their most basic needs.

In 2022, even after the new CJEU decision, cases of withdrawal of material reception conditions based on - variously interpreted - violation of house rules or on violent behaviours were reported.

In mid-September 2022, the Prefecture of Gorizia (Friuli Venezia Giulia) notified the withdrawal of reception conditions to 22 asylum seekers accused of having used an unauthorised electric cooking oven that caused a short circuit in the CARA of Gradisca d’Isonzo electrical system. The asylum seekers were expelled from the accommodation centre immediately after the issuance of the decision, without being allowed to make submissions in their own defence. Later, in November 2022, the Administrative Court for Friuli Venezia Giulia region upheld the appeals submitted by 11 asylum seekers with four different decisions,<sup>783</sup> but the Prefecture complied with the order to restart the accommodation measures only for the first two applicants. Other 8 applicants had to present an urgent request to the ECHR under Article 39 of the Regulation thus obtaining that, while sending to the ECHR the information requested, the Government re- established the reception measures for them. Two ordinary appeals have been sent to the ECHR claiming the violation of Article 3 and Article 6 of the European Convention for Human Rights.

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<sup>779</sup> Article 23(4) Reception Decree as amended by the L 50/2023 which converted into law DL 20/2023.

<sup>780</sup> Administrative Court of Campania, Decision 5476/2018, 12 September 2018, available in Italian at: <https://bit.ly/2VJU2VL>.

<sup>781</sup> CJEU Habqin case C- 233/18, and CJEU C- 422/ 2021 published on 1 August 2022.

<sup>782</sup> CJEU C- 422/ 2021 published on 1 August 2022.

<sup>783</sup> Administrative Court for Friuli Venezia Giulia Region, decision no.434 of 26 October 2022, published on 4 November 2022, available at: [bit.ly/3JWRIf9](https://bit.ly/3JWRIf9); decision no 470 of 9 November 2022, published on 10 November 2022; Decision no. 515 of 23 November 2022, published on 30 November 2022; Decision no. 516 of 23 November 2022 published on 30 November 2022.

### 3.3. Possession of sufficient resources

Another worrying practice relates to withdrawal of reception conditions for reasons connected to the possession 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 benefited.<sup>784</sup>

In several cases in 2020 and in previous years, however, Prefectures withdrew reception conditions based on a decision that does not comply with the law or the spirit of the recast Reception Conditions Directive.<sup>785</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>786</sup>

In 2020 the Prefecture of Pordenone requested 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 the existence of resources.

For example, 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>787</sup>

In 2021 and early 2022, the revocations adopted for this reason were several hundred.

In March 2021, the administrative Court for **Lombardy** cancelled the withdrawal of reception measures applied from the Prefecture of Milan to an asylum seeker who, the previous year, had earned 3,844 euros and, in 2021, 1,836 euros. The Court stated that, according to Article 14 (3) of Legislative Decree 142/2015, incomes must be higher than the social allowance and must be ascertained as actually achieved, not just presumed.<sup>788</sup>

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<sup>784</sup> Article 23(6) Reception Decree.

<sup>785</sup> See as an example: Administrative Court of Friuli Venezia Giulia, decision No. 122/2019 of 13 March 2019.

<sup>786</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>787</sup> Administrative Court of Tuscany, decision no 00437/2020 of 15 April 2020.

<sup>788</sup> Administrative Court for Lombardy, decision of 25 March 2021, no. 779.

In the region **Emilia Romagna**, according to the media, 349 revocations were adopted in 2021 by the Prefecture of Reggio Emilia, out of which 115 based on the assessment of the availability of sufficient resources.<sup>789</sup> In Bologna, as of February 2022, the measure reached about 20 asylum seekers who were then asked for large reimbursements even if their incomes slightly exceeded the social allowance. The requests, published by the Migrants Coordination of Bologna,<sup>790</sup> require asylum seekers several thousand euros corresponding to the entire sums paid per day per capita to the reception body.<sup>791</sup>

On 28 February 2022, the Administrative Court of Bologna accepted the appeal submitted by an asylum seeker who had been asked to reimburse 15,000 euros for the reception measures received. According to the Court, as the resources had not been hidden, the revocation was incompatible with art. 20 (3) of the Reception Directive. Furthermore, the requested reimbursement amount did not appear proportional nor congruous.<sup>792</sup>

In Tuscany, in early 2022, various cases in which the Prefectures asked significant reimbursements to people in reception centres who had found a job were reported. In the same period in Campania, the Prefecture asked people who were employed but did not exceed the limit to overcome indigence to give back the sum corresponding to the pocket money received.

On March 2023, the Council of State<sup>793</sup> confirmed the decision by the Administrative Court for Emilia Romagna evaluating as legitimate the decision to revoke the reception measures to an asylum seeker for exceeding the annual income level envisaged by the legislation (as he earned around 10,000 euros in one year), while it deemed the order for payment of over 15,000 euros as incongruous and disproportionate. The Council of State held that, even in the absence of concealment of resources, the revocation of accommodation measures for overcoming poverty can be decided on the basis of Article 17(3) and 17 (4) of the recast Reception Conditions Directive, and the asylum seeker can be asked for a reasonable refund. In interpreting the adequacy of the reimbursement, the Council of State considered that the regulatory basis could be found in Article 26 (5) of the reception directive which, regulating the possibility for Member States to demand a whole or partial reimbursement for any costs granted for the free legal assistance and representation in the appeal procedure, evaluates improvements in the applicant's financial situation only if they can be deemed considerable and cases of false information supplied by the applicant in order to receive such aid.

For these reasons, the Council of State decided that Article 23 (1, d), of the reception decree has to be disapplied as it does not provide that partial or full reimbursement must be subject to the conditions set out in Article 26 of the recast Reception Conditions Directive and, in any case, as it does not provide that the reimbursement has to be proportionate to the specific case.

Based on this decision, the Emilia Romagna Regional Administrative Court decided in three cases to confirm the revocation due to overcoming poverty but to cancel the request for reimbursement as it was deemed disproportionate.<sup>794</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>795</sup>

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<sup>789</sup> Reggio Sera, Migranti, nel 2021 ci sono state 349 revoche dell'accoglienza, 10 December 2021, available at: <https://bit.ly/3wlkObL>.

<sup>790</sup> An example of these letters is available at: Coordinamento Migranti Bologna, available at: <https://bit.ly/3KSZhvX>.

<sup>791</sup> Meltingpot, Bologna – Presidio contro i rimborsi astronomici chiesti ai richiedenti asilo, 16 February 2022, available at: <https://bit.ly/3MRxSfj>.

<sup>792</sup> Administrative Court for the Emilia Romagna Region, decision no. 223 of 23 February, published on 28 February 2022.

<sup>793</sup> Council of State, Decision no. 2386/2023 of 9 February 2023, published on 7 March 2023.

<sup>794</sup> Administrative Court for the Emilia Romagna Region, decisions no. 136, 137 and 138 of 8 March 2023, published on 16 March 2023.

<sup>795</sup> Article 23(7) Reception Decree.



### 3.4. Civil Registration

Decree Law 113/2018 repealed the rules governing civil registration (*iscrizione anagrafica*) of asylum seekers,<sup>796</sup> and stated that the residence permits issued to them were not valid titles for registration at the registry office.<sup>797</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>798</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>799</sup>

In 2021, after the reform, not all municipalities agreed to retroactively recognize the civil registration to asylum seekers who had requested it during the validity of the DL 113/2018. On this matter, an appeal is pending before the Civil Court of Trieste at the time of writing.

According to the law, the applicant for international protection, in possession of a residence permit for asylum request<sup>800</sup> or of the receipt certifying the request<sup>801</sup> is registered in the registry of the resident population.<sup>802</sup> For applicants accommodated in first reception centres, the person in charge of the centres must notify the municipality of the changes in cohabitation 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 centres and from the SAI centres, constitutes a reason for immediate cancellation of the residence.<sup>803</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. This provision 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>804</sup> After registration, asylum seekers obtain an identity card valid for three years.<sup>805</sup>

## 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 in which they are free to move.<sup>806</sup> In practice, this provision has never been applied so far.

<sup>796</sup> Article 5-bis Reception Decree was repealed by Article 13 Decree Law 113/2018 and L 132/2018.

<sup>797</sup> Article 4(1-bis) Reception Decree, inserted by Article 13 Decree Law 113/2018 and L 132/2018.

<sup>798</sup> Decision no. 186/2020 of 31 July 2020, available at: <https://bit.ly/2SCXDBl>.

<sup>799</sup> Article 5 bis Reception Decree.

<sup>800</sup> Article 4 (1) Reception Decree.

<sup>801</sup> Article 4 (3) Reception Decree.

<sup>802</sup> Article 5 bis (1) Reception Decree, re-introduced, with amendments, by Decree Law 130/2020 and L 173/2020.

<sup>803</sup> Article 5 bis (3) Reception Decree.

<sup>804</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>805</sup> Article 5 bis (4) introduced by Decree Law 130/2020.

<sup>806</sup> Article 5(4) Reception Decree.



## 4.1. Dispersal of asylum seekers

The placement of applicants for international protection throughout the Italian national territory is governed by a series of official acts, prepared with the involvement of several local public actors, with the aim of achieving a distribution proportional to the possibilities of local absorption and the territories' specificities. Since 2014, several interventions have been directed at reaching a fair distribution of asylum seekers on the territory; said measures had however limited impact, and distribution is still far from homogeneous on the territory.

In the Unified Conference<sup>807</sup> of 10 July 2014, Government, regions and local authorities reached an agreement on a National Operational Plan,<sup>808</sup> which represented an attempt to develop a system of planning, organisation and national management of the reception of migrants and refugees. The fundamental aspect on which the implementation of the Plan was based is the progressive overcoming of the logic of emergency that had characterised the Italian reception system until then.

The agreement affirmed the centrality of the former SPRAR system (now SAI) considered pivotal of the reception system for both adults and for all unaccompanied foreign minors. In this context, any solutions implemented as a matter of urgency (reference is to CAS facilities) should have a residual role and still tend to the characteristics and services provided according to the SPRAR model.

The plan acknowledges the need to organise distribution of arriving migrants and states that, if the capacity of the SPRAR system is insufficient or not immediately available, distribution must take place on a regional basis, according to the following agreed criteria:

- percentage of access, by Regions, to the National Social Policy Fund;
- exclusion of municipalities affected by earthquakes and of municipalities affected by emergency situations;
- quotas relating to the actual presence of migrants in the territories and not to the initial allocations.

Based on the agreement reached, it is up to the National Coordination Table<sup>809</sup> to prepare the distribution forecast, while the subsequent allocation within each region must be agreed within the coordination tables chaired by the Prefect of the regional capital municipality and specifically with local authorities where facilities are identified for temporary reception. The adoption of such criteria was meant to avoid an excessive concentration of migrants in reception on the same territory and, on the contrary, to favour their relocation to different areas of the national territory.

The implementation of this agreement in the following years was only partial, for reasons of both political nature (e.g. linked to changes in local political majorities weary of applying agreements reached by previous majorities),<sup>810</sup> as well as for reasons related to a lack of effective planning and implementation of the planned interventions. First, although the Plan was based on the rapid expansion of the SPRAR system, as it was recognized that it would have allowed an orderly distribution on the national territory, the expansion did not take place before 2017, while in those years sea arrivals had increased by more than 200%, with the consequent extensive growth in the number of CAS.

Another crucial passage of the agreement provided for the activation of regional hubs of first reception, whose main functions would have had to be to quickly relieve the congested ports of disembarkation, to

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<sup>807</sup> The Unified Conference (Conferenza Unificata) is a permanent body where the Central Government, Regions, Provinces and Municipalities are represented. It participates in decision-making processes involving matters for the State and the Regions, in order to foster cooperation between the State activity and the system of autonomies, examining matters and tasks of common interest, also carrying out advisory functions. More specifically, the regional allocation criteria defined by the National Coordinating Table are established in agreement with the Unified Conference, as per Article 16 (1) Reception Decree.

<sup>808</sup> The text of the agreement is available at: <https://bit.ly/3Kq3ZDx>.

<sup>809</sup> The Table is established pursuant to Article 29 (3) of Legislative Decree no. 251/2007 (Qualification Decree). For more information on Table functions, refer to the previous Management and coordination paragraph.

<sup>810</sup> See Linkiesta, Morcone: "Sui migranti i sindaci non possono decidere quello che vogliono", 1 December 2016, available in Italian at: <https://bit.ly/3UcX6sv>. For an in-depth analysis of the effect of electoral incentives on the reception, see the recent article by Gamalerio and Negri, Not welcome anymore: the effect of electoral incentives on the reception of refugees, in *Journal of Economic Geography*, available at: <https://doi.org/10.1093/jeg/lbad002>.

act as facilities for the distribution of asylum seekers within each region and to lead to a progressive dismantlement of the enormous CARA collective centres, which were predominantly located in the South. In fact, the only regional hub to be formally activated was the Mattei Centre of Bologna, in the Emilia-Romagna region, opened in 2014 with a capacity of 200 people (in summer 2016 it reached the number of about 1,000 people) and suddenly closed and converted to CAS in June 2019. In a scenario like the Italian one, characterised by successive sea arrivals within a short time frame of hundreds of people, who must be disembarked, identified and transferred in a short time, the failure to activate regional hubs has resulted, up to the present, in serious logistical problems in the national distribution of migrants, putting additional pressure on the mechanism of transfers from Southern Italy and depriving the regions of a distributing platform that was also meant to be used for the screening of migrants' vulnerabilities, in view of the definitive accommodation of the applicants.

The years following the 2014 agreement saw a strong expansion in the use of emergency reception facilities, at the expense of the ordinary reception and the permanence, if not a worsening, of strong imbalances in the distribution of asylum seekers at a national level. Between 2015 and 2017, the increase of people in reception and the fact that increasingly more local administrations opposed the use of emergency reception facilities was accompanied by an uneven distribution of migrants, so much so that CAS existed in 2,600 Municipalities out of a total of about 8,000, while the Municipalities engaged in the SPRAR system were less than a thousand.<sup>811</sup>

It is for these reasons that in 2016 the Ministry of the Interior designed a new plan, together with the National Association of Italian Municipalities (ANCI). Starting from the mechanism of regional quotas set in July 2014, it conceived a system focused on the wider involvement of municipal realities and the maximum "diffusion" of migrants within the various territories. The objective of this plan was to involve all Italian municipalities in the reception, in sustainable numbers of migrants, uniformly distributed over the territories, according to criteria of demographic proportionality. The ultimate goal was to gradually reduce the use of extraordinary reception, in favour of joining the SPRAR.

To do so, quotas were set for each Italian Municipality, proportional to the population of each.

These quotas corresponded to the number of asylum seekers or protection beneficiaries that each municipality would have to accommodate in SPRAR facilities. The number was calculated in three different ways, depending on the type of Municipality concerned:

- Municipalities with less than 2,000 inhabitants (3,493 in total) were allocated a fixed quota of 6 asylum seekers.
- Metropolitan cities (14 in total) were allocated a variable quota, equal to 2 migrants per thousand inhabitants.
- Municipalities with more than 2,000 inhabitants (4,491 in total) were allocated a variable number of places calculated for each region (calculated on the basis of the regional quotas of July 2014), net of the number of reception places already allocated to small municipalities and metropolitan cities in that given region. The distribution was made using the ratio (per 1,000 inhabitants) between the total places for reception and the total inhabitants of the Municipalities belonging to this group. The amount thus calculated varied, but corresponded to around 2.5 people per thousand inhabitants.

The plan thus created was based on the estimation of a system of reception which counted a total of approximately 200,000 places.

In an effort to convince as many municipalities as possible to adhere to the new plan, the Minister of the Interior gave binding instructions to all Prefects,<sup>812</sup> providing for a "safeguard clause" that exempted the SPRAR municipalities from the activation of "further forms of reception".

According to this clause, Prefects could not open new emergency reception facilities in the municipalities that voluntarily joined the SPRAR network for that given number of migrants. Furthermore, all non-SPRAR

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<sup>811</sup> See Linkiesta, *Ecco i comuni che dovrebbero accogliere i migranti, e non lo fanno*, 5 January 2017, available in Italian at: <https://bit.ly/3KxiVQa>.

<sup>812</sup> See Minister's Directive of 11 October 2016, available at: <https://bit.ly/3Mma5pH>.

reception centres already present in said territory should have been removed or transformed into SPRAR.<sup>813</sup>

As a result of these important measures, there has been a significant acceleration in voluntary joining the SPRAR system by Italian Municipalities, from 2,800 to 3,386 (+21%) between December 2016 and December 2017,<sup>814</sup> and consequently an increase in SPRAR places of 37% during 2017.<sup>815</sup> The expansion of the SPRAR network enabled the reduction of concentration of asylum seekers in some of the larger centres. For example, the CARA of Mineo passed from 3,733 to 2,585 migrants present (-31%) between December 2016 and December 2017, while that of Conetta di Cona dropped from 1,420 to 761 people (-46%) in the same period<sup>816</sup>. Finally, in 2017, 672 temporary or first reception centres could be closed, while 9,211 remained operational.<sup>817</sup>

With the entry into force of the Salvini Decree (Decree Law 113/2018) and the exclusion of asylum seekers from SPRAR (then SIPROIMI), the extension of the latter and the equitable distribution between Municipalities have ceased to be a priority of the Government, which has gradually abandoned the forms of local consultation that have been activated in the meantime. The subsequent adoption of the Lamorgese Decree (Decree Law 130/2020) saw the return of asylum seekers to the current SAI system, but it was not an opportunity to restore the mechanisms of consultation and fair redistribution inaugurated a few years earlier, that indeed appear now abandoned. The consequence of this is that to date, even though there has been a gradual increase in the total number of places in the SAI, the territories still see a very strong imbalance in the distribution of reception places.

At the end of 2022, the total number of asylum seekers and beneficiaries of international protection accommodated was 107,677 (including those hosted in SAI) and their distribution across the regions (as per the 2014 Plan quotas) was as follows:

**Distribution of asylum seekers and beneficiaries of protection accommodated in Italy per region: 31 December 2022**

Region	Number of individuals	Percentage on the national total (regional quotas)	Number of individuals hosted in SAI	Percentage of individuals hosted in SAI against the total number of individuals per region
Lombardy	12,286	11%	3,063	24%
Emilia-Romagna	10,503	10%	3,040	29%

<sup>813</sup> The actual transformation of a reception facility from CAS to SAI was disciplined by the MoI DCLI with Circular letter 11610 of 4 August 2017, having as object: Conversione posti da Centri di accoglienza straordinari a SPRAR - disposizioni operative.

<sup>814</sup> In March 2017, according to an initial survey by all the Prefectures, 200 Municipalities without any reception facilities had given willingness to join the SPRAR, 200 other Municipalities had expressed their intention to transform into SPRAR the temporary structures already present in their territories. Finally, 31 Municipalities had indicated their intention to expand existing SPRAR projects in their territories.

<sup>815</sup> For a comprehensive analysis of these figures, see Fondazione Cittalia, Rapporto annuale SPRAR 2017, available in Italian at: <https://bit.ly/41ka0r4>.

<sup>816</sup> For more data on the subject, see Report on the operation of the reception system designed to meet extraordinary needs connected with the exceptional influx of foreigners into the country (year 2017), August 2018, available at: <https://bit.ly/3MyqffW>.

<sup>817</sup> Further information regarding the implementation of the plan can be found in Luca Pacini, Verso l'accoglienza diffusa: un cammino lungo tre anni per arrivare al Piano integrazione, in Libertà civili, issue 4/2017, available at: <https://bit.ly/3KUHLys>.

Sicily	10,386	10%	5,042	49%
Lazio	9,361	9%	2,762	29%
Piedmont	11,355	9%	2,293	20%
Tuscany	7,125	7%	1,747	24%
Campania	6,769	6%	3,102	46%
Veneto	6,517	6%	728	11%
Calabria	5,135	5%	2,976	58%
Apulia	5,151	5%	3,157	61%
Liguria	4,936	5%	1,025	21%
Friuli-Venezia Giulia	4,450	4%	239	5%
Marche	3,577	3%	1,255	35%
Abruzzo	2,743	3%	841	31%
Umbria	2,118	2%	434	20%
Basilicata	2,126	2%	764	36%
Trentino-Alto Adige	1,613	2%	204	13%
Molise	1,613	2%	892	55%
Sardinia	1,533	1%	253	16%
Valle d'Aosta	131	0,1%	31	24%
National total	107,677	100%	33,848	31%

Source: Ministry of Interior, Cruscotto statistico giornaliero, 31 December 2022 and (for data regarding SAI) 31 January 2023, available at: <https://bit.ly/3ZhYhZk>.

As can be observed, the distribution of asylum seekers and protection holders in Italy still remains highly imbalanced between regions.<sup>818</sup> A recent study showed that less than one out of four municipalities (precisely 23.2%) in 2021 reported on the presence on its territory of a reception facility, be it prefectural (CAS or first reception centres) or afferent to the SAI system. Similarly, the distribution is heterogeneous even between one province and the other. For example, in the Province of Reggio Emilia 93% of Municipalities were involved in reception, while in the Province of Florence only 56%. On the other hand, the closure of thousands of centres has led to a greater concentration of migrants, especially in some large metropolitan cities. The territories with the most places available in 2021 were the metropolitan cities of Rome (3,796), Turin (3,637), Milan (3,524), Bologna (2,579) and Naples (2,578). Overall, in these five metropolitan cities in 2021 there were over 16,000 places in reception facilities, accounting for 16.5% of the total number of places in the country.<sup>819</sup>

Not only that: the SAI network, in addition to being still largely insufficient, is characterised by a very significant territorial imbalance, so that there are regions such as Apulia where the SAI make up more than 60% of the places in reception, and others such as Friuli-Venezia Giulia where SAI places are less than 5% of the regional total. This continues to be a serious problem in terms of the effective possibility for asylum seekers to access quality services and especially in terms of the availability of places dedicated to vulnerable people, that are still completely absent in many Italian regions.<sup>820</sup>

### 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 projects. As previously mentioned, in case of a shortage of places, it is likely that an applicant will remain in first reception facilities or in CAS centres for the entire duration of the asylum procedure.

Asylum seekers can be moved from one CAS to another of the same province or between different provinces, to achieve better redistribution between territories. The Prefectures organise transfers within their own province, whereas transfers between the different provinces are decided by the Ministry of the Interior.<sup>821</sup> In these procedures, the opinion of the individual asylum seekers on the place of their reception is rarely taken into consideration. Transfer decisions cannot be appealed, but the refusal by the affected person to be transferred is equivalent to a non-acceptance of reception itself and can therefore give rise to a measure of withdrawal of the reception measures.<sup>822</sup>

In this context were set the transfers requested by the Prefectures of Friuli Venezia-Giulia and organised by the Ministry with the purpose of reducing the number of migrants in the region, which is a border area and therefore the first point of arrival for those coming through the Balkan Route. During 2022, which saw an increase of around 30% in border crossings from Slovenia compared to 2021, the Ministry periodically sorted thousands of asylum seekers from the first reception centres of the Prefectures of Gorizia, Trieste and Udine to other regions. In July 2022, due to the progressive saturation of other regions' reception facilities, the frequency of these transfers has significantly decreased, with the consequence that hundreds of people were crammed into old overcrowded barracks or forced to live rough (it is worth noting that only 268 SAI places are active in that region).<sup>823</sup>

Considering the far from perfect distribution of the SAI projects in Italy, and therefore the absence or scarcity of SAI places in certain territories, it happens frequently that a transfer from CAS to SAI involves

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<sup>818</sup> A comprehensive analysis of the subject is available in the publication from Campo, Giunti and Mendola, *The Political Impact of Refugee Migration: Evidence from the Italian Dispersal Policy*, Center for European Studies Paper series, no. 456, December 2020, available at: <https://bit.ly/3o3zPgx>.

<sup>819</sup> Source ActionAid and Openpolis, *Centri d'Italia - Mappe dell'accoglienza*. Report 2022, *Il vuoto dell'accoglienza*, available at: <https://bit.ly/3GDUgav>.

<sup>820</sup> Source: I numeri del SAI, 28 February 2023, available at: <https://bit.ly/3KAyBAY>.

<sup>821</sup> Article 15 (4) Reception Decree.

<sup>822</sup> Article 23 (1 a) Reception Decree.

<sup>823</sup> See *Altreconomia*, *Il collasso dell'accoglienza e l'abbandono dei richiedenti asilo. Il caso Friuli-Venezia Giulia*, 20 September 2022, available at: <https://bit.ly/3nnpzzT>. See also RAI TGR, *Migranti, resta irrisolto il nodo dell'accoglienza*, 11 April 2023, available at: <https://bit.ly/3Hw414f>. See also *Il Fatto Quotidiano*, *Migranti, Lamorgese lenta nei trasferimenti: in Friuli Venezia Giulia i centri scoppiano e i richiedenti asilo finiscono in strada*, 29 September 2022, available at: <https://bit.ly/3p6ULUv>.

the relocation of the migrant far away from the place where they were hosted and lived for months or years, often outside the region and towards SAI projects in Southern Italy. The prospect of a new uprooting and of having to start anew your own path of integration in an unknown territory is often so traumatic as to induce those interested to give up the transfer into SAI, and therefore to lose the right to reception to which they would be entitled. No data is available on non-acceptances of transfer measures into SAI, but ASGI observed that this is one of the major problems resulting from an ineffective dispersal policy, as it can bring well-established paths towards autonomy and social inclusion to a sudden halt.

There are no specific law provisions regarding the possibility for an asylum seeker to obtain a transfer from one reception facility to another for personal reasons, such as the need to be closer to their workplace, or to be closer or reunite with family members elsewhere,<sup>824</sup> and no known regulatory provisions providing for families to be accommodated together exist. The observation of local practices shows that the unity of families is usually valued, and therefore the institutions involved ensure, where possible, that members of the same family are hosted in the same accommodation (it is not uncommon for members of the same family to be separated during search and rescue operations at sea, as a result of which they are transferred and accommodated in different places). More variable and less guaranteed are the practices relating to requests for transfer for work reasons, especially when the transfer would involve different Prefectures (and consequently the Ministry).

In general terms, a transfer between SAI projects is usually more likely than a transfer between Prefectures, for reasons related to faster and more effective communication between the former, as well as generally greater openness to the practice by the SAI Central Service.

#### 4.2. Restrictions in accommodation in reception centres

The Reception Decree 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 a different time for relevant personal reasons or for reasons related to the asylum procedure.<sup>825</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 by the Prefecture. 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 and regulated by the "reception regulations" of each facility), that person cannot be readmitted to the same structure and material reception conditions can be withdrawn by the Prefecture (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 Material 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 for the applicant's absence.

However, in these situations the very existence of measures regulating the access to structures and the potential lack of legal advice prevent recipients from challenging revocations.

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<sup>824</sup> Article 14 (1) Reception Decree only foresees that asylum seekers have access to the reception measures "with the members of their family". "Family members", within the meaning of Article 2 (1 f) Reception Decree, shall mean: the spouse of the applicant, the minor children of the applicant, whether adopted or born out of wedlock, minors under guardianship, the parent or other adult legally responsible for the minor applicant.

<sup>825</sup> Article 10(2) Reception Decree.



With regards to the reception project part of the SAI network, rules relating to absence are different and have been regulated through the technical-operational note of the Central Service 1/2018 of 12 April 2018.<sup>826</sup> It provides that the hosted migrant loses the right to stay in reception after 72 hours of unjustified absence, where unjustified absence means a "voluntary removal, for more than 24 hours, without any agreement with the coordinator/ project manager for the local authority".

Justified absence, on the other hand, means a period of absence from the reception facility, duly motivated (for example, to visit relatives or friends, for job search, for training, for work...) that the interested migrant can agree with the project manager from the local authority. Each beneficiary can benefit from 30 days (cumulative) of justified absence within 12 (every) months of SAI reception. In assessing the authorisation for the justified absence, "the local authority is called upon to assess the real needs of the beneficiary, considering its path of inclusion". This provision is consistent with the spirit of socio-educational responsibility typical of the SAI, which requires project managers to make a qualitative assessment of the beneficiary's inclusion path. Although these are indications aimed at protecting the hosted migrants themselves, a rule of this type gives a great discretion to the local authority. In any case, periods of absence due to administrative/judicial procedures or to therapeutic and rehabilitation needs, including hospitalisation, are excluded from the calculation of 30 days. In exceptional cases, the responsible for the local authority may agree with the Central Service on additional periods of justified absence, with appropriate supporting documentation. These general rules are outlined in the reception regulation that SAI projects are required to formally share with each guest,<sup>827</sup>

As can be seen, the regulation of absences in the SAI is inspired by greater flexibility and a criterion of sharing choices in the reception process.<sup>828</sup> This is in fact a provision of a potentially discriminatory nature, because the difference in treatment is essentially based on having had access to a SAI facility, which, as has been described, is often due circumstances that have no connection to the particular situation of the applicant.

## B. Housing

### 1. Types of accommodation

#### Indicators: Types of Accommodation

1. Number of reception centres: Not available<sup>829</sup>
2. Total number of places in the reception centres: 107,677<sup>830</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

At the end of 2022, the number of asylum seekers and beneficiaries of international protection in the reception system was 107,677, which represents a significant increase compared to 2021, when 78,644 migrants were present. Out of the total number, at the end of 2022, 71,882 were in first reception facilities (CAS and first governmental centres) and 33,848 in SAI (former Siproimi).<sup>831</sup>

<sup>826</sup> Text of the note is available, in Italian, at: <https://bit.ly/3zVrCOF>.

<sup>827</sup> A model of these regulations is available as an annex to the Operations Manual, see: <https://bit.ly/3GFtQYk>.

<sup>828</sup> For more information about the differences in reception conditions at various levels of the system, see the paragraph Conditions in Reception Facilities.

<sup>829</sup> Information not available. However, according to the report published by Openpolis and Actionaid, as of 31 December 2021 the number of facilities was 8,699, available in Italian at: <https://bit.ly/3ZjT1oc>, 8.

<sup>830</sup> This is the number of persons accommodated in CPSA, hotspots governmental reception centres CAS and Sai on 31 December 2022, Source Mol Cruscotto Statistico Giornaliero.

<sup>831</sup> Source: Mol Cruscotto statistico giornaliero, available at: <https://bit.ly/3SQSqYx>.

However, the decrease in the number of persons accommodated and in arrivals of asylum seekers did not lead to an increased tendency to place them in ordinary structures: at the end of 2021, 7 out of 10 asylum seekers were still accommodated in extraordinary centres.<sup>832</sup>

Occupancy of the reception system: 31 December 2022			
Hotspots	CAS and first governmental centres	S.A.I.	Total
1,947	71,882	33,848	107,677

Source: Ministry of Interior

As reported by the Ministry of Interior, as of 31 December 2021, the total number of accommodation facilities was 4,225 divided as follows: 4,216 CAS facilities (down from 4,583 in 2020) and 9 first reception centres.<sup>833</sup> Data regarding 2022 are not yet available.

The total number of CAS facilities decreased from 2020 when, according to the data obtained by Altreconomia, the number of CAS facilities at 31 July 2020 was 5,565 and decreased by around 500 units from the 6,004 existing in October 2019. The number of accommodated persons, however, did not drop significantly: at the end of 2021, asylum seekers accommodated in CAS and first reception centres were 52,185, compared to 54,343 at the end of 2020 and 66,958 at the end of 2019. This confirms that, in 2020 and in 2021 the trend of closing smaller CAS continued, as a consequence of the 2018 Decrees and tender specification schemes, as well as a result, in 2021, of the new 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>834</sup> These are First Aid and Reception Centres (CPSA),<sup>835</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>836</sup> According to the SOPs, persons should stay in these centres “for the shortest possible time”, but in practice they are accommodated for days or weeks. In 2020 and in 2021, due to the COVID-19 emergency, hotspots were used for quarantine and isolation measures (See AIDA Country Report on Italy – 2020 and 2021 updates).

By the end of 2022, five hotspots were operating in **Apulia** (Taranto, 244 places) and **Sicily** (Lampedusa, 389 places, Messina, 250 places, Pantelleria, 48 places, and Pozzallo, 334 places). The hotspot on the island of Pantelleria was opened at the beginning of August 2022<sup>837</sup> and is mainly focused on managing arrivals from Tunisia, while the former Trapani hotspot, opened in 2016, was converted into a CPR (administrative detention facility) in 2020. A total of 1,947 persons were accommodated in hotspots at the end of the year 2022, 93% of them in Sicily and 7% in Apulia.<sup>838</sup>

In the first reception centre of Crotone, a space has been set up to carry out activities of first identification, fingerprinting and registration of the will to apply for international protection, as well as the formalisation of pushback or expulsion orders. This is abundant and compelling evidence that hotspot operational procedures are de facto implemented there, although the facility is not formally identified as such.<sup>839</sup> Over the last few months, ASGI, through the In Limine project, undertook monitoring of the Roccella Jonica structure (in the Calabria region), which is responsible for the first reception of migrants arriving on that territory and for the related procedures. Several requests for generalised civic access were

<sup>832</sup> Report ActionAid and Openpolis, *ibid*, 10.

<sup>833</sup> The 2020 and 2021 Governmental reports can be accessed at: <https://bit.ly/3y8bRCN>.

<sup>834</sup> Article 8(2) Reception Decree, as amended by DL 130/2020, which now directly recalls Article 10-ter TUI.

<sup>835</sup> L 563/1995.

<sup>836</sup> Article 10-ter TUI, inserted by Article 17 Decree Law 13/2017 and L 46/2017.

<sup>837</sup> See Mol, *Migranti, a Pantelleria il nuovo Punto-Crisi*, available at: <https://bit.ly/4053sw2>.

<sup>838</sup> MOI, *Cruscotto Statistico Giornaliero*, 31 December 2022, available in Italian at: <https://bit.ly/3Jw6bYo>.

<sup>839</sup> See ASGI, *Il centro di accoglienza di Crotone: dati generali, i minori e le procedure di redistribuzione*, available at: <https://bit.ly/3LQf7sE>.

submitted to the Prefecture of Reggio Calabria, from which it emerged, first of all, that a new hotspot is about to be realised in Roccella Jonica and that the necessary preparatory activities are in progress.<sup>840</sup> More recently, the Government has expressed the intention to activate a new hotspot in Friuli Venezia-Giulia, probably in Trieste, intended to managing the identification and detention of migrants reaching Italy through the Balkan Route.<sup>841</sup>

Decree-Law 20/2023 provided that, up to 31 December 2025, the Lampedusa hotspot could be managed by the Italian Red Cross, in derogation from the rules on tendering procedures.<sup>842</sup> This provision became necessary following the continuous mismanagement issues registered in the facility (See paragraph Conditions in hotspots), in order to ensure the functionality of a structure considered fundamental for the Italian system. The same Decree also provided for the possibility for the Government to activate new hotspot facilities throughout the national territory, with the same functions of identification, selection and administrative detention, again in derogation from the rules relating to tender procedures.<sup>843</sup> The identification of suitable locations to host new hotspots and their activation has been entrusted to the Extraordinary Commissioner appointed by the Government as part of the declaration of the state of emergency.<sup>844</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, selected through public tender.<sup>845</sup>

At the time of writing, 9 first reception centres are established in the following regions in Italy:

First reception centres by region	
First reception centre	Region
Gorizia (CARA Gradisca d'Isonzo)	Friuli-Venezia Giulia
Udine (Caserma Cavarzerani)	Friuli-Venezia Giulia
Foggia (Borgo Mezzanone)	Apulia
Bari (CARA Palese)	Apulia
Brindisi (Restinco)	Apulia
Crotone (Sant' Anna)	Calabria
Caltanissetta (Pian del Lago)	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.

The Hub centre located in Bologna, Mattei, is now classified as CAS. Other governmental centres working as first accommodation facilities but not classified as first governmental centres by Mol are the one of Ferneti, in Trieste, called Casa Malala, and the one in Pordenone, Caserma Monti, both in Friuli Venezia Giulia.<sup>846</sup>

<sup>840</sup> Source: ASGI, Roccella Jonica: situazione attuale e implementazione “approccio hotspot”, 21 February 2023, available in Italian at: <https://bit.ly/43u1Fmv>.

<sup>841</sup> See RAI, Hotspot sulla Rotta balcanica. L'ex prefetto di Trieste Valenti pianifica struttura sul territorio, 15 January 2023, available at: <https://bit.ly/43bUv5a>.

<sup>842</sup> Article 5-bis (2) Decree Law 20/2023 converted with modifications into Law 50/2023.

<sup>843</sup> Article 5-bis (3) Decree Law 20/2023 converted with modifications into Law 50/2023.

<sup>844</sup> Article 2 (1a) Decree of the Chief of the Department of Civil Protection 984/2023.

<sup>845</sup> Article 9(2) Reception Decree.

<sup>846</sup> See Mol, available at: <https://bit.ly/3y4dbFm>.

### 1.3. Temporary facilities: CAS

In case of temporary unavailability of places in the first reception centres, the Reception Decree provides the use of Emergency Reception Centres (*centri di accoglienza straordinaria*, CAS). The CAS system, originally designed as a temporary measure to prepare for transfer to second-line reception, expanded in recent years to the point of being entrenched in the ordinary system. The Reception Decree adopted in August 2015 missed the opportunity to actually change the system and simply renamed these centres from “emergency centres” to “temporary facilities” (*strutture temporanee*).

The CAS are identified and activated by the Prefectures, in cooperation with the Ministry of Interior. Following Decree Law 113/2018, CAS facilities can be activated only after obtaining the opinion of the local authority on whose territory the structures will be set up.<sup>847</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 is not sufficient to meet the reception demand.

The term CAS is a formal classification related to the temporary function of the reception facility, but does not in itself define its nature. The forms that CAS facility can take are in fact extremely varied, going from small apartments that managing bodies rent from private citizens to collective centres obtained within entire buildings, from camps organised with containers and tents to former army barracks. The tender specifications scheme, in fact, provides for the possibility of setting up CAS in “single housing units”, in collective centres with less than 50 places, centres with a capacity between 50 and 300 places, or collective centres with more than 300 places.<sup>848</sup>

Following the reform of the accommodation system made by Decree Law 130/2020, the CAS are specifically designed only for the first accommodation phase and for the time “strictly necessary” until the transfer of asylum seekers to the SAI system.<sup>849</sup> The services guaranteed are the same as in the first reception centres (see [Forms and Levels of Material Reception Conditions](#)).<sup>850</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>851</sup> which has never happened; instead, these structures have been made permanent.

There are over 4,200 CAS established across Italy.<sup>852</sup> As underlined (see [Forms and Levels of Material Reception Conditions](#)), following the 2018 Mol tender specification schemes most of the small CAS facilities were forced to close, leaving the accommodation scene to large centres managed by profit organisations 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 limited number and quality of services provided through the new tender specification schemes published in February 2021, in addition to the SAI system remaining based on a purely voluntary adhesion by the Municipalities, suggest that the situation will not change any time soon.

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<sup>847</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>848</sup> See Tender Specification Scheme, Ministerial Decree 29 January 2021, available at: <https://bit.ly/41T6Ni3>.

<sup>849</sup> Article 11 (3) Reception Decree, as amended by Decree Law 130/2020.

<sup>850</sup> Articles 10 (1) and 11 (2) Reception Decree.

<sup>851</sup> Article 12-bis Decree Law 113/2018, as amended by L 132/2018.

<sup>852</sup> Source: 2021 Governmental report on the situation of the reception system, available at: <https://bit.ly/3y8bRCN>.

## 1.4. Provisional centres

Law 50/2023 provided that, pending the identification of available places in governmental centres or in CAS, reception for asylum seekers may be arranged by Prefect, for the time strictly necessary, in provisional structures where food, lodging, clothing, health care and linguistic-cultural mediation are the services ensured.<sup>853</sup>

## 1.5. Second reception - SAI system

The system now called SAI (Reception and Integration System, Sistema di Accoglienza e Integrazione, formerly known as SPRAR or SIPROIMI) is dedicated mainly to beneficiaries of international protection and unaccompanied minors.<sup>854</sup>

SAI projects can also accommodate: victims of trafficking; domestic violence and serious 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>855</sup> holders of special protection, holders of a permit for special cases (former humanitarian protection),<sup>856</sup> and former unaccompanied minors, who obtained a prosecution of assistance.<sup>857</sup> Holders of special protection, when in case of application of the international protection exclusion clauses, are instead excluded.

The activation of SAI reception projects depends on funding provided directly by the Ministry of the Interior (and not by the Prefectures, as for CAS and first reception centres) to the local authority. The latter must voluntarily apply to host a reception project in its territory and submit a detailed project to the Ministry, asking for funding. The application is evaluated by a commission and, if deemed appropriate, the local project is financed for a period usually equal to 3 years. At the end of the period financed, the Municipality holder of the project can ask the Ministry for a new three-year funding.<sup>858</sup>

SAI projects, even if more stable than CAS as they are based on multi annual funding that promotes the quality of interventions, are by nature "more fragile", because adherence to the SAI system and the maintenance of such projects are entirely dependent on a local political will.<sup>859</sup> As mentioned, the decision by the Governments to maintain these projects in existence solely based on a voluntary adhesion by municipalities constitutes an important limitation to their widespread distribution on the national territory, which does not go in the direction of greater availability of places in this system and does not facilitate immediate access by asylum seekers to the system.

On 28 February 2023, the SAI network comprised 934 projects, for a total of 43,923 places financed, of which 679 projects (36,821 places) for ordinary beneficiaries, 214(6,299 places) for unaccompanied minors and 41 projects (803 places) for people with living with mental health conditions or physical disability. As previously mentioned, the opening of a SAI project depends on the sole will of the local administration responsible (mostly municipalities), so there is no proportional distribution in Italy: this means that the presence of SAI projects on the territory is uneven and often concentrated in Southern

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<sup>853</sup> Article 11 (2 bis) Reception Decree introduced by L 50/2023.

<sup>854</sup> According to Article 1-sexies DL 416/1989, as amended by DL 130/2020, local authorities responsible for the SAI projects "can" host in such projects also asylum seekers and beneficiaries of special protection or other protection titles.

<sup>855</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>856</sup> Ibid, mentioning Articles 1 (9) DL 113/2018 (special cases); Article 19, (1, 1.1) TUI, amended by DL 130/2020.

<sup>857</sup> Article 1 sexies (1 bis) DL 416/1989, introduced by DL 130/2020. In some CAS, according to the law unaccompanied minors becoming adults can benefit from further assistance (accommodation and help) up to 21 years. It is called "proseguito amministrativo", administrative continuation.

<sup>858</sup> The funding application and assessment mechanism for the project is governed by the Ministerial Decree 18 November 2019.

<sup>859</sup> For a recent analysis of the impact of political preferences on the political willingness to open reception facilities, see the significant contribution from Gamalerio and Negri, Not welcome anymore: the effect of electoral incentives on the reception of refugees, in Journal of Economic Geography, available at: <https://doi.org/10.1093/jeg/lbad002>.



Italy (alone, the regions of Calabria, Campania, Apulia and Sicily count 488 projects, over 52% of the national total).<sup>860</sup>

While the SAI system has been slowly but constantly expanded throughout the country in the 20 years since it was set up,<sup>861</sup> the total amount of available places is still largely inadequate to meet the existing needs. For this reason, CAS and emergency accommodations still need to be opened and maintained. Furthermore, historically, the number of SAI seats funded by the Government and the number of SAI seats active and available differ by several thousands. This has been happening because of bureaucratic delays as well as organisational and logistical issues.

As evidenced by the extensive work of Actionaid,<sup>862</sup> at the date of 31 December 2021, the SAI system had more than 10 thousand funded but unavailable places. A more recent reportage from the magazine *Altreconomia*<sup>863</sup> showed that, in October 2022, against over 44,000 funded places within the SAI system, only 35,000 of them were available and even fewer, 33,000, were actually used.

As a further confirmation of the fact that national authorities are not investing strongly enough on the enlargement of the SAI system, 2021 and 2022 saw a further slowdown in the growth of the number of places financed. In fact, the authorities decided to expand only projects for unaccompanied foreign minors or vulnerable applicants,<sup>864</sup> and to finance additional places (therefore the extension of existing projects and not the activation of new projects) reserved for refugees from Afghanistan and (by an early 2022 legislative amendment) from Ukraine.<sup>865</sup> It can be argued however, that this was done in the attempt to respond to the large number of new arrivals from said countries, on the basis of an emergency response, and not to ensure a stable and necessary expansion of the SAI.

## 1.6 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 public reception system, provided for example by Catholic or voluntary associations, which support several asylum seekers and refugees.

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 S.A.I.

Other projects financed by municipalities or AMIF funds and directed at accommodating families and unaccompanied minors started.

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<sup>860</sup> See I numeri del SAI, February 28th 2023, at: <https://www.retesai.it/i-numeri-dello-sprar/>.

<sup>861</sup> See Rapporto Annuale SAI 2021, available at: <https://bit.ly/3Z9qQbt>.

<sup>862</sup> ActionAid, Centri d'Italia, Mappe dell'accoglienza. Report 2022, available at: <https://bit.ly/3SQiQKd>.

<sup>863</sup> *Altreconomia*, Scarsa programmazione, posti vuoti e persone al freddo: così ai migranti è negata l'accoglienza, available at: <https://bit.ly/3ZMLD4D>.

<sup>864</sup> Ministerial Decree no. 19125 of July 1st 2021 funded 51 UFM projects, for a total of 855 new places, via the AMIF Fund. Ministerial Decree no. 23420 of August 10th 2021 funded 44 UFM projects, for a total of 662 new places, via the AMIF Fund. Ministerial Decree no. 23428 of August 10th 2021 funded the enlargement of 37 UFM already existing projects, for a total of 797 new places, and the enlargement of 14 already existing projects for physical/mental vulnerabilities, for a total of 174 new places. Ministerial Decree no. 35936 of November 17th 2021 funded the enlargement of 1 UFM already existing project, for a total of 20 new places, and the enlargement of 1 already existing project for physical/mental vulnerabilities, for a total of 5 new places.

<sup>865</sup> Ministerial Decree no. 40783 of December 21st 2021 funded the enlargement of 113 already existing projects, for a total of 2,277 new places intended primarily for the reception of Afghan families. Ministerial Decree no. 1415 of 19 January 2022 funded the enlargement of 45 already existing projects, for a total of 723 new places intended primarily for the reception of Afghan families. Ministerial Decree no. 8910 of 17 March 2022 funded the enlargement of 39 already existing projects, for a total of 470 new places intended primarily for the reception of Afghan families. Ministerial Decree no. 18215 of June 9th 2022 funded the enlargement of 135 already existing projects, for a total of 3,530 new places intended primarily for the reception of Afghan and Ukrainian families. Ministerial Decree no. 30147 of 23 August 2022 funded the enlargement of 105 already existing projects, for a total of 2,325 new places intended primarily for the reception of Afghan and Ukrainian families.



In Bologna, for example, the VESTA project, conceived and developed by the Camelot Social Cooperative - is operational. The project, designed mainly for beneficiaries of international and special protection who reach the age of majority, provides a contribution towards the costs to the host family.<sup>866</sup>

The OHANA project, financed by AMIF fund, is developing accommodation for families of unaccompanied minors in the cities of Turin, Milan, Pavia, Venice, Verona Padova, Pordenone, Rome, Bari, Catania and Palermo.<sup>867</sup>

The NGO Refugees Welcome Italia promotes numerous initiatives of “welcome in the family” for protection holders who have had to abandon the public reception system, in particular to those who have not found a place in the SAI or have had to leave before the actual conclusion of their path of social inclusion. Refugees Welcome has developed over the years a significant network on the Italian territory, putting itself in relation both with the authorities of the reception centres and with numerous municipal administrations.<sup>868</sup>

## 2. Conditions in reception facilities

### Indicators: Conditions in Reception Facilities

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

Reception conditions vary considerably not only among different reception centres but also between the same type of facilities. While the services provided are supposed to be 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 within reception facilities. However, asylum seekers remain in reception centres throughout the whole asylum procedure, which may last several months, as well as during the appeal procedure, that can last up to 3-4 years, depending on the workload and backlog within the relevant court. The Reception Decree does not foresee a maximum time-limit for permanence in reception centres, but stipulates that access to reception must be provided from the moment the person expresses the will to apply for protection and throughout the whole asylum procedure, though this is rarely the case (See [Access and Forms of Reception Conditions](#)).

The adoption and the recent update of the Safe Countries of Origin list, together with border procedures and, more generally, the application of accelerated procedures, will 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 asylum seekers even shortly after their arrival. (see [Accelerated procedure](#)).

### 2.1. Conditions in hotspots

Current contracts provide that the following services should be delivered within the hotspot facilities: information provision on the asylum procedure and the reception system, social assistance, psychological assistance, preparation and distribution of meals, health care, provision of clothing and personal hygiene

<sup>866</sup> Bologna, Camelot presenta Vesta, per ospitare rifugiati in famiglia, available at: <https://bit.ly/3y9ALDf>.

<sup>867</sup> Ohana project, see: <https://bit.ly/3jD0v28>.

<sup>868</sup> Source Refugees Welcome Italia, Cosa facciamo, available at: <https://bit.ly/42pAXdA>.

products, telephone card.<sup>869</sup> These services must be provided with the proper care and methodologies when working with unaccompanied minors or vulnerable individuals.

The stay within hotspots should be limited to the time strictly necessary to carry out the identification and initiation of legal procedures. Italian law, however, does not provide for a maximum duration of stay, although these are closed structures in which personal freedom is limited.

In the absence of sufficiently defined regulatory provisions, it has often happened that migrants stay in hotspots for many weeks, due to delays in transferring them to government centres or CAS. Faced with continuous arrivals after landings and internal organisational and management issues, hotspots very often become severely overcrowded and their conditions severely deteriorate.<sup>870</sup>

This is particularly the case for the hotspot on the island of Lampedusa, which, in view of its official capacity of 389 places, has often accommodated much higher numbers of newly arrived migrants in the course of 2022-2023, up to a maximum of over 3,200 people, 8 times its capacity, in February 2023. Several times, in the period between 2022 and the beginning of 2023, hundreds of men, women and children were forced to sleep outdoors, on makeshift mattresses, at temperatures as low as six degrees. The centre has experienced a number of power outages and shortages of food, clothing and running water.<sup>871</sup> In this context of severe health and hygiene issues, three people died in early 2023.<sup>872</sup>

Save the Children, active within the hotspot of Lampedusa, has denounced a now permanent situation of delays and shortcomings in the provision of the most basic services, even when directed to the most vulnerable. The NGO reported that 450 minors, 250 of whom unaccompanied, even very small children, had been present in the hotspot for over a month.<sup>873</sup> UNICEF also noted severe crowding and delays identified as risk factors for the most vulnerable.<sup>874</sup>

ASGI, as part of its InLimine project, carried out monitoring, data collection and a visit to the hotspot in March 2022, following which it produced a report highlighting the numerous critical issues identified.<sup>875</sup>

ASGI has presented urgent appeals to the European Court of Human Rights in order to request the immediate transfer from the hotspot of Lampedusa of three families, including children, who were detained there for varying periods and in degrading material and hygienic conditions. By 10 November 2022, the Court ordered the Government to immediately transfer only one of the families.<sup>876</sup>

In March 2023, the ECtHR delivered its judgement on the case *J.A. and Others v. Italy*,<sup>877</sup> concerning four Tunisian nationals who were rescued by an Italian ship and taken to the Lampedusa hotspot.

The Court ruled that the applicants were subjected to inhuman and degrading treatment during their stay in the Lampedusa hotspot, in violation of Article 3 of the Convention. Additionally, it stated that the impossibility for the applicants to lawfully leave the closed area of the hotspot clearly amounts to deprivation of liberty under Article 5 of the Convention, especially considering that the maximum duration of their stay in the crisis centre was not defined by any law and that the regulatory framework did not allow

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<sup>869</sup> See Mol Decree 29 January 2021, Outline of tender documents for the supply of goods and services relating to the management and operation of the centres, attachment 6-bis, available at: <https://bit.ly/41b1UAt>.

<sup>870</sup> See La Nuova Calabria, Hotspot di Crotone al collasso, quasi mille migranti in 24 ore e casi di scabbia, 27 October 2022, available at: <https://bit.ly/42NebN5>. Corriere della Sera, Pasti cotti a Bari e servizi poco igienici: ecco l'hotspot per i migranti a Taranto, 12 January 2023, available at: <https://bit.ly/3o4l0K3>.

<sup>871</sup> See Il Fatto Quotidiano, Lampedusa, "È emergenza igienico-sanitaria all'hotspot dei migranti": materassi accatastati, rifiuti e sovraffollamento, 8 July 2022, available at: <https://bit.ly/3lj9lcV>. Il Post, Nell'hotspot di Lampedusa manca il cibo e ci si riscalda con i falò, 20 February 2023, available at: <https://bit.ly/3ofOG7Y>. La Repubblica, Migranti, nell'hotspot di Lampedusa al collasso: "Sto all'aperto con mio figlio di 4 mesi", 13 March 2023, available at: <https://bit.ly/3pOksJR>.

<sup>872</sup> La Repubblica, Lampedusa, giovane ivoriana muore nell'hotspot sovraffollato. Il terzo caso in tre mesi, 19 February 2023, available at: <https://bit.ly/454T2IZ>.

<sup>873</sup> Save the Children, Hotspot sovraffollato a Lampedusa: le condizioni critiche dei minori, 12 April 2023, available at: <https://bit.ly/41YgFqV>.

<sup>874</sup> UNICEF, Cronache di frontiera. Lampedusa: vite in hotspot, 10 May 2023, available at: <https://bit.ly/3MfcWiC>.

<sup>875</sup> ASGI, Report sulla visita al Centro hotspot di Lampedusa, Agosto 2022, available at: <https://bit.ly/3Oh74rW>.

<sup>876</sup> See ASGI, Diritti violati nell' hotspot di Lampedusa: per la CEDU il trattamento è disumano e degradante solo per le famiglie con minori, available at: <https://bit.ly/3pLd2XP>.

<sup>877</sup> *J.A. and Others v. Italy* (dec.), no. 21329/18, 30 March 2023, available at: <https://hudoc.echr.coe.int/eng/?i=001-223716>.

the use of the Lampedusa hotspot as a detention centre for foreigners. The applicants were neither informed of the legal reasons for their deprivation of liberty nor able to challenge the grounds of their de facto detention. Hence, the Court held that Italy violated Article 5 §§ 1, 2 and 4 of the Convention.

The Government, between 2022 and 2023, has tried with difficulty to accelerate the transfers of migrants from Lampedusa, employing ships of the Coast Guard and the Navy, military aircrafts,<sup>878</sup> but also increasing the service of ferries from the island to Sicily.<sup>879</sup>

As previously mentioned, Decree-Law 20/2023 provided that, up to 31 December 2025, the Lampedusa hotspot could be managed by the Italian Red Cross, in derogation from the rules on tendering procedures.<sup>880</sup> This provision became necessary following the continuous mismanagement problems registered in facility.

## 2.2. Conditions in first reception centres

According to the law, first reception centres offer accommodation to asylum seekers for the purpose of completion of operations necessary for the determination of their legal status,<sup>881</sup> and of medical tests for the detection of vulnerabilities, to take into account for a subsequent and more focused placement.<sup>882</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>883</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, religions, or political groups to prevent the rise of tensions and violence.

Law 50/2023, which converts Decree Law 20/2023, adopted by the new Government, provides that within governmental centres and CAS, health care, social assistance and linguistic-cultural mediation will no longer be provided. These new regulations will be followed by a new set of tender schemes specifications for these centres.

## 2.3. 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>884</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 theoretical. As explained (see: [Form and Levels of Material Reception Conditions](#)) the new tender specification schemes published by the Mol on 24 February 2021<sup>885</sup> do not intervene to concretely change the level of services

<sup>878</sup> See Fanpage, *È stato avviato il piano di evacuazione dell'hotspot che ospita i migranti a Lampedusa*, 7 May 2023, available at: <https://bit.ly/3o5RDIf>.

<sup>879</sup> See Avviso per la reperibilità di navi per il trasporto di persone migranti dall'isola di Lampedusa, available at: <https://bit.ly/3HNxaP8>.

<sup>880</sup> Article 5-bis (2) Decree Law 20/2023 converted with modifications into Law 50/2023.

<sup>881</sup> Article 9(1) Reception Decree.

<sup>882</sup> Article 9(4) Reception Decree.

<sup>883</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>884</sup> Articles 11(2) and 10(1) Reception Decree.

<sup>885</sup> Ministry of Interior Decree published on 24 February 2021, available in Italian at: <https://bit.ly/3tGSWtO>.

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.

Bearing in mind that the term CAS simply defines a legal category and not a type of structure, and that consequently there are CAS activated in small apartments, as well as in collective centres of hundreds of places, it can be understood the actual quality of the services and the very nature of the reception in CAS differ greatly.

The chronic emergency state under which the CAS operate has forced the improvisation of interventions and favoured the entry into the reception network of entities lacking the necessary skills or, in the worst cases, only interested in profits.

The functioning of CAS depends on a service contract between the management bodies and the local 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>886</sup> while the new tender specification scheme is keeping the reception panorama unchanged.

## 2.4. Conditions in SAI

The SAI network is mainly constituted by small facilities and rented apartments,<sup>887</sup> located in – or close to – city centres or, alternatively, well connected to cities through public transport. There, asylum seekers can benefit from first level services, which include the same services guaranteed in first accommodation facilities (CAS and governmental centres): material reception services, health care, social and psychological assistance, linguistic-cultural mediation, Italian language courses, legal orientation and orientation to the territorial services.<sup>888</sup>

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>889</sup> (See [Content of protection](#)).

The fact that these projects are permanently structured and that the necessary resources are planned in time, and therefore not dependent on a downward bidding process, means that all these services can be promptly provided to those able to access this system, with no delay.

Law 50/2023, which converted Decree Law 20/2023, recently came into force. Asylum seekers have been once more excluded from the possibility to access the SAI system. As such, the reception system will return to a situation in which applicants will only have access to collective government centres and temporary facilities, while the SAI will become a sub-system reserved exclusively to protection holders. Access to the SAI will only be granted to asylum seekers identified as vulnerable and to those who have legally entered Italy through complementary pathways (Government-led resettlements or private sponsored humanitarian admission programs).

<sup>886</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 ActionAid, third report, available in Italian at: <https://cutt.ly/7yONslR>. 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>887</sup> In 2021, more than 84% of the facilities used in the SAI were apartments. See Rapporto Annuale SAI 2021, available at: <https://bit.ly/3JzyJ37>.

<sup>888</sup> Article 1-sexies (2 bis, a) DL 416/1989, introduced by DL 130/2020.

<sup>889</sup> Article 1-sexies (2 bis, b) DL 416/1989.

## 2.5. 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>890</sup> By the end of 2018, some of these camps had been rapidly evacuated.<sup>891</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, while also beneficiaries of international protection were forced to abandon the Sprar/Siproimi reception due to the expiry of their project.

The report,<sup>892</sup> published in December 2019 offers a description of the types of informal settlements frequently subject, even in 2019, to evictions.

The report published by NAGA on 16 December 2021, highlights how the number of homeless persons increased in Milan; most of them are third country nationals under the age of 35, often migrants benefiting from protection.<sup>893</sup>

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>894</sup> It is estimated that at least 7,000 migrants are now living within informal settlements, within the Capitanata area.<sup>895</sup>

The Government recently allocated 200 million euros from the National Program for Recovery and Resilience (PNRR)<sup>896</sup> to Municipalities particularly affected by the presence of informal settlements (especially in Apulia). This could be a unique opportunity to finally overcome the ghettoization that informal settlements produce; however, problems have already emerged with regard to the effective ability of Municipalities to develop projects in this respect, to the point that there is a concrete risk that these funds will be spent just building new settlements made of housing containers, or not be spent at all.<sup>897</sup>

The fifth Report *Agromafie e Caporalato* published by FLAI- CGIL two labour unions, by the end of 2020, highlights that, in the last decade more and more asylum seekers are crowding informal settlements sought close to the place of work in the agriculture sector. To date, the report says, tens of thousands of asylum seekers are living in a promiscuous and degrading manner in these settlements.

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<sup>890</sup> MSF, *Fuori campo*, 2 February 2018, 36.

<sup>891</sup> Il Giornale, 'Bari, sgomberati i locali della Ferrhotel occupati da extracomunitari', 12 October 2018, available in Italian at: <https://bit.ly/2HBfOGQ>; Internazionale 'A San Ferdinando sgomberata una tendopoli se ne apre un'altra', 6 March 2019, available in Italian at: <https://bit.ly/2F2S3EQ>; 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>892</sup> Naga, Senza Scampo, December 2019, available in Italian at: <https://cutt.ly/1yONfN4>.

<sup>893</sup> Naga, Più fuori che dentro, available in Italian at: <https://bit.ly/3tgw4Vf>.

<sup>894</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>895</sup> See Tra le piaghe del caporalato: azioni e idee per superare i ghetti, 27 July 2022, available at: <https://bit.ly/41ToQEF>.

<sup>896</sup> The PNRR is the program with which the Italian Government intends to manage the funds of the Next Generation EU. In other words, it is the instrument of economic recovery and upturn introduced by the European Union to remedy the losses caused by the pandemic. The text of the Italian PNRR is available at: <https://tinyurl.com/yk89x3rh>.

<sup>897</sup> See Human Rights Watch, Better Solutions Needed for Migrant Workers' Makeshift Settlements in Italy, 4 April 2023, available at: <https://bit.ly/41TrcDv>.



Such examples, beyond Borgo Mezzanone, are S. Ferdinando, Cassibile, the Felandina in Metapontum area, Campobello, in Mazara, Castel Volturno (Caserta) and Saluzzo.<sup>898</sup>

The final report "The Bad Season" (La Cattiva Stagione)<sup>899</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.

In November 2021, the Criminal Court of **Pordenone** acquitted the activists of the NGO Rete Solidale, operating in Pordenone, together with 9 asylum seekers, accused of having occupied a private parking lot to help around 70 asylum seekers in need of accommodation in 2017.<sup>900</sup>

In **Trieste**, some beneficiaries of international protection and asylum seekers whose reception conditions were withdrawn, are facing a criminal procedure to have occupied the "Silos area", a private area behind the train station. From what emerged from the trial, they slept amidst garbage and animals with cardboard huts. In June 2022, the court of Trieste condemned them to two years' imprisonment plus a fine. An appeal against the decision has been brought before the Court of Appeal of Trieste and is pending at the time of writing.

In **Ventimiglia**, as reported by Refugees Rights Europe and Progetto 20K,<sup>901</sup> after the closure of the Roja Camp, people started once more to create informal settlements around the city.

The report, published in July 2021, informed that "hundreds of displaced people have been spending cold nights outside during the winter without access to clean water, sanitation, hygiene provisions and heating. Other settlements were created on the beach and in abandoned railway offices close to the former Red Cross camp, referred to as 'red houses.' And that "the buildings were forcibly evicted by the police in April 2021. At the time of eviction, there were 50-60 people sleeping inside each building. The police, with the help of private companies, blocked the entrances to the buildings, sealed the water pipes and threw away all of the residents' belongings." According to the report, "Most of the people in transit were sleeping under the bridge on the riverside, by the distribution parking lot, evoking a crisis similar to the one in 2016. (..) Without an institutionally guaranteed shelter, the organisations working in the area have only been able to provide a limited number of beds and hosting solutions dedicated to vulnerable people such as women, minors and families. The legal shelter provision provided by WeWorld, Caritas and Diaconia Valdese assisted 362 people in April 2021, of whom 29 were women".

A recent publication<sup>902</sup> showed that at least ten thousand migrants live in informal settlements in Italy, often characterised by marginality, very poor access to services and exploitation. Of these ten thousand people, about 30% are asylum seekers or refugees. Another study<sup>903</sup> documented the socio-health situation of informal settlements of migrants and refugees in the capital city of Rome, underlining how almost all the people assisted by the MEDU NGO indicated having been hosted only at former CARA or CAS centres, often in mega-structures isolated from population centres and lacking services to promote knowledge of rights, and integration into the social fabric. In Rome alone, there are an estimated 2,000 people, including asylum seekers, refugees, holders of international protection and migrants in transit, living in informal settlements.<sup>904</sup>

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<sup>898</sup> FLAI- CGIL, Quinto report su Agromafie e Caporalato, 2020, available in Italian at: <https://bit.ly/3CKEAYs>.

<sup>899</sup> Medici per i diritti umani, report La Cattiva Stagione, 21 October 2019, available in Italian at: <https://cutt.ly/JyONhtH>.

<sup>900</sup> See Meltingpot, Pordenone: non luogo a procedere per le attiviste della Rete solidale e nove richiedenti asilo, 13 November 2021, available at: <https://bit.ly/3LiCidL>.

<sup>901</sup> Refugees Rights Europe and Progetto 20K the Exacerbation of a crisis, impact of the COVID-19 on people on the move at the Italian- French border, July 2021, available at: <https://bit.ly/3OR2lp6>, 12.

<sup>902</sup> Ministry of Labour and Social Policies, National Association of Italian Municipalities, Le condizioni abitative dei migranti che lavorano nel settore agro-alimentare. Prima indagine nazionale, July 2022, available at: <https://bit.ly/429bo10>.

<sup>903</sup> MEDU and UNHCR, Margini. Rapporto sulle condizioni socio-sanitarie di migranti e rifugiati negli insediamenti informali della città di Roma, available at: <https://bit.ly/3YA26ba>.

<sup>904</sup> For further information on migrants' informal settlements in Italy, see: Mendola and Busetta, "Health and Living Conditions of Refugees and Asylum-seekers: A Survey of Informal Settlements in Italy." Refugee Survey Quarterly, vol. 37, no. 4, Oxford UP, Dec. 2018, pp. 477–505, available at: <https://doi.org/10.1093/rsq/hdy014>. See also: Brovia and Piro, "Ghettos, camps and dormitories. Migrant workers' living conditions in enclaves of



## C. Employment and education

### 1. Access to the labour market

#### Indicators: Access to the Labour Market

1. Does the law allow for access to the labour market for asylum seekers? ☒Yes ☐No  
❖ If yes, when do asylum seekers have access to the labour market? 2 months
2. Does the law allow access to employment only following a labour market test? ☐Yes ☒No
3. Does the law only allow asylum seekers to work in specific sectors? ☐Yes ☒No  
❖ If yes, specify which sectors
4. Does the law limit asylum seekers' employment to a maximum working time? ☐Yes ☒No  
❖ If yes, specify the number of days per year
5. Are there restrictions to accessing employment in practice? ☒Yes ☐No

According to the Reception Decree, an asylum seeker can start to work after 60 days from the moment they lodged the asylum application.<sup>905</sup> Even if they start working, the asylum seeker permit cannot be converted into a work or residence permit.<sup>906</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.

Furthermore, employers are often wary of hiring asylum seekers who are in possession only of the asylum request receipt or the request for renewal of the six-month permit, since they present no expiry date, even if they are legally equal to the residence permit.

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. 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 in the national territory.<sup>907</sup>

In early 2022, an additional case was signalled to ASGI in Bolzano, since both the employment office and Questura had denied access to work to a Dublin asylum seeker.

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.

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industrial agriculture in Italy", in Rye and O'Reilly, "International Labour Migration to Europe's Rural Regions". Routledge, 2020. See also: Belloni, Fravega, Giudici, "Fuori dall'accoglienza: insediamenti informali di rifugiati tra marginalità e autonomia", in *Politiche Sociali* 2/2020, 225-244, DOI: 10.7389/97987. See also: Romeo (ed.), "Abbandoni. Assembramenti umani e spazi urbani: rifugiati e negligenti politiche di accoglienza", Turin, 2017.

<sup>905</sup> Article 22(1) Reception Decree.

<sup>906</sup> Article 22(2) Reception Decree.

<sup>907</sup> CJEU decision, joined cases C322/19 and C385/19, 14 January 2021.

L.132/2020 has re-introduced the possibility - abolished by Decree Law 113/2018 implemented by L.132/2018 - for asylum seekers to be involved in activities of social utility in favour of local communities.<sup>908</sup>

### *Regularisation of foreign workers*

From June to August 2020 - the Government allowed the regularisation 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>909</sup> The procedure was opened to asylum seekers allowing the applicants to change their permit into a work permit.

Two different procedures were regulated:

- 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>910</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 6-months permit to stay, convertible into a work permit only if, in those six months, he or she found an employment contract in one of the three above-mentioned sectors.

Asylum seekers could access both types of procedures. However, the MoI Circulars provided that access to the second procedure was subject to the renunciation of the asylum application.<sup>911</sup> Through the renunciation, to be formalised 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.

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>912</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>913</sup>

In total, only 230,000 persons applied for such regularisation procedure.<sup>914</sup>

Out of the 207,452 applications submitted in the first procedure, as of 19 October 2022, 83,032 residence permits had actually been released, meaning only the 37.7% of the total number of applications presented. Two class actions have been promoted - one in Rome and the other in Milan - against the administration's delay.

## **2. Access to education**

### **Indicators: Access to Education**

- |  |   |
|--|---|
| 1. Does the law provide for access to education for asylum-seeking children? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 2. Are children able to access education in practice?                        | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |

<sup>908</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>909</sup> Article 103 DL 34/2020 converted with amendments by L. 77/2020.

<sup>910</sup> Article 103 (2) DL 34/2020.

<sup>911</sup> MoI Circular of 19 June 2020; MoI Circular of 7 July 2020.

<sup>912</sup> Civil Court of Florence, Interim Decision of 25 September 2020, available at: <https://bit.ly/3up8TX6>.

<sup>913</sup> Administrative Regional Court of Marche, Interim Measure no. 274 of 17 September 2020, available at: <https://bit.ly/2Rjft2x>.

<sup>914</sup> See report from Ero Straniero, based on data provided by the Ministry of Interior, September 2021, available at: <https://bit.ly/3v5qjL3>, 25.

Italian legislation provides that all children until the age of 16, both nationals and foreigners, have the right and 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>915</sup> The Reception Decree refers 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.

## 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>916</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.

### 1. Practical obstacles in accessing health care

The right to medical assistance is acquired at the moment of the lodging of the asylum application. However, 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](#)).

<sup>915</sup> Article 21(2) Reception Decree.

<sup>916</sup> Article 34 TUI; Article 16 PD 21/2015; Article 21 Reception Decree.

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>917</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>918</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 permits 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 were 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>919</sup> Such obstacles were reported with regard to access to health cards from 2019 until now. 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>920</sup> In practice, however, 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 if reception conditions were withdrawn, they cannot renew the health card.

Medical assistance is extended to each regularly resident family member under the applicant's care in Italy and is recognised for new-born babies of parents registered with the National Health System.<sup>921</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>922</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 the Italian population.

One of the most relevant obstacles to access health services is the language barrier. Usually medical operators only speak Italian and there are no cultural mediators or interpreters who could facilitate the mutual understanding between operator and patient.<sup>923</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).

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<sup>917</sup> Article 21 Reception Decree; Article 16 PD 21/2015.

<sup>918</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>919</sup> Ministry of Interior Circular of 1 September 2016; Revenue Agency Circular No 8/2016.

<sup>920</sup> Article 42 PD 394/1999.

<sup>921</sup> Article 22 Qualification Decree.

<sup>922</sup> See M Benvenuti, *La protezione internazionale degli stranieri in Italia*, Jovene Editore, Napoli 2011, 263.

<sup>923</sup> *Ibid.*

## 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>924</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 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 instead of unemployed. In other regions such as **Piedmont** and **Lombardy**, the exemption is extended until asylum seekers manage to access the labour market. In order to maintain the ticket exemption, asylum seekers need to register in the registry of the job centres (*centri per l'impiego*) attesting their unemployment.

On 12 January 2023, regarding a case brought by ASGI and Emergency, the Civil Court of Milan ascertained the discriminatory conduct of the Lombardy region which, like other regions, distinguishes, for the purposes of exemption, between unemployed and inactive people, a circumstance which particularly impacts asylum seekers and refugees who, compared to other categories of foreigners, have been staying in the territory for less time and, in most cases, have not had previous working relationships before enrolling in the national health service. The Court acknowledged, with specific reference to the category of asylum seekers, how it is "obvious that an asylum seeker cannot claim a previous employment relationship in Italy (...) especially because, pursuant to art. 22 of Legislative Decree no. 142/2015, asylum seekers can carry out working activities only after 60 days from the request for the relevant residence permit".<sup>925</sup>

## 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 beneficiaries, victims of torture or serious violence, issued by Decree on 3 April 2017 to implement Article 27(1-bis) of the Qualification Decree, also apply to asylum seekers (see [Content of Protection: Health Care](#)).

In order to ensure the protection of the health of foreign citizens in Italy, ASGI has collaborated with the Italian Society of Migration Medicine (*Società italiana di medicina delle migrazioni*, SIMM) since 2014, monitoring and reporting cases of violation of the constitutional right to health.

Since 2015, ASGI has also collaborated with MSF, providing legal support for migrants victims of violence. From April 2016, the two organisations have started a project in **Rome** opening a centre specialising in the rehabilitation of victims of torture.<sup>926</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>927</sup> Updated information is not available.

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<sup>924</sup> Ministry of Health Circular No 5 of 24 March 2000.

<sup>925</sup> Civil Court of Milan, decision of 12 January 2023, available at: [bit.ly/3LwUuDr](https://bit.ly/3LwUuDr).

<sup>926</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](https://bit.ly/1ShpCGG).

<sup>927</sup> MSF, *Fuori campo*, February 2018, 39.

A protocol was signed in January 2021 by the Prefecture of Massa Carrara (Tuscany) and functional units of mental health for examining the cases of persons applying for international protection who are psychologically vulnerable, aimed at providing them with adequate care and enhanced protection.<sup>928</sup>

## E. Special reception needs of vulnerable groups

### Indicators: Special Reception Needs

1. Is there an assessment of special reception needs of vulnerable persons in practice?

☐ Yes

☒ No

Article 17(1) of the Reception Decree establishes 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](#)).

However, 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>929</sup> The Decree provides, in theory, that special services addressed to vulnerable people with special needs shall be ensured in first reception centres.<sup>930</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 number of services to be provided. This is 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.

Currently, in case vulnerable people access the SAI system before they are granted 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>931</sup>

In February 2023, SAI Central Service reported that there are only 41 projects specialised in the care of forced migrants with mental distress and disabilities, corresponding to 803 places. The number of regions not provided with a dedicated place has grown from 8 to 9 since 2020, with the inclusion of Friuli Venezia Giulia. The others remain: Abruzzo, Basilicata, Friuli Venezia Giulia, Campania, Liguria, Molise, Sardinia, Trentino Alto Adige, Valle d'Aosta and Veneto.<sup>932</sup>

<sup>928</sup> EC, EMN Bulletin, May 2021, available at: <https://bit.ly/3Fioz4r>, 5.

<sup>929</sup> Articles 9(4) and 11(1) Reception Decree.

<sup>930</sup> Article 17(3) Reception Decree.

<sup>931</sup> Article 34 MoI Decree 18 November 2019. According to an analysis from 2020, the places intended for the reception of vulnerable people were by that time insufficient; there were 734 places specialised 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. 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>932</sup> I numeri del SAI, February 2023, available at: <https://bit.ly/3LJ7xC0>.



In the light of this data, it appears clear that the Italian reception system is in practice for the most part devoid of services and facilities dedicated, or at least adequate, to the reception of vulnerable people. The limited places available in the SAI network for people with special needs are completely insufficient to meet the needs of an entire national system. On the other hand, the prefectural reception circuit (which welcomes almost 70% of the total) does not have ad hoc facilities, there are no specific services envisioned, nor training requirements of operators, nor is there any provision for enhanced collaboration with the local social and health services. This does not mean that in Italy there are no prefectural reception centres able to take care of vulnerable migrants, but that positive experiences in this regard are very rare and that they have developed only from the good will of the managing entities, without adequate legal or economic support from the competent institutions. The ministerial Guidelines on assistance, rehabilitation and treatment of vulnerable migrants,<sup>933</sup> while constituting a high-quality document and an important reference point, have in fact remained largely not enforced in the reception context, both because no reference is made to them within the Prefectures' tender specifications, and because, in adopting them, the Government has not provided any additional financial resources.

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>934</sup> Where possible, adult vulnerable people are placed together with other adult family members already present in the reception centres.<sup>935</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>936</sup>

In Italy, the NGO "Doctors for Human Rights" published a study on post-traumatic stress disorder (PTSD) among refugees and asylum applicants. The study concluded that overcrowding, geographical isolation, prolonged stay, length of legal proceedings, as well as episodes of violence particularly in large reception centres, have detrimental effects on asylum seekers' and refugees' mental health. In a public appeal, 18 civil society organisations – including MEDU, ASGI, Action Aid, Oxfam, and Refugees Welcome Italia – called for a policy that avoids the use of large reception facilities.<sup>937</sup>

With respect to the accommodation for LGBTQI+ people, from 2018, when there were no dedicated public accommodation projects,<sup>938</sup> the situation only slightly improved. Currently, only a few places in dedicated public projects exist, led by Arcigay and Caleidos, in Modena, and by Quore Association (R.A.R.O. project) based in the Piedmont region.<sup>939</sup>

Another relevant experience is that of the network Rise the difference in Bologna, which launched a pilot project for the creation and management of a reception facility - included among the 2017-2019 former Sprar- Siproimi - dedicated to LGBT asylum seekers and refugees.<sup>940</sup> In late 2022, the Municipality of Rome opened a call for tenders for a pilot SAI project dedicated to the reception of LGBT+ migrants.<sup>941</sup>

As pointed out by legal practitioners, reception workers and lawyers, although LGBTQI sexual orientation is a factor of persecution and can motivate the recognition of international protection, it is often hidden for

<sup>933</sup> 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, adopted with Decree of the Ministry of Health on 3 April 2017, available at: <https://t.ly/Wwyp>.

<sup>934</sup> Article 9(3) PD 21/2015.

<sup>935</sup> Article 17(5) Reception Decree.

<sup>936</sup> Article 17(7) Reception Decree.

<sup>937</sup> Fra, Migration: Key Fundamental Rights Concerns, Quarterly Bulletin, February 2021, available at: <https://bit.ly/37WS13N>, 17.

<sup>938</sup> Openmigration, Mille baci: rifugiati LGBTI in Italia tra ostacoli e buone pratiche, 26 July 2018, available at: <https://bit.ly/3MHVlcZ>.

<sup>939</sup> Link to the RARO project led by Quore, available at: <https://bit.ly/3vwYzPA>.

<sup>940</sup> Link to the project available at: <https://bit.ly/3vFf2Qt>.

<sup>941</sup> Comune di Roma, Bando SAI, progetto pilota per migranti LGBT+, available at: <https://bit.ly/3TCuuZi>.

a long time by asylum seekers who do not feel safe as they fear being discriminated against and attacked by other guests of the centres.<sup>942</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 consisting of spouses and first-degree relatives.<sup>943</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 parents are divided and placed in different centres, and usually the children are accommodated with their 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.

Places dedicated to families are very few throughout Italy, both in CAS and within the SAI network. Some Italian regions almost entirely lack reception places suitable for families. This element of fragility of the reception system became even more evident in the 2021-2022 period, first with the arrival of the Afghan evacuees, among whom there were many large families (between 5 and 10 people per nucleus), and then with the people fleeing from Ukraine, among whom there were mainly single-parent households.

While within the SAI projects specific tools and services are in place for households hosted there, this is almost entirely absent in all other types of reception, in the sense that neither the law nor the regulatory provisions, nor do the specifications of services provide for the activation of activities or services dedicated to families as such. This means that any services are activated of their own free will by the NGOs managing the centres, but in the absence of guidelines, quality standards and potentially without the possibility to see the related expenses reimbursed by the Government.

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 must activate the guardianship.<sup>944</sup> Following this decision, Juvenile Courts gave indications to authorities not to directly accommodate minors with relatives other than parents.

Based on NGOs' experience, no specific or standardised mechanisms are put in place to prevent gender-based violence in reception centres. As a rule, permanent law enforcement personnel are present outside governmental centres with the task of preventing problems and maintaining public order. In practice, 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 minors

The Reception Decree states that the best interest of the child has priority in the application of reception measures, in order to ensure living conditions suitable for a child with regard to protection, well-being and development, including social development, in accordance with Article 3 of the Convention on the Rights of the Child.<sup>945</sup>

In order to evaluate the best interest of the child, the child shall be heard, taking into account their age, the extent of their maturity and personal development, also for the purpose of understanding their past

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<sup>942</sup> See also: Large movements, Prassi del sistema accoglienza e migranti LGBTQ+, 28 June 2021, available at: <https://bit.ly/3OqqBDX>.

<sup>943</sup> Article 10(1) Reception Decree.

<sup>944</sup> Court of Cassation, 3 April 2019, decision 9199/2019.

<sup>945</sup> Article 18(1) Reception Decree.

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 interest.<sup>946</sup>

During 2022, more than 28,000 unaccompanied minors arrived in the country (13,000 via disembarkation).<sup>947</sup> The total number of unaccompanied minors hosted in Italy on 31 December 2022 was 20,089, a 65% growth compared to 2021. Such a significant increase is largely attributable to the arrival on the Italian territory of a considerable number of minors from Ukraine, following the outbreak of war in the country in February 2022 and the humanitarian crisis that emerged as a consequence.

Unaccompanied foreign minors are predominantly male (85.1%). With reference to age, 44.4% are 17, 24% are 16, 11.3% are 15 and 20.3% are under 15. As of 31 December 2022, the main countries of origin of unaccompanied minors were Ukraine (5,042 minors), Egypt (4,899), Tunisia (1,800), Albania (1,347) and Pakistan (1,082). Taken together, these five nationalities represent more than 70% of the total figure. 96% were accommodated in reception facilities, while 4% were accommodated in private housing (with families). The majority of unaccompanied children were accommodated in **Sicily** (19.5%), followed by **Lombardy** (14.3%), Calabria (10.3 %), Emilia-Romagna (9%).<sup>948</sup> Comparing the share of minors welcomed in the various Italian regions with that relating to 2021 and 2020, a large increase in numbers, throughout the territory is quite evident, especially in Lombardy (+1,678), where presences have quadrupled since the same period in 2021.

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>949</sup> Through the Fund, the Ministry provides, with its 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>950</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>951</sup> On 22 December 2020, the MoI informed that the AMIF fund had authorised the funding of 21 million euros to MoI to strengthen the implementation by local authorities of projects for the reception of unaccompanied minors in the former SIPROIMI (now SAI) network. The maximum cost of the projects is € 68,40 per day per person.<sup>952</sup>

## 2.1. Dedicated facilities for unaccompanied children

Italian legislation provides that for unaccompanied foreign minors, as for unaccompanied minors of Italian citizenship, the main reception response should be the placement in family foster care, while placement in a community should be activated only to the extent that this is not possible. In this regard, national practices have changed considerably with the arrival of minors from Ukraine. While at the end of 2021 only 3% of unaccompanied foreign minors were entrusted to a family and 97% were placed in one of the different kinds of existing communities,<sup>953</sup> on 31 December 2022 70% of the over 20,000 minors present

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<sup>946</sup> Article 18(2) Reception Decree.

<sup>947</sup> For more detailed information on sea arrivals of unaccompanied foreign minors in 2022, see: Save the Children, Hidden in Plain Sight, Migrant children travelling to and through Europe, The South Frontier, 2023, available in Italian at: <https://bit.ly/3K6LF2c>.

<sup>948</sup> Ministry of Labour, Monitoring report on unaccompanied foreign minors, 31 December 2022, available at: <https://bit.ly/3F0xhpf>.

<sup>949</sup> 2015 Stability Law (Law 190/2014, Article 1 (181-182).

<sup>950</sup> Chamber of Deputies, Study Service, 19 March 2020, available in Italian at: <https://cutt.ly/myO8ddD>.

<sup>951</sup> MOI, available at: <https://bit.ly/3fg5x2e>.

<sup>952</sup> See: <https://bit.ly/3oeJzRb>.

<sup>953</sup> See Children's Ombudsman, 2021 report to Parliament, available at: <https://bit.ly/438B0L0> page 184.

in Italy were placed in reception facilities, while 23% were placed in a private subject. 92% of the children in family care are from Ukraine.<sup>954</sup>

At the end of 2022, there were 1,533 reception facilities hosting unaccompanied children, of these, 136 are dedicated to the first reception and each receives an average of 29 minors, and 1,397 to the second reception, with an average of 7 minors each. The reception facilities are located throughout the country and, in line with the data of the arrivals of minors, while the first reception facilities are more present in Sicily, followed by Lombardy and Emilia Romagna.<sup>955</sup>

Out of the 20,089 accommodated unaccompanied minors at the end of 2022, 10,010 were welcomed in second-line reception facilities (49.8%), which include SIPROIMI-SAI facilities, second-line accommodation facilities funded by AMIF and all second-level structures authorised at regional or municipal level. Another 3,994 (19.9%) were in first reception centres.<sup>956</sup>

During 2022, there were 7,526 voluntary removal of minors from the reception system. The nationalities most represented in the phenomenon of spontaneous abandonment are those of Tunisia, Egypt and Afghanistan. To leave the communities are mainly minors who are placed in the territories close to where they entered Italy. This can be observed through existing statistics, showing that 49% of the abandonments occurred in Friuli-Venezia Giulia and 42% in Sicily (the latter, however, is also a region with the highest number of minors welcomed in absolute terms).<sup>957</sup>

In its 2021 report to Parliament, the Children's Ombudsman reported pointed out the need to ensure the uniformity of the quality of services provided, through the adoption of guidelines for the national tariff relating to the costs of the services offered by the reception facilities and that relating to the costs of reimbursements paid to the entrusted parties. The current address lines, in fact, only indicated macro-items (e.g. clothes or room rents) to which the regions must adhere, but do not contain any indication with respect to the quantification of the expenditure, not even in terms of average costs of reception.

Another important problem in the reception system has also been pointed out: the classification of residential structures for minors. The lack of a shared name, which makes it possible to clearly identify the organisational and structural peculiarities of residential services, inevitably affects the effectiveness of monitoring activities and the quality of interventions, given the difficulty of finding detailed information on the type of structure in which the minor is placed<sup>958</sup>.

Given the recent significant increase of arrivals, whereas the capacity of the child care system has increased only slightly in previous years, public authorities, especially in larger cities, have been struggling to find suitable places to accommodate minors and often lacking financial resources to fund these facilities. In an attempt to cope with this new emergency, the Government launched a number of interventions.

- The contribution paid by the Ministry of the Interior to Municipalities that host at their expense unaccompanied foreign minors (not within SAI projects) has been increased from a maximum of 45 euros per day to 60 euros per day, for each day of presence of the child. This quantity was also set as an auction basis for the activation of new first reception facilities.<sup>959</sup> This intervention was widely requested and shared with the associations of Municipalities, struggling with the high costs related to the reception of children in specialised communities. The National Association of Italian Municipalities (ANCI) had requested the funding of at least 4,000 additional SAI places for

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<sup>954</sup> Source Ministry of Labour and Social Policies, Half-yearly review report on unaccompanied foreign minors in Italy, 31 December 2022, available at: <https://bit.ly/3MybRTs>.

<sup>955</sup> For an in-depth analysis of the reception in the regions of Sicily, Apulia, Liguria and Marche, see: Defence for Children and Cespi Report on 2021, Minorenni stranieri non accompagnati, Legge 47/2017, rapid survey on Apulia, Marche, Liguria, Sicily, published on June 2022, available in Italian at: [bit.ly/3li1SI0](https://bit.ly/3li1SI0).

<sup>956</sup> *Ibid*, 34-35.

<sup>957</sup> Source Ministry of Labour and Social Policies, Half-yearly review report on unaccompanied foreign minors in Italy, 31 December 2022, available at: <https://bit.ly/3MybRTs>.

<sup>958</sup> See Children's Ombudsman, 2021 report to Parliament, available at: <https://bit.ly/438B0L0>.

<sup>959</sup> See Circular letter from the Department of Civil Liberties to Prefects on 19 May 2022.

minors, deemed strongly necessary, but the proposal was rejected several times by both the Parliament and the Government.<sup>960</sup>

- SAI places for unaccompanied foreign minors were increased several times between 2021 and 2022, to reach funding for 2,334 new seats (see next paragraph “SAI”).
- On 4 August 2022, the Ministry of Interior published a public notice for the submission of projects for the activation of temporary centres functioning as “regional hubs for unaccompanied foreign minors”, for a total of 1,000 new places to be financed through the AMIF fund, starting on 1 January 2023.<sup>961</sup> The list of the 15 projects to be financed was published only in May 2023. It is not yet clear where these centres will be located and which is going to be their capacity. The operating period for these projects has been redefined and will cover the timeframe between 1 July 2023 and 9 January 2026. The activation of regional hubs for unaccompanied minors is an initiative shared with ANCI, aimed at equipping local territories with facilities that can function as bearings that amortise the continuous arrival of minors, giving time to the municipalities to find definitive solutions of reception.<sup>962</sup>
- Considering that the aforementioned interventions proved insufficient, the Minister of the Interior, in March 2023, urged the Prefects to open new reception structures for minors.<sup>963</sup>
- The Extraordinary Commissioner for the state of emergency announced on 3 May 2023 that an order will soon be promulgated enabling Prefects to activate temporary structures for unaccompanied minors, with a maximum of 50 places each. Indeed, this possibility is already provided for by law<sup>964</sup> (see the following paragraph First reception centres and CAS for unaccompanied children), which is why it is not clear at the moment what is meant.
- Lastly, the Government has ordered that the communities authorised or accredited for the reception of unaccompanied minors under 14 can derogate from the parameters of capacity provided by local and national rules, in the maximum extent of 25% of the assigned places.<sup>965</sup>

## SAI

According to the law, the accommodation of all unaccompanied children shall primarily take place in SAI facilities, regardless of whether they present an application for international protection.<sup>966</sup>

Children reaching adulthood in SAI centres can remain there until a final decision on their asylum application.<sup>967</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 could stay in SAI 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 former SIPROIMI (now SAI) Guidelines issued by the Ministry of Interior with decree of 18 November 2019 regulated the matter in the same way.<sup>968</sup> Decree Law 130/2020 finally authorised the access to SAI for unaccompanied minors who became adults obtaining an administrative extension of their placement.<sup>969</sup>

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<sup>960</sup> Source ANCI, Biffoni: “Ingestibile concentrazione minori stranieri non accompagnati in certi Comuni”, 14 April 2023, available at: <https://bit.ly/42TlrHg>.

<sup>961</sup> The full documentation of the public notice is available at: <https://bit.ly/407wg7l>.

<sup>962</sup> Source ANCI, Minori stranieri non accompagnati, Anci: Puntare sul doppio canale: hub di primissima accoglienza e rete SAI diffuse su territori”, 3 May 2023, available at: <https://bit.ly/3oeCGUA>.

<sup>963</sup> Source: ANSA, Piantedosi a Prefetti: “Aprire centri per minori migranti”, 23 March 2023, available at: <https://bit.ly/42HN8D9>.

<sup>964</sup> Article 19 (3-bis) Reception Decree.

<sup>965</sup> See Order of the Chief of Department for Civil Protection no. 994 of 11 May 2023, available at: <https://bit.ly/45IRK3e>.

<sup>966</sup> Article 19(2) Reception Decree.

<sup>967</sup> Article 12(5-bis) Decree Law 113/2018, as amended by L 132/2018.

<sup>968</sup> Article 38 MoI Decree 18 November 2019.

<sup>969</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>.



SAI Guidelines provide additional specific activities and services in favour of unaccompanied minors and in particular the activation of services aimed at promoting family foster care, 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 guardians. It also provides specialised services dedicated to minors with particular vulnerabilities.<sup>970</sup>

As of February 2023, 6,299 places for unaccompanied foreign minors were financed in 214 SAI projects.<sup>971</sup> The number of places dedicated to unaccompanied children within the SAI network of reception projects has been increased in 2021,<sup>972</sup> but still falls short of current needs, given the over 19,000 unaccompanied children currently present in the reception system.<sup>973</sup>

Between March and November 2022, the Children's Ombudsman, together with UNHCR, UNICEF and the SAI Central Service conducted a series of field visits in several SAI projects, among them Amelia, Aradeo, Bologna, Galatina, Narni, Pescara and Rieti.<sup>974</sup>

### **First reception centres and CAS for unaccompanied children**

For immediate relief and protection purposes unaccompanied children may be accommodated in governmental first reception facilities. The system of first reception outlined by Law 47/2017 and Reception Decree remains substantially unrealized, constituting one of the parts of the legislation with respect to which the reality is further away from legal provisions. The decree of the Ministry of the Interior that should regulate the government structures of first reception for minors accompanied has not been issued so far. Practices regarding the placement of children in these structures is not based on a single system, but on a poorly coordinated set of different types of accommodation, with visible effects of management difficulties for the institutions and an undeniable impact on the predictability and linearity of Child protection and inclusion path.

In the absence of the first government reception centres, this phase is in fact covered by different types of structures: the most similar in standards to the regulatory provision, the centres financed by the Migration and Integration Asylum Fund (AMIF) and centrally managed by the Ministry of the Interior; the extraordinary reception centres set up by the Prefects (c.d. CAS minor) and managed by the Prefectures; family homes and socio-educational communities managed by individual Municipalities; SAI structures that, unlike their natural destination, end up performing a function of first reception.

It should be highlighted that these are separate reception levels, based on institutions of different scope. This causes a difficult and sometimes lacking coordination, as well as a substantial differences in respect for set rules depending on the centre. Moreover, the investment, although large, is not sufficient to accommodate all children. Looking at available data,<sup>975</sup> the percentage of minors that remain in first-reception facilities is too high, which in many cases effectively transforms them into long-term centres, with further problems in terms of planning, placement management and fast transfers of children arriving.

Regarding the quality of reception, alongside efficient reception centres, fruitful collaborations between institutions and non-profit organisations that put boys and girls at the centre, situations are found where minors are placed in an often-inappropriate way, also because of the non-compliance with the quality standards laid down by law. These include structures lacking these standards, where also adults are

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<sup>970</sup> Mol Decree, 18 November 2019, Article 35, available in Italian at: <https://cutt.ly/hyO8jXD>.

<sup>971</sup> SAI, *I numeri del SAI*, February 2023, available in Italian at: <https://bit.ly/3LJ7xC0>.

<sup>972</sup> Ministerial Decree no. 19125 of July 1st 2021 funded 51 UFM projects, for a total of 855 new places, via the AMIF Fund. Ministerial Decree no. 23420 of 10 August 2021 funded 44 UFM projects, for a total of 662 new places, via the AMIF Fund. Ministerial Decree no. 23428 of 10 August 2021 funded the enlargement of 37 UFM already existing projects, for a total of 797 new places. Ministerial Decree no. 35936 of 17 November 2021 funded the enlargement of 1 UFM already existing project, for a total of 20 new places. For a comprehensive analysis of the evolution over time of the SAI system for unaccompanied minors, see the report from ANCI-Cittalia, *Il Sistema di accoglienza e integrazione e i minori stranieri non accompagnati*, 2023, available at: <https://bit.ly/3HL70MP>.

<sup>973</sup> Data as of 31 January 2023, Ministry of Labour report available in Italian at: <https://bit.ly/3TwowJB>.

<sup>974</sup> See: <https://bit.ly/3q0Uz9Q>.

<sup>975</sup> Ministry of Labour, Monitoring report on unaccompanied foreign minors, 31 December 2022, available at: [bit.ly/3kol1b5](https://bit.ly/3kol1b5).



accommodated (for example hotspots or hotels), with a strong impact on the well-being of minors, their future planning and their rights. In other situations, due to the lack of places in reception facilities, minors are put on a waiting list and remain completely without reception or in precarious accommodation with relatives or compatriots. The sharp increase in the number of unaccompanied minors arriving in Italy is not in fact matched by an adequate increase in the number of places available in facilities for minors, on the other hand there was a reduction in the number of places in AMIF centres.

In its Concluding Observations addressed to the Italian Government in 2019 on the implementation of the Convention on the Rights of the Child and Adolescence, the competent UN Committee had already expressed its concern regarding the “Shortcomings in emergency, first and second-level reception centres for unaccompanied children concerning the age assessment procedure, the lack of adequate information and social activities for children, the length of stay of children in emergency or first-level reception centres, and delays in the appointment of guardians”.<sup>976</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>977</sup>

The Ministry of Interior Decree issued on 1 September 2016 has identified the structural requirements and the services ensured in such centres.<sup>978</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>979</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>980</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 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 of movement for the hosted minors. According to the rules in force in these centres, to protect the potential victims of trafficking, minors could not own cell phones and can leave 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 encouraging children to leave the facilities where they are accommodated.<sup>981</sup> The Italian NGO Group for the Convention of the Rights of the Child (CRC Group) reached the same conclusions and recalled, in its latest report, that “a system of “first reception” de facto so organised, in which the standards of health protection and needs related to minors are unclear, is (...) lacking in the ability to ensure an individualised approach to individual minors and therefore unable to identify and

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<sup>976</sup> UN Committee on the Rights of the Child, Concluding observations on the combined fifth and sixth periodic reports of Italy, CRC/C/ITA/CO/5-6, 28 February 2019, available at: <https://bit.ly/41SSN81>.

<sup>977</sup> *Ibid.*

<sup>978</sup> Ministry of Interior Decree of 1 September 2016 on the establishment of first reception centres dedicated to unaccompanied minors.

<sup>979</sup> Article 3 Ministry of Interior Decree of 1 September 2016.

<sup>980</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>981</sup> Children’s Ombudsperson, *I movimenti dei minori stranieri non accompagnati alle frontiere settentrionali*, 29 March 2019, available in Italian at: <https://bit.ly/2v2oNt6>.

manage particularly vulnerable cases. This results in serious negative effects on the psycho-social health of the individual at a young age, a strong detachment and adherence to the rules both in current events and in the future projection, the increased risks of absconding and therefore the high risk of invisibility, because of the escape from the formal and protective reception systems".<sup>982</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>983</sup> According to Article 19(3-bis) of the Reception Decree, in case of mass arrivals of unaccompanied children and unavailability of the dedicated reception centres, the use of CAS to accommodate children is permitted.<sup>984</sup>

Similarly to temporary shelters for adults (see [Types of Accommodation](#)), these CAS are established by Prefectures and directly managed by civil society bodies. 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>985</sup> No maximum time limit for the period of stay in such centres is defined by the law; accommodation is limited to the time "strictly necessary" until the transfer to adequate structures.<sup>986</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 coordination with the services of the territory.<sup>987</sup>

At the end of 2022, first reception centres accommodated 3,994 (19.9% of the total national figure) unaccompanied children. These centres include government centres financed by AMIF, CAS activated by the Prefects, first reception facilities authorised by the municipalities or regions and emergency and provisional centres. Out of these, 5 projects were in Sicily and one in Molise. In total, they offer 275 places for male unaccompanied minors, spread in 13 facilities.

On 25 November 2021, these projects were extended until 31 December 2022 and, following the extension, the financial contribution relating to the 6 active projects was increased.<sup>988</sup>

From 23 August 2016, when AMIF funded facilities were activated, to 31 December 2022, when those facilities have been permanently closed, the total number of unaccompanied minors hosted in such structures was 11,698.<sup>989</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>990</sup>

The reception of unaccompanied children not transferred to the governmental centres or SAI 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>991</sup>

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<sup>982</sup> CRC Group, 12° Updated report 2022, Chapter VIII, available at: <https://bit.ly/3q0yXKD>.

<sup>983</sup> Article 19(3) Reception Decree.

<sup>984</sup> Article 19(3-bis) Reception Decree, citing Article 11.

<sup>985</sup> Article 19 (3-bis) Reception Decree.

<sup>986</sup> Article 19(3-bis) Reception Decree, citing Article 19(2)-(3).

<sup>987</sup> Article 19(3-bis) Reception Decree.

<sup>988</sup> Ministry of Labour, Monitoring report on unaccompanied foreign minors, 31 December 2021, available at: <https://bit.ly/3EHAIVN>; the decree of increase and the extension of the activities published on 25 November 2021 can be consulted at: <https://bit.ly/3kypyUJ>.

<sup>989</sup> Ministry of Labour, Monitoring report on unaccompanied foreign minors, 31 December 2022, available at: <https://bit.ly/3LK3IU>.

<sup>990</sup> Children's Ombudsman, *I movimenti dei minori stranieri non accompagnati alle frontiere settentrionali*, 29 March 2019, available at: <https://bit.ly/2v2oNt6>.

<sup>991</sup> Article 19(3) Reception Decree, as amended by Article 12 Decree Law 113/2018 and L 132/2018.

The Ministry of Interior, together with the EUAA, 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>992</sup>

On 4 August 2022, the Ministry of Interior published a public notice for the submission of projects for the activation of temporary centres functioning as “regional hubs for unaccompanied foreign minors”, to be financed through the AMIF fund, starting on 1 January 2023.<sup>993</sup> The list of the 15 projects to be financed was published only in May 2023. It is not yet clear where these centres will be located and how many places they will offer in practice. The operating period for these projects has been redefined and will cover the timeframe between 1 July 2023 and 9 January 2026.

## 2.2. Accommodation with adults and destitution

Unaccompanied children cannot be held or detained in governmental reception centres for adults and CPR.<sup>994</sup>

In 2020, the Public Prosecutor at the Juvenile Court of Trieste sent two directives to authorities in Friuli Venezia Giulia region. They authorised 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 sections on [Age assessment](#) and [Access to 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](#)).

On 21 July 2023, the ECtHR condemned Italy in the case *Darboe and Camara v. Italy* (no. 5797/17).<sup>995</sup> The Strasbourg judges verified that the Italian authorities unlawfully held that Mr. Darboe was of age, through anachronistic and unreliable age-assessment medical tests, contrary to what was stated by the applicant himself, thus failing to appoint a guardian who could represent him and preventing him from presenting the application for international protection without proper support.

Furthermore, the erroneous age assessment led to his placement in the adult reception centre of Cona, known for its extreme overcrowding, widespread violence and serious sanitation deficiencies, for more than four months. In the light of these findings, the Court considered that the right to respect for Mr. Darboe's private and family life (Article 8 of the Convention) and the prohibition of being subjected to inhuman and degrading treatment (Article 3 of the Convention) had been violated. The Court specifies that the extreme vulnerability of minors together with their status as asylum seekers are a decisive element to be carefully considered and protected through specific guarantees.

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<sup>992</sup> Mol Guidelines available in Italian at: <https://cutt.ly/2yO8nAN>.

<sup>993</sup> The full documentation of the public notice is available at: <https://bit.ly/407wg7l>.

<sup>994</sup> Article 19(4) Reception Decree.

<sup>995</sup> ECtHR, *Darboe and Camara v. Italy*, Application No 5797/17, Communicated on 14 February 2017, available at: <https://bit.ly/3Z8AtWY>.

The appeal, brought to the attention of the Court by ASGI lawyers in January 2017, when, after an urgent requested under Article 39 of the Court regulation, the minor was moved to a dedicated facility, was deemed admissible since the Court also found the inexistence, within the Italian legal system, of effective judicial remedies (article 13 of the Convention) to act against the living conditions within reception facilities

Save the Children, active within the hotspot of Lampedusa, has denounced a now permanent situation of delays and shortcomings in the provision of the most basic services, even regarding the most vulnerable. The NGO reported that 450 minors, 250 of whom unaccompanied, even very small children, had been present in the hotspot for over a month.<sup>996</sup> UNICEF also noted severe crowding and delays identified as risk factors for the most vulnerable.<sup>997</sup> In early May 2023, around 500 unaccompanied minors, locked inside the hotspot, held a demonstration, climbing the roof of the facility and clamouring to be transferred.<sup>998</sup>

ASGI noted that at the Roccella Ionica hotspot, unaccompanied minors are subject to de facto detention, as they are not permitted to leave the facility.<sup>999</sup>

## F. Information for asylum seekers and access to reception centres

### 1. Provision of information on reception

According to the Procedure Decree, upon submission of an asylum application, police authorities are obliged to provide information to 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>1000</sup> 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 to be 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>1001</sup>

This provision, unlike Article 5 of the recast Reception Conditions Directive, does not explicitly foresee that information shall be provided orally.

Information provision on the asylum procedure and reception is also included among the activities to be conducted in the hotspot facilities.<sup>1002</sup> However, ASGI's requests for access and information have shown that this is also a critical aspect, as the Ministry has argued that the information provisioning activities are entrusted exclusively to UNHCR, which, however, has never confirmed or denied this attribution.<sup>1003</sup> It has been proven that there is a clear link between authorities' detention practices and information-giving practices carried out by intergovernmental organisations such as the UNHCR and the IOM, and the contribution of this relation to processes of migrant differential inclusion/exclusion.<sup>1004</sup>

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<sup>996</sup> Save the Children, Hotspot sovraffollato a Lampedusa: le condizioni critiche dei minori, 12 April 2023, available at: <https://bit.ly/41YgFqV>.

<sup>997</sup> UNICEF, Cronache di frontiera. Lampedusa: vite in hotspot, 10 May 2023, available at: <https://bit.ly/3MfcWiC>.

<sup>998</sup> See Repubblica, Protesta dei minori non accompagnati all'hotspot di Lampedusa, 1 May 2023, available at: <https://bit.ly/3okux0P>.

<sup>999</sup> See ASGI, Roccella Ionica: situazione attuale e implementazione "approccio hotspot", 21 February 2023, available at: <https://bit.ly/3pXsL65>.

<sup>1000</sup> Article 10(1) Procedures Decree.

<sup>1001</sup> Article 3(3) Reception Decree and Article 10 Procedures Decree.

<sup>1002</sup> Article 10-ter (1, 3 and 4) Legislative Decree 286/1998. See also the Hotspot Standard Operating Procedures, available at: <https://bit.ly/3M0vILX> and the 6-bis attachment to Outline of contract documents for hotspots, see Specifiche tecniche integrative dello schema di capitolato di appalto relative all'erogazione dei servizi di accoglienza ed alla fornitura di beni – lotto unico per centri di cui all'art. 10-ter del d.lgs. 25 luglio 1998, n. 286, available at: <https://bit.ly/41b1UAt>.

<sup>1003</sup> See ASGI, Il diritto all'informazione nell'hotspot di Lampedusa: le responsabilità di UNHCR, 27 March 2023, available at: <https://bit.ly/3l0IEjl>.

<sup>1004</sup> See Calarco R., Managing Migration through Detention and Information-Giving Practices: the Case of the Italian Hotspot and Relocation System, in International Migration Institute working paper, volume 173/2022, available at: <https://bit.ly/432EGxS>. See also Vianelli L., The Implementation of the Hotspot Approach in Italy. CONDISOBS Policy Paper No. 2, January 2022, available at: <https://bit.ly/3ld658j>.

The National Commission for the Right of Asylum has edited a Practical Guide for Applicants for International Protection,<sup>1005</sup> currently available in 12 languages,<sup>1006</sup> in which the rights and duties of the applicant and the asylum procedures are illustrated in a simple and understandable way. The leaflet also includes information on health services and on the reception system, and on how these services can be accessed. In addition, it contains the contact details of UNHCR and other specialised refugee-assisting NGOs.

In practice however, information provision to asylum seekers is carried out rarely and often raises concerns regarding its accuracy. First, the use and distribution of these leaflets is actually quite rare in the immigration offices of the Police Headquarters. Staff are often not aware of the existence of this tool, the use of which is also hampered by problems such as the failure of the Ministry to periodically resupply offices with new copies or the lack of paper to print copies. Information is therefore provided sporadically and exclusively orally by police personnel, rarely trained to carry out a complete information provision, and not always with the support of professional interpreters and language mediators.

Furthermore, it emerged over time that the guide prepared by the National Commission has not been correctly translated into some of the chosen languages, in particular Bengali, with the result that it is almost completely incomprehensible even for literate asylum seekers.

Finally, with particular regard to information provision on reception issues, ASGI was able to observe a certain reluctance from some police offices to inform applicants about their right to request access to reception, in view of the difficulty on the part of Prefectures to ensure actual access.

The gaps in information provision raises serious concerns among NGOs, as it is considered necessary for asylum seekers to receive extensive information both verbally and in writing, 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 should be properly informed on the benefits and level of material reception conditions. Depending on the type of centre and the rules adopted by the managers of the reception centres, asylum seekers may benefit from proper information of the asylum procedure, access to the labour market or any other information on their integration rights and opportunities.

## 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>1007</sup> The representatives of the aforementioned bodies are allowed to enter these centres, except for security reasons and for the protection of the structures and of the asylum seekers.<sup>1008</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 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.

<sup>1005</sup> Guida pratica per i richiedenti protezione internazionale in Italia, available at: <https://bit.ly/3LICXH4>.

<sup>1006</sup> Italian, English, French, Spanish, Arabic, Somali, Kurdish, Amharic, Urdu, Bengali, Farsi and Tigrinya.

<sup>1007</sup> Article 10(3) Reception Decree.

<sup>1008</sup> Article 10(4) Reception Decree.

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, EUAA and to the Children's Ombudsman, to the Mayor or a person delegated by them. 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 centre is based, to child protection agencies with long experience, to representatives of the media, and to other persons who present a justified request.<sup>1009</sup>

## G. Differential treatment of specific nationalities in reception

Once in reception, there are no recorded differences among asylum seekers based on 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](#)).

However, after the takeover by the Taliban in Afghanistan of August 2021 and the war in Ukraine, the Government has provided specific accommodation measures for Afghans, first of all for those evacuated, and later for people escaping from Ukraine.

### Accommodation measure for Afghans

To meet the reception needs of asylum seekers from Afghanistan the DL no. 139 of 8 October 2021, has provided for the activation of a further 3,000 places in SAI<sup>1010</sup> and Article 1 (390) L 234/2021 has provided additional **2,000 places**.

These were reserved seats which were then extended to those who fled Ukraine by Article 5 quarter (5) and (6) DL 14/2022 converted into L 28/2022.

### Accommodation for people escaping from the Ukrainian conflict

See [Annex on Temporary Protection](#).

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<sup>1009</sup> Article 7 Ministry of Interior Decree of 1 September 2016.

<sup>1010</sup> Article 7 (1) DL 139/2021, converted into L 205/2021 and later modified by Article 5 quarter (5) DL 14/2022 converted into L 28/2022.



## Detention of Asylum Seekers

### A. General

#### Indicators: General Information on Detention

• Total number of persons detained in 2022 <sup>1011</sup>	
❖ CPR	Not available
❖ Hotspots	Not available
• Number of persons in detention as of 30 April 2022:	
h) CPR	1,420
i) Hotspots	5,600
• Number of detention centres:	
c. CPR	10
d. Hotspots	4
• Total capacity of detention centres:	
❖ CPR	744 <sup>1012</sup>
❖ Hotspots	Not available <sup>1013</sup>

The Reception Decree prohibits the detention of asylum seekers for the sole purpose of examining their asylum application.<sup>1014</sup> However, the provisions introduced by Decree Law 113/2018, implemented by L 132/2018, created 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>1015</sup>

The recent amendments introduced by Decree-Law 20/2023 on urgent provisions concerning the flow of legal entry of foreign workers and the prevention of and fight against irregular immigration, converted with amendments by Law 50/2023 and entered into force on 6 May 2023, require a brief description of the main legislative changes introduced.

Law 50/2023 included additional grounds for detention of asylum seekers. In particular:

- ❖ it allows for detention of applicants in the border procedure (see [Border Procedure](#));
- ❖ It allows detention in case it is necessary to determine the elements on which it is based the international protection application (in case they cannot be acquired without imposing a detention measure) and applicants present risk of absconding;<sup>1016</sup>
- ❖ it allows to detain asylum seekers who are in a Dublin procedure (see [Dublin](#));
- ❖ it enlarges the cases of detention for identification purposes;<sup>1017</sup>

#### Additional grounds for detention of asylum seekers

Decree-Law 20/2023 amended Article 6, par. 2, d), of the Legislative Decree 142/2015 by providing for the possibility of detaining the asylum seeker within a CPR when "it is necessary to determine the elements on which the application for international protection is based that could not be acquired without detention and there is a risk of flight". The elements to take into account to

<sup>1011</sup> In 2021, 5,147 people were detained in CPR, and 44,242 in hotspots. See Report to Parliament Annexes to the yearly report of the National Guarantor for the rights of detained persons, June 2022, available at: <https://rb.gy/alzvet>.

<sup>1012</sup> Effective capacity by December 2021. As of the end of 2021, the official capacity was 1,359 places in total, see Report to Parliament Annexes to the yearly report of the National Guarantor for the rights of detained persons, June 2022, available at: <https://rb.gy/alzvet>.

<sup>1013</sup> No official data on capacity of hotspots is available. ASGI has reported that Lampedusa's hotspot has a capacity of 250 places, Pozzallo has a capacity of 230 places, Messina has a capacity of circa 250 places and Taranto has a capacity of 400 places, resulting in circa 1100 total places. Effective capacity of hotspots varied over time, especially in the context of the COVID-19 pandemic, due to temporary conversion of structures to quarantine facilities.

<sup>1014</sup> Article 6(1) Reception Decree.

<sup>1015</sup> Article 6(3-bis) Reception Decree, inserted by Article 3 Decree Law 113/2018 and L 132/2018.

<sup>1016</sup> Article 6 (2) (d) of the Reception Decree as replaced by the L. 50/2023.

<sup>1017</sup> Article 6 (3-bis) as amended by the L. 50/2023 converting into law the DL 20/2023.

evaluate the existence of the risk of absconding are equivalent to those provided by article 13, par. 4-bis, Legislative Decree 286/1998 for cases of administrative expulsion. In particular:

- the absence of a passport or other equivalent document;
- having previously declared or falsely attested one's personal details;
- failure to comply with a previous detention order;
- violation of the measures ordered in the event of the granting of a time limit for voluntary departure.

Based on these elements, the assessment of the risk of absconding must be made on a case-by-case basis.

A new ground for detention of asylum seekers introduced is included in the new Article 6-bis, Legislative Decree 142/2015, which provides for the possibility of detaining the applicant during the border procedure for the sole purpose of ascertaining they have the right to access the country's territory. Detention may take place within hotspots or CPR located near borders and transit zones in cases where the applicant has not presented a valid passport or other equivalent document, or does not provide suitable financial guarantees. The detention measure in this case cannot extend beyond the time strictly necessary to carry out the border procedure pursuant to article 28-bis of Legislative Decree 25/2008 and must be subject to validation by a Judge. The validation hearing is held, where possible, remotely. In case of validation of the detention order by the Judge, the detention period would then be of a maximum of four weeks, which cannot be extended.

Article 6-ter of Legislative Decree 142/2015, as recently modified, regulates a further new ground of detention, concerning asylum seekers subjected to the Dublin procedure under EU Regulation No. 604/2013. On this point, please refer to the special section "[Dublin](#)" within the chapter on procedures.

#### *De facto detention in hotspots and other similar facilities*

Among the modifications introduced by Decree-Law 20/2023, converted into Law 50/2023, are the additions introduced in Article 10-ter, par. 1-bis, of Legislative Decree no. 286/1998, part of the provisions for the identification of foreign nationals found to be illegally present in the national territory or rescued during rescue operations at sea.

The first paragraph of Article 10-ter already provided for the detention in hotspots of foreign nationals found illegally crossing the internal or external border or arrived in the national territory following rescue operations at sea. The same, in fact, can be taken for rescue and first assistance within these centres, where the photo-dactyloscopic and signal data are then taken and where information on the right to asylum, on the relocation program within other EU Member States and on the possibility of recourse to assisted voluntary return should be guaranteed.

The new paragraph 1-bis, expands the possibility of using *de facto* detention, within "similar facilities", providing that for the "optimal performance of the fulfilment of the tasks referred to in this Article, the third country nationals hosted at the crisis points referred to in paragraph 1 may be transferred to similar facilities on the national territory, for the performance of the activities referred to in the same paragraph", specifying that the identification of these facilities will be made in agreement with the Ministry of Justice.

Persons applying for asylum in CPR are subject to the [Accelerated Procedure](#).

In 2021, as reported by the Guarantor for the rights of detained persons, 5,142 people - 99% of them men - had been detained in CPRs; roughly 66% (3,420) were actually returned. Tunisia is by far the most represented country of nationality amongst detained migrants, and the country with the highest

return rate (2,805 out of 5,142 detained migrants are Tunisians and 1,945 out of 3,420 returned migrants are returned to Tunisia).<sup>1018</sup>

As of 30 April 2022, 1,420 people - only 15 of which were women - were detained in CPRs. Out of the total number, 859 were actually returned. Out of the 1,420 detained migrants, 589 (41%) were Tunisians; out of the 859 returned migrants, 431 (50%) were Tunisians.<sup>1019</sup>

The number of CPRs 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. At the end of 2021, the official capacity was 1,359 places; effective capacity was of 744 places but two CPRs out of 10 (Caltanissetta and Trapani) were active respectively from 3 May and 31 July 2021.

The number of persons entering the hotspots in 2022 was not available at the time of writing. In 2021, 44,242 persons – including 1,645 unaccompanied minors – entered in hotspots, 35,178 of which - including 1,382 unaccompanied minors - in Lampedusa.<sup>1020</sup> High pressure on the hotspot of Lampedusa continued in 2021, with the centre hosting at times more than 1,000 migrants, despite its much smaller capacity.

## B. Legal framework of detention

### 1. Grounds for detention

#### Indicators: Grounds for Detention

5. In practice, are most asylum seekers detained
- |                      |   |  |
|----------------------|---|--|
| 4. on the territory: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| 5. at the border:    | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No |
6. Are asylum seekers detained in practice during the Dublin procedure?
- ☐ Frequently ☐ Rarely ☒ Never
7. Are asylum seekers detained during a regular procedure in practice?
- ☐ Frequently ☒ Rarely ☐ Never

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 offence impeding entry,<sup>1021</sup> and that a priority has to be given in any case to citizens of countries with which repatriation agreements exist (for which the length of detention can be increased of 30 days).<sup>1022</sup>

In its report to Parliament of June 2022, the Guarantor for the rights of detained persons expressed concern on the fact that many people had been detained without legal basis, and in fact a significant number had been released based on court decisions.<sup>1023</sup>

<sup>1018</sup> Report to Parliament of the National Guarantor for the rights of detained persons, June 2022, available at: <https://rb.gy/alzvet>.

<sup>1019</sup> Report to Parliament of the National Guarantor for the rights of detained persons, June 2022, available at: <https://rb.gy/alzvet>.

<sup>1020</sup> Report to Parliament Annexes to the yearly report of the National Guarantor for the rights of detained persons, June 2022, available at: <https://rb.gy/alzvet>.

<sup>1021</sup> According to Article 4 (3) and 5 (5) TUI.

<sup>1022</sup> Article 14 (1.1) TUI.

<sup>1023</sup> Report to Parliament Annexes to the yearly report of the National Guarantor for the rights of detained persons, June 2022, available at: <https://rb.gy/alzvet>.

As of 30 April 2022, out of 1,420 people who passed through the CPRs, 356(25%) were released because the detention was not considered legitimate by the Judge. 619 (44%) people were repatriated.<sup>1024</sup>

Throughout 2021, out of 5,147 people who entered the CPRs, 827(16%) were released because the detention was not validated and 2,520 (49%) were actually repatriated.<sup>1025</sup>

### 1.1. Asylum detention

Asylum seekers shall not be detained for the sole reason of the examination of their application.<sup>1026</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>1027</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>1028</sup>
- (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>1029</sup>
- (c) Is issued an expulsion order on the basis that he or she constitutes a danger to public order or state security,<sup>1030</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>1031</sup> including with the intention of committing acts of terrorism;<sup>1032</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>1033</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>1034</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.

- (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

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<sup>1024</sup> Report to Parliament Annexes to the yearly report of the National Guarantor for the rights of detained persons, June 2022, available at: <https://rb.gy/alzvet>.

<sup>1025</sup> Annexes to the yearly report of the National Guarantor for the rights of detained persons, June 2021, available here: <https://bit.ly/3w94dbu>.

<sup>1026</sup> Article 6(1) Reception Decree.

<sup>1027</sup> Article 6(2) Reception Decree.

<sup>1028</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.

<sup>1029</sup> Introduced by Decree Law 130/2020 converted by L 173/2020.

<sup>1030</sup> Article 13(1) TUI.

<sup>1031</sup> Article 13(2)(c) TUI.

<sup>1032</sup> Article 3(1) Decree Law 144/2005, implemented by L 155/2005.

<sup>1033</sup> Article amended by Decree Law 130/2020 converted by L 173/2020

<sup>1034</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.

determined by the competent authority or reporting at given times to the competent authority.<sup>1035</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>1036</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 Articles 13 and 14 TUI shall remain in detention when, in addition to the above-mentioned 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>1037</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 establishing 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>1038</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 identified by law. In a Circular issued on 27 December 2018, the Ministry of Interior specified that it will be the responsibility of the Prefectures in whose territories such structures are found to identify special facilities where this form of detention could be performed. At the time of writing, there is no information on the identification of these premises.

As those dedicated premises have never been identified, detention for identification purposes occurs *de facto* in hotspots.<sup>1039</sup> In **Lampedusa**, ASGI and other civil society organisations have reported that the centre gate is constantly closed and migrants are able to leave the centre only through openings in the fence, regularly adjusted by the administration and then reopened by migrants. More broadly, people taken to Lampedusa are *de facto* detained on the island, considering that they cannot purchase a title of travel and leave without an identity document.<sup>1040</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

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<sup>1035</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>1036</sup> Article 10-ter(3) TUI, inserted by Decree Law 13/2017 and L 46/2017.

<sup>1037</sup> Article 6(3) Reception Decree.

<sup>1038</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>1039</sup> Guarantor for the rights of detained persons, *Relazione al Parlamento*, 15 June 2018, available in Italian at: <http://bit.ly/2TZy9ol>, 233.

<sup>1040</sup> ASGI et al., Hotspot di Lampedusa: sempre più un luogo di confinamento, August 2021, available in Italian at: <https://bit.ly/3Js3OVu>.

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.

The number of persons entering the hotspots in 2022 was not available at the time of writing: as of 30 April 2022, 5,600 people entered the hotspots, of whom 811 were minors<sup>1041</sup>. In 2021, out of 5,147 persons detained in CPRs, 862 (16%) were released given that they were not identified in the timeframe foreseen by the law. In the first four months of 2022, out of 1,420 persons detained in CPRs 264 (19%) were released because they were not identified in the timeframe foreseen by the law.<sup>1042</sup>

## 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 refers to the alternatives to detention provided in the TUI. To this end, authorities should apply Article 14 TUI to the compatible extent, including the provisions on alternative detention measures provided by Article 14(1-bis).

The TUI provides that a foreign national who has received an expulsion order may request to the Prefect a certain period of time for voluntary departure. In that case the person will not be detained and will not be forcibly removed from the territory. However, to benefit from this measure, some strict requirements must be fulfilled:<sup>1043</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:

3. The obligation to hand over passport to the police until departure;
4. The obligation to reside in a specific domicile where the person can be contacted;
5. The obligation to report to police authorities following police instructions.

In 2021, 968 alternative measures were granted in total; by 31 May 2022, 343 alternative measures were granted.<sup>1044</sup>

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>1045</sup> shall be immediately adopted or executed. The repatriation request corresponds to a withdrawal of the application for international protection.<sup>1046</sup>

<sup>1041</sup> Report to Parliament Annexes to the yearly report of the National Guarantor for the rights of detained persons, June 2022, available at: <https://rb.gy/alzvet>.

<sup>1042</sup> Report to Parliament Annexes to the yearly report of the National Guarantor for the rights of detained persons, June 2022, available at: <https://rb.gy/alzvet>.

<sup>1043</sup> Articles 13(5.2) and 14-ter TUI.

<sup>1044</sup> LASCIATECIENTRARE, Dietro le mura. Abusi, violenze e diritti negati nei CPR d'Italia, October 2022, available in Italian at: <https://rb.gy/daoyns>

<sup>1045</sup> Pursuant to Article 13(4) and (5-bis) TUI.

<sup>1046</sup> Article 6(9) Reception Decree.



In case the applicant is the recipient of an expulsion order,<sup>1047</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>1048</sup>

NGOs have been advocating for a community-based approach to alternatives to detention. “Classic” alternatives to detention (e.g. regular reporting, surrender of passport and identity documents and home confinement) are indeed deemed to be coercive and not responsive to individual needs.

It is thus proposed to move towards “community-based” alternatives (e.g. case management), which consist in non-coercive measures, based on the direct involvement of the person concerned. Case management is an individualised process of support and cooperation during the migration process. Together with a case manager, beneficiaries explore all the options available regarding their legal status. Once fully informed, they are empowered to make informed decisions and achieve sustainable long-term solutions. In 2019-2021 NGOs Progetto Diritti and CILD have piloted a project targeting people at medium-high risk of detention.<sup>1049</sup>

Since 2020, the association Mosaico for Refugees created the “Channels of Solidarity” project offering support to vulnerable people at risk of detention.<sup>1050</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>1051</sup> However, there have been cases where unaccompanied children have been placed in CPRs following a wrong age assessment. Minors, both accompanied and unaccompanied, are also de facto detained in hotspots and, in the context of the COVID-19 pandemic, on quarantine vessels.

**Hotspots:** More than 12,000 minors have entered hotspots in Italy since 2016.<sup>1052</sup> 8,934 children entered in hotspots in 2021; 7,289 were unaccompanied and 1,645 accompanied children.<sup>1053</sup>

It has been noted how the practice according to which, quoting the National Guarantor, “the foreign citizen is basically precluded from having correct personal data reported on the entry information sheet [foglio notizie]” in hotspots,<sup>1054</sup> may easily lead to unlawful deprivation of liberty in detention facilities, and delayed disclosure/age assessment.

During the first 7 months of the pandemic, unaccompanied minors were also subject to fiduciary isolation or quarantine at hotspots. In the case of Lampedusa hotspot, unaccompanied minors were kept in social isolation conditions, accommodated in situations of promiscuity with adults, within often inadequate and

<sup>1047</sup> The expulsion order to be executed according to the procedures set out in Article 13(5)-(5.2) TUI.

<sup>1048</sup> Article 6(10) Reception Decree.

<sup>1049</sup> CILD and Progetto Diritti, Alternatives to detention: towards a more effective and humane migration management, 2021, available at: <https://bit.ly/3q794Wl>.

<sup>1050</sup> Mosaico for Refugees, Channels of Solidarity, available at: <https://rb.gy/vnune1>.

<sup>1051</sup> Article 19(4) Reception Decree.

<sup>1052</sup> ASGI, Unaccompanied minors: critical conditions at Italian internal and external borders, June 2021, available at: <https://bit.ly/34PNMpg>.

<sup>1053</sup> Report to Parliament Annexes to the yearly report of the National Guarantor for the rights of detained persons, June 2022, available at: <https://rb.gy/alzvet>.

<sup>1054</sup> National Guarantor for the rights of detained persons, Rapporto sulle visite effettuate nei CPR (2019 - 2020), available in Italian at: <https://bit.ly/3JllvVw>.

overcrowded spaces and deprived of their personal liberty. In these circumstances, access by unaccompanied minors to dedicated and appropriate health and psychosocial support was significantly compromised.<sup>1055</sup>

**CPR:** There is no official consolidated data on the number of persons detained in CPRs that declared to be minors and are recognised as such via the age assessment procedure. One case has been mentioned in Palazzo San Gervasio.<sup>1056</sup> ASGI book on Turin's CPR reported 1 case in 2021, regarding the same CPR, of a minor subjected to age assessment procedure without the involvement of the Juvenile Court and detained during the age assessment in violation of the "*favor minoris*" principle. He was released after 95 days of detention based on a medical report that noted "discomfort from reactive anxiety to psychosomatic symptomatology" and a "reactive anxiety and psychosomatic symptomatology that are expressed in a condition of psycho-emotional vulnerability".<sup>1057</sup> It has also been reported that, as in Lampedusa's hotspot migrants are not able to have their personal data corrected by authorities, many who have been identified as adults in Lampedusa declare themselves to be minors upon arrival in Trapani's Milo CPR. Pending the age assessment, these minors are kept for weeks in the CPR (in a special area that does not fully avoid situations of promiscuity between adults and minors).<sup>1058</sup>

**Borders:** Cases of de facto detention of minors in border areas have also been reported. 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 critical issues related to the procedure for the age assessment of minors, still in "non-application" of the provisions enshrined in Law 47/2017, in the context of readmissions to Slovenia. Even though this procedure should not involve families and vulnerable people, readmissions were also carried out against those who declared themselves to be minors at the border, as reported by the network Tavolo Minori Migranti. This practice has been legitimised by two directives on the age assessment of minors sent by the Public Prosecutor to the attention of the Juvenile Court of Trieste on 31 August and 21 December 2020. Contrary to the guarantees enshrined in Law 47/2017, these guidelines authorise security forces to carry out an age assessment of persons intercepted at the Italy-Slovenia border with a de visu evaluation: police can consider migrants as adults if there are no apparent doubts about the age of consent of the concerned person, regardless of the declaration of minor age and the consequent judicial review required by law. These directives assign a discretionary power to the Public Security authority in identifying the age of migrants and refugees subjected to border controls, contrary to the provisions of Law 47/2017, which states that age assessment must be carried out taking into account identity documents and, if necessary, following a multidisciplinary procedure as part of a proceeding under the jurisdiction of the Juvenile Court. In 2020, in at least four cases, the Juvenile Court of Trieste ordered the fulfilment of the procedure for the age assessment of the persons involved, following appeals lodged by minors who had been identified as adults with the result of being placed in adult facilities.<sup>1059</sup>

ASGI has urged Italian authorities to comply with the ban envisaged by current national legislation and by Article 37 of the CRC ("no child shall be deprived of their liberty unlawfully or arbitrarily") concerning the detention of minors and their placement in structures characterised by conditions of promiscuity or forms of de facto detention, such as hotspots; ensure that reports concerning persons who declare themselves to be minors and who are present in CPRs, hotspots, or other facilities, including those prepared for the epidemiological emergency such as quarantine ships, are immediately taken in charge by competent authorities and that transfer to suitable structures is immediately arranged.<sup>1060</sup>

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<sup>1055</sup> ASGI, Unaccompanied minors: critical conditions at Italian internal and external borders, June 2021, available at: <https://bit.ly/34PNMpg>.

<sup>1056</sup> LASCIA TE CIENTRARE, Dietro le mura. Abusi, violenze e diritti negati nei CPR d'Italia, October 2022, available in Italian at: <https://rb.gy/daoyns>.

<sup>1057</sup> ASGI, The Black book on the Pre-Removal Detention Centre (CPR) of migrants in Turin – Corso Brunelleschi, September 2021, available at: <https://rb.gy/zezi9h>.

<sup>1058</sup> National Guarantor for the rights of detained persons, Rapporto sulle visite effettuate nei CPR (2019 - 2020), available in Italian at: <https://bit.ly/3MPri93>.

<sup>1059</sup> ASGI, Unaccompanied minors: critical conditions at Italian internal and external borders, June 2021, available at: <https://bit.ly/34PNMpg>.

<sup>1060</sup> Ibidem.

### 3.2. Detention of other vulnerable groups

Detention of children in families in CPR is not prohibited. Children can be detained together with their parents if they request it and if decided by the Juvenile Court. In practice, very few children are detained.

Following the 2017 reform, the law also prohibits the detention of vulnerable persons,<sup>1061</sup> although in practice shortcomings regarding identification and age-assessment procedures at the hotspot means that this is not always ensured.<sup>1062</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>1063</sup> In CPR, however, legal assistance and psychological support are not systematically provided, although the latter was foreseen in the tender specifications schemes (*capitolato*) published by the Ministry of Interior on 20 November 2018 and 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>1064</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.

Issues with protection of persons with special needs in detention have been reported by the Guarantor, who has stressed the need for enhanced referral mechanisms and continuous monitoring of health conditions of detained persons, via stipulation of MoU with local sanitary services<sup>1065</sup>. ASGI's monitoring of CPRs has stressed that in these places, vulnerabilities are often ignored and unaddressed: minors, people with disabilities, victims of abuse, asylum seekers, people accused of serious crimes or socially dangerous people are mixed together, which increases the tensions and risks of crises.<sup>1066</sup>

From a gender perspective, it must be noted that – also due to the temporary closure in 2021 of the women section of Rome's CPR, which is the only present on the national territory – there has been a sharp decrease in numbers of women detained in CPRs. In 2021, only 5 women (2 Tunisian, 2 Nigerians, and 1 Romanian) were detained in the CPR, only 1 of which was returned (3 were released following non-validation of the detention order by the judge and 1 as applicant for international protection). Contrastingly, in 2020, 223 women had been detained in the CPR, representing circa 4% of the total detained persons; the most represented nationalities were China (47 women), Nigeria (33), Morocco (14), Tunisia (13), Ukraine and Georgia (12); 31 were returned, 146 were released due to non-validation of the detention by the judge, 26 were released upon reaching maximum term of detention, 9 were released as applicants for international protection.<sup>1067</sup>

As of 30 April 2022, 15 women were detained in the CPR; only 4 of them were returned, while 10 were released after the non-validation of the detention ordered by the judges, and 1 as she applied for international protection.<sup>1068</sup>

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<sup>1061</sup> Article 7(5) Reception Decree, as amended by Article 8 Decree Law 13/2017 and L 46/2017.

<sup>1062</sup> ASGI, *Unaccompanied minors: critical conditions at Italian internal and external borders*, June 2021, available at: <https://bit.ly/34PNMpg>.

<sup>1063</sup> Article 7(5) Reception Decree.

<sup>1064</sup> Article 6(1) Reception Decree.

<sup>1065</sup> National Guarantor for the rights of detained persons, *Rapporto sulle visite effettuate nei CPR (2019 - 2020)*, available in Italian at: <https://bit.ly/3MPri93>.

<sup>1066</sup> ASGI, *The Black book on the Pre-Removal Detention Centre (CPR) of migrants in Turin – Corso Brunelleschi*, September 2021, available at: <https://bit.ly/3CQZQD5>.

<sup>1067</sup> National Guarantor for the rights of detained persons, *Update on immigration detention as of 15 November 2021*, available in Italian at: <https://bit.ly/3InUDEc>; National Guarantor for the rights of detained persons, *Relazione al Parlamento*, June 2021, available in Italian at: <https://bit.ly/35UHwx5>; National Guarantor for the rights of detained persons, *Relazione al Parlamento*, June 2020, available in Italian at: <https://bit.ly/3ib15ov>.

<sup>1068</sup> Report to Parliament Annexes to the yearly report of the National Guarantor for the rights of detained persons, June 2022, available at: <https://rb.gy/alzvet>.

The enhanced vulnerability of women in detention and the many criticalities of the women's section of Rome's CPR have been repeatedly noted.<sup>1069</sup>

For what concerns hotspots, it can be observed that women are a minority in such centres, representing only 8% of the total number of persons held in hotspots in 2021 (3,432 out of 44,242). The most represented nationalities were Ivorian (1,256), Guinean and Tunisian (618 each), Nigerian (116) and Eritrean (109).<sup>1070</sup> In 2020, 1,641 women were held in hotspots, representing 6% of the hotspot population. In 2021, ASGI has documented a critical situation in Lampedusa's hotspot. The report found that overcrowding, the condition of promiscuity also for what concerned shared bathrooms, the prevalent presence of male police personnel, the absence of places to conduct interviews in a protected setting, the lack of access to adequate mediation and information and structured mechanisms of identification and referrals, expose women to a high risk of experiencing (in some cases, further) violence. As highlighted in the report, these situations also risk significantly undermining the determination of women who intend to seek protection, as they could flee from a gender-based violence experience (as they could be controlled by a trafficking network, experience domestic violence, or suffer abuse) or because, due to the aforementioned conditions, they might experience an accident, abuse or feel unsafe within the facilities.<sup>1071</sup>

This situation brought ASGI to file urgent appeals to the European Court of Human Rights in 2022, demanding the immediate transfer from the Lampedusa hotspot of three family units; as a consequence, the Court ordered the Italian government to immediately transfer one of the families.<sup>1072</sup>

#### 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	7 days in Lampedusa, 10 days in Pozzallo, 20 days in Taranto <sup>1073</sup>

##### 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.

Article 6(3-bis) of the Reception Decree introduced by Decree Law 113/2018 has 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 time frame, 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>1074</sup> The provision of a detention period up to 30 days and extendable to up to 90 plus 30

<sup>1069</sup> Il Post, Nessuno aiuta le donne al centro di detenzione di Ponte Galeria, January 2021, available in Italian at: Annalisa Camilli, Chi sono le donne rinchiusse nel centro di espulsione di Roma, Internazionale, February 2019, available at: <http://bit.ly/3KT7qQD>.

<sup>1070</sup> Report to Parliament Annexes to the yearly report of the National Guarantor for the rights of detained persons, June 2022, available at: <https://rb.gy/alzvet>.

<sup>1071</sup> ASGI, Una prospettiva di genere sull'Hotspot di Lampedusa: la sistematica e colposa violazione dei diritti delle donne, October 2021, available in Italian at: <https://bit.ly/3tgdRHf>.

<sup>1072</sup> ASGI, Diritti violati nell' hotspot di Lampedusa: per la CEDU il trattamento è disumano e degradante solo per le famiglie con minori, November 2022, available in Italian at: <https://rb.gy/v0k8qw>.

<sup>1073</sup> Data as of 31 December 2021, Report to Parliament Annexes to the yearly report of the National Guarantor for the rights of detained persons, June 2022, available at: <https://rb.gy/alzvet>; the same Report underlined that in Lampedusa and Pozzallo as of 30 April 2022 the duration of detention was 5 days, while no data was available about Taranto. Messina was not operating in 2021 and 2022.

<sup>1074</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.

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>1075</sup>

The reform, introduced by L. 132/2018, confirmed by DL 130/2020 and converted by L. 173/2020, has given a legal basis to a practice - that of *de facto* detention in hotspots - already being implemented. However, as underlined by ASGI 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.<sup>1076</sup>

The Guarantor, in the parliamentary debate relating to the conversion into law of the D.L. 130/2020, highlighted how "the non-recognition of the possibility of complaints in hotspots" does not satisfy the requirements laid down in the *Khlaifia* case, creating an unequal treatment between those held in the CPRs, who will have access to a whole series of guarantees and be able to exercise a whole series of rights, including the possibility to present requests and complaints, and whoever is detained in a hotspot, who will not be able to access any of the aforementioned prerogatives. The Guarantor raised several critical issues on the detention of asylum seekers in hotspots 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>1077</sup> The Guarantor had previously defined the condition of applicants detained for identification in as a "limbo of legal protection". As a result of detention being practised in a grey legal area or on a *de facto* basis, applicants who face prison-like conditions do not even receive the same guarantees and legal provisions as prison detainees.<sup>1078</sup>

The fact that these places are currently also being used for quarantine, means that detention may be prolonged indefinitely, if the period of precautionary isolation actually starts again every time new people arrive in the quarantine facility.<sup>1079</sup>

As of 2021, appropriate places for detention for identification purposes have not yet been identified. Thus, the situation remained almost unchanged as regards *de facto* detention, which, in the absence 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>1080</sup>

As already mentioned, no data on persons identified in hotspots is available for 2022. In 2021, out of 5,147 persons detained in CPRs 862 (17%) were released because they were not identified in the timeframe foreseen by the law. In the first four months of 2022, out of 1,420 persons detained in CPRs, 264 (19%) were released because they were not identified in the timeframe foreseen by the law.

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<sup>1075</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.

<sup>1076</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, January 2021, available in English at: <https://bit.ly/3bu0haa>.

<sup>1077</sup> Guarantor for the rights of detained persons, *Parere sul decreto-legge 21 ottobre 2020, n. 130*, available at: <https://bit.ly/33IUnO8>.

<sup>1078</sup> The Left, *LOCKED UP AND EXCLUDED* Informal and illegal detention in Spain, Greece, Italy and Germany, December 2020, available at: <https://bit.ly/37q36JY>.

<sup>1079</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>1080</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 hotspot approach is used beyond the actual hotspot centres. In October 2020, ASGI reported that the first line reception facility of Monastir, in Sardinia, was being used as a de facto detention facility.<sup>1081</sup> In 2021, ASGI reported many criticalities at the “new border” of Pantelleria, where landed migrants are also channelled in hotspot-like procedures.<sup>1082</sup> The new inspection conducted by ASGI in May 2022 confirmed the critical issues that emerged the previous year, which include unlawful detention practices, obstacles to access to the right of defence, violation of freedom of phone correspondence - in light of the seizure of phones -, inadequate detention conditions and promiscuity.<sup>1083</sup>

#### 4.2. Duration of asylum and pre-removal detention

The maximum duration of detention of asylum seekers is 12 months.<sup>1084</sup> The duration of pre-removal detention decreased from 180 to 90 days, plus 30 days in cases of repatriation agreements with the countries of origin.<sup>1085</sup> According to ASGI, the difference between the maximum duration of ordinary detention for third-country nationals (4 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>1086</sup> In September 2021, the Specialised Section of the Court of Rome issued a decision clarifying that the validation request by the Questura to the Court is to be presented within 48 hours from the moment in which the applicant made (i.e., making stage) his application for international protection.<sup>1087</sup> The same conclusions were reached by the Specialised Section of the Courts of Trieste<sup>1088</sup> and Milan<sup>1089</sup> in January 2023. On this point, the Court of Milan, in December 2022, had already raised a question of constitutional legitimacy, considering “relevant and not manifestly unfounded the question of constitutional legitimacy of art. 6 c. 5 d.lgs. 142/2015, for being in contrast with art. 13 Constitution, in the part in which it refers to art. 14 d.lgs. 286/1998, implying that the term of forty-eight hours to request the validation of the detention ordered by the Questore shall elapse, even in the case of detention ordered pursuant to art. 6 c. 3 d. lgs. 142/2015, from the adoption of the measure by which the Questore orders the detention and not from the moment in which the detained person is considered to have acquired the quality of “applicant for international protection international” pursuant to Art. 2 let. a) Legislative Decree 142/2015”.<sup>1090</sup> The merits of the issue will be analysed and decided by the Constitutional Court in coming months.

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>1091</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 order.<sup>1092</sup>

<sup>1081</sup> ASGI, Report sopralluogo giuridico: la Sardegna come luogo di frontiera e di transito, December 2020, available at: <https://bit.ly/2SPky3r>.

<sup>1082</sup> ASGI, La frontiera di Pantelleria: una sospensione del diritto Report del sopralluogo giuridico di ASGI, June 2021, available at: <https://bit.ly/39ovdKB>.

<sup>1083</sup> ASGI, La frontiera di Pantelleria: una sospensione del diritto Report del sopralluogo giuridico di ASGI, August 2022, available at: <https://rb.gy/9ndftw>.

<sup>1084</sup> Article 6(8) Reception Decree.

<sup>1085</sup> Article 14(5) TUI, as amended by Decree Law 130/2020 and L. 173/2020.

<sup>1086</sup> Article 6(5) Reception Decree.

<sup>1087</sup> ASGI, Il Tribunale di Roma: i termini per la convalida del trattenimento decorrono dalla manifestazione di volontà di chiedere asilo in CPR, available in Italian at: <https://bit.ly/3qa9iwo>.

<sup>1088</sup> Tribunale di Trieste, proceeding 81/2023, decision 18 January 2023.

<sup>1089</sup> Tribunale di Milano, proceeding 23/2023, decision 18 January 2023.

<sup>1090</sup> Tribunale di Milano, proceeding 42304/2022, decision 11 December 2022.

<sup>1091</sup> Pursuant to Article 28-bis(1) and (3) Procedure Decree.

<sup>1092</sup> Article 6(6) Reception Decree.



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>1093</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>1094</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>1095</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>1096</sup> The Court of Cassation also stressed the principle according to which an asylum seeker cannot be detained over the times scheduled under the accelerated procedure, unless other reasons for detention arise<sup>1097</sup> (see also [Judicial Review](#)). In December 2021, the Specialised Section of the Court of Lecce has clarified that the detention of the applicant for international protection cannot be extended once its terms – to be calculated from the making of the application – have expired.<sup>1098</sup> Other Courts have not validated the prorogation of detention because the time limits for the accelerated procedure had not been respected by the competent Territorial Commission or Questura.<sup>1099</sup>

The average duration of detention in CPR is not available. As reported above, in 2021, 17% of persons detained in CPRs were released because they were not identified in the timeframe foreseen by the law, while in the first four months of 2022, they were 264 out of 1,420 (19%).

The average length of stay in hotspots in 2021 was of 7 days in Lampedusa, 10 days in Pozzallo and 20 days in Taranto. The Messina hotspot was not operating in 2021. As of 30 April 2022, the duration of detention in Lampedusa and Pozzallo was of 5 days, while no data was available about Taranto. Messina was still not operating in 2022.<sup>1100</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

<sup>1093</sup> Article 35-bis(4) Procedure Decree.

<sup>1094</sup> Article 6(7) Reception Decree, as amended by Article 8 Decree Law 13/2017 and L 46/2017.

<sup>1095</sup> Article 6(8) Reception Decree.

<sup>1096</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>.

<sup>1097</sup> Court of Cassation, decision no. 2458/2021 published on 2 February 2021.

<sup>1098</sup> ASGI, Trattenimento nel CPR, impossibile prorogare un termine già scaduto, January 2022, available in Italian at: <https://bit.ly/3CUlaGL>.

<sup>1099</sup> Tribunale di Trieste, proceeding 893/2022, decision 5 april 2022; Tribunale di Torino, proceeding 15476/2022, decision 23 August 2022; Tribunale di Torino, proceeding 22329/2022, decision 29 November 2022; Tribunale di Torino, proceeding 23638/2022, decision 14 December 2022.

<sup>1100</sup> Report to Parliament Annexes to the yearly report of the National Guarantor for the rights of detained persons, June 2022, available at: <https://rb.gy/alzvet>.

## 1.1. Pre-removal detention centres (CPR)

Under the Reception Decree, asylum seekers can be detained in CPRs - previously known as CIEs -, where third-country nationals who have received an expulsion order are generally held.<sup>1101</sup> The functioning of CPRs and their essential rules are laid out in the CIE Regulation adopted in 2014.<sup>1102</sup> This Regulation has been abolished by the Interior Ministry Directive of the 19 May 2022<sup>1103</sup>. 10 CPRs are present on the Italian territory, as detailed in the list below. The official capacity, with all 10 CPRs active, would be of 1,359 places. Effective capacity in 2021 and first four months of 2022 was reduced, due to the temporary closure of some structures and COVID-19 restrictions: by the end of 2021, only 744 places were available,<sup>1104</sup> while as of 30 April 2022 the official capacity of the centres was of 727 places. In March 2023, the CPR in Turin was temporarily closed following several riots that progressively made its spaces unfit for use, ultimately forcing the transfer of all detained persons to other facilities.<sup>1105</sup> By the time of publication, no information is available on the timeframe for a possible reopening.

The latest data available on capacity of CPR and persons detained therein are as follows, updated to 31 December 2021:<sup>1106</sup>

Capacity and detentions by CPR		
CPR	Official capacity <sup>1107</sup>	Persons detained up to 31 December 2021 <sup>1108</sup>
Bari-Palese	126	626
Brindisi-Restinco	48	244
Caltanissetta-Pian del Lago	92	564
Gradisca d'Isonzo (Go)	150	773
Macomer (Nu)	50	197
Palazzo San Gervasio (Pz)	128	845
Roma Ponte Galeria	210	473
Torino	210	776
Trapani-Milo	205	180
Milano	140	469
<b>Total</b>	<b>1,359</b>	<b>5,147</b>

Source: Guarantor of detained persons, updated as of 31 December 2021.

As of 31 December 2021, according to data reported by the National Guarantor, Potenza, Gorizia and Turin were the CPRs with the highest influx of persons. The practice of detention in CPRs did not change even during the COVID-19 pandemic and the related lockdowns, which led to periods of border closure and suspension of connections with countries of origin: despite the impossibility of removal/deportation,

<sup>1101</sup> Article 6(2) Reception Decree.

<sup>1102</sup> Ministero dell'Interno, Regolamento Unico CIE, 2014, available in Italian at: <https://bit.ly/3JgGYjp>.

<sup>1103</sup> Ministero dell'interno, Direttiva recante "Criteri per l'organizzazione e la gestione dei centri di permanenza per i rimpatri previsti dall'art. 14 del decreto legislativo 25 luglio 1998, n. 286 e successive modificazioni", available in Italian at: <https://rb.gy/wfqcv5>.

<sup>1104</sup> Report to Parliament Annexes to the yearly report of the National Guarantor for the rights of detained persons, June 2022, available at: <https://rb.gy/alzvet>.

<sup>1105</sup> CILD, Chiude il Cpr di Torino: la speranza è che non riapra più, 30 marzo 2023, available in Italian at: <https://rb.gy/0ee2>.

<sup>1106</sup> Report to Parliament Annexes to the yearly report of the National Guarantor for the rights of detained persons, June 2022, available at: <https://rb.gy/alzvet>.

<sup>1107</sup> The National Guarantor report provides a breakdown based on official and effective capacity. "Official capacity" refers to the total number of places present in the centre, while "effective capacity" refers to the number of places that can be occupied in a centre in a given year. Effective capacity of the centres is very frequently lower than official capacity, for example as some areas of the centres might not be available due to maintenance issues or to be in need of renovations.

<sup>1108</sup> Ibid.

the validations and extensions of detention orders continued without interruption.<sup>1109</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>1110</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>1111</sup>

The situation as of 31 May 2022 in the 10 CPRs can be described as follows:<sup>1112</sup>

- ❖ Milan's CPR, situated at the outskirts of the city, currently has an official capacity of 140 places; as of May 2022, 46 persons were detained, while the total capacity of the centre is of 72 people. The new call for tender issued in April 2021 foresees 84 places and has been won by ENGEL srl (who is already managing Potenza's CPR).
- ❖ Turin's CPR, which was first opened in 1999, currently has an official capacity of 210 places. As of May 2022, out of 112 places available, 94 persons were detained. It has been managed since 2015 by Gepssa, a multinational society which had previously managed detention centres in Rome and Milan and is considered one of the main actors in the business of detention immigration.<sup>1113</sup> In September 2021, its isolation section known as Ospedaletto was closed down, following the report of the visit of the National Guarantor – which took place shortly after a migrant, Moussa Balde, committed suicide in the isolation section in May 2021 –,<sup>1114</sup> who had deemed detention in this area as an inhumane and degrading treatment and called for its immediate and definitive closure.<sup>1115</sup> From February 2022, it is managed by Ors Italia S.r.l., operating also in Rome's CPR. As previously mentioned, the centre was closed in March 2023.<sup>1116</sup>
- ❖ Gorizia's CPR, which was first activated in 2006 but has been closed from 2013 to 2019 following protests on its conditions, had an official capacity of 150 places; as of May 2022, 80 persons were detained, out of an effective capacity of 100 places.
- ❖ Macomer's CPR is the first immigration detention facility in Sardinia and was opened in 2020 (after a structure previously hosting a high security prison was repurposed). It is situated on the outskirts of a small town, more than 50 kilometres away from the closest cities (Nuoro and Oristano). It has an official capacity of 50 places; as of May 2022, it hosted 48 detainees. From 21 March 2022, it is managed by the social cooperative Ekene.
- ❖ Rome's CPR, situated in Ponte Galeria, at the outskirts of the city, has been active since 1998. It currently has an official capacity of 210 places. It is the only Italian immigration detention facility for women; the women's section was partially renovated in 2020, but some parts remain in dire conditions. As of May 2022, 123 persons (119 men and 4 women) were detained, out of 125 places available at that time.
- ❖ Potenza's CPR is located in the outskirts of the town of Palazzo San Gervasio, 65 km from Potenza, in a very isolated and hard to reach area. It was reopened in 2018 and it has recently been closed for renovation from May 2020 to February 2021. It has an official capacity of 198 places and, as of May 2022, 71 persons were reportedly detained there, out of 112 places available (in 2021, 16% of the total of persons detained in Italian CPRs were detained here).
- ❖ Bari's CPR has an official capacity of 126 places and has been managed from 2018 to 2021 by the social cooperative Badia Grande (which also manages Trapani's CPR). In October 2021, several CPR's managers, including the director of the CPR until February 2021, were involved in

<sup>1109</sup> ASGI, The Black book on the Pre-Removal Detention Centre (CPR) of migrants in Turin – Corso Brunelleschi, September 2021, available at: <https://bit.ly/3CQZQD5>.

<sup>1110</sup> Article 19(3) Decree Law 13/2017 implemented by L 46/2017.

<sup>1111</sup> Article 2(2) Decree Law 113/2018, implemented by L 132/2018.

<sup>1112</sup> LASCIAECIENTRARE, Dietro le mura. Abusi, violenze e diritti negati nei CPR d'Italia, October 2022, available in Italian at: <https://rb.gy/daoyns>.

<sup>1113</sup> Ilaria Sesana, La detenzione amministrativa dei migranti è un affare. Anche in Italia, *Altraeconomia*, 2017, available in Italian at: <https://bit.ly/3leVMxt>.

<sup>1114</sup> National Guarantor for the rights of detained persons, Chiuso l'Ospedaletto del Cpr di Torino: accolta la Raccomandazione del Garante nazionale, September 2021, available in Italian at: <https://bit.ly/3MVVKOz>.

<sup>1115</sup> National Guarantor for the rights of detained persons, Report on the visit to Turin's CPR in June 2021. Available in Italian at: <https://bit.ly/3MVVKOz>.

<sup>1116</sup> See above note 96.

criminal investigations for serious malpractices in the management of the CPR.<sup>1117</sup> On 25 November 2022, the local Prefettura excluded the social cooperative Badia Grande from the European open tender for the award of management services of the local CPR.<sup>1118</sup> As of 31 May 2022, 49 people were detained out of 72 places available.

- ❖ Brindisi's CPR has an official capacity of 48 places and as of May 2022 44 persons (less than 5% of the total of persons detained in CPRs were detained here in 2021)
- ❖ Caltanissetta's CPR currently has an official capacity of 92 places; as reported in 2021, 564 persons (around 10%) had been detained there throughout the year. It was closed for renovations, following requests by the National Guarantor, between April 2020 to May 2021.
- ❖ Trapani's CPR currently has an official capacity of 205 places; as of May 2022, 32 persons were detained here, out of an effective capacity of 36 places. It has been closed for renovations from April 2020 to August 2021.

From more information from a gender perspective see [Detention of vulnerable applicants](#).

Access to CPRs for rights organisations and civil society remains problematic in practice. In December 2021, Sardinia's Administrative Tribunal (TAR) invalidated acts by Nuoro's Prefecture not allowing access of civil society organisations in Macomer's CPR, acknowledging the legitimate interest of rights organisations and civil society to enter immigration detention facilities to ensure the protection of fundamental rights. Similar judgments have been issued in April 2021 by Piedmont's TAR regarding access to Turin's CPR and in October 2020 by Sicilia's TAR with regard to access to Caltanissetta's CPR.<sup>1119</sup> Recently Lombardy's TAR clarified that, regardless of the rules of their statutes, associations that promote the protection of fundamental rights – certified by their experience – can have access to CPR, cancelling the Milan Prefecture's previous refusal of access to the Milan CPR by a local association<sup>1120</sup>

#### *Locali idonei*

LD 113/2018, converted into Law 132/2018, has expanded the places of deprivation of liberty suitable for the administrative detention of foreign citizens pending the validation of immediate accompaniment to the border. The new Art. 13 para 5-bis of the Consolidated Immigration Act introduced the possibility that the justice of peace, at the request of the Questore, orders the detention of the third country nationals in "suitable structures" ("locali idonei") if there are no available places in CPRs. Furthermore, if the unavailability of places in CPRs persists after the validation hearing, it is possible to order the detention of foreign citizens in "suitable premises at the border office concerned, until the actual removal is carried out and, in any case, no later than forty-eight hours following the hearing of validation". The provision has been criticised by the National Guarantor<sup>1121</sup> as well as by ASGI<sup>1122</sup> for its indeterminacy, as the methods of detention and the suitability criteria are not specified, leaving it exclusively to the discretion of the public security authorities. The UN Committee on Enforced Disappearances, in the concluding observations of its 2019 report on Italy, expressed concern for the unavailability of a list of locali idonei, which effectively prevents the Guarantor from monitoring them. The Committee thus recommended the Italian government to immediately publish the aforementioned list and guarantee access by the National Guarantor to these premises<sup>1123</sup>.

<sup>1117</sup> Chiara Spagnolo, "Migranti, frode sull'assistenza sanitaria nel centro di permanenza di Palese: 4 indagati", La Repubblica, October 2021, available in Italian at: <https://bit.ly/3iaqZYc>.

<sup>1118</sup> Prefettura di Bari, provvedimento di esclusione Badia Grande Soc. Coop. Sociale, 25 November 2022, available in Italian at: <https://rb.gy/avqavv>.

<sup>1119</sup> TAR Sardegna, 838/2021, published on 24/12/2021, available in Italian at: <https://bit.ly/35YBFH4>; TAR Piemonte, 360/2021, published on 6/4/2021, available in Italian at: <https://bit.ly/3qcz1nl>; TAR Sicilia, 2169/2020, published on 21/10/2020, available in Italian at: <https://bit.ly/37CPFqn>.

<sup>1120</sup> ASGI, I diritti umani devono entrare nei CPR!, January 2023, available in Italian at: <https://rb.gy/lxw29j>.

<sup>1121</sup> National Guarantor, Opinion on LD 113/2018, October 2018, available in Italian at: <https://bit.ly/3KJJ63i>.

<sup>1122</sup> ASGI, I "locali idonei" al trattenimento dei cittadini stranieri: le criticità del dettato normativo, i rilievi mossi dalle autorità di garanzia e i dati raccolti da ASGI, April 2021, available in Italian at: <https://bit.ly/3MXOtxl>.

<sup>1123</sup> UN Committee on Enforced Disappearances, Concluding observations on the report submitted by Italy under article 29 (1) of the Convention, May 2019, available at: <https://bit.ly/3MYgGVt>.

LD 130/2020, converted into Law 173/2020, confirmed the expansion of places of deprivation of liberty intended for the detention of foreign citizens pending validation of the forced repatriation, but – in pursuance of recommendations made by the National Guarantor<sup>1124</sup> – specified that art. 14 of the TUI applies: in such places of detention, adequate sanitary and housing standards must be ensured and fundamental rights must be guaranteed. These places are thus to be considered as surrogates of CPRs and respond to the same standards. The National Guarantor has further clarified that all the protections provided for in the Cpr compatible with a short stay, including the possibility of visits by persons authorised to access the institutes prisons and security rooms as well as by national and international protection organisations<sup>1125</sup>.

There is no data on individuals detained in the so-called “locali idonei” from the entry into force of the rule. ASGI, as part of the In Limine project, has thus urged the publication of this information, sending FOIA requests to concerned authorities in July 2020. All questioned Questure (Bergamo, Bologna, Brescia, Milan, Parma, Roma) replied to the request for information, although often information was only partial due to alleged reasons of public security. More specifically, none of the Offices – notwithstanding requests made by the National Guarantor as well as the UN Committee on Enforced Disappearances – has shared a list of structures identified as locali idonei, nor provided clear information on criteria to be used in the suitability assessment, merely citing inputs received on this by the National Guarantor but not confirming whether any specific regulation has been adopted.

The disclosed information confirms that all the 6 Questure questions have implemented detention in “locali idonei”. Between July 2019 and July 2020, at least 393 persons were held here in *locali idonei*. Most represented nationalities were Morocco, Albania and Tunisia.<sup>1126</sup>

The National Guarantor has visited, between December 2020 and January 2021, in “locali idonei” in Immigration Offices in Parma and Bologna. The former has 2 holding chambers, in which 38 persons were held pursuant to Art. 13 para 5-bis TUI; no critical events were reported. The latter uses the so-called “sale accompagnati” as locali idonei; in 2020, 17 people were held here pursuant to Art. 13 para 5-bis TUI; among these, 6 were held for 2 nights, 4 for 3 nights, 2 for nights.<sup>1127</sup>

In May 2022, ASGI had access to locals used by Milan’s Questura, and could gather information on the detention procedure and its timing, the places used and certain critical issues related to the right of defence of persons detained.<sup>1128</sup> What emerged is that the maximum duration of detention is 48 hours and only those who receive a deportation decree with accompaniment by public force are detained in the sector, while those who receive deportation decrees for which detention is ordered are immediately transferred to the CPR. Detention validation hearings are mainly conducted remotely and the detainee’s lawyer can speak with the detainee – also remotely - only a few minutes before the hearing. Personnel of the Questura meeting with ASGI’s delegation indicated that detainees have the possibility to be visited by family members or the lawyer, but the direct experience of some cases showed that this right is not guaranteed in practice.<sup>1129</sup>

Upon entry, detainees receive and sign an information form on the possibility of requesting voluntary departure and sign the information sheet that will be attached to the deportation decree.

No specific information is provided on the possibility of accessing the procedure for recognition of international protection. Regarding the right to health, there is no reference protocol with the National Health Service and no examination on the suitability of the application of a detention measure. However, it has been reported that a doctor from the National Health Service is contacted in case of specific requests by the detainee. The Questura di Milano argued that, despite the absence of an express provision of law, there is the possibility for detainees to submit complaints to the Guarantor for detainees’ rights. Mobile

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<sup>1124</sup> National Guarantor, Opinion on LD 130/2020, November 2020, available in Italian at: <https://bit.ly/3id2N7z>.

<sup>1125</sup> National Guarantor, Thematic report on suitable structures used for detention of third-country nationals, August 2021, available in Italian at: <https://bit.ly/3Jh0aNS>.

<sup>1126</sup> ASGI, I “locali idonei” al trattenimento dei cittadini stranieri: le criticità del dettato normativo, i rilievi mossi dalle autorità di garanzia e i dati raccolti da ASGI, April 2021, available in Italian at: <https://bit.ly/3MXOtxl>.

<sup>1127</sup> National Guarantor, Thematic report on suitable structures used for detention of third-country nationals, August 2021, available in Italian at: <https://bit.ly/3Jh0aNS>.

<sup>1128</sup> ASGI, Il punto sulle strutture idonee nella disponibilità delle autorità di pubblica sicurezza per il trattenimento dei cittadini stranieri in attesa dell’esecuzione del rimpatrio: il monitoraggio di ASGI presso la Questura di Milano, November 2022, available in Italian at: <https://rb.gy/wfl5po>.

<sup>1129</sup> Ibid.



phones are requisitioned upon entering the premises; detainees would then be granted to use it only for the time strictly necessary to contact family members or lawyers, apparently under the surveillance of police officers.

Finally, there is no regulated service regarding the meals provided to detainees, who, if in possession of money, can use the snack machines; otherwise, in the case of longer detention, it was reported that a meal was offered through the canteen service of the operators.<sup>1130</sup>

This visit followed Lombardi's Administrative Tribunal precautionary order following the appeal filed by ASGI after Milan Questura rejected the request for access to locali idonei. In October 2022, the same TAR, while noting the lack of interest in the case having occurred in May of the same year of ASGI's visit, reiterated the that reasoning behind the rejection of the request by the local Questura had been erroneous.<sup>1131</sup>

## 1.2. Hotspots

As described in the [Hotspots](#) section, there are four operating hotspots (the fifth, the hotspot of Trapani was converted into a CPR in September 2018). In 2020 and 2021, hotspots were temporarily, partially or completely converted to quarantine facilities, with varying capacity and conditions. As of April 2022, Messina's hotspot appears not operational.

Hotspot	Capacity
Lampedusa	250
Pozzallo	230
Taranto	400
Messina	250
<b>Total</b>	<b>1,130</b>

As already noted, the hotspot approach is used beyond hotspots centres. In October 2020, ASGI reported that the first line reception facility of Monastir, in Sardinia, was being used as a de facto detention facility; a further visit in April 2021 confirmed persisting criticalities.<sup>1132</sup>

With reference to the new critical issues that have emerged at the new border of Pantelleria, please refer to what has been reported above.<sup>1133</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 a group of Tunisians in the Lampedusa CPSA in 2011. In particular, the Court found that their detention was unlawful, and that the conditions in which the Tunisians were accommodated – in a situation of overcrowding, poor hygienic conditions, prohibition of contacts with the outside world and continuous surveillance by law enforcement, lack of information on their legal status and the duration and the reasons for detention – constituted a violation of Articles 3 and 5 ECHR, in addition to the violation of Article 13 ECHR due to the lack of an effective remedy against these violation.<sup>1134</sup> The Grand Chamber judgement of 15 December 2016 confirmed the violation of such

<sup>1130</sup> Ibid.

<sup>1131</sup> ASGI, Il diritto di accesso ai "luoghi idonei" di trattenimento: la sentenza del TAR Milano, November 2022, available in Italian at: <https://rb.gy/gf2jxc>.

<sup>1132</sup> ASGI, Un resoconto della visita di ASGI al Centro di accoglienza di Monastir, April 2021, available in Italian at: <https://bit.ly/3CKQecX>.

<sup>1133</sup> See Duration of detention, para. 4.1.

<sup>1134</sup> ECtHR, *Khlaifia and Others v. Italy*, Application No 16483/12, Judgement of 1 September 2015.



fundamental rights.<sup>1135</sup> Despite civil society organisations calling out the continued practice of detention in hotspots in violation of the Khlaifia judgement, in December 2021 the supervision procedure on the implementation of the ECtHR judgement was officially closed. ASGI, A Buon Diritto and CILD have expressed concern for the closure of the supervision procedure and stressed again the persistence of serious and systematic violations of fundamental rights.<sup>1136</sup> Regarding the unlawfulness of detention, the Government asserted that it had fully implemented the Khlaifia judgement by enacting L 173/2020.<sup>1137</sup> Nevertheless, as pointed out by the National Guarantor for the Rights of Detainees, the 2020 reform did not introduce any new provisions related to hotspots, amending solely the legislation covering CPRs.<sup>1138</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 identified by law. In a Circular issued on 27 December 2018, the Ministry of Interior specified that it will be the responsibility of the Prefectures in whose territories such structures are found to identify special facilities where this form of detention could be performed. At the time of writing, there is no information on the identification of these premises.

As those dedicated premises have not been identified, detention for identification purposes occurs de facto in hotspots.<sup>1139</sup>

According to ASGI, detention in facilities other than CPRs and prisons violates Article 10 of the recast Reception Conditions Directive, which does not allow for detention to take place in other locations than those designated for this purpose and additionally because in these places the guarantees envisioned 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 application of detention measures. 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>1140</sup>

In the recent case *J.A. and Others v. Italy*,<sup>1141</sup> the European Court of Human Rights condemned Italy for violating Article 3 (prohibition of torture and inhuman and degrading treatment), Article 5 (right to liberty and security) and Article 13 (right to an effective remedy) of the Convention, on the complaint lodged by the four Tunisian nationals rescued and transferred to the Lampedusa hotspot and here victims of de facto detention.

### 1.3. Transit zones

The lack of a clear legal definition of transit zones has led to a situation of legal ambiguity, on which illegitimate practises of refusal of entry and detention have been built. Border authorities, considering these areas as extraterritorial, act as if they were exempt from the application of constitutional, national and international standards for the protection of fundamental rights. This interpretation is untenable under the rule of law, since the jurisdiction exercised by the State over such places is not in question. People who are denied entry at airports are forced to wait for repatriation to their country of origin in transit zones. In some cases, this wait can last several days. Foreign citizens are brought back by the same company they travelled with to reach Italy. During this period, people are arbitrarily detained in grossly inadequate

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<sup>1135</sup> ECtHR, *Khlaifia and Others v. Italy*, Grand Chamber, Judgement of 15 December 2016.

<sup>1136</sup> ASGI, *Trattenimento in hotspot: c'era un giudice a Strasburgo*, January 2022, available in Italian at: <https://bit.ly/3JkBXpX>.

<sup>1137</sup> Rappresentanza permanente d'Italia presso il Consiglio d'Europa, *Communication of the Italian Government*, February 2021, available at: <https://bit.ly/34NltGJ>.

<sup>1138</sup> National Guarantor, *Opinion on DL 130/2020*, November 2020, available in Italian at: <https://bit.ly/3id2N7z>.

<sup>1139</sup> Guarantor for the rights of detained persons, *Relazione al Parlamento*, 15 June 2018, available in Italian at: <http://bit.ly/2TZy9ol>, 233.

<sup>1140</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>1141</sup> Case of *J.A. and Others v. Italy*, application n. 21329/2018, 30 March 2023, <https://rb.gy/8uq8v>.

conditions and in the absence of the basic guarantees accorded to persons deprived of their liberty. Detention takes place in premises that are structurally unsuitable for the purpose, isolated from the outside world, without access to fresh air, with little opportunity to consult a lawyer, without any detention order being issued and therefore without any validation by a judge.

De facto detention is used intensively by the authorities in the management of migratory flows in transit at airports. Such deprivation of personal liberty is enforced in the absence of a legal basis, a maximum period of detention and a judicial review of the legitimacy of the detention, in inadequate conditions. Persons detained in airport transit zones have extremely limited possibilities of getting in touch with organisations, protection bodies, family members and lawyers - as their access to such areas is strictly limited. The obstacles put in place by border authorities to reduce outsiders' access to transit areas result in a series of violations, among which the right to information, the right to defence (it is often impossible for detainees to physically contact a lawyer), and effective access to judicial protection. Moreover, the lack of access of civil society to these areas makes them almost invisible to public opinion. Furthermore - while it is difficult for the outside world to enter the transit zones, the authorities do not take any measures to ensure that detained persons can communicate outwardly. On the contrary, on numerous occasions foreign nationals are informally deprived of their mobile phones and, on several occasions, appointed lawyers have been denied entry on the basis that these areas are considered as 'sterile', meaning that only certain categories of persons may have access.<sup>1142</sup>

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>1143</sup>

However, the Guarantor for detained persons maintained that a de facto detention contrary to Articles 13 of the Italian Constitution and to Article 5 of the ECHR was configurable in the situation where people were unable to enter Italy since they were notified of 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.<sup>1144</sup> This period of time varied according to the availability of flight connections with the place of origin.

In 2022, the National Guarantor stressed concerns over de facto detention in transit zones, noting the persisting practice at air or port borders where the effective rejection of the foreign citizen present at border crossings does not take place immediately and people are blocked for days in the transit area, and its criticalities in terms of lack of judicial review of detention as well as conditions of detention.<sup>1145</sup>

In 2021, 6,153 persons received refusals of entry at the borders (3,578 air border, 167 at land borders, 2,408 at sea borders). The main nationality registered is Albanian with 4,007 people (65%). The National Guarantor reported of 305 detained at the transit zones as follows:<sup>1146</sup>

Police border office	2 days	3 days	4 days	5 days	6 days	7 days	8 days	Total
Bergamo Orio al Serio	90	27	10	-	-	-	-	127

<sup>1142</sup> ASGI, Le zone di transito aeroportuali come luoghi di privazione arbitraria della libertà, January 2021, available in Italian at: <https://bit.ly/3CLdOqh>.

<sup>1143</sup> Letter from Ministry of Interior, 8 October 2019, available in Italian at: <https://cutt.ly/WyO4qYF>.

<sup>1144</sup> Guarantor report, page 7. See also, Questione Giustizia, Zone di transito internazionali degli aeroporti, zone grigie del diritto, 9 December 2019, available in Italian at: <https://cutt.ly/EyO4wL9>.

<sup>1145</sup> Report to Parliament Annexes to the yearly report of the National Guarantor for the rights of detained persons, June 2022, available at <https://rb.gy/alzvet>

<sup>1146</sup> Ibidem.

Milano Malpensa	50	4	3	1	-	-	-	58
Roma Fiumicino	-	76	35	4	1	3	1	120
Total	140	107	48	5	1	3	1	305

Article 13 (5 bis) TUI, as amended by DL 113/2018,<sup>1147</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>1148</sup> The situation remained unchanged as of December 2022, as reported by ASGI's through the InLimine Project.<sup>1149</sup>

## 2. Conditions in detention facilities

### Indicators: Conditions in Detention Facilities

1. Do detainees have access to health care in practice? ☒ Yes ☐ No  
If yes, is it limited to emergency health care? ☐ Yes ☒ No

In relation to detention conditions, the 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>1150</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.

The decree-law 130/2020 expressly provides that adequate sanitary and housing standards must be ensured in the CPR.<sup>1151</sup> Regarding the former, as pointed out by the Guarantor of prisoners in his reports, the protection of the right to health and adequate assistance is strongly influenced by the organisational 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. The Guarantor has repeatedly called out for the urgent establishment of MoU between CPR's and local health authorities (ASL), but these are not yet in place in all CPRs.

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>1152</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>1153</sup>

<sup>1147</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>1148</sup> Article 13 (5 bis) TUI.

<sup>1149</sup> ASGI, Il trattenimento in attesa di allontanamento in "locali idonei" presso gli uffici di frontiera: le informazioni ottenute dalle autorità competenti, available in Italian at: <https://rb.gy/llvjb4>.

<sup>1150</sup> Article 7(1) Reception Decree.

<sup>1151</sup> Article 14 (2) TUI as amended by Article 3 (4 a) of Decree Law 130/2020.

<sup>1152</sup> Article 14 (2 bis) TUI.

<sup>1153</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>.

Serious regulatory protection deficits remain with respect to the actual prison regime. These 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 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>1154</sup>

The right of detainees to be adequately informed of their rights and of the possibility to apply for asylum is expressly provided for by the Interior Ministry Directive of 19 May 2022,<sup>1155</sup> that abolished the previous CIE Single Regulation. The CPR managing body is in charge of organising a "normative information provision" service, funds for which however have been drastically cut via the draft tender specifications prepared by the Ministry of Interior in 2018 and confirmed in 2021. There was, in fact, a decrease in the number of hours dedicated to this activity: (i) by 66% (for Centres with up to 50 places); (ii) by 70% (for Centres with up to 150 places); (iii) by 78% (for Centres with up to 300 places). This had inevitable repercussions on the effective protection of the right to information of detainees.<sup>1156</sup>

The Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) made a periodic visit to Italy from 28 March to 8 April 2022. However, the visit did not concern detention facilities for foreign nationals, as reported by media sources.<sup>1157</sup>

## 2.1. Overall conditions

### Hotspots

It is necessary to recall here that, as previously mentioned, in 2016 the ECtHR in the *Khlaifia* judgment condemned Italy for the arbitrary detention of foreign citizens in the Centre of Aid and First Reception (CSPA) — now renamed hotspots — of Lampedusa. The Court was also heavily critical regarding the lack of effective remedies against this deprivation of liberty and related living conditions. Since then, the Italian government has not filled this critical gap in Italian legislation and has kept on detaining people (even minors and vulnerable people) without the required validation from a judge. Some NGOs (including CILD, ASGI, and A Buon Diritto) have actively taken part in the judgement's implementation supervision procedure before the Committee of Ministers of the Council of Europe. From 2018 to the end of 2021, they redacted around ten observations reports demonstrating that the Italian government had done next to nothing to end the systematic violation of human rights in these places.<sup>1158</sup> Notwithstanding, the implementation supervision procedure has been closed in December 2021. Civil society expressed concerns over the closure of the procedure and stressed again the urgency of addressing the need for adequate legal, procedural and reception standards in immigration detention.<sup>1159</sup>

<sup>1154</sup> Article 6(4) Reception Decree.

<sup>1155</sup> Ministero dell'interno, Direttiva recante "Criteri per l'organizzazione e la gestione dei centri di permanenza per i rimpatri previsti dall'art. 14 del decreto legislativo 25 luglio 1998, n. 286 e successive modificazioni", available in Italian at: <https://rb.gy/wfqcv5>.

<sup>1156</sup> CILD, Buchi Neri, available in Italian at: <https://bit.ly/3JgTwY8>.

<sup>1157</sup> Consiglio d'Europa, news 2022, Il Comitato anti-tortura del Consiglio d'Europa effettua una visita di 12 giorni in Italia, April 2022, available in Italian at: <https://rb.gy/xazkd>.

<sup>1158</sup> Open Migration, The shameful topicality of the *Khlaifia* case, November 2021, available at: <https://bit.ly/35Wvaoc>.

<sup>1159</sup> ASGI, Trattenimento in hotspot: c'era un giudice a Strasburgo, January 2022, available in Italian at: <https://bit.ly/3JkBXpX>.

As reported by ASGI's InLimine Project as a result of its monitoring and legal assistance activities, in the summer of 2021, during the period of peak arrivals, people have been de facto detained, even for up to one month, in the Lampedusa hotspot without validation by a judge and without the application of proper hygienic measures, including those directed at preventing the spread of COVID-19. Detention conditions were inhumane; migrants were hosted in potentially risky settings and hotspots were overcrowded, even reaching a point where 1,000 people were accommodated in a location with an official capacity of 250 people. Even vulnerable persons were informally detained for an extended period of time, lacking any adequate mechanism of assistance, referral and/or priority transfer for people who had survived the shipwreck, human trafficking, gender-based violence, torture or who were fragile for any other reason. Such informal and prolonged detention also involved minors, whose transfers were often slowed down by the unavailability of places in centres for sanitary isolation. In particular, there were reports of people being subject to informal and extended detention in the Lampedusa hotspot even when they suffered from medical and/or psychological illness. As an example, a family consisting of two minors and a mother who had suffered from a carcinoma was kept in the hotspot under inadequate conditions including a lack of access to appropriate medical treatments, from 12 July to 12 August 2021, when the family was finally transferred to a centre for fiduciary isolation. Another family consisting of two minors, one of whom suffered from a severe illness that causes motor disability, and of a father who had requested international protection, was kept in a hotspot from 1 July to 10 August 2021.<sup>1160</sup>

In September 2021, MSF, who had deployed teams to provide medical and psychological assistance at landings and in the hotspot during the summer, providing help to over 11,000 persons, ceased its activities in Lampedusa, citing the inadequacy of the emergency approach adopted and the need for structural interventions to ensure the respect and protection of fundamental rights.<sup>1161</sup>

This situation remained unchanged through 2022, as showed by data collected through ASGI's InLimine Project.<sup>1162</sup>

The Pozzallo hotspot is located in the premises of the former customs office in the port of Pozzallo. It is enclosed by a barrier about 3 metres high and has a constantly manned entrance. The structure consists of three large dormitories, divided according to gender and age. During 2019, it mainly welcomed people awaiting transfers to other European countries in the context of the so-called voluntary relocation. Such redistribution procedures usually involved long-term stays within the centre. From March 2020 to the end of 2021, due to the pandemic, the hotspot has been used for the execution of quarantine and fiduciary isolation periods for arriving foreign citizens, including minors. This use raises critical issues as the hotspots are not, in fact, compatible with the implementation of measures aimed at the prevention and spread of COVID-19 for obvious structural reasons, since these places are unsuitable for long-term stays. Inspectors sent by the Sicily Region in September 2020 highlighted multiple sanitary criticalities such as common toilets, not proportionate for the real capacity and insufficient sanitation.<sup>1163</sup> In July 2021, migrants protesting in the hotspot caused a fire in the building, a few migrants escaped from the hotspot but were traced by authorities.<sup>1164</sup>

The Taranto hotspot is located a few metres from the entrance to the commercial port of the city, close to the gigantic industrial area. The proximity to the former Ilva steelwork factory and other polluting industrial plants is made evident by the thick patina of red dust that covers the tensile structures and containers that make up the centre's structure. In 2019, ASGI, ActionAid and Oxfam visited the hotspot and reported inadequate structures creating situations of promiscuity and the lack of adequate medical services and

<sup>1160</sup> ASGI, Una prospettiva di genere sull'Hotspot di Lampedusa: la sistematica e colposa violazione dei diritti delle donne, October 2021, available in Italian at: <https://bit.ly/3tgdRHf>.

<sup>1161</sup> MSF, Lampedusa: approccio emergenziale poco efficiente, serve intervento strutturale, September 2021, available in Italian at: <https://bit.ly/37uJIRz>.

<sup>1162</sup> ASGI, L'hotspot di Lampedusa: alcuni riscontri dalla pubblica amministrazione, May 2022, available in Italian at: <https://rb.gy/bdh5l0>; see also ASGI, Report Lampedusa 2022: le criticità, August 2022, available in Italian at: <https://rb.gy/litjw5>.

<sup>1163</sup> Ragusa Oggi, L'HotSpot di Pozzallo, ma anche il centro San Pietro, bocciati dagli ispettori regionali: "inadeguato per prevenire il covid e per la quarantena", September 2020, available in Italian at: <https://bit.ly/3D1uNEZ>.

<sup>1164</sup> Repubblica, Migranti, incendio all'hotspot di Pozzallo: 30 in fuga, July 2021, available in Italian at: <https://bit.ly/3CLcSll>.



support for vulnerable persons.<sup>1165</sup> In November 2020, protests in the hotspots culminated in the escape of 16 persons and, one year later, in the arrest of one migrant held responsible for the protests and for resisting to the police.<sup>1166</sup>

The Messina hotspot is made up of a series of containers of zinc sheets and tensile structures capable of hosting up to 250 people. During 2019, the Messina hotspot mainly welcomed people awaiting transfer to other European countries in the context of the so-called voluntary relocation.<sup>1167</sup> In 2020 it was mostly used as quarantine facility.<sup>1168</sup>

As already noted, in October 2020 and again in April 2021, ASGI reported that the first line reception facility of Monastir, in Sardinia, was being used as a de facto hotspot, despite not being defined as a hotspot facility. The Monastir reception centre is located in a military area surrounded by large fences. Although the legal configuration of the centre is not clear, the same evidently has functions attributable to those defined by the hotspot approach; all the typical hotspot procedures are also carried out in the centre, such as health screening, pre-identification via news sheet, identification, fingerprinting and control in databases for the purpose of defining the legal status of the foreign citizen on the territory and for channelling them into asylum procedures or towards repatriation. The same structure has been used for periods of fiduciary isolation and quarantine. With regard to the conditions of stay, it was reported that an area housed 25 people in quarantine, with a single toilet equipped with a shower, and other chemical toilets outside the building.<sup>1169</sup>

In 2021, ASGI reported many criticalities in Pantelleria, where newly arrived migrants are also channelled in hotspot-like procedures.<sup>1170</sup> Those arriving on the island are hosted in a structure largely unsuitable for reception that previously hosted military barracks. It is a transit centre without any precise legal configuration and with many criticalities in terms of reception conditions and protection of rights.<sup>1171</sup> As mentioned above, the new inspection conducted by ASGI in May 2022 confirmed the critical issues that emerged the previous year.<sup>1172</sup>

## CPR

As already mentioned, immigration detention continued during the COVID-19 pandemic and the related lockdowns, notwithstanding the fact that no transfer could take place and concerns raised by civil society.<sup>1173</sup> It has been noted – including by judges while not validating detention in CPRs – that detention applied while transfers were blocked is without legal basis: detention in CPRs is supposed to be exclusively preparatory to repatriation and if this is not possible, any detention is considered illegitimate.<sup>1174</sup> A first Mol circular urging reception managing bodies to adopt appropriate measures to

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<sup>1165</sup> ASGI, Visita all'hotspot di Taranto, July 2019, available in Italian at: <https://bit.ly/3telHjr>.

<sup>1166</sup> Corriere del Mezzogiorno, Taranto, fece scappare 16 ospiti: arrestato dalla polizia, November 2021, available in Italian at: <https://bit.ly/3tVK2e8>.

<sup>1167</sup> ASGI, Cosa succede ai migranti nell'hotspot di Messina, February 2019, available in Italian at: <https://bit.ly/3tisWZ7>.

<sup>1168</sup> ASGI, Hotspot di Messina, December 2020, available in Italian at: <https://bit.ly/3ljhfpb>.

<sup>1169</sup> ASGI, Un resoconto della visita di ASGI al Centro di accoglienza di Monastir, April 2021, available in Italian at: <https://bit.ly/3CKQecX>.

<sup>1170</sup> ASGI, La frontiera di Pantelleria: una sospensione del diritto. Report del sopralluogo giuridico di ASGI, June 2021, available in Italian at: <https://bit.ly/3tcSwyD>.

<sup>1171</sup> ASGI, La frontiera di Pantelleria: una sospensione del diritto. Report del sopralluogo giuridico di ASGI, June 2021, available in Italian at: <https://bit.ly/3tcSwyD>.

<sup>1172</sup> ASGI, La frontiera di Pantelleria: una sospensione del diritto Report del sopralluogo giuridico di ASGI, August 2022, available at: <https://rb.gy/9ndftw>.

<sup>1173</sup> ASGI et al, *Emergenza COVID-19. L'impatto sui diritti delle/dei cittadine/i straniere/i e le misure di tutela necessarie: una prima ricognizione*, March 2020, available in Italian at: <https://bit.ly/3qac6JW>.

<sup>1174</sup> The Specialised Section of Rome in a decision dated March 2020 did not authorise the extension of the detention of an asylum seeker from Bangladesh detained in the Ponte Galeria CPR by assessing the reasonableness of detention in the pandemic emergency context. That same day, the Court of Trieste issued a ruling in which it did not validate the detention of an asylum seeker detained in Potenza's CPR, stating that detention was not justifiable as it had lost the purpose of being "strictly functional to enable the timely processing of applications for international protection and the subsequent and possible execution of the expulsion". CILD, Migrant detention in Covid-19 times, August 2020, available at: <https://bit.ly/3KTAvvf>.



prevent COVID-19 contagion in CPRs was issued in March 2020. Adequate measures have not always been put in place and detainees felt abandoned inside the centres, where distancing was virtually impossible, while also being exposed to very precarious living conditions.<sup>1175</sup> No official data is available on access to vaccines for persons in CPRs. As of September 2021, vaccination activities had not yet kicked off in CPRs in Rome, Bari, Trapani.<sup>1176</sup> In Potenza's CPR, the lack of adequate prevention measures and proper internal information provision led in March 2020 to hunger strikes and protests, which were violently repressed; two parliamentary interrogations were presented on conditions in the centre.<sup>1177</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. A further expansion of the role of the National Guarantor on monitoring of all places of detention has been foreseen by L. 173/2020. The National Guarantor, in the context of its dedicated focus on immigration detention, has repeatedly noted the lack of an adequate legal framework for detention in CPRs. More recently, the Guarantor has highlighted the importance of the ongoing review of the consolidated regulation for CPRs, currently being undertaken by the Mol's Department of Civil Liberties and Immigration. Even if the regulation does not suffice to ensure a legal basis for detention, it could provide for a more solid central governance of immigration detention and the evolution of the system towards higher standards of protection.<sup>1178</sup>

CPRs detain people with very different legal statuses, from those coming from prisons to applicants for international protection. According to the law, asylum seekers detained in CPR should be placed in a dedicated space.<sup>1179</sup> The National Guarantor has reported on the overall lack of distinctions made on this respect in CPRs, where separation of persons in different conditions is often not possible due to lack of adequate spaces, affecting the safety of the detention environment.<sup>1180</sup>

"Modalities of detention seriously and physiologically problematic" was the wording used by the National Guarantor to describe the structural issues affecting the immigration detention system in Italy.<sup>1181</sup> The National Guarantor describes regulatory gaps, structural problems, and issues in the management of detention facilities. CPR facilities and resources are generally described as lacking at best, resulting in a very poor quality of life for detained persons. The National Guarantor also describes worrying practises compromising the ability of detained persons to communicate with the outside world. The Guarantor has therefore repeatedly called out for the improvement of detention facilities and of their connection to local services (especially in terms of access to the National Health System) as well as of the ability of detained persons to communicate freely through their mobile phones.<sup>1182</sup>

Concerning overall conditions of detention in CPRs, several issues have been reported, mainly regarding:<sup>1183</sup>

- The privatised management of CPRs (even for health-related services) is one of the most controversial issues in administrative detention. In recent years, the social cooperatives that manage these facilities have been gradually joined by multinational corporations, which manage detention centres or services in prisons all over Europe;

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<sup>1175</sup> Francesca Esposito, Emilio Caja, Giacomo Mattiello, "No one is looking at us anymore" - Migrant Detention and Covid-19 in Italy, *Border Criminologies*, November 2020, available at: <https://bit.ly/35YDTGq>.

<sup>1176</sup> CILD, Buchi Neri, available in Italian at: <https://bit.ly/3JgTwY8>.

<sup>1177</sup> Ibidem.

<sup>1178</sup> National Guarantor for the rights of detained persons, Yearly report to the Parliament 2021, June 2021, available in Italian at: <https://bit.ly/3NI1P6T>.

<sup>1179</sup> Article 6(2) Reception Decree.

<sup>1180</sup> National Guarantor for the rights of detained persons, Rapporto sulle visite effettuate nei CPR (2019 - 2020), available in Italian at: <https://bit.ly/35UHwx5>.

<sup>1181</sup> National Guarantor for the rights of detained persons, Rapporto sulle visite effettuate nei CPR (2019 - 2020), available in Italian at: <https://bit.ly/3MPri93>.

<sup>1182</sup> Ibidem

<sup>1183</sup> CILD, Buchi Neri, January 2020 – July 2021, available in Italian at: <https://bit.ly/3JgTwY8>.

- The tendency to minimise the costs of managing the CPRs in favour of profit maximisation is evident in the outline of the tender specifications prepared by the Ministry of the Interior in 2018, and partially confirmed in the new outline of the same description in 2021. This has resulted in a drastic decrease in all services for people within CPRs, a reduction in the hours staff employed by the Centres' managing bodies (operators, information and mediation services, health personnel) and has thus led to a structural lack of staff in the various CPRs, with pathological drifts recorded in some facilities;
- In some cases, the square metre size of single rooms does not comply with the minimum living space standard set by the European Court of Human Rights. Further critical issues observed in CPRs concern the lack of natural light in the sleeping rooms, deriving from the presence of screened windows; the lack of possibility for detainees to directly turn lights on or off; in some instances, the presence of cockroaches and non-insulated rooms, of worn-out, mouldy mattresses;
- In some facilities, there is an inadequate number and/or very poor hygienic conditions of sanitary services, which are often without doors and thus do not ensure any privacy;
- The poor quality of food, lack of compliance with food safety regulations and menus which do not always take into account diets for religious or medical reasons;
- The total lack of common living spaces and activities for detainees;
- Freedom of communication is often partially and completely limited: in most CPRs, the number of landline telephones, which according to the legislation should be present in a number not lower than 1 for every 15 people, was insufficient; in many CPRs, the possibility to make video calls with family members during COVID-19 was not given. Furthermore, the illegitimate practice of seizing mobile phones of detainees upon entrance in centres continues in Torino, Potenza, Roma, Trapani, and Macomer. In February 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 can also constitute 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>1184</sup>

Especially dire conditions have been reported in Turin's CPR, whose infamous sanitary isolation section (so-called Ospedaletto) was closed in September 2021 upon insistence of the National Guarantor, following the tragic suicide of Moussa Balde a few months before.<sup>1185</sup>

Several cases of self-harm and/or suicide attempts in CPRs have been reported in Milan, Turin, and Bari.<sup>1186</sup> Revolts over detention conditions in CPRs are frequent; in 2021, detained persons protested and revolted in Turin and Milan. In May 2021, a protest over lack of food in Milan's CPR was violently repressed by riot police, resulting in 8 persons harmed and followed up by hunger strikes and cases of self-harm.<sup>1187</sup>

The National Guarantor reported that, in the course of 2021 two people died inside CPRs.<sup>1188</sup> Other deaths occurred in 2022.<sup>1189</sup>

<sup>1184</sup> Civil Court of Milan, decision of 23 February 2021, available at: <https://bit.ly/3bopoLe>.

<sup>1185</sup> ASGI, The Black book on the Pre-Removal Detention Centre (CPR) of migrants in Turin – Corso Brunelleschi, September 2021, available at: <https://bit.ly/3CQZQD5>; National Guarantor for the rights of detained persons, Chiuso l'Ospedaletto del Cpr di Torino: accolta la Raccomandazione del Garante nazionale, September 2021. Available in Italian at: <https://bit.ly/3MvVKOz>.

<sup>1186</sup> CILD, Buchi Neri, January 2020 – July 2021, available in Italian at: <https://bit.ly/3JgTwY8>.

<sup>1187</sup> Ibidem.

<sup>1188</sup> Report to Parliament Annexes to the yearly report of the National Guarantor for the rights of detained persons, June 2022, available at: <https://rb.gy/alzvet>.

<sup>1189</sup> Altreconomia, Un altro morto nel Cpr di Gradisca d'Isonzo, "buco nero" del Friuli-Venezia Giulia, September 2022, available in Italian at: <https://rb.gy/qbjhs5>; Ansa, Incendio in Cpr Brindisi, muore un migrante, dicembre 2022, available in Italian at: <https://rb.gy/a2qnwx>.

## Locali idonei

Very limited information on “locali idonei” is available. According to information acquired by ASGI via FOIA, the 6 Questure of Bergamo, Bologna, Brescia, Milan, Parma and Rome have implemented detention in such spaces. Between July 2019 and July 2020, at least 393 persons were held in these locations. Most represented nationalities appear to be Morocco, Albania and Tunisia. Guarantees on information provision, right to defence, access to the asylum procedures and contacts with the exterior appear to be left at the ample discretion of authorities.<sup>1190</sup>

The National Guarantor has visited, between December 2020 and January 2021, the “locali idonei” in Immigration Offices in Parma and Bologna. The former has 2 holding chambers, in which 38 persons were held in 2020 pursuant to Art. 13 para 5-bis TUI; no critical events were reported. The latter uses the so-called “sale accompagnati” as locali idonei, although the Guarantor pointed out that no renovation of the rooms was ensured prior to their conversion for this use. In 2020, 17 people were held here pursuant to Art. 13 para 5-bis TUI; among these, 6 were held for 2 nights, 4 for 3 nights, 2 for nights. Regarding Parma and Bologna, the Guarantor noted that many standards were not complied with: both have dirty walls and are almost empty, with a bench – to be used as sitting in daytime and bed at night, with only a blanket as bedding – being the only place of furniture. Sanitary services are external and can be used only upon request to police. There are no external spaces for yard time. In Bologna, the rooms have a glass wall, meaning persons held have no privacy at all. Based on inadequate detention conditions observed in Parma and Bologna, the National Guarantor has asked the Department of Public Security circulates clear indications to ensure the suitability of detention premises, as well as called upon visited Immigration Offices for the prompt improvement of detention conditions as per the Guarantor's recommendations. The Guarantor has also noted how neither in Parma nor in Bologna rights of persons held were adequately protected. In both premises, detainees' phones are seized upon entrance, leaving held persons unable to freely communicate. Regarding freedom of communications, the Guarantor stressed how the right to realise phone calls must be granted, recalling the already cited 2021 judgement by Milan's Court. No adequate information provision materials or activities are in place. Judicial validation of detention is not always rightly ensured, as different cases in which persons were held without the authorisation of the judge, pending the transfer to CPRs, were reported. When detention validation orders are present, they are not always well motivated, as it appears that judges are not aware of detention conditions in the locali idonei. Issues with the recording of presences were also noted.<sup>1191</sup>

As mentioned above, in May 2022 ASGI had access to locals used by Milan's Questura, which allowed them to understand the procedure of detention and its timing, the places used and certain critical issues related to the right of defence of persons detained.<sup>1192</sup> This visit followed Lombardy's Administrative Tribunal precautionary order issued following the appeal filed by ASGI after the Questura of Milan rejected the request for access to locali idonei.<sup>1193</sup>

## Transit zones

In transit zones, people are arbitrarily detained in grossly inadequate conditions and in the absence of the basic guarantees accorded to persons deprived of their liberty. Detention takes place in premises that are structurally unsuitable for the purpose, isolated from the outside world, without access to fresh air, with little opportunity to consult a lawyer, without any detention order being issued and therefore without any validation by a judge. Such deprivation of personal liberty is enforced in the absence of a legal basis, a maximum period of detention and a judicial review of the legitimacy of the detention, in inadequate

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<sup>1190</sup> ASGI, I “locali idonei” al trattenimento dei cittadini stranieri: le criticità del dettato normativo, i rilievi mossi dalle autorità di garanzia e i dati raccolti da ASGI, April 2021, available in Italian at: <https://bit.ly/3MXOtxl>.

<sup>1191</sup> National Guarantor, Thematic report on suitable structures used for detention of third-country nationals, August 2021, available in Italian at: <https://bit.ly/3Jh0aNS>.

<sup>1192</sup> ASGI, Il punto sulle strutture idonee nella disponibilità delle autorità di pubblica sicurezza per il trattenimento dei cittadini stranieri in attesa dell'esecuzione del rimpatrio: il monitoraggio di ASGI presso la Questura di Milano, November 2022, available in Italian at: <https://rb.gy/wfl5po>.

<sup>1193</sup> ASGI, Il diritto di accesso ai “luoghi idonei” di trattenimento: la sentenza del TAR Milano, November 2022, available in Italian at: <https://rb.gy/gf2jxc>.

conditions. Persons detained in airport transit zones have extremely limited possibilities of getting in touch with organisations, protection bodies, family members and lawyers - as their access to such areas is strictly limited.

In 2021, 6,153 persons were pushed back at borders (3,578 air border, 167 land border, 2,408 sea border). The main nationality registered was Albanian, with 4,007 people refused entry at the borders (65% of the total).<sup>1194</sup>

The National Guarantor reported as of 31 December 2021, 305 persons were detained in the areas of Bergamo Orio Al Serio, Milan Malpensa and Rome Fiumicino airports: the detention time lasted from 2 days to as long as 7-8 days in some cases registered at Roma Fiumicino.<sup>1195</sup>

According to information acquired by ASGI via FOIA, by 31 October 2022, 980 persons were pushed back at Fiumicino airports, of which 208 were Albanians (21%).<sup>1196</sup> In the same period, there were 105 asylum applications, 28 from Turkish people (27%).<sup>1197</sup>

## 2.2. Activities

According to article 4(m) of the new Directive of the Ministry of the Interior of May 2022 - in line with the Article 4(h) of the CIE Regulation it substituted -, social, recreational and religious activities shall be organized in the centres, and to "this end the manager shall prepare a weekly calendar of planned activities, to be brought to the attention of all foreigners present."

In practice, it has been reported that in most CPRs, apart from unequipped outdoor concrete courtyards, there are no: (i) football fields or libraries; (ii) places of worship; (iii) recreational and cultural activities; (iv) agreements with civil society associations that can provide additional services and activities.<sup>1198</sup> 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. As pointed out by the National Guarantor, these shortages mean that CPRs are "empty shells", where people are reduced to bodies to be held and confined.

The security approach to administrative detention makes CPRs places of extreme social marginality and isolation from a community which is prevented from entering detention facilities and creating relationships with detainees. The people detained in CPRs live in a condition of permanent forced idleness, where even small daily life choices, such as reading a book, writing, or playing sports are limited and regulated.<sup>1199</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>1200</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>1201</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. Within the socio-health services provided in the CPR, a periodical

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<sup>1194</sup> Report to Parliament Annexes to the yearly report of the National Guarantor for the rights of detained persons, June 2022, available at: <https://rb.gy/alzvet>.

<sup>1195</sup> Report to Parliament Annexes to the yearly report of the National Guarantor for the rights of detained persons, June 2022, available at: <https://rb.gy/alzvet>.

<sup>1196</sup> ASGI, La frontiera di Fiumicino: i riscontri della pubblica amministrazione, November 2022, available in Italian at: <https://rb.gy/ylyc6u>.

<sup>1197</sup> Ibid.

<sup>1198</sup> CILD, Buchi Neri, January 2020 – July 2021, available in Italian at: <https://bit.ly/3u710qg>.

<sup>1199</sup> National Guarantor for detained persons, Report of 12 April 2021, 6.

<sup>1200</sup> Article 14(2) TUI.

<sup>1201</sup> Article 21(1) and (2) PD 394/1999.

assessment of the conditions of vulnerability requiring special reception measures must be ensured.<sup>1202</sup> The Prefectures are obliged to ensure coordination with local health authorities to ensure access to medical services ex art. 35 of the Consolidated Act on Immigration. Art. 3 of the new Directive of the Ministry of the Interior of May 2022 provides for a medical examination of suitability for life in the CPR to be issued by the competent ASL prior to entry into the facility, or in case the person enters without having had the visit “the examination must be repeated within 24 hours of entering the CPR by the doctor from the ASL with which the Prefecture headquarters of the CPR has entered into a special protocol.”<sup>1203</sup> The certification of the medical visit shall be forwarded to the Judge's file of the validation of detention.

Health care inside CPRs should be considered "complementary" (not substitutive) to services provided by the National Health Service, implying a necessary link with the latter. This connection should be guaranteed by the above-mentioned MOUs between the relevant Prefecture and the local ASL, which are essential to guarantee a timely access of the detainees to ASL health facilities and periodical inspections of the health authority inside the centres. However, these MOUs are often not adequately implemented. In Turin and Brindisi, despite the existence of MoUs, no inspections have ever been carried out by the ASL in the Centres to verify the hygienic and sanitary conditions, the quality of sanitary services and of the food administered. In Milan, for a long time the absence of a MoU has impaired access of detained persons to health services; only in July 2021, after countless interventions by the National Guarantor, civil society associations and some parliamentarians, the Prefecture of Milan signed two MoU with the ASL of Milan: one being aimed at the detainees' access to the SSN and inspection activities by health authorities. This MOU runs from 1 July 2021 to 31 December 2021. The other is aimed at issuing a STP code to detainees who do not have it and runs from 1 July 2021 to 30 June 2022. However, it is not clear why such strict time limits have been set for their validity. It seems unreasonable to have waited so long for the finalisation of a MOU between the health authorities and the Prefecture of Milan and then to only provide for a period of operation of six months and one year respectively, of those instruments.<sup>1204</sup>

The lack of adequate supervision by local health authorities resulted even more evident in the context of the COVID-19 pandemic. ASGI and other civil society organisations have repeatedly called out local health authorities to play a more active role in the supervision of health and sanitary conditions in CPRs.<sup>1205</sup>

It is to be noted that in CPRs health care is de facto – especially in the light of the absence of adequately implemented MoUs with local health authorities – managed by private parties, being entrusted to the managing body of the CPRs and not to the National Health Service (SSN).

The SSN is merely assigned, at a regulatory level, the task of carrying out the preliminary medical examinations to verify the suitability of the detainee for life in a restricted community. However, this provision is, in most cases, disregarded in practice: it has been indeed found that the certificate for this purpose is issued: by a doctor of the managing institution in the CPRs of Turin, Milan and Potenza; by the health staff of hotspots or quarantine ships in the case of Brindisi, Bari, Caltanissetta, Trapani and Gradisca d'Isonzo. Medical examinations to verify the suitability of detention for an individual are not, in most cases, carried out in an adequate manner; they are generally rushed, and the medical records of the person concerned are often not properly assessed. The presence of law enforcement personnel during medical examinations also appears to be very frequent in CPRs, despite this practice contradicting what is required by the CIE Single Regulation and what is prescribed by the CPT, as absence of "medical confidentiality" is one of the factors preventing the detection of possible ill-treatment. As a result, the detention of people unsuited for detention conditions, including persons undergoing methadone treatment on a sliding scale, persons suffering from serious diseases and/or mental health issues, has been reported<sup>1206</sup>.

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<sup>1202</sup> Article 7(5) Reception Decree.

<sup>1203</sup> Art. 3(2), Directive of the Ministry of the Interior of May 2022.

<sup>1204</sup> CILD, Buchi Neri, January 2020 – July 2021, available in Italian at: <https://bit.ly/3u710qg>.

<sup>1205</sup> ASGI, ASGI chiede alle ASL di verificare il rispetto del diritto alla salute dei migranti nei CPR, April 2020, available in Italian at: <https://bit.ly/3ibDvqx>.

<sup>1206</sup> CILD, Buchi Neri, January 2020 – July 2021, available in Italian at: <https://bit.ly/3u710qg>.



According to the National Guarantor, the organisation of health services within CPRs appears to be "particularly critical", due to lack of staff adequately trained in medicine related to migration,<sup>1207</sup> and to the absence of risk prevention protocols, despite the numerous episodes of self-harm occurring in the Centres.<sup>1208</sup>

Additionally, the new scheme of contract specifications has led to a drastic decrease in the number of hours per week dedicated to personal services, starting with health services. More specifically, between 2017 and 2018-2021 there has been a serious cut of hours for medical and psychological services in all centres: 40% cut for medical and 55% cut for psychological assistance in CPRs with a capacity of 50 places; 27% for medical and 33% for psychological assistance in CPRs with a capacity between 51 and 150 places; 70% for medical and 55% for psychological assistance in CPRs with a capacity of more than 150 places. As a result:

- In Milan's CPR (140 places), for each detainee: (i) medical assistance is guaranteed for 15 minutes per week and (ii) psychological assistance for 6 minutes per week. Moreover, it was noted that, in this facility, there is a long list of detainees waiting for a visit with the psychologists of the centre, one of whom is also the Director of the Centre itself;
- In Turin's CPR (180 places), for each detainee: (i) medical assistance is guaranteed for 14 minutes per week and (ii) psychological assistance for 8 minutes per week. The inadequacy of the service offered by the managing body was such that, in February 2021, the latter signed a memorandum of understanding with the order of doctors of the province of Turin. According to the National Guarantor, this protocol could not overcome the criticalities observed in this centre, with particular reference to the provision of specialist services within the competence of the territorial services;<sup>1209</sup>
- In Macomer's CPR (50 places), medical assistance was provided for only 3 hours a day and psychological assistance for 8 hours a week. However, after only three weeks of opening the Centre in February 2020, the internal health staff threatened to strike and resign due to the lack of conditions that would allow them to work safely. In March 2020, the National Guarantor found that the number of health workers present in the structure was insufficient. This led the Prefecture of Nuoro to increase the medical assistance service to 5 hours a day, while psychological assistance, according to the lawyers assisting detainees in the Centre, continues to be "non-existent".<sup>1210</sup>

The monitoring of psychiatric cases and the administration of psychotropic drugs is often managed by psychologists and nurses appointed by the managing body, with no involvement nor supervision of local health authorities. It has been noted how the percentage of detainees subjected to the administration of psychotropic drugs and anxiolytics is very high. As an example, in Milan's CPR, this percentage reaches - according to the managing body itself - 80% of the total detainee population. This situation is made even more concerning by the lack of connection with the local ASL and, therefore, the total absence of adequate psychiatric assistance. The critical nature of the situation is well illustrated by the recent survey on the abuse of psychotropic drugs within the Italian CPRs<sup>1211</sup>, which found that at the Milan CPR, in the period between October 2021 and February 2022, while spending on psychotropic drugs exceeded 60% of the total amount of drugs purchased, only 8 psychiatric visits were made to detainees. In Turin's CPR, according to the medical director of the facility, "psychotropic drugs are used by the litre", but without adequate monitoring, considering that throughout 2020 no psychiatrist has ever visited the facility. In 2021, collaboration with the Mental Health Centre of the local ASL resumed; regardless, visits in these cases are also on call, so there is no constant care of the patient, which tends to be replaced by the constant and continuous administration of psychopharmacological therapies.<sup>1212</sup> In Rome's CPR, according to the competent health authority, the percentage of detainees who are given psychotropic

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<sup>1207</sup> Intended as Doctors who are specialized in the assistance and treatment of migrants (such as SAMIFO or INMP in Rome) or S.I.M.M. (Italian society of Migration Medicine).

<sup>1208</sup> National Guarantor for the rights of detained persons, Rapporto sulle visite effettuate nei CPR (2019 - 2020), available in Italian at: <https://bit.ly/3tgzilq>.

<sup>1209</sup> National Guarantor, Rapporto sulla visita effettuata il 14 giugno 2021 nel Centro di permanenza per i rimpatri (Cpr) di Torino, September 2021, available in Italian at: <https://bit.ly/3Jmspuu>.

<sup>1210</sup> CILD, Buchi Neri, January 2020 – July 2021, available in Italian at: <https://bit.ly/3u710qg>.

<sup>1211</sup> Altraeconomia, Rinchiusi e sedati: l'abuso quotidiano di psicofarmaci nei Cpr italiani, 1 April 2023, available in Italian at: <https://rb.gy/489u4>. See also, Il Riformista, Migranti rinchiusi e sedati, tutti i soldi spesi dallo Stato per stordirli e tenerli buoni nei Cpr, 7 April 2023, available in Italian at: <https://rb.gy/5woo2>.

<sup>1212</sup> Garante per i diritti delle Persone private della Libertà personale del Comune di Torino, Dott.ssa Monica Cristina Gallo, Relazione annuale attività 2022, 27 March 2023, available in Italian at: <https://rb.gy/p030i>.



drugs and anxiolytics is 65-70%. In Gradisca's CPR, according to data provided by the regional Guarantor, 70% of the detained population is subjected to therapies requiring the administration of psychotropic drugs and tranquilisers. The abuse in the administration of psychotropic drugs, which is apparent in most CPRs, can be traced back to the absence of a connection with the national health system and to the management of health services entrusted to private bodies, with the risk of bending medical and pharmacological intervention to the needs of discipline and security of the facilities.<sup>1213</sup>

Access to medical records is difficult. Even though the legislation provides for the right of the detainee to see and obtain a copy of his/her medical file, practises impairing this right have been reported in CPRs. In the Turin centre, not even lawyers, delegated by the detainees, are allowed to have a copy of the medical documentation. Furthermore, in most cases medical records are not adequately compiled. Already in 2017, the CPT had found that in the CPR of Turin, the medical staff of the managing institution were filling in medical files of each detainee in a very general, broad way, with a noticeable absence of detail, especially in registration of possible injuries (necessary to verify possible ill-treatment). The issue has been reported also in 2021 by the National Guarantor, who recommended that the medical records of each detainee should be always properly filled in, including the records of possible complaints of ill-treatment and beatings suffered by the detainee.<sup>1214</sup>

There is still no reliable, effective and complete system in place within the CPR network to record critical events (e.g. suicides or attempted suicides; episodes of self-harm; hunger strikes; deaths), despite this deficiency being identified and brought to the attention of the Italian Government by the European Committee for the Prevention of Torture already in 2017.<sup>1215</sup> In addition, the National Guarantor has been recommending, for several years, that a standardised and centralised system of recording critical events be introduced, which would allow overseeing bodies to have rapid knowledge of the most relevant events occurring in the Centres and ensure greater transparency regarding the functioning of these places of detention.<sup>1216</sup>

Provisions regulating CPRs do not foresee solitary confinement (for justice, health, disciplinary or security reasons), but only the possibility to place detainees in sanitary "observation" rooms, in case the existence of elements that may reflect the incompatibility of a detainee with restricted community life, which did not emerge during the initial certification of suitability for detention, is noted by the personnel. The most striking example of how this provision can lead to severe violations as regards respect of human dignity was the so-called Ospedaletto within Turin's CPR, which, according to the National Guarantor, looked like the "old section of a zoo". In these premises, detainees were put in isolation for a wide range of reasons (from disciplinary reasons to alleged needs of "protection"), without a maximum time limit being fixed, which in some cases reached 5 months. Two detainees have died in Ospedaletto in 2019 and 2021 respectively. Following the suicide of Moussa Balde in May 2021, and the insistent requests by the National Guarantor, the Ospedaletto was finally closed in autumn 2021.<sup>1217</sup> The broader issue of confinement in sanitary rooms in CPRs remains to be addressed.

It is necessary to note that the number of deaths in CPRs has never been as high as in recent years. Between June 2019 and December 2022, ten foreign nationals lost their lives whilst held in administrative detention, two just in the last 5 months of 2022.<sup>1218</sup> The specific instances differ in terms of causes and circumstances, but what is common between them is a lack of clarity about the circumstances of their

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<sup>1213</sup> CILD, Buchi Neri, January 2020 – July 2021, available in Italian at: <https://bit.ly/3u710qg>.

<sup>1214</sup> National Guarantor for the rights of detained persons, Relazione al Parlamento, June 2021, available in Italian at: <https://bit.ly/3qfLXtg>.

<sup>1215</sup> CPT, Report to the Italian Government on the visit to Italy carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 7 to 13 June 2017, available at: <https://bit.ly/3lnPE6e>.

<sup>1216</sup> National Guarantor for the rights of detained persons, Rapporto sulle visite effettuate nei CPR (2019 - 2020), available in Italian at: <https://bit.ly/3tgzilq>.

<sup>1217</sup> National Guarantor for the rights of detained persons, Chiuso l'Ospedaletto del Cpr di Torino: accolta la Raccomandazione del Garante nazionale, September 2021. Available in Italian at: <https://bit.ly/3Jmshuu>.

<sup>1218</sup> Melting Pot Europea, Brindisi, un'altra morte di CPR, 22 December 2022, Available in Italian at: <https://rb.gy/wmtyi>.

deaths, doubts about the suitability of these persons to be placed in this restricted community setting in the first place, and the risks arising from inadequate protection of the health of detainees.<sup>1219</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.

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>1220</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>1221</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>1222</sup> 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 also 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.

Access to CPRs and hotspots for rights organisations and civil society remains problematic in practice and has often led to litigation in front of national Courts.

In 2020, 2 out of 6 requests for access in hotspots by ASGI were accepted. In 2020, Sicilia's TAR had accepted ASGI's request to suspend and re-examine a denial to entry in Lampedusa's hotspot by Agrigento's Prefecture;<sup>1223</sup> in August 2021, Sicilia's TAR has confirmed the accessibility of hotspots and other places of detention by civil society organisations ex art. 7 of the Reception Decree and has also clarified that no absolute limitation to the principle of accessibility is acceptable.<sup>1224</sup>

In December 2021, Sardinia's Administrative Tribunal (TAR) invalidated acts by Nuoro's Prefecture not allowing access of civil society organisations in Macomer's CPR, acknowledging the legitimate interest of rights organisations and civil society to enter immigration detention facilities to ensure the protection of

<sup>1219</sup> CILD, Buchi Neri, available in Italian at: <https://bit.ly/3u710qg>.

<sup>1220</sup> Article 7(2) Reception Decree.

<sup>1221</sup> Article 7(3) Reception Decree.

<sup>1222</sup> Article 6 (4) and (5) MoI Decree 20 October 2014

<sup>1223</sup> ASGI, Accesso agli hotspot da parte della società civile, October 2020, available in Italian at: <https://bit.ly/3wjAr1>.

<sup>1224</sup> ASGI, Hotspot di Lampedusa: Tar Sicilia conferma il principio di accessibilità della società civile ai luoghi di trattenimento, available at: <https://bit.ly/3KV0wdl>.

fundamental rights. Similar judgments have been issued in April 2021 by Piedmont's TAR regarding access to Turin's CPR and in October 2020 by Sicilia's TAR regarding access to Caltanissetta's CPR.<sup>1225</sup> As mentioned above, in January 2023, Lombardy's TAR clarified that, regardless of the rules of their statutes, associations that promote the protection of fundamental rights – certified through previous experience – can have access to CPRs, cancelling the Milan Prefecture's previous refusal of access to the Milan CPR by a local association.<sup>1226</sup>

Persons detained in airport transit zones have extremely limited possibilities of contacting organisations, protection bodies, family members and lawyers, as their access to such areas is strictly limited. The obstacles put in place by border authorities to reduce outsiders' access to transit areas result in a series of violations, among which to the right to information, the right to defence (it is often impossible for detainees to physically contact a lawyer), and effective access to judicial protection. Moreover, the lack of access of civil society to these areas makes them almost invisible to public opinion. Furthermore - while it is difficult for the outside world to enter the transit zones, the authorities do not take any measures to ensure that detained persons can communicate outwardly. On the contrary, on numerous occasions third country nationals are informally deprived of their mobile phones and appointed lawyers have often been denied entry on the basis that these areas are considered as 'sterile', meaning that only certain categories of persons may have access, as they are considered of an extraterritorial nature.<sup>1227</sup>

As of November 2019, ASGI asked access to the transit zones but the competent authorities never answered to the request.<sup>1228</sup> In January 2021, ASGI sent a new request to access to the transit zones of Malpensa airport and Rome Fiumicino airport. The Central Directorate of Immigration and Border Police at the Ministry of the Interior rejected the request, arguing that the regulations provided for CPRs do not apply to transit zones.<sup>1229</sup>

## 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 apply 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>1230</sup> Similar decisions were adopted by the Civil Court of Torino in 2022, that acknowledged the non-instrumentality of the asylum claim, arguing, *inter alia*, that the information contained in the 'foglio notizie' signed by the asylum seeker at the time of disembarkation is not sufficient

<sup>1225</sup> TAR Sardegna, 838/2021, published on 24/12/2021, available in Italian at: <https://bit.ly/3CR3Gwf>; TAR Piemonte, 360/2021, published on 6/4/2021, available in Italian at: <https://bit.ly/3KSxUBw>; TAR Sicilia, 2169/2020, published on 21/10/2020, available in Italian at: <https://bit.ly/3CRdBlf>.

<sup>1226</sup> ASGI, I diritti umani devono entrare nei CPR!, gennaio 2023, available in Italian at: <https://rb.gy/lxw29j>.

<sup>1227</sup> ASGI, Le zone di transito aeroportuali come luoghi di privazione arbitraria della libert , January 2021, available in Italian at: <https://bit.ly/3wjvmlG>.

<sup>1228</sup> ASGI, In Limine Project, 18 February 2020, see: <https://cutt.ly/6yO5rMM>.

<sup>1229</sup> ASGI, Accesso della societ  civile alle zone di transito aeroportuali: il diniego della pubblica amministrazione, April 2021, available in Italian at: <https://rb.gy/ji6und>.

<sup>1230</sup> i.e. Civil Court of Trieste, decision of 20 November 2020.

to justify an evaluation of unfoundedness of the application for international protection. In the specific case, the “foglio notizie” had been completed only nine days after disembarkation.<sup>1231</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>1232</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>1233</sup> Recent and consistent decisions of the Supreme Court of Cassation on appeals brought by citizens detained following second and third extensions made it clear that, if the public administration presents the same reasons already alleged to justify the request for the first extension, the existence of "concrete elements that make it possible to believe that identification is likely" cannot be sustained. Consequently, the competent Judge must reject the request for extension.<sup>1234</sup> These decisions were also adhered to by Magistrates' Court who did not extend detentions at CPRs if there were not 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.<sup>1235</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 concerned until the effective removal and in any case not exceeding 48 hours following the validation hearing.<sup>1236</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 Specialised Section of the competent Civil Court, having regard to the place where the centre is located.<sup>1237</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.

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<sup>1231</sup> Tribunale di Torino, proceeding 21367/2022, decision 17 November 2022; Tribunale di Torino, proceeding 21369/2022, decision 17 November 2022; Tribunale di Torino, proceeding 21371/2022, decision 17 November 2022.

<sup>1232</sup> Article 14(5) TUI.

<sup>1233</sup> Article 14(6) TUI.

<sup>1234</sup> Ex multis, Civil Court of Cassazione, decisions nn. 6066/2019, 14842/2021, 15647/2021, 25875/2021, 29075/2021, 31535/2021, 21995/2022

<sup>1235</sup> Giudice di Pace di Milano, proceeding 65826/2021, decision 25 February 2022; Giudice di Pace di Roma, proceeding 8744/2022, decision 2 March 2022; Giudice di Pace di Torino, proceeding 11193/2022, decision 28 October 2022; Giudice di Pace di Torino, proceeding 11673/2022, decision 9 November 2022; Giudice di Pace di Torino, proceeding 13066/2022, decision 5 December 2022; Giudice di Pace di Torino, proceeding 13438/2022, decision 12 December 2022.

<sup>1236</sup> Article 13(5-bis) TUI, inserted by Article 4 Decree Law 113/2018 and L 132/2018.

<sup>1237</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.

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>1238</sup>

According to the law, where possible, 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>1239</sup> The lawyer is thus forced to choose between being present next to the client or next to the judge at the validation hearing.<sup>1240</sup>

The Questore shall transmit the relevant files to the competent judicial authority to validate the detention for a maximum period of 60 days, to allow the completion of procedure related to the examination of the asylum application.<sup>1241</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>1242</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>1243</sup>

A long-standing practice of holding detention validation/extension hearings in CPRs exists,<sup>1244</sup> against which the Superior Council of the Judiciary had already intervened with decisions in 2010, clarifying that these hearings should take place in Court, except for cases of absolute impossibility<sup>1245</sup> – continues.<sup>1246</sup> Another critical issue is the absence of concerned persons in hearings, since their attendance is not always guaranteed;<sup>1247</sup> Furthermore, the Supreme Court of Cassation has clarified in a recent sentence that the absence of the third-country national at the hearing for the validation or extension of his/her detention, it is not an absolute ground for invalidity, but merely a nullity which must be promptly objected to by the party. The Court highlights how the procedure outlined by article 14 of the Consolidated Law on Immigration is a civil proceeding at nature and therefore does not follow the rules of criminal trials; thus, the presence of the party at the hearing is not a public interest but merely an interest of the party.<sup>1248</sup> The party's absence at the hearing, led to the Supreme Court upholding of the appeal in its decision of February 2023.<sup>1249</sup>

Other critical aspects of the judicial review of detention in the context of the validation and extension hearings regard the appointment of lawyers by the detainees and the timing of communications to the lawyers, which the latter argued amounted to obstacles to the right of defence, as well as the inadequate duration of the hearings, which usually last between 5 and 10 minutes.

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<sup>1238</sup> Article 6(5) Reception Decree, as amended by L 46/2017. Nevertheless, as reported to ASGI, some Questure, when issuing the detention order, do not provide asylum seekers with copy of such orders nor explanations of the reasons for detention.

<sup>1239</sup> Article 6(5) Reception Decree, as amended by L 46/2017.

<sup>1240</sup> Senate, *2017 CPR Report*, December 2017.

<sup>1241</sup> Article 6(5) Reception Decree.

<sup>1242</sup> Pursuant to Article 28-bis(1) and (3) Procedure Decree.

<sup>1243</sup> Article 6(6) Reception Decree.

<sup>1244</sup> It was reported that in Turin already in 2015 only 10% of hearings for the validation/extension of immigration detention were taking place at the Judge's chambers, as the majority of hearings took place in the immigration detention centre. Fabrizio Mastromartino, Enrica Rigo, Maurizio Veglio, "Lexilium. Osservatorio sulla giurisprudenza in materia di immigrazione del giudice di pace: sintesi Rapporti 2015", in *Diritto, Immigrazione e Cittadinanza*, 2017, available in Italian at: <https://bit.ly/3u518GP>.

<sup>1245</sup> Consiglio Superiore della Magistratura (CSM), Delibera del 21 luglio 2010, avente ad oggetto: "Convalida dei provvedimenti di allontanamento dei cittadini comunitari emessi dal Questore ai sensi dell'art. 10 c. 11 e 12 dlvo 30/07 (come modificato dal dlvo 32/08): locali da utilizzare e criteri da adottare per la individuazione di quelle esigenze residuali che giustificano il ricorso al supporto logistico delle questure per l'organizzazione della suddetta udienza". Available in Italian at: <https://bit.ly/3N0Zui4>.

<sup>1246</sup> Melting Pot, *Aspetti critici delle udienze di convalida e/o proroga del trattenimento presso il Cpr di Palazzo San Gervasio*, November 2021. Available in Italian at: <https://bit.ly/3wfv2uK>.

<sup>1247</sup> CILD, Buchi Neri, available in Italian at: <https://bit.ly/3u710qg>.

<sup>1248</sup> Supreme Court of Cassation, I Civil Section, 5520/2021, published in March 2021 and available in Italian at: <https://bit.ly/3Jk6dl1>.

<sup>1249</sup> Supreme Court, I Civil Section, 4961/2023, 16 February 2023.



Finally, it has been reported that validation and extension decree are often not well motivated, and rather "standardised" grounds for validation and extension are used. In 2021, the Court of Cassation annulled a detention extension order pointing out that the judicial authority had not adequately explained the motivation behind its decision;<sup>1250</sup> in another ruling, the Supreme Court dismissed the decree of a Justice of the Peace who prolonged for the fourth time the detention of a foreigner in a CPR, pointing out the total absence of adequate reasons for such an order, also considering that the judicial authority, instead of adequately motivating the decision, had simply proceeded to tick specific boxes on a pre-printed form.<sup>1251</sup> In a previous ruling of December 2020, the Court of Cassation had already reiterated that detention must be considered exceptional and considered the extension in object illegitimate because it was not adequately motivated with respect to the corresponding functionality for repatriation.<sup>1252</sup> Various recent decisions of the Supreme Court are in line with earlier ones.<sup>1253</sup>

The Court of Cassation affirmed an important principle regarding the need not to limit personal freedom for asylum seekers beyond the time limits established for examining the application under the accelerated procedure, unless there are other reasons for detention. In the case examined by the Court, the applicant had submitted an application, while held in the CPR that was deemed as motivated by the sole purpose of preventing or avoiding a removal order. After around two months, the Civil Court of Turin extended the detention of the applicant, even though the Territorial Commission had not yet summoned him for a personal interview. Therefore, the time taken 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 such article any delays in the procedure not attributable to the applicant do not justify the extension of the detention.<sup>1254</sup>

By extending the scope of this ruling to the judicial phase, the Civil Court of Trieste rejected the extension of detention in a case in 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 of Trieste itself had omitted to rule about the suspension within 5 days from the request, as required under accelerated procedure by the Procedure Decree.<sup>1255</sup>

The practice of the "double information paper", whose impact on access to the procedure has already been addressed (see [Different treatment of specific nationalities in the procedure](#)), affects also the review of detention. For instance, 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. 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 were able to lodge applications for international protection at the competent Questura. Deciding on the validity of their detention order, in two out of three cases the Civil Court of Palermo did not validate the detention, statement contained in the *scheda informativa* by considering it was not sufficient to fulfil 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>1256</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](#)).<sup>1257</sup>

<sup>1250</sup> Supreme Court, I Civil Section, 9440/2021, available in Italian at: <https://bit.ly/3CMAciZ>.

<sup>1251</sup> Supreme Court, III Civil Section, 13172/2021, available in Italian at: <https://bit.ly/3CPHkeo>.

<sup>1252</sup> Court of Cassation, decision of 23 July 2020, published on 9 December 2020, no. 28063.

<sup>1253</sup> Supreme Court, VI Civil Section, 32570/2022, 4 November 2022; Supreme Court, VI Civil Section, 504/2023, 11 January 2023; Supreme Court, I Civil Section, 4858/2023, 16 February 2023; Supreme Court, I Civil Section, 4855/2023, 16 February 2023.

<sup>1254</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>1255</sup> Civil Court of Trieste, decision 16 March 2021.

<sup>1256</sup> Civil Court of Palermo, decision available in Italian at: <https://cutt.ly/myO5LIE>.

<sup>1257</sup> See ASGI, Cassazione sulle prassi hotspot: il secondo foglio notizie non può limitare l'accesso al diritto di asilo, available at: <https://bit.ly/3u8sl5O>.



## 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 their rights and duties in a language they understand 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 accessing these detention structures.<sup>1258</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>1259</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.

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>1260</sup>

CPRs' managing bodies are in charge of organising a "normative information provision" service. The funds for such service, however, have been drastically cut via the tender specifications for 2018 and 2021. There was, in fact, a decrease in the number of hours dedicated to this activity: by 66% (for Centres with up to 50 places); by 70% (for Centres with up to 150 places); by 78% (for Centres with up to 300 places). This had inevitable repercussions on the effective protection of the right to information of detainees.<sup>1261</sup>

Another relevant obstacle which hampers persons detained in CPR from obtaining information on their rights and thus enjoying their right to legal assistance is the shortage of interpreters available in the detention centres, who should be provided by the specific body running the structure. In 2021, it was reported that in Milan's CPR, some daytime operators also worked as cultural mediators and cleaners; in Turin's CPR, there is a lack of cultural mediators and those present do not cover all languages spoken by detainees; in Gradisca's CPR, the lack of linguistic mediation service has led to the practice - condemned by the CPT - of using other detainees as ad hoc "translators".

Regarding interviews with lawyers, in 2020 and 2021 limitations on access to the Centres for the conduct of defence interviews were reported. In some cases, these limitations were justified because of the effects of COVID-19 or other public order-related problems. In the Palazzo San Gervasio and Macomer centres, lawyers are prevented from using their mobile phones inside the facility. It was also reported that confidentiality is not always guaranteed during defence interviews and that there is no adequate linguistic support personnel in the CPR to support.<sup>1262</sup>

<sup>1258</sup> LasciateCIEntrare, *Mai più CIE*, 2013, 7.

<sup>1259</sup> Article 13(5-bis) TUI.

<sup>1260</sup> Article 6 (7) LD 142/2015.

<sup>1261</sup> CILD, Buchi Neri, available in Italian at: <https://bit.ly/3u710qg>.

<sup>1262</sup> Ibidem.

Significant limitations to freedom of communication – which is guaranteed in theory but often significantly limited, if not completely denied (with inadequate number of landline phones and/or seizing of personal mobile phones) – may also affect the concrete exercise of the right to defence. In this context, a Tunisian citizen detained at the Milan CPR urgently appealed in front of the Specialised Section of the Court of Milan to obtain the return of his cell phone. The Tribunal ordered the Prefecture, the Police Headquarters and the managing body to allow the applicant to use his cell phone in the manner indicated in Article 7 of the CIE Unified Regulations (Ministerial Regulation October 20, 2014) for visits within the centre: that means, on the basis of daily shifts, in premises under surveillance but respecting the privacy of the person and for a sufficient time, which the order indicates as at least two hours.<sup>1263</sup> The right to phone correspondence is actually established by art. 5 of the Ministry Interior Directive of May 2022.

## E. Differential treatment of specific nationalities in detention

As of April 2022, the most the most represented countries of origin of individuals detained in CPRs were Tunisia (589 persons, representing almost 42% of CPRs' population), Egypt (183 persons, 13%), Morocco (137 persons, 10%), Nigeria (80, 6%) and Albania (71 persons, 5%).<sup>1264</sup> These numbers were similar to those registered in 2021, when the most the most represented countries of origin for CPR detainees were Tunisia (2,805 persons, representing almost 55% of CPRs' population), Egypt (515 persons, 10%), Morocco (420 persons, 8%), Albania (219 persons, 4%) and Nigeria (215, 4%).<sup>1265</sup>

Similar to what already noted in [Differential treatment of specific nationalities in the procedure](#), it is to be reported that persons coming from specific countries – and especially Tunisia – are particularly targeted for what concerns detention. Tunisia is indeed by far the most represented nationality in CPRs, as well as the Country where most returns are carried out to.

In 2021, as reported from the Guarantor for the rights of detained persons, 5,147 people - 99% of them men - had been detained in CPRs, roughly 50% out of which (2,520) were actually returned. Tunisia is by far the most represented nationality amongst detained migrants and the country with the highest return rate (2,805 out of 5,147 detained migrants are Tunisians and 1,818 out of 2,520 returned migrants are returned to Tunisia).<sup>1266</sup> As of April 2022, 1,420 migrants had been detained in CPRs, out of which 619 (less than 50%) were returned. Tunisia remains the most represented nationality (42%, followed by Egypt, whose nationals represent 13% of detained migrants) and the country where most of the returns (50%) take place.<sup>1267</sup>

It has been noted how the speed with which returns to Tunisia continue being carried out has led to serious violations of the rights of Tunisian nationals transiting through CPRs, from the violation of the right to be informed about the possibility of applying for asylum, to the practice of not formalising applications for international protection, to, where an application for international protection is finalised, subjecting Tunisian asylum seekers to a fast track procedure.<sup>1268</sup>

In the past, other nationalities have been targeted for detention and repatriation. This was the case of Nigeria: in 2017, the MoI issued a circular ordering the emptying of all immigration detention centres (at that time, these were still called CIEs) to make room for Nigerian nationals.<sup>1269</sup> Record numbers of returns

<sup>1263</sup> ASGI, Il Tribunale di Milano: consentire l'utilizzo del cellulare all'interno del CPR, March 2021, available in Italian at: <https://rb.gy/bcmuot>.

<sup>1264</sup> Report to Parliament Annexes to the yearly report of the National Guarantor for the rights of detained persons, June 2022, available at: <https://rb.gy/alzvet>.

<sup>1265</sup> Ibid.

<sup>1266</sup> Ibid.

<sup>1267</sup> Ibid.

<sup>1268</sup> CILD, Buchi Neri, available in Italian at: <https://bit.ly/3u710qg>.

<sup>1269</sup> Open Migration, Perché sono i nigeriani a venire rimpatriati più spesso, July 2017, available at: <https://bit.ly/3tgbuV1>.

to Nigeria were registered in 2019, with 734 persons returned via 8 charter flights.<sup>1270</sup> In 2020 and 2021, detention and returns of Nigerian nationals decreased.<sup>1271</sup>

For a gender perspective on the topic, see section on [Detention of vulnerable applicants](#).

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<sup>1270</sup> National Guarantor for the rights of detained persons, Relazione al Parlamento, June 2020, available in Italian at: <https://bit.ly/3CPilIB>.

<sup>1271</sup> Annexes to the yearly report of the National Guarantor for the rights of detained persons, June 2021, available at: <https://bit.ly/36nWIT6>.

## 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>1272</sup>

The application is submitted to the territorially competent Questura of the place where the person has a registered domicile.

A common problem regarding the issuance of residence permits for international protection beneficiaries is the lack of a registered domicile address, which must be provided to the police. Proof of 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 and Questura often reject issuance or renewal requests submitted by beneficiaries who lack a real domicile and provide either a fictitious/virtual residence or a registered legal address at an organisation's office.<sup>1273</sup>

To discourage such practice, already in 2015, the Ministry of Interior issued a circular addressed to the Questura of Rome, remarking that the law does not require beneficiaries of international protection to attach a registered address certificate to the residence permit issuance or renewal request. Instead, a declaration by the person concerning their domicile is considered sufficient; at the same time, the Ministry clarified that fictitious/virtual residences must be accepted as proof of the domicile when the Questura deems necessary, for security reasons, to have knowledge of the domicile of beneficiaries of international protection.<sup>1274</sup> On 25 June 2019, the Civil Court of Rome accepted the urgent appeal lodged by an Afghan beneficiary of subsidiary protection whose residence permit renewal request was rejected by the Questura of Rome due to the lack of a real domicile certificate, as the applicant had attached to the renewal request the virtual residence certificate - and ordered the immediate issuance of the residence permit.<sup>1275</sup>

However, in ASGI's experience, Police offices in the entire national territory still request proof of domicile to renew residence permits for beneficiaries of international protection.

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>1276</sup> The application is sent back to the administrative Territorial Commission that decided on the original asylum application, which has to assess the renewal request and either express a favourable opinion to the renewal or send the file to the National Asylum Commission, which is responsible for the proceedings concerning the cessation or withdrawal of protection status. The Territorial Commission also considers information provided by the police concerning crimes committed during the person's stay in Italy, while assessing the renewal request. In practice, these permits are usually renewed and the main reason why renewal may

<sup>1272</sup> Article 23(1) and (2) Qualification Decree.

<sup>1273</sup> Please refer to CSD Diaconia Valdese, Monitoring report on illegitimate practices by Questura, July 2021, available in Italian at: <https://bit.ly/3CPlo1S>.

<sup>1274</sup> Ministry of Interior Department of Civil Liberties and Immigration, Circular 18 May 2015, Beneficiaries of international protection - Domicile and residence permit renewal request, available at: <https://bit.ly/3tgckB9>.

<sup>1275</sup> Civil Court of Rome, 25 June 2019, decision available in Italian at: <https://bit.ly/36qfUiY>.

<sup>1276</sup> Article 23(2) Qualification Decree.

not happen is that the procedure to withdraw protection status started due to the beneficiary having committed a serious crime.

Another frequent reason 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 if 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 cessation of international protection by NAC in a few of such cases has been cancelled, even if the provision is still in place.

Some Questure illegitimately subordinate the issuance of residence permits for subsidiary protection to the exhibition of the passport by the applicant. On 31 January 2020, the Civil Court of Brescia upheld the appeal lodged by an ASGI lawyer for a Nigerian beneficiary of subsidiary protection to whom the Questura of Bergamo refused to issue the residence permit because he did not have a passport.<sup>1277</sup>

On 10 March 2022, the Civil Court of Brescia upheld the appeal lodged by the applicant, a beneficiary of subsidiary protection, clarifying how, according to the Article 23 of the Qualification Directive, national implementing authorities are not given discretion as to additional requirements, not set in law, for the issuance of a residence permit for subsidiary protection beneficiaries.<sup>1278</sup>

Humanitarian reasons were then circumscribed to certain hypotheses and the government introduced, for this purpose, some new residence permits that can be released directly by the Questura in "special cases" (*casi speciali*), namely for medical treatment,<sup>1279</sup> particular civil value,<sup>1280</sup> and for natural calamity.<sup>1281</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>1282</sup> Decree Law 130/2020 specified that the refoulement or expulsion of a person is 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, their 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, have to be taken into account.<sup>1283</sup>

In such cases, special protection permits (*protezione speciale*) are granted, either through the international protection procedure or following the submission of a direct request to the Questura subject to a favourable opinion by the Territorial Commission. Special protection permits have a duration of two years and are renewable - upon expression of a favourable opinion by the Territorial Commission -,<sup>1284</sup> and convertible in labour residence permits, except for cases in which such protection was recognized in application of the non-refoulement principle following the exclusion from international protection.<sup>1285</sup>

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<sup>1277</sup> Civil Court of Brescia, Decision 18250/2019, 31 January 2020, available in Italian at: <https://bit.ly/3u84JDZ>.

<sup>1278</sup> Civil Court of Brescia, Decision of 10 March 2022.

<sup>1279</sup> Article 19(2)(d-bis) TUI, inserted by Article 1(1)(g) Decree Law 113/2018 and L. 132/2018.

<sup>1280</sup> Article 42-bis TUI, inserted by Article 1(1)(q) Decree Law 113/2018 and L. 132/2018.

<sup>1281</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>1282</sup> Articles 19(1) as amended by Decree Law 130/2020 and L. 173/2020.

<sup>1283</sup> Article 32 (3) Procedure Decree and Article 19 (1.1) TUI as amended by Decree Law 130/2020 and L. 173/2020.

<sup>1284</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>1285</sup> Hypotheses ruled by Articles 10(2), 12 (1) (b) and (c) and 16 of the Qualification Decree.

Despite the Supreme Court clarifying in a report on the new legislation<sup>1286</sup> that the amended normative provides for two different channels through which it is possible to obtain the issuance of a permit for special protection by the Questura (either following the transmission of the acts by the TC that rejects the application for international protection, or when a request for a residence permit is submitted directly by the applicant to the Questura, subject to the favourable opinion of the TC), following the amendment of the special protection regime in 2020, several Questura rejected as 'not receivable' (irricevibili) the special protection requests lodged by applicants directly at police stations. Such practice was unanimously condemned by Civil Courts throughout Italy, which upheld appeals lodged by applicants, and ordered Questura to immediately receive the special protection requests.<sup>1287</sup>

To discourage similar illegitimate practices and avert further convictions of the public administration by the judicial authority, on 19 July 2021 the National Asylum Commission issued a circular in which it endorsed the interpretation of the relevant provision offered by the Supreme Court and subsequently unanimously upheld by Civil Courts, clarifying once and for all the 'receivability' of special protection applications by the Questura.<sup>1288</sup>

An additional and more recent circular, issued by the Department of Public Security of the Ministry of the Interior on 23 November 2021, provides for the non-convertibility of the residence permit for special protection obtained through a specific request to the Police Headquarters and not within the international protection procedure.<sup>1289</sup>

However, this interpretation - which would create an unjustified difference in treatment between those who obtain a residence permit for special protection within the procedure for international protection and those who are granted it following a specific request submitted to the Questura, risking to induce applicants to apply for international protection even in cases where they would chose instead to apply only for special protection at the Questura - does not appear to be supported in any way by the newly amended legislation, which explicitly states that the only hypothesis of non-convertibility of the special protection permit is the one related to cases in which such protection was recognized in application of the non-refoulement principle following the exclusion from international protection, and is thus likely to be challenged in Court and disapplied by Judges.

On this basis, the Administrative Court of Veneto, on 28 November 2022, upheld the appeal lodged by a beneficiary of special protection obtained with a direct request to the competent Questura and whose request to convert it in a job permit to stay was declared not receivable.<sup>1290</sup>

Subsequently, the Questura of Trieste, pending analogous appeals filed for the same reasons, revoked the provision and granted the conversion.

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 Questura, and the specialised sections of Civil Courts.<sup>1291</sup>

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<sup>1286</sup> Supreme Court of Cassation, Ufficio del Massimario e del Ruolo, Report n. 94 on new legislation, 20 November 2020, International Protection - Urgent provisions on matter of immigration, international protection and complementary - D.I. 21 October 2020, n. 130, available in Italian at: <https://bit.ly/3N1Wim7>.

<sup>1287</sup> Civil Court of Bologna, Decision 3246/2021, 6 May 2021, available in Italian at: <https://bit.ly/3qdgA2x>; Civil Court of Naples, Decision 11264/2021, 24 May 2021, available in Italian at: <https://bit.ly/3MS636x>; Civil Court of Ancona, Decision 2505/2021, 29 May 2021, available in Italian at: <https://bit.ly/3qdVvow>; Civil Court of Venice, Decision 3057/2021, 3 June 2021, available in Italian at: <https://bit.ly/3tizAyh>; Civil Court of Rome, Decision 20342/2021, 28 June 2021, available in Italian at: <https://bit.ly/3u9F265>; Civil Court of Naples, Decision 18799/2021, 11 August 2021, available in Italian at: <https://bit.ly/3qcl4oX>.

<sup>1288</sup> National Asylum Commission, Law n. 173/2020 - Art. 19 Legislative decree n. 286/1998, Special protection and prohibition of expulsion and refoulement, available in Italian at: <https://bit.ly/3CQ9bv0>.

<sup>1289</sup> Ministry of Interior, Department of Public Security, Legislative Decree n. 286/1998, article 19, c. 1.2. Residence permit for special protection reasons, 23 November 2021.

<sup>1290</sup> Administrative Tribunal of Veneto region, Decision no. 1812 of 28 November 2022, available in Italian at: [bit.ly/3xZhSI6](https://bit.ly/3xZhSI6).

<sup>1291</sup> Article 15 (1) Decree Law 130/2020.



## 2. Registered residence

Beneficiaries of international protection or special protection can apply for registration.

Decree Law 113/2018 repealed the rules governing civil registration (*iscrizione anagrafica*) of asylum seekers,<sup>1292</sup> and stated that the residence permit issued to them did not constitute a valid title for registration at the registry office.<sup>1293</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>1294</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>1295</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>1296</sup>

In some cases, the duration of the registry registration guarantees greater chances of obtaining access to welfare. Academics 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. In the immediate aftermath of the Constitutional Court ruling, some municipalities did not accept such interpretation and accepted to register applicants for international protection in the registry office only if they had submitted or resubmitted their application after the publication in the Official Gazette of the sentence of August 5, 2020, and only with effect from that application.<sup>1297</sup> This is the case of the municipality of Trieste, against which two asylum seekers lodged an appeal before the Civil Court of Trieste, still pending at the moment of writing.

In 2022, applicants and beneficiaries of international protection continued to be excluded from the exercise of rights due to unlawful discriminatory practices implemented in the registry offices of many municipalities of the national territory, as denounced in December 2020 by Action Aid, ASGI, Black lives matter Roma, Caritas Roma, Centro Astalli, CIR – Consiglio Italiano per i Rifugiati, Comunità di Sant'Egidio, Focus – Casa dei diritti sociali, Intersos, Laboratorio 53, MEDU – Medici per i diritti umani, MSF – Medici senza frontiere, Médecins du Monde France – Missione ItaliaPensare Migrante.<sup>1298</sup>

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<sup>1292</sup> Article 5-bis Reception Decree was repealed by Article 13 Decree Law 113/2018 and L 132/2018.

<sup>1293</sup> Article 4(1-bis) Reception Decree, inserted by Article 13 Decree Law 113/2018 and L 132/2018.

<sup>1294</sup> Article 6(7) TUI.

<sup>1295</sup> Decision no. 186/2020 of 31 July 2020, available at: <https://bit.ly/3y4Hfka>

<sup>1296</sup> Article 5(3) Reception Decree, as amended by Article 13 Decree Law 113/2018 and L 132/2018.

<sup>1297</sup> ASGI, ASGI to the municipalities: the registration of applicants for international protection must be accepted retroactively from the moment of the request, 24 August 2020, available in Italian at: <https://bit.ly/3wfrzFf>.

<sup>1298</sup> Action Aid et al, The rejecting registry office: a photography of Rome in emergency, 10 recommendations for the effective exercise of rights, December 2020, available in Italian at: <https://bit.ly/3igkyTq>.

## 2.1. Registration of child birth

The birth of a child can be registered at the 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>1299</sup> Until recently **refugees** could 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.

Following the evolution of the legislation on the recognition of refugee status, which has entrusted the entire international protection procedure to the Ministry of Interior, UNHCR encouraged the latter to define new procedures with regard to the clearance for marriage for beneficiaries of refugee status. On 12 January 2022, the Ministry of Interior, following up on the suggestion made by the UN Agency, published a circular which introduces a new procedure, informed by the procedure described in Article 1 paragraph 2 of Legislative Decree 19 January 2017, n. 7, for the clearance for marriage for refugees: to the request for publication of the marriage submitted to the municipality, the refugee has only to attach a substitutive declaration, pursuant to Presidential Decree no. 445 of 28 December 2000.<sup>1300</sup>

The law does not provide a solution for applicants for international protection and beneficiaries of **subsidiary protection and of national protection** who cannot request the authorisation (*nulla osta*) from their embassies with a view to registering a marriage. In this case, they can follow the procedure set out in 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.

In such cases, and when the applicants do not want or cannot apply to the authorities of their countries of origin, a request can be submitted, pursuant to the procedure set out in article 98 of the Italian Civil Code, to the register of the municipality of residence for the publication of the marriage (attaching a notarial act signed in court or before a notary or a declaration in lieu of affidavit - with a written statement explaining the reasons why the person cannot submit the clearance issued by the authorities of his/her country of origin). In cases of rejection of the request by the register, the person can appeal to the court, asking the judge to establish that there are no impediments to the marriage and to order the registrar to proceed with the publication of the marriage.

On 22 May 2018, the Civil Court of Genova, in accordance with established case-law, upheld the appeal lodged by an ASGI lawyer for a Nigerian applicant for international protection and authorised the publication of the marriage, stating that in cases in which the presentation of the clearance is made impossible, the foreigner must be allowed to prove by any means the recurrence of the conditions for marriage according to the laws of their countries. The Court further observed that such interpretation is necessary to harmonise domestic law with the Fundamental Charter of Rights (ECHR), since the Strasbourg Court has affirmed that the margin of appreciation reserved to States in matters of a foreigner's capacity to marry cannot extend to the point of introducing a general, automatic and indiscriminate limitation on a fundamental right guaranteed by the Convention (Judgement of 14 December 2010, O'Donoghue and Others v. The United Kingdom).<sup>1301</sup>

On 9 September 2019, the Civil Court of Milan accepted the appeal lodged by a Chinese applicant for international protection and ordered the Milan municipality to proceed with the publication of the marriage,

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<sup>1299</sup> Article 116 Civil Code.

<sup>1300</sup> Ministry of Interior, Department for Internal and Territorial Affairs, Circular n. 1/2022, on the clearance for the refugee who intends to contract marriage in Italy, available at: <https://bit.ly/3MYvzqv>.

<sup>1301</sup> Civil Court of Genova, Decision 473/2018, 22 May 2018, available in Italian at: <https://bit.ly/3tkx7Uk>.

noting that the failure to issue the requested clearance by the authorities of the country of origin cannot be interpreted as a refusal by the authorities to the celebration of the marriage for reasons that may be contrary to public order under Article 16 L. 218/1995 or be attributable to the existence of some effective impediment.<sup>1302</sup>

### 3. Long term residence

#### Indicators: Long-Term Residence

- |   |               |
|---|---------------|
| 1. Number of long-term residence permits issued to beneficiaries in 2022: | Not available |
|---|---------------|

As indicated by the national statistical institute (Istat), between 2021 and 2022 the number of non-EU citizens with regular residence permit in Italy increased by almost 6%, going from 3,373,876 on 1 January 2021 to 3,561,540 to 1 January 2022. Long-term residence permits are almost 66% out of the total residency permits currently valid in the country.<sup>1303</sup>

The disaggregated figure for long-stay permits issued to beneficiaries of international protection is not available, nor is the general figure for long-stay permits issued in the year 2022.

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>1304</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>1305</sup>

The application to obtain the long-term residence permit is submitted to the Questura and should be issued within 90 days.<sup>1306</sup> However, according to ASGI's experience, the actual issuance of the permit requires considerably longer times. The issuance of the permit is subject to a contribution of €130.46.<sup>1307</sup>

### 4. Naturalisation

#### Indicators: Naturalisation

- |   |               |
|---|---------------|
| 2. What is the waiting period for obtaining citizenship?  |               |
| 2. Refugee status   | 5 years       |
| 3. Subsidiary protection                                  | 10 years      |
| 3. Number of citizenship grants to beneficiaries in 2022: | Not available |

In 2021, a total of 109,594 citizenships were granted, down by 8% compared to 2020.<sup>1308</sup> Disaggregated data on citizenship grants to beneficiaries of international protection are not available, nor are general data for the year 2022.

<sup>1302</sup> Civil Court of Milan, Decision 7166/2019, 9 September 2019, available in Italian at: <https://bit.ly/3qA6gBV>.

<sup>1303</sup> Istat, Non-EU Citizens in Italy, in 2021- 2022, October 2022, available in Italian at: [bit.ly/3ZmjL6W](https://bit.ly/3ZmjL6W).

<sup>1304</sup> Article 9(5-bis) TUI.

<sup>1305</sup> Article 9 (1-ter) and (2-ter) TUI.

<sup>1306</sup> Article 9(2) TUI.

<sup>1307</sup> Ministerial Decree of 8 June 2017.

<sup>1308</sup> Istat, Non-EU Citizens in Italy, in 2021- 2022, October 2022, available in Italian at: [bit.ly/3ZmjL6W](https://bit.ly/3ZmjL6W).

Italian citizenship can be granted to **refugees** legally resident in Italy for at least 5 years.<sup>1309</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>1310</sup>

In both cases, the beneficiary's registration at the registry office must be uninterrupted. This can be particularly challenging for beneficiaries of international protection, as the law does not ensure any support or long-term accommodation for them and some might be forced to live in precarious situations. 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, even after the ruling by the Constitutional Court, several municipalities were initially reluctant to recognize the right to register them retroactively.

The 2018 reform also introduced the requirement of the sufficient knowledge of the Italian language (at least B1 level), attested through specific certifications or through the qualification in an educational institution recognised by the Ministry of Education.<sup>1311</sup> Applications presented after 5 December 2018 without meeting this requirement have been rejected.<sup>1312</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>1313</sup> The law does not provide any guarantee to prevent statelessness.

In 2021, acquisitions by marriage were 11.9% of the total (not limited to beneficiaries of protection, but referred to all third country nationals), while those per residence 41%.

In 2021, the greatest number of acquisitions was recorded regarding Albanian nationals (22,493), followed by Moroccans (16,588) and Brazilians (5,460).

From a territorial point of view, new citizens are heavily concentrated in six regions of the Centre-North: Lombardy, Emilia-Romagna, and Veneto which host 49% of those who have acquired citizenship in 2021 (with 25.1% of them living in Lombardy alone).<sup>1314</sup>

### 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 by the authorities of the country of origin and duly translated and legalised. Since the 2018 reform, applicants must also submit a certification of knowledge of the Italian language. The originals are submitted to the Prefecture of the place of residence.

**Refugees** may submit, in lieu of the original birth certificate and criminal records certificate, a declaration (affidavit), signed before a Court and certified by two witnesses. The law does not provide this possibility 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

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<sup>1309</sup> Articles 9 and 16 L 91/1992 (Citizenship Act).

<sup>1310</sup> Article 9(1)(f) Citizenship Act.

<sup>1311</sup> Article 9.1 Citizenship Act, inserted by Article 14 Decree Law 113/2018 and L 132/2018.

<sup>1312</sup> Ministry of Interior Circular No 666 of 28 January 2019.

<sup>1313</sup> Article 10-bis Citizenship Act, inserted by Article 14 Decree Law 113/2018 and L 132/2018.

<sup>1314</sup> Istat, Non-EU Citizens in Italy, in 2021- 2022, October 2022, available in Italian at: [bit.ly/3ZmjL6W](https://bit.ly/3ZmjL6W).

certificates, instead of a criminal record and birth certificates, to request the Italian citizenship, assessing the risk she would have incurred in by turning to the authorities of her country of origin.<sup>1315</sup>

The application is subject to the payment of a €250 contribution.

The evaluation of the citizenship application is largely discretionary. As consistently confirmed by the case law of the Administrative Courts,<sup>1316</sup> the denial may be motivated by insufficient social inclusion in the national context. Even if not provided by law, a further general requirement established by the Ministry of Interior for those who apply for citizenship by residency is the necessary to have an income produced on Italian territory, which amount shall not be less than those established by the Decree-Law 382/1989, signed into law 8/1990 as confirmed by art. 2 of the Act 549/1995.<sup>1317</sup> The benchmarks are euro 8,263.31 for the unmarried applicant, euro 11,362.05 for the applicant with a spouse, and euro 516.00 to be added for each child. If the applicant does not possess their own income or has an income below those established by law, it is possible to consider the incomes of other household members (in the same family status of the applicant). Pending the acceptance of the citizenship request the applicant must retain, without interruptions, both the residence and the income capacity.

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>1318</sup> The Administrative Court of Lazio decided that it also applied 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>1319</sup>

The Decree Law 130/2020 has repealed the provision of Decree Law 113/2018 which extended the 48 months term applicable to citizenship applications pending at the time of the entry into force of the decree law.<sup>1320</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>1321</sup>

Decree Law 130/2020 converted into L. 173/2020 has introduced a new time limit for the completion of the citizenship procedure by Prefectures, set in 24 months extendable up to a maximum of 36 months, which applies to requests submitted on or after 20 December 2020.<sup>1322</sup>

Thus, currently, there are different deadlines for the conclusion of the procedure, depending on when the application was submitted, whether before, during or after the end of the validity of the provision of Decree-Law 113/2018.

It should be noted that these are indicative 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.

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<sup>1315</sup> Civil Court of Rome, decision 21785 of 13 November 2019.

<sup>1316</sup> See e.g. Administrative Court of Lazio, Decision 8967/2016, 2 August 2016.

<sup>1317</sup> Ministry of Interior, Income required for the application for citizenship by residence and modalities for their indication and updating, 30 November 2020, available in Italian at: <https://bit.ly/3ihIS7o>.

<sup>1318</sup> Article 19-ter Citizenship Act, inserted by Article 14 Decree Law 113/2018 and L 132/2018.

<sup>1319</sup> Administrative Court of Lazio, Decision 1323/2019.

<sup>1320</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 onto force of the Decree Law 113/2018 in 48 months.

<sup>1321</sup> According to Article 3 DPR 18.4.1964 n. 362.

<sup>1322</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.

## 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:

- ❖ Has voluntarily re-availed himself or herself of the protection of the country of nationality;
- ❖ Having lost his nationality, has voluntarily re-acquired it;
- ❖ Has acquired Italian nationality, or other nationality, and enjoys the protection of the country of his or her new nationality;
- ❖ 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;
- ❖ Can no longer, because the circumstances in connection with which he or she 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
- ❖ 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 constitutes also a ground for cessation of **subsidiary protection**.<sup>1323</sup>

In both cases, the change must be of non-temporary nature and there must not exist serious humanitarian reasons preventing return to the country of origin.<sup>1324</sup> 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>1325</sup>

In practice, Territorial Commissions may express a negative opinion on the renewal of subsidiary protections (art. 14, lett. c, of the legislative decree no. 251 of 2007) recognized by Civil Courts following an appeal, when in disagreement with the orientation of the judicial authority circa the situation of indiscriminate violence in the country of origin of the person, and send instead the documents to the National Asylum Commission for an assessment of the applicability of cessation clauses based on changed circumstances. In practice, cessation based on changed circumstances appears to be rarely applied. Decree Law 113/2018 has introduced a new provision to the Qualification Decree according to which any return to the country of origin which is not justified by serious and proven reasons is relevant for the assessment of cessation of both refugee status and subsidiary protection.<sup>1326</sup>

<sup>1323</sup> Article 15(1) Qualification Decree.

<sup>1324</sup> Articles 9(2) and 15(2) Qualification Decree.

<sup>1325</sup> Articles 9(2-bis) and 15(2-bis) Qualification Decree.

<sup>1326</sup> Articles 9(2-ter) and 15(2-ter) Qualification Decree, inserted by Article 8 Decree Law 113/2018 and L 132/2018.



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>1327</sup>

## 5.2. Cessation procedure

The NAC is responsible for deciding on cessation of international protection.<sup>1328</sup> According to the law, cessation is declared on the basis of an individual evaluation of the refugee's personal situation.<sup>1329</sup> No specific group of beneficiaries in Italy face cessation of international protection.

However, on 7 October 2021, UNHCR has recommended that States hosting Ivorian refugees expatriated due to political crises in their country of origin to end their refugee status as of 30 June 2022 and facilitate their voluntary repatriation, reintegration, or acquisition of permanent residency or naturalisation for those wishing to remain in host countries, highlighting that those who have ongoing international protection needs will be entitled to request an exemption from cessation.<sup>1330</sup> No circular was however adopted during 2022.

Data on cessation rates has not been publicly available since 2019. For data on previous years, see [AIDA Country Report on Italy – 2019 Update](#).

The new provision introduced by Decree Law 113/2018 on the relevance, for the application of cessation clauses, of any return of the beneficiary to the country of origin, will likely continue to result in the automatic initiation of the cessation procedure for all those signalled to NAC by the border police.

The person concerned must be informed in writing that the National Commission is re-assessing their eligibility to international protection and the reasons for the re-examination; he or she must be given the opportunity to set out in a personal interview or in a written statement, the reasons why his or her status should not be terminated. In most cases, in practice, a personal interview of the beneficiary of international protection is conducted by NAC. If the person, duly invited, fails to appear, the decision is made based on the available documentation. The NAC shall, in the course of this procedure, apply *mutatis mutandis* the basic principles and safeguards set forth for the assessment of international protection applications. During the proceedings, the person concerned has no access to free legal assistance. NAC should decide within 30 days from the date of the interview or from the expiration of the deadline for submitting documents. In the event of a decision to terminate international protection statuses, the NAC must assess whether, as prescribed by the TUI, a residence permit on other grounds may be granted, or if, in application of the principle of non-refoulement, a special protection must be granted to the person (the special protection residence permit issued subsequently a termination has a validity of two years, is renewable, subject to the opinion of the Commission, allows the person to work, and is convertible in a permit for work reasons).

If the residence permit for refugee status or subsidiary protection expires during proceedings before the NAC, or if proceedings before NAC were initiated following a negative opinion by the Territorial Commission on the renewal of the subsidiary protection, the permit is renewed by the Questura until a final decision is reached by NAC.<sup>1331</sup>

An appeal against the decision can be lodged before a Civil Court, within 30 days from notification. Territorial competence is established on the basis of which Territorial Commission recognised

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<sup>1327</sup> EMN, Studio del Punto di Contatto Italiano European Migration Network (EMN), 2020, available at: <https://bit.ly/3fiWCwP>.

<sup>1328</sup> Article 5 Procedure Decree; Article 13 PD 21/2015.

<sup>1329</sup> Article 9(1) Qualification Decree.

<sup>1330</sup> UNHCR, UNHCR recommends the cessation of refugee status for Ivorians, 7 October 2021, available at: <https://bit.ly/3idupt4>.

<sup>1331</sup> Articles 32(3) and 33 Procedure Decree; Article 6(1-bis)a TUI; Article 33 Procedure Decree; Article 14 PD 21/2015.

international protection to the beneficiary. The appeal has automatic suspensive effect and follows the same rules as in the [Regular Procedure: Appeal](#).<sup>1332</sup>

As previously mentioned, statistics concerning cessations and revocation procedures have not been available since 2019.

## 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.

International protection is withdrawn also when, after the recognition, it is ascertained that the status should have been refused to the person concerned because:

- ❖ He or she falls within the exclusion clauses.

Decree Law 113/2018, implemented by L 132/2018, has significantly extended the list of crimes triggering exclusion and withdrawal of international protection, including, inter alia, 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; non-aggravated drug offenses.<sup>1333</sup>

- ❖ There are reasonable grounds for considering him or her as a danger to the security of Italy or, having been convicted by a final judgement 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>1334</sup> and the appeals against it,<sup>1335</sup> are subject to the same procedure foreseen for [Cessation](#) decisions. The only exception worth mentioning concerns beneficiaries of international protection for whom the protection is revoked because they fall within the exclusion clauses: when the NAC assesses that, in application of the principle of non-refoulement, a special protection must be granted, the residence permit issued by the Questura will not be convertible in a permit for work reasons pursuant to art. 6 TUI.

<sup>1332</sup> Article 35-bis(3) Procedure Decree.

<sup>1333</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>1334</sup> Article 33 Procedure Decree; Article 14 PD 21/2015.

<sup>1335</sup> Article 19(2) LD 150/2011.

## B. Family reunification

### 1. Criteria and conditions

#### Indicators: Family Reunification

1. Is there a waiting period before a beneficiary can apply for family reunification?  
☐ Yes ☒ No  
❖ If yes, what is the waiting period?
2. Does the law set a maximum time limit for submitting a family reunification application?  
☐ Yes ☒ No  
❖ If yes, what is the time limit?
3. Does the law set a minimum income requirement? ☐ Yes ☒ No

Since the entry into force of LD 18/2014, the family reunification procedure governed by Article 29bis TUI, previously only applicable 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** – which can mean several months in some regions – and there is no maximum time limit for applying for family reunification.

Contrary to what is prescribed for other third-country nationals,<sup>1336</sup> beneficiaries of international protection are not required to prove a minimum income and adequate housing to apply for family reunification. They are also exempted from subscribing a health insurance for parents aged 65 and over.

Beneficiaries may apply for reunification with:<sup>1337</sup>

- The spouse who is not legally separated from the applicant and who must not be under the age of 18 years;
- Minor children, including those of spouse, or those born outside marriage, on the condition that the other parent, in the case where they are available, has given their consent;
- Dependent children over 18 who, for objective reasons, are incapable of supporting themselves due to severe health problems resulting in complete invalidity;
- Dependent parents in the following cases: no other children in the country of origin or birth; parents over the age of 65 years whose other children are incapable of supporting them due to documented severe health problems.

Article 29 bis of the TUI establishes that, if a beneficiary of international protection cannot provide official documents proving their family relationships, due to their status or to the absence of a recognised authority able to issue such documents, or to the presumed unreliability of the documents issued by the local authority, the Italian diplomatic missions or consular posts shall issue relevant certificates based on the checks considered necessary. Other means may be used to prove a family relationship, including elements taken from documents issued by international organisations, if considered suitable by the Ministry of Foreign Affairs. Under Paragraph 1bis of Article 29 of the TUI, when the applicant cannot find documentary evidence of family relationship with the family member he or she intends to reunite with, he or she may request DNA testing. The DNA testing may be also requested by diplomatic or consular authorities responsible for issuing the family reunification visa if there are doubts over the existence of a family relationship or over the authenticity of the documentation produced. All costs of testing and related expenses must be borne by the applicant. Article 29 bis of the TUI specifies that an application cannot be rejected solely on grounds of lack of documentary evidence.

In practice, the phase of the procedure falling under the competence of embassies and consular authorities is characterised by unpredictable, and often illegitimate, practices that factually hinder

<sup>1336</sup> Article 29-bis TUI, citing Article 29(3) TUI.

<sup>1337</sup> Article 29(1) TUI.

beneficiaries' access to the right to reunification with their families, including, inter alia: obstacles in accessing the premises of the embassy or consular office; difficulties in communicating with the authorities; frequent recourse to DNA testing; recourse made to external companies that take responsibility for handling visa applications and collecting documentation; administrative delays and setbacks in visa issuance; incorrect and restrictive interpretation of the normative framework.<sup>1338</sup>

As reported by Istat, the main reason for entry into Italy of third country nationals is family reunification (almost 73% of the entrances of Moroccan citizens during 2021).<sup>1339</sup>

On 8 January 2020, the Civil Court of Rome upheld the appeal of a Somali citizen, beneficiary of subsidiary protection, against the decision of inadmissibility of the visa application by the Italian Consulate of Istanbul, which had declared its lack of jurisdiction concerning the issuance a visa for family reunification to her husband. The woman had lodged an urgent appeal fearing for the health conditions of her husband, who needed urgent medical care, and in view of the risk that the clearance for reunification issued by the competent Prefecture, which has a validity of only six months, could expire. The judge, in accepting the appeal, concluded that pursuant to art. 5 of Presidential Decree no. 394/1999, the consulate of the "foreigner's place of residence", in this case Istanbul, where the applicant's husband holds a Turkish residence permit, is competent to issue the visa. In fact, 'residence' must be intended as the place where the person has his or her habitual abode, that is the place where he or she regularly stays and takes care of himself or herself, as from the documentation presented. The representation in Nairobi (in charge of consular services for Somalis) cannot be considered competent since the husband has not been residing for some time in Somalia from where he fled. Finally, the court recalled that the rejection of the application cannot be motivated solely on the lack of documentary evidence of family ties when refugees cannot provide official documents proving their family ties.<sup>1340</sup>

On 16 January 2020, the Court of Appeal of Rome upheld the appeal lodged by ASGI lawyers for an Afghan beneficiary of refugee status who had requested and obtained the authorization to be reunited with his parents residing in Afghanistan and to whom the Embassy in Kabul had rejected to issue visas, due to insufficient documentary evidence of family ties, of the condition of dependency of the parents, and of the absence of the applicant's brothers in Afghanistan. In practice, the applicant's brothers were all living abroad, as demonstrated by the submission of authentic copies of identity documents issued by their respective countries of residence. The Court reiterated the relevance of art. 29-bis which is a direct application of art. 25 of the Geneva Convention. This provision - taking into consideration the difficulties encountered by refugees in finding documentation attesting personal and family relations and facts, which sometimes prevents them from exercising their fundamental rights - obliges states to provide administrative assistance to refugees. It is for this reason that art. 29-bis introduces a particular facilitation of evidence for refugees seeking family reunification and specifically provides that consular representatives must provide assistance and support applicants in finding the necessary documentation, it is also possible to use other means of proof to demonstrate the existence of the requirements for reunification and - in any case - it is excluded that the application for reunification is rejected for the sole lack of documentary evidence of family ties.<sup>1341</sup>

On 30 September 2020, the Court of Rome upheld the appeal filed by a beneficiary of international protection who had requested to be reunited with his daughter. The Italian embassy in the country of origin of the applicant did not accept the documents submitted to prove the family relationship and subjected the applicant and his daughter to DNA testing, which showed that the girl was not the applicant's biological daughter. In the appeal, the applicant claimed that Italian law does not limit the principle of filiation to biological descent, and that, in any case, the father had recognized the girl as his own, providing for her for years. The claimant also complained about the excessive use of DNA testing

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<sup>1338</sup> Caritas Italiana, Consorzio Communitas, UNHCR, Family First - In Italy with your family, November 2019, available in Italian at: <https://bit.ly/3lqmPq0>.

<sup>1339</sup> Istat, Non-EU Citizens in Italy, in 2021- 2022, October 2022, available in Italian at: [bit.ly/3ZmjL6W](https://bit.ly/3ZmjL6W). Istat also reports that they do exceptions the Pakistani, whose citizens more require international protection (over 41% of new documents issued), and Nigerians (over 39%)

<sup>1340</sup> Civil Court of Rome, Decision 8 January 2020, available in Italian at: <https://bit.ly/3MYMXvp>.

<sup>1341</sup> Court of Appeal of Rome, Decision 5093/2018, 16 January 2020, available in Italian at: <https://bit.ly/3iduEnY>.

by Italian consular authorities. The Court acknowledged that the applicant and his daughter constituted a family unit and that the non-issuance of the visa would harm the young girl's right to family unity. The decision censured the Embassy's decision to resort to DNA testing without giving reasons about the invalidity of the documents submitted, stressing that DNA testing must be considered as a measure of last resort, to be resorted to only when official documents or other evidence proving a family relationship is missing or unavailable.<sup>1342</sup>

On 5 February 2021, the Civil Court of Rome upheld the urgent appeal lodged by an Eritrean refugee status holder who had requested to be reunited with her minor child, who was alone in Ethiopia, and for whom the result of the DNA test had confirmed the family link. In spite of this, and not taking into consideration that the applicant's son was holding a travel document expiring on 9 August 2020 and that the application included also a declaration in lieu of affidavit concerning the son's father unavailability, the consular authority orally informed the applicant that the office was unable to issue the visa due to the expiration of the travel document. After stating that the visa application appeared to be well-founded, as the outcome of the DNA test confirmed the parental relationship and that the consular authority did not raise any impediment to the issuance of the visa other than the absence of a valid travel document, the Court, reiterating the pre-eminence of the protection of family unity, especially in the presence of a minor, ordered the immediate issuance of a visa with territorial validity limited to the granting State ex Article 25 of Regulation (EC) N. 810/09, which is directly applicable and does not require further internal implementing provisions.<sup>1343</sup>

Starting from 2020 and until 31 July 2021, the validity of the authorizations for family reunification issued by the Prefectures, which in normal circumstances have a duration of six months, was extended by law due to the pandemic and to the difficulties family members might encounter in requesting the visa or in travelling and entering Italy. At the moment of writing, no further extensions have been granted.<sup>1344</sup>

On 17 March 2021, the Civil Court of Rome accepted the urgent appeal lodged by ASGI lawyers for a Sri Lankan applicant for family reunification whose wife had been unable to submit her visa application, also due to difficulties linked to the ongoing pandemic. In response to the embassy's inertia and considering the forthcoming expiration of the authorization for reunification, the applicant's lawyers sent several warnings and reminders to the Italian diplomatic authority in Colombo, which remained unanswered. Despite this, during the proceedings Italian diplomatic authorities claimed that no response was given because they considered the authorization expired. It should be noted that authorizations for family reunification were extended by law until 30 April 2021 due to the pandemic. The judge ordered the immediate formalisation of the visa request, reiterating the validity of the clearance.<sup>1345</sup>

As recorded by ASGI, in many cases Italian embassies refused family visas in cases where the marriage had been celebrated with one of the spouses being in the country of origin. With decision of 11 February 2023, the Civil Court of Rome accepted the appeal filed by a couple in such situation and observed that the assessment of the actual existence of an emotional bond to affirm the fictitiousness or not of a marriage cannot be only evaluated based on the cultural parameters of the country of asylum.<sup>1346</sup>

On 10 June 2022, the Civil Court of Rome accepted the appeal presented by a Somali citizen, beneficiary of international protection against the refusal of a family visa for his wife based on the absence of sufficient documentation certifying the marriage bond. The applicant was not present at the time of marriage registration and his signature had been affixed by a third person. The court highlighted the limits in which

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<sup>1342</sup> European Union Agency for Fundamental Rights (FRA), Migration: key fundamental rights concerns, December 2020, available at: <https://bit.ly/3dChq21>; Civil Court of Rome, Decision, 30 September 2020, available at: <https://bit.ly/3th42c3>.

<sup>1343</sup> Civil Court of Rome, Decision, 5 February 2021, available at: <https://bit.ly/36nuk3t>.

<sup>1344</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 and Decree Law 56/2021, converted by L. 27/2021.

<sup>1345</sup> Civil Court of Rome, Decision 12457/2021, 17 March 2021, available in Italian at: <https://bit.ly/3lqnkQU>; see also Civil Court of Rome, Decision 39375/2021, 15 July 2021, available at: <https://bit.ly/3u7PuL4>.

<sup>1346</sup> Civil Court of Rome, decision of 11 February 2023.



a holder of international protection incurs in producing the required documentation and insisted on the need to highlight further elements for the purpose of verifying the genuineness of the link, in the present case the declarations, judged credible, issued at the examination of the asylum application before the Territorial Commission.<sup>1347</sup>

Following the Taliban's takeover of Afghanistan in August 2021, ASGI repeatedly denounced the inertia of Italian institutions in addressing and resolving the serious situation of Afghan men and women who can no longer remain in their country because of the high risk that would pose to their safety.

In the letters that ASGI has addressed to the Ministry of Foreign Affairs and Cooperation in September and October 2021, the organisation requested clear indications concerning those persons who have a right to obtain a visa for family reunification.<sup>1348</sup> The Ministry replied that, for those who had already been authorised with a *nulla osta* from the Prefecture whose validity had expired (due to the impossibility, since long before August 2021, to obtain visas by the Embassy in Kabul, today no longer existing), the representation that receives the visa application would be entitled to ask for confirmation of its validity to the prefecture. However, a valid *nulla osta* was once more requested in order to release family visas. Indeed, the Ministry of Foreign Affairs allowed Afghans to self-certify the family bond with family members for whom reunification is requested if there are no documents that can prove it or if the documents are not legalised.

In ASGI's opinion, this generates a pointless bureaucratisation of the process, and causes its excessive extension in time, two elements that are incompatible with the need for those concerned to speedily leave the country and have the right to do so. Moreover, the government's guidance does not clarify which parameters should be taken into consideration by the prefectures. Even the indications provided by the Ministry concerning access to embassies in neighbouring countries are not clear, and seem to ignore the fact that the possibility to obtain an appointment is of central importance to effectively ensure that Afghan citizens have access to their right to be reunited with their family members as prescribed by law.

On 24 December 2021, the Civil Court of Rome upheld the urgent appeal lodged by ASGI lawyers for an Afghan beneficiary of subsidiary protection who had obtained on July 2021 the authorization from the Prefecture to be reunited with his wife, an Afghan citizen who had been forced to take refuge in Pakistan since August 2021. The applicant and his wife had tried several times - both by phone and by email - to request an appointment at the Italian Embassy in Islamabad to formalize the visa application in time, without obtaining a response. The Court, in reaffirming its jurisdiction in matters of family reunification even in the case of silence and inertia of the public administration, considered subsistent both the *fumus boni iuris*, for the likely existence of the right to family reunification of the applicant, and the *periculum in mora*. In fact, the irreparable damage was found on the one hand in the imminent expiration of the six-month authorization and on the other hand in the dangerous situation to which the wife of the applicant was exposed, irregularly present in Pakistan and therefore at risk of repatriation to Afghanistan. The court ordered the Italian Embassy in Islamabad, Pakistan, to schedule an urgent appointment for the visa application for family reunification in favour of the wife of the applicant.<sup>1349</sup>

The Court of Cassation,<sup>1350</sup> deciding on 14 July 2021 on the family reunification of a refugee with her mother, under 65 years of age, who had another son in her country of origin, and recalling Article 8 of the ECHR, stated that the presence of the other child is not decisive in excluding the right to family reunification if the latter cannot provide for the financial support of the parent who, in this case, depended on the assistance of the refugee who had requested reunification.<sup>1351</sup>

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<sup>1347</sup> Civil Court of Rome, decision of 10 June 2022.

<sup>1348</sup> ASGI, Afghanistan, ASGI to the Ministry of Foreign Affairs and Cooperation: public indications for entry visas, 29 September 2021, available at: <https://bit.ly/3JkpjHH>; ASGI, Italy's inaction in rescuing people at risk in Afghanistan, 8 October 2021, available at: <https://bit.ly/3KIJBuG>.

<sup>1349</sup> Civil Court of Rome, Decision 72951/2021, 24 December 2021;

<sup>1350</sup> Court of Cassation, decision 20127 of 14 July 2021, available at: <https://bit.ly/37hKk84>.

<sup>1351</sup> Meltingpot, Status di rifugiato e ricongiungimento familiare – La sola presenza di figli nel Paese di origine non esclude l'ingresso del genitore infraseessantacinquenne, available at: <https://bit.ly/3xMApIA>.



## 2. Status and rights of family members

According to the law and in application of the principle of family unity,<sup>1352</sup> family members who are not individually entitled to international protection status have the same rights as those granted to the relative who holds international protection. The family members of the beneficiary of international protection present in the national territory who are not individually entitled to such protection are issued a residence permit for family reasons pursuant to article 30 of the TUI.<sup>1353</sup> According to the latter, in the case of family members of beneficiaries of international protection, the residence permit for family reasons has to be issued notwithstanding the fact that the family member was previously not in possession of a valid residence permit and was irregularly present on the territory.<sup>1354</sup> These provisions do not apply to family members who are or would be excluded from international protection<sup>1355</sup>

For what concerns minor children of beneficiaries of international protection, pursuant to the law, the application for international protection submitted by a parent is considered extended also to the unmarried minor children present on the national territory with the parent at the time of its submission. This implies that any decision to recognize international protection will also be extended to the minor children of the applicant, who will be issued the same residence permits as the parent.<sup>1356</sup>

Furthermore, the law provides that the minor child of a third country national living with him/her and resides regularly in Italy is subject to the legal status of the parent - or to the most favourable status of the parents - with whom they live.<sup>1357</sup> In the implementation of the Qualification Decree, the best interests of the child are taken into consideration as a priority.<sup>1358</sup>

Until 2014, Questure refused to issue a residence permit for international protection to children of beneficiaries of international protection born after their parents were granted international protection. Instead, they issued a permit for family reasons. This practice, which was backed by a circular issued by NAC in 2010,<sup>1359</sup> resulted in: (1) a lack of protection for the child born in Italy after the recognition of international protection to the parent, who was not recognized any protection by Italy, paradoxically entailing that, in his/her regard, the protection of the country of origin of the parent should have applied, even if it was the same country from which the child's parent had to flee, and (2) a disparity of treatment between members of the same family unit (children born before and after the granting of the protection to the parent) in relation to substantially equivalent situations, with a consequent violation of constitutionally protected rights.

This widespread and illegitimate practice was partially curbed by a further circular issued by NAC in July 2014,<sup>1360</sup> which, pursuant to Articles 19(2-bis) and 22(1) of the Qualification Decree, definitively clarified that minor children born in Italy after the recognition of refugee or subsidiary protection status to their parents are entitled to the same rights, also from the point of view of the right to international protection, as the parent entitled to such protection, until they reach adult age.

The application for the extension of international protection to minor children born after the recognition of international protection to the parent, i.e. the request for the issuance of a residence permit for international protection, must be lodged at the Questura by the parent beneficiary of international protection, who must submit a copy of the original birth certificate of the child and of the decision granting international protection.

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<sup>1352</sup> Article 22 Qualification Decree.

<sup>1353</sup> Article 30 TUI.

<sup>1354</sup> Article 30 TUI.

<sup>1355</sup> Occurring cases governed by Articles 10 and 16 Qualification Decree.

<sup>1356</sup> Article 6(2) TUI.

<sup>1357</sup> Article 31(1) TUI.

<sup>1358</sup> Article 19(2-bis) Qualification Decree.

<sup>1359</sup> National Asylum Commission, Circular n. 3208 - Extension of refugee status, 23 November 2010, available in Italian at <https://bit.ly/3qcW6qo>.

<sup>1360</sup> National Asylum Commission, Circular 2267 - Beneficiaries of international protection and extension to minor children, 17 July 2014, available in Italian at: <https://bit.ly/3wb3AOB>.

## C. Movement and mobility

### 1. Freedom of movement

Refugees, beneficiaries of subsidiary protection, and applicants for international protection, can freely circulate within the Italian territory.<sup>1361</sup> If beneficiaries of international protection are not accommodated in reception centres (by choice, revocation of the reception measures or end of the period of reception foreseen by law), they can settle in the city or town of their choice.

If accommodated in a government reception centre, beneficiaries of international protection could be requested to return to the structure by a certain time in the early evening. More generally, in order not to lose the accommodation, beneficiaries of international protection are not allowed to spend more than a certain amount of days outside of reception structures without authorisation (see [Reception Conditions](#)).

Once and if beneficiaries of international protection obtain a place in a SAI project, they must necessarily accept the place assigned to them, even if it implies moving to another city. If the assigned place is refused, the beneficiary definitively loses the right to be accommodated in a SAI reception centre.

### 2. Travel documents

Travel documents for beneficiaries of international protection are regulated 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 are valid for 5 years and are renewable. The issuance of travel documents is refused by Questura, or, if already issued, the document is withdrawn, if there are very serious reasons relating to national security and public order that prevent its release. In practice, travel documents are usually issued automatically to beneficiaries of refugee status by Questura.

On 23 February 2020, the Civil Court of Florence examined the case of a Somali refugee to whom the Questura of Florence did not issue a travel document, opposing a long silence after 2 years from the lodging of the request. The Court upheld the appeal ordering Questura to issue the travel document, after examining passport legislation in the light of the provisions of the 1951 Geneva Convention on refugees, whose art. 28 excludes the issuance of a travel document only for reasons of state security or public order.<sup>1362</sup>

When there are well-founded reasons that do not allow the beneficiary of subsidiary protection to request a passport from the diplomatic authorities of the country of citizenship, the competent Questura issues a travel permit (*titolo di viaggio*, as opposed to the travel document, *documento di viaggio*, issued to refugees) to the person concerned. When applying for a travel permit in Questura, beneficiaries of subsidiary protection must therefore submit a note or documentation explaining why they cannot apply for or obtain a passport from the authorities of their countries of origin. Beneficiaries of subsidiary protection whose diplomatic or consular authorities are not present in Italy are usually issued a travel permit by Questura.

The administrative procedure aimed at issuing the travel document can be activated upon request of the beneficiary of subsidiary protection (and, as explained below, of the beneficiary of humanitarian/special protection). Questura is required not only to receive the request for the issuance of the travel document but also to assess the request and adopt an express decision on the application.<sup>1363</sup> As for the

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<sup>1361</sup> Pursuant to art. 6(6) TUI, besides what is established in the military laws, the Prefect can prohibit third country nationals from staying in municipalities or in places that interest the military defence of the State. Such prohibition is communicated to third country nationals by the Local Authority of Public Security or by means of public notices. Those who violate the prohibition can be removed by means of public force.

<sup>1362</sup> Civil Court of Florence, Decision 13202/2019, 23 February 2020, available at: <https://bit.ly/34OdsT1>.

<sup>1363</sup> Regional Administrative Court of Catania, Decision 179/2015, available in Italian at: <https://bit.ly/3ljcs7f>.

competence to deal with disputes relating to the failure to issue the travel document for refugees, beneficiaries of subsidiary protection and of humanitarian/special protection alike, although there is no lack of rulings by the ordinary judge (see above, *inter alia*, the decision of the Regional Administrative Court of Florence), the administrative jurisprudence has affirmed its competence by recalling art. 133, paragraph 1, letter u), of the c.p.a. which attributes to the exclusive jurisdiction of the administrative judge disputes concerning the provisions relating to passports as well as art. 21 of Law 21 November 1967, n. 1185, which also refers to the documents, equivalent to the passport, in favour of foreigners and stateless persons.<sup>1364</sup>

Regarding the prerequisites for the issuance of the travel document, as already mentioned, it is indisputable that for the beneficiary of subsidiary protection it is sufficient to state the well-founded reasons why he/she cannot apply to the diplomatic representation of his/her country of origin to request the passport, reasons that can be found in the grounds for applying for international protection or in the conduct of the authorities of the country of origin. Beneficiaries of subsidiary protection can thus invoke, *inter alia*, reasons linked to their status and to their international protection claim to the procedures applied by their embassies or to the lack of documentation requested, such as original identity cards or birth certificates. Evidence, such as a written note from the embassy refusing a passport, is not required but helpful if provided. The Questura usually verifies whether the person concerned in fact is not in possession of these documents, looking at the documents he or she provided during the international protection procedure. In some cases, immigration offices contact the embassies asking for confirmation of the reported procedure. The applicant assumes responsibility, under criminal law, for his or her statements. The Questura can reject the application lodged by beneficiaries of international protection if the reasons adduced are deemed unfounded or not confirmed by embassies. According to the law, if there are reasonable grounds to doubt the identity of the beneficiary of subsidiary protection, the document is refused or withdrawn by Questura. However, the administrative case-law has established that it appears contradictory to attribute a status to a subject and deny the same subject one of the concrete projections of this status (in this case, the travel permit) due to a profile (that of identity) that pertains to the very core of this type of administrative measures considering that in the absence of certainty about the applicant's identity, the Commission could not have granted the requested protection and the Questura issued the relative residence permit.<sup>1365</sup>

Important to note is that, while the travel document issued to refugees is valid for all countries recognized by the Italian State, excluding the country of citizenship of the refugee, 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 opening of the cessation procedure (See [Cessation](#)).

For beneficiaries of national protection (either the former humanitarian protection or the current special protection, please consider that for the latter no jurisprudence is available at the moment of writing), already back in 1961 the Ministry of Foreign Affairs and International Cooperation with Circular n. 48<sup>1366</sup> clarified that third country nationals who do not have the qualification of refugees and who, for various reasons, cannot obtain the passport from the authorities of their country of origin, will be issued a new document, in the shape of a light green booklet, called "Travel permit for third-country nationals". The Ministry further stated that the granting of the document may take place, except in cases of urgent necessity, only after the interested party has proved that he/she is unable to obtain a passport from the authorities of his/her country and that he/she has no pending lawsuits or obligations towards the family. In 2003 the Ministry of Interior,<sup>1367</sup> - following up on clarification requests received by several Questure

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<sup>1364</sup> Regional Administrative Court of Rome, Decision 7390/2014, 30 September 2015, available at: <https://bit.ly/3JeilOR>; Regional Administrative Court of Rome, Decision 7768/2011, 2 March 2015, available at: <https://bit.ly/3thuPFe>.

<sup>1365</sup> Regional Administrative Court of Lazio, Decision 11465/2015, 30 September 2015, available at: <https://bit.ly/3uoT2sP>.

<sup>1366</sup> Ministry of Foreign Affairs and International Cooperation, Circular n. 48 - Travel permit for third-country nationals, 5 March 2004, available at: <https://bit.ly/36pZPtU>.

<sup>1367</sup> Ministry of Interior, Circular n. N.300/C/2003/331/P/12.214.5/1^DIV - On provisions regarding the renewal of residence permits for humanitarian reasons, 24 February 2003, available at: <https://bit.ly/3MUe62N>.

on the renewal of humanitarian protection residence permits for those who continue to be without a passport or equivalent document or who, although possessing it at the time of the first release, no longer possess it or its validity has expired - underlined that beneficiaries of humanitarian protection are allowed to remain in Italy by reason of their particular objective situation which is connected, on the basis of elements assessed by the Territorial Commissions, to a concrete exposure to risks to personal safety or to the exercise of fundamental personal rights, and that by its very nature, this situation, although not attributable to that of a refugee, often precludes the issuance of a passport by the authorities of the country of origin, also depriving the individual of the right to travel abroad. The Ministry then, recalling that the above-mentioned circular by the Ministry of Foreign Affairs had never been repealed, reiterated to the Questure that the release of travel permits for beneficiaries of national protection has to be granted, adding that otherwise there would be a reduction of the rights recognized to legally residing third-country nationals also in relation to the Italian Constitution.

However, on several instances Questure have practically hindered the issuance of travel permits for beneficiaries of subsidiary protection and national protection through illegitimate practices which have been generally sanctioned by the resulting case-law, as proven by the collected jurisprudence mentioned in the previous reports (See [AIDA Country Report on Italy – 2021 Update](#)).

Significantly, on 13 July 2022, the Council of State upheld the appeal submitted by a holder of national protection who was refused a travel document as he had not proven the impossibility to obtain such document from his embassy. The Council of State evaluated that the impossibility of contacting authorities from the country of origin in order to obtain the travel document cannot be understood as only including those cases where the contact or return of the foreigner to his country of origin would expose him to serious risks for his own safety, but it must be extended to all those circumstances in which the bureaucratic systems of the country of origin make it impossible for the citizen to obtain the requested document. With the same decision, the Council of State clarified that Article 24 (3) of the Procedures Decree concerning the subsidiary protection status, applicable by analogy to the case under its exam, allows the issuance of the travel document if there are no imperative reasons of national security "or" public order, while it is not enough to refuse it automatically referring to the mere existence of a criminal record.<sup>1368</sup>

## D. Housing

### Indicators: Housing

- |   |                          |
|---|--------------------------|
| 1. For how long are beneficiaries entitled to stay in SIPROIMI/SAI?             | 6 months <sup>1369</sup> |
| 2. Number of beneficiaries staying in reception centres as of 31 December 2022: | 33,848 <sup>1370</sup>   |

As underlined in the Reception condition chapter, Decree Law 130/2020 converted into Law 173/2020 had, on paper at least, 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 was still conceived and indicated as primarily intended for beneficiaries of international protection and unaccompanied foreign minors. Other foreign nationals could only access SAI in case of available places.<sup>1371</sup> The system remained based on the voluntary

<sup>1368</sup> Council of State, Decision 5947 published on 13 July 2022, available at: [bit.ly/3q0Mt0M](https://bit.ly/3q0Mt0M).

<sup>1369</sup> The reception period in SAI projects is fixed at 6 months for beneficiaries of international protection. This period can be extended up to one year and in exceptional cases (for example during the COVID-19 emergency or for particularly critical situations) even beyond that limit.

<sup>1370</sup> Source: Mol Cruscotto statistico giornaliero, available at: <https://bit.ly/3SQSgYx>. 33,848 is the total amount of people hosted in SAI projects; The details of how many of these are asylum seekers and how many are protection holders are not yet available. As for 2021, the holders of some form of protection amounted to 75% of the total number of persons received.

<sup>1371</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.

adhesion of the municipalities. Even after the reform SAI still does not have enough places to meet the reception needs of all those who are entitled to it.

A possible solution, which ASGI has indicated several times since 2015, is a reform that transfers the administrative functions of reception management to the Municipalities: this would lead to the gradual absorption of specific services for reception within the social services guaranteed at the territorial level, as part of the related welfare system and, therefore, no longer optional. This way, Municipalities could no longer choose, as is the case now, whether to activate a SAI project or not, that is, whether or not to deal with reception services for refugees: reception would become an integral part of local welfare and minimum levels of assistance could also be established which the Municipalities should adhere to.<sup>1372</sup>

Law 50/2023 recently came into force. Through its new provisions, asylum seekers have been once again excluded from the possibility to access the SAI system, so that the reception system will return to a situation in which applicants will only have access to collective government centres and temporary facilities, while the SAI will become a sub-system reserved exclusively to protection holders. Access to the SAI will only be granted to asylum seekers identified as vulnerable and to those who have legally accessed Italy through complementary pathways (Government-led resettlements or private sponsored humanitarian admission programs).

## 1. Stay in first reception centres and CAS

A protection status does not allow the beneficiary to remain in first reception facilities or CAS. For this reason, beneficiaries who have obtained a protection title should be quickly transferred, if they want, into a SAI project. However, the scarcity of available places in the SAI network and numerous procedural issues often mean that the person is discharged from the reception centre where they were accepted as an asylum seeker before their entry into a SAI centre is arranged. The beneficiary of protection is then forced to temporarily leave the reception system. As described in detail in the Reception chapter, frequent are also the cases in which the request for inclusion in SAI is not even made. Already prior to the 2018 reform, some Prefectures considered that material conditions may be immediately ceased after the status recognition. In some cases, depending on the discretionary decisions of the responsible Prefectures and on bureaucratic delays, beneficiaries of national/international protection, after obtaining protection status, might be allowed to stay in the reception centre a few months or a few days after the notification or until the access to a SAI project. According to the information collected by ASGI, the majority of Prefectures allow beneficiaries of an international or national protection to remain in CAS only a few days.

## 2. Accommodation in SAI

Following the 2020 reform, reception of beneficiaries of international protection is carried out in the SAI system, Reception and Integration System (*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 - under some conditions also after they become adults - (see [Reception of Unaccompanied Children](#)), beneficiaries of international protection and, in case of available places, applicants for international protection and people who have obtained some other residence permits for specific reasons (among which beneficiaries of national protection).

Unaccompanied children should have immediate access to SAI. Local authorities can also accommodate in SAI: THB survivors; domestic violence survivors and labour exploitation survivors; persons issued a residence permit for medical treatment, or for natural calamity in the country of origin, or for acts of

<sup>1372</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.



particular civic value.<sup>1373</sup> Moreover, Decree Law 130/2020 states that local authorities can also accommodate in these facilities applicants for international protection, beneficiaries of special protection, beneficiaries of a special cases permit (former humanitarian protection),<sup>1374</sup> and former unaccompanied minors, who obtained the continuation of assistance.<sup>1375</sup> Access to the SAI is precluded to beneficiaries of special protection who have obtained the permit because of international protection exclusion clauses.<sup>1376</sup>

The SAI system is formed by small reception structures where assistance and integration services are provided. SAI projects are run by local authorities together with civil society actors such as NGOs. According to the Ministry of Interior Decree of 18 November 2019, SAI 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, 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>1377</sup> Such Decree,<sup>1378</sup> which includes the Guidelines for the former Siproimi system, has not yet been replaced by a new one reflecting the actual new configuration of the SAI.

Decree Law 130/2020 introduced two different levels of services for persons accommodated in SAI projects:

- ❖ First level services: applicants for international protection 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>1379</sup>
- ❖ Second level services: only available for beneficiaries of an international or special protection, include support for integration, job research, job orientation and professional training.<sup>1380</sup>

In contrast to the large-scale buildings provided in Governmental centres CPSA (former CARA and CDA) and CAS, according to official data from the SAI network,<sup>1381</sup> as of February 2023, SAI comprised 934 smaller-scale decentralised projects. The projects funded a total of 43,923 accommodation places.<sup>1382</sup> Of the SAI projects currently funded, 36,821 are ordinary places, 6,299 for unaccompanied minors, and 803 for people with mental distress or physical disabilities.

In 2021, a total of 42,464 people were accommodated.

The MoI Decree of 18 November 2019 establishes that reception in the SAI system lasts six months (for holders of a form of protection).<sup>1383</sup>

Only in some cases, indicated by the Decree, reception conditions may be extended for a further six months, with adequate motivation and with prior authorization from the competent Prefecture. In

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<sup>1373</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>1374</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>1375</sup> Article 1 sexies (1 bis) DL 416/1989, introduced by DL 130/2020.

<sup>1376</sup> Articles 10(2), 12 (1) (b) and (c) and 16 of the Qualification Decree; Article 1 sexies (1) (a) DL 416/1989, as amended by DL 130/2020.

<sup>1377</sup> Article 34 MoI Decree 18 November 2019.

<sup>1378</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/ayPqgeE>.

<sup>1379</sup> Article 1 sexies (2 bis, a) DL 416/1989, introduced by DL 130/2020.

<sup>1380</sup> Article 1 sexies (2 bis) DL 416/1989, introduced by DL 130/2020.

<sup>1381</sup> Sistema Accoglienza e Integrazione (SAI), The numbers of SAI, available in Italian at: <https://tinyurl.com/5n942vtm>.

<sup>1382</sup> Ibid.

<sup>1383</sup> Article 38 MoI Decree 18 November 2019.



particular, the decree allows the extension for the conclusion of integration paths, or for extraordinary circumstances related to health reasons. Furthermore, the extension of six months could be authorised in case of vulnerabilities or special needs (as listed in Article 17(1) 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>1384</sup>

Decree Law 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 integration paths for which the competent Municipalities are responsible within the limits of human, instrumental and financial available resources.<sup>1385</sup> Despite this, the Annual Report of the Sprar/Siproimi reception system shows that refugees who are accommodated in Sprar/Siproimi facilities face many obstacles in achieving housing autonomy. In 2018, less than 5% of the people accommodated within the Sprar/ Siproimi system benefited from an accommodation subsidy when their time in the system ended, and less than 1% was supported with lease procedures as they left reception facilities.<sup>1386</sup>

According to the SAI report published in 2021, beneficiaries who left SAI facilities in 2020 were 14,280. Out of the total number, less than half (45,0%) chose to leave the project, while 49,4% had to leave due to the expiration of the reception period.<sup>1387</sup>

More in detail, regarding beneficiaries of international protection, the National Plan drawn up for the years 2022 - 2024 by the National Coordination Table set up at the Ministry of the Interior - Department for Civil Liberties and Immigration,<sup>1388</sup> identifies interventions on:

3. linguistic training aimed at the knowledge of Italian language at least at A1 level;
4. knowledge of the fundamental rights and duties enshrined in the Constitution of the Italian Republic;
5. orientation to essential public services;
6. orientation to job placement.<sup>1389</sup>

Even though the accommodation system should be considered as a unique system, the withdrawal of reception conditions governed by the Accommodation Decree only refers to first reception facilities and CAS.

The Mol Decree also dictates 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 serious and violent behaviour;
- b) unjustified failure to report to the facility identified by the SAI Central Service;
- c) unjustified abandonment of the facility for over 72 hours, without prior authorization from the Prefecture;
- d) application of the measure of pre-trial detention in prison for the beneficiary.

The withdrawal of the reception measures is ordered by the responsible Prefecture.<sup>1390</sup>

Article 14 of Decree Law 130/2020 sets a financial invariance clause for all the changes made by the decree and, for what concerns the SAI, it states that this also applies to any increase in places in the related projects.

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

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<sup>1384</sup> Article 39 Mol Decree 18 November 2019.

<sup>1385</sup> Article 5 (1) Decree Law 130/2020 converted by L 173/2020.

<sup>1386</sup> UNHCR, ASGI and SUNIA, The refugee house - Guide to housing autonomy for beneficiaries of international protection in Italy, February 2021, available at: <https://bit.ly/3weRsMI>.

<sup>1387</sup> Rapporto Sai Siproimi 2021, available at: <https://bit.ly/3k6tFXW>, 55.

<sup>1388</sup> According to Article 29 (3) of the Qualification Decree.

<sup>1389</sup> Article 5 (2) Decree Law 130/2020 converted by L 173/2020.

<sup>1390</sup> Article 40 Mol Decree 18 November 2019.

flows.<sup>1391</sup> As observed by some studies,<sup>1392</sup> this clause makes it unlikely that the SAI will actually be able to accommodate the categories of people, including applicants for international protection, to whom the decree gives the right to access the SAI system.

Due to the exceptional reception needs resulting from the crisis in Afghanistan, art. 7 of Law Decree no. 139 of October 8, 2021 provided for an increase in the financial allocation to the National Fund for Asylum Policies and Services corresponding to 11,335,320 euros for the year 2021 and 44,971,650 euros for each of the years 2022 and 2023, to increase the SAI network by 3,000 places for the ordinary category.<sup>1393</sup>

In December 2021, 2,000 additional SAI places were activated, to meet accommodation needs of Afghan asylum seekers.<sup>1394</sup>

Later, DL 16 of 28 February 2022,<sup>1395</sup> later transposed into DL 14/2022 converted with modification by L 28/2022, established the *ad hoc* expansion of 3,000 SAI places and the possibility for people escaped from Ukrainian's war to access the SAI places already activated for Afghans.<sup>1396</sup>

While the SAI system has been slowly but constantly expanded throughout the country in the 20 years since it was set up<sup>1397</sup>, the total amount of available places is still falling short and largely inadequate to meet the existing needs. For this reason, CAS and emergency accommodations still need to be opened and maintained. Furthermore, historically, the number of SAI places funded by the Government and the number of SAI places actually active and available differ by several thousands, as a consequence of bureaucratic delays, as well as organisational and logistical issues.

As showcased by the extensive work of Actionaid,<sup>1398</sup> by 31 December 2021, the SAI system counted more than 10,000 funded but unavailable places. A more recent reportage from the magazine *Altreconomia* showed that,<sup>1399</sup> in October 2022, against over 44,000 funded places within the SAI system, only 35,000 of them were available and even fewer were used (33,000).

### 3. Access to public housing

From the point of view of international and supranational law, the issue of housing is of particular importance. Art. 21 of the Convention on the Status of Refugees states that "As regards housing, the Contracting States, in so far as the matter is regulated by law or regulations or is subject to the control of public authorities, shall accord to refugees lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances". Therefore, according to the Convention, refugees must enjoy the most favourable treatment possible when accessing housing, in a manner that is not, in any case, disadvantageous compared to other foreigners. The law of the European Union is also in line with the Convention: in fact, art. 32 of EU Directive 95/2011 provides for the principle of equal treatment in access to housing between beneficiaries of international protection and third countries citizens who are legally residing in their territories.

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<sup>1391</sup> Article 14 (3) Decree Law 130/2020 converted by L 173/2020.

<sup>1392</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>1393</sup> Ministero dell'Interno, Published the funding decree for additional SAI network projects, 21 December 2021, available in Italian at: <https://bit.ly/37sGF6W>. Places increased by Article 7 (1) DL 139/2021, converted into L 205/2021, as modified by Article 5 quater (5) DL 14/2022 converted into L 28/2022

<sup>1394</sup> 2,000 places according to Article 3(4) DL 16/2022, modifying Article 1 (390) L 234/2021, later transposed in DL 14/2022 as modified by Article 5 quater (6) DL 14/2022 converted into L 28/2022.

<sup>1395</sup> DL 16/2022, Article 3, then repealed and transfused in the DL 14/2022, Article 5 quater as modified by the conversion Law n. 28 of 5 April 2022, without prejudice to all effects, acts and measures adopted in the meantime on the base of DL 16/2022.

<sup>1396</sup> Article 5 quater DL 14/2022 converted with modifications into L 28/2022.

<sup>1397</sup> See Rapporto Annuale SAI 2021, available at: <https://bit.ly/3Z9qQbt>.

<sup>1398</sup> ActionAid, Centri d'Italia, Mappe dell'accoglienza. Report 2022, available at: <https://bit.ly/3SQiQKd>.

<sup>1399</sup> *Altreconomia*, Scarsa programmazione, posti vuoti e persone al freddo: così ai migranti è negata l'accoglienza, available at: <https://bit.ly/3ZMLD4D>.

National legislation on this subject is even clearer: art. 29 paragraph 3-ter of Legislative Decree 19 November 2007, n. 251, provides that "Access to housing benefits provided for in Article 40, paragraph 6, of Legislative Decree 25 July 1998, no. 286, is open to beneficiaries of refugee status and of subsidiary protection, on equal terms with Italian citizens". The right to access housing support measures is therefore among those rights for which the Italian legal system provides for equal treatment between refugees and Italian citizens.<sup>1400</sup>

Consistent with the relevance of the issue, housing integration is addressed by the National Integration Plan for beneficiaries of international protection, the most important institutional policy document on the issue of refugee integration in recent years, published by the Ministry of the Interior in 2017. This document identifies access to housing as one of the priority interventions.<sup>1401</sup>

However, some structural characteristics of the Italian housing system make it not particularly responsive to the needs of beneficiaries of international protection. According to a study from 2019, the share of public housing appeared to be low: in the last thirty years, public housing has steadily represented between 5 and 6% of the overall housing market. In absolute terms, the public housing stock is estimated at around 800,000 units, with a capacity of nearly two million people, with 650,000 applications pending housing allocation in municipal rankings. Furthermore, in many cases the criteria for the allocation of public housing is disadvantageous for many immigrants, even when they have a very low income, as a minimum seniority of residence is required: this criterion can exclude all those beneficiaries of international protection who have been residing in Italy for a shorter time.<sup>1402</sup>

In Italy, people with no income or with an income that does not allow them to buy a house or to pay rent can ask their Municipality to access publicly owned housing (commonly called "social housing"), within Public Residential Housing ("Edilizia Residenziale Pubblica", or ERP). Regions have the power to issue laws that regulate access criteria and distribution of economic resources. Municipalities are responsible for issuing calls for tenders for the submission of access applications and for selecting people to whom housing is assigned.<sup>1403</sup>

The possibility of competing for the allocation of housing is given to Italian citizens, citizens of an EU member state, as well as foreign citizens legally residing in Italy, either with an EU residence permit for long-term residents or with a two-year permit at least. Beneficiaries of international protection are treated on the same footing as Italian citizens regarding access to public housing: they can always apply and they cannot be asked to meet additional or different requirements than those provided for Italian citizens. Application requirements vary among Regions, and sometimes even among Municipalities within the same Region. Some Regions have specific scores for refugees. In general terms, criteria can be: maximum income (normally measured through ISEE), non-ownership of housing, residence in the Municipality where the application is submitted, no previous allocation of public residential housing, no illegal occupations.<sup>1404</sup>

When calls to access residential housing, published by locally responsible Municipalities, are closed, applications duly complying with the call's requirements are given scores for ranking purposes. The methods of giving scores vary depending on Regions and Municipalities. Scores can be attributed for income, family composition, seniority of residence, overcrowding, cohabitation with other families,

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<sup>1400</sup> Article 29 Qualification Decree; Article 40(6) TUI; UNHCR, ASGI and SUNIA, The refugee house - Guide to housing autonomy for beneficiaries of international protection in Italy, February 2021, available at: <https://bit.ly/3weRsMI>.

<sup>1401</sup> Ministry of the Interior, National Integration Plan for beneficiaries of international protection, 2017, available at: <https://bit.ly/34PTS99>.

<sup>1402</sup> Colombo, F., Housing autonomy of applicants and beneficiaries of international protection in Italy, University of Urbino Carlo Bo, DESP - Department of Economics, Society, Politics, 2019, available at: <https://bit.ly/3ifGKgZ>.

<sup>1403</sup> UNHCR, ASGI and SUNIA, The refugee house - Guide to housing autonomy for beneficiaries of international protection in Italy, February 2021, available at: <https://bit.ly/3weRsMI>.

<sup>1404</sup> UNHCR, ASGI and SUNIA, The refugee house - Guide to housing autonomy for beneficiaries of international protection in Italy, February 2021, available at: <https://bit.ly/3weRsMI>.

presence of severely disabled persons within the family, inadequate or unhygienic accommodation, expulsion or eviction decisions, and newly-formed family units. The Municipality publishes the provisional ranking with the indication of the deadline by which any appeals can be filed for scoring mistakes. The final ranking is then published, and available accommodation is assigned on its basis.<sup>1405</sup>

Numerous regional laws provide that only those individuals who do not own a property in any country in the world or, at least, in their country of origin can access public housing. This limitation entails discrimination to the extent that the Region (or the Municipality) only asks non-EU citizens for documents issued by a competent authority in the country of origin to certify the absence of real estate in that country. In any case, beneficiaries of international protection cannot contact the authorities in their countries, so they are not required to provide evidence regarding real estate property in the country of origin.<sup>1406</sup>

The procedure to access social housing is regulated by regional provisions and Municipalities' administrative acts. Among the documents necessary to access the application procedure, some Regions require documents translated and certified by the Italian Embassy, attesting the absence of real estate properties abroad or in the country of origin. Beneficiaries of international protection cannot be asked for this documentation, as stateless citizens or political refugees are treated on equal footing with Italian citizens. This means that, for the purposes of assessing their economic circumstances, there is no need to submit declarations issued by Embassies or Consulates, since only income and assets potentially held in Italy must be taken into account and, if existent, be self-certified, as is required of Italian citizens. In any case, two judgments of the Court of Milan in 2020 established that requesting the above documents to all non-EU citizens is discriminatory. As a further requirement to access the public housing application procedure, some Regions and Municipalities require prolonged residence or work activity in the area for a few years. The regional law of Lombardy, which required 5 years of residence and was particularly disadvantageous for foreign citizens, was declared unlawful by the Constitutional Court, and therefore repealed. Moreover, with judgement no. 9/2021, the Constitutional Court established that the seniority of residence cannot be included among the criteria for attributing a higher score for the assignment of public housing because it does not determine a condition of greater need.<sup>1407</sup> In the same judgement, the Constitutional Court also declared that the requirement of legalised documents attesting the absence of real estate properties abroad or in the country of origin represent a discriminatory provision, contrary to Article 3 of the Italian Constitution.

## E. Employment and education

### 1. Access to the labour market

The residence permit issued to refugees and beneficiaries of subsidiary protection enables them to have access to work and to public employment, with the only admitted limitation being positions involving the exercise of public authority or responsibility for safeguarding the general interests of the State. However, the Code of Navigation establishes that the enrolment of cadets, students and trainees is reserved only for EU or Italian citizens, a rule that appears discriminatory.<sup>1408</sup>

Beneficiaries are entitled to the same treatment as Italian citizens with regard to employment, self-employment, registration with professional associations, professional training, including refresher courses, on-the-job training and services provided by employment centres.

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<sup>1405</sup> Ibid.

<sup>1406</sup> Ibid.

<sup>1407</sup> Ibid.

<sup>1408</sup> Article 119 Navigation Code.

According to the law, the Prefects, in agreement with the Municipalities, promote initiatives for the voluntary involvement of applicants 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>1409</sup>

A research based on 17 interviews to beneficiaries of international protection in Italy out of the reception system, shows possibilities in obtaining a job and sometimes even in keeping it depends less from the quantity and quality of previous skills, from diplomas, internship or apprenticeship certificates than from friendships, social networks and - from the beginning - on the weight of economic obligations towards the family. Those who feel that the obligations towards families are very pressing leads to take advantage of the social networks that can be immediately activated in order to get a job in the shortest possible time. For these subjects, accommodation is experienced as an impediment or a useful support strictly necessary to be able to move in search of a job. A constant of those who find themselves in this situation seems to be that of not building networks with the natives and not having an interest in learning Italian. The need for a quick job leads them to search within “community” networks, for compatriots in the city, or between migrants and refugees, often known in Libya or in the reception facility. Often, they accept informal work in the countryside or sell goods illegally in the main cities, or even move to other European countries in search of better opportunities (such as Spain, France, Sweden, Germany, Malta, etc.). Instead, for those who have a lower need for economic restitution, because younger people, without wife or children, a social path built also through networks of indigenous people internships, even if with little income, or social contacts also through sport activities become important. However, the research shows that this does not mean that those who adhere to this model necessarily want to stay in Italy. Indeed, only one person claims to be open to the possibility; all the others argue that they will move back to their home country.<sup>1410</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. Enrolment may be requested at any time during the school year.<sup>1411</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>1412</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>1413</sup>

Current legislation does not allow the establishment of special classes for foreign students and the Circular of the Ministry of Education of 8 January 2010 maintains that the number of non-nationals in school classes should be limited to 30%.

Schools are not obliged to provide specific language support for non-national students but, according to the law, the Teachers' Board defines, in relation to the level of competence of foreign students, the necessary adaptation of curricula and can adopt specific individualised or group interventions to facilitate learning of the Italian language.

As underlined by the Ministry of Education in guidelines issued in February 2014, special attention should be paid to Italian language labs. The Ministry observes that an effective intervention should provide about

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<sup>1409</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>1410</sup> Rapporto di ricerca "Rifugiati al lavoro - Quali reti? Quali politiche?", IRES Piemonte, December 2021, available at: <https://bit.ly/3MBXhZg>.

<sup>1411</sup> Article 38 TUI; Article 45 PD 394/1999.

<sup>1412</sup> Article 45(2) PD 394/1999.

<sup>1413</sup> Article 192(3) LD 297/1994.



8-10 hours per week dedicated to Italian language labs (about 2 hours per day) for a duration of 3-4 months.<sup>1414</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>1415</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.

Paragraph 3-bis of Art. 26 of the Qualification Decree provides that: “to recognize professional qualifications, diplomas, certificates and other qualifications obtained by refugees or beneficiaries of subsidiary protection abroad, competent authorities shall identify appropriate systems of assessment, validation and accreditation allowing for the recognition of qualifications under Art. 49 of Decree of the President of the Republic No. 394 of 31 August, 1999, even when the country where the degree was obtained will not issue a certification, provided that the person concerned will prove his/her impossibility to acquire such certification”.<sup>1416</sup>

The General Direction for students, development and higher education internationalisation of the Ministry for Education, University and Research, inside its “Procedures for entry, residency and enrolment of international students and the respective recognition of qualifications, for higher education courses in Italy” has invited Italian higher education institutions to “recognise cycles and periods of study conducted abroad and foreign study qualifications, with a view to entering higher education, proceeding with university studies and obtaining Italian university qualifications (Art. 2 Law 148/2002)” and “to make all necessary efforts to introduce internal procedures and mechanisms to evaluate refugee and subsidiary protection holder qualifications, even in cases where all or part of the relative documents certifying the qualifications are missing”.<sup>1417</sup>

Despite the above mentioned normative having the potential to have a significant and positive impact on the integration of beneficiaries of international protection, until recently such provision has been implemented only on an occasional basis, mostly by single universities that have autonomously recognized qualifications even in the absence of original certificates.

In 2017, the Council of Europe launched the European Qualifications Passport for Refugees (EQPR) through a pilot project involving four countries, including Italy, as well as the UNHCR. The purpose of the EQPR is to provide a methodology for assessing refugees’ qualifications even when these cannot be fully documented and to have the assessment accepted across borders. It provides an assessment of higher education qualifications based on available documentation and a structured interview. It also presents information on the applicant’s work experience and language proficiency. The document provides reliable information for integration and progression towards employment and admission to further studies. In Italy, the EQPR has been used mainly as an instrument for access to higher education, giving refugees with adequate qualifications the possibility to enrol in academic programmes. So far, 143 interviews have been conducted and 49 EQPR holders are studying at Italian higher education institutions. This has been made possible thanks to a systemic approach, with the support of the Ministry of University and Research, the coordination of CIMEA (the Italian ENIC), and the active involvement of 34 higher education institutions in the National Coordination for the Evaluation of Refugee Qualifications (CNVQR). Since 2020, the EQPR was accepted among the documents allowing holders to apply for the university scholarships offered to refugees or international protection holders managed by the Conference of Italian University Rectors (CRUI) with the Italian Ministry of the Interior and the National Association of the bodies for the right to

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<sup>1414</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>1415</sup> Article 26 Qualification Decree.

<sup>1416</sup> Article 26 Qualification Decree.

<sup>1417</sup> Information Centre on Academic Mobility and Equivalence (Cimea), Recognition of qualifications held by refugees, available at: <https://bit.ly/3ljdxjf>.

higher education (ANDISU). CRUI received 207 applications, and 96 out of the 100 scholarships available were awarded to students now enrolled in Italian universities. Of these, 11 are EQPR holders.<sup>1418</sup>

## 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>1419</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>1420</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.

"The CJEU ruled in C-462/20 that it is contrary to EU law to give different rights to citizens and beneficiaries of international protection. The case concerned family discount cards in Italy that can be used to obtain reduced rates on goods and services, but the cards are not provided to beneficiaries."<sup>1421</sup>

## 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>1422</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>1423</sup> Beneficiaries of international protection enjoy equal treatment with Italian citizens in the COVID-19 vaccination scheme.

### 1. Contribution to health spending

Beneficiaries of international protection and national protection (humanitarian/special), as applicants for international protection, are obliged to register with the National Health Service and are entitled to equal treatment and full equality of rights and duties compared to Italian citizens both with regard to the obligation to contribute and to the assistance provided in Italy by the NHS and its temporal validity (art. 34 of TUI). On the subject of exemption, of particular relevance is what is provided for by art. 17(4) of the Reception Conditions Directive, transposed in Italy by the Reception Decree, pursuant to which "member States may oblige applicants to bear or contribute to the costs of the material reception conditions and

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<sup>1418</sup> University World News, Opening up education opportunities for refugee scholars, 27 March 2021, available at: <https://bit.ly/363MZBD>; Council of Europe (CoE), European Qualifications Passport for Refugees, <https://www.coe.int/en/web/education/recognition-of-refugees-qualifications>; ASGI, Recognition of academic and employment qualifications of refugees, 27 January 2020, available at: <https://bit.ly/3u3DFpi>.

<sup>1419</sup> Article 27 Qualification Decree.

<sup>1420</sup> Article 2(1)(a)(2) Decree Law 4/2019.

<sup>1421</sup> EUAA, Annual Asylum Report (2022), available at: <https://bit.ly/43bVK4W>, 55.

<sup>1422</sup> Article 34 TUI; Article 16 PD 21/2015; Article 21 Reception Decree.

<sup>1423</sup> Article 42 PD 394/1999.

health care provided for in this Directive, if the applicants have sufficient resources, for example where they have been employed for a reasonable period of time." Despite this, access to health care for beneficiaries of international protection varies greatly across regions. The main differences and difficulties are found with reference to the exemption from the cost-sharing of healthcare costs. Only some regions, including Friuli-Venezia Giulia and Puglia, currently extend the exemption until the beneficiaries of international and national protection actually find a job.<sup>1424</sup>

On April 18, 2016, ASGI and other NGOs sent a letter to the Ministry of Health, asking it to implement Article 17(4) of the recast Reception Conditions Directive, according to which applicants for international protection may be required to contribute to health care costs only if they have sufficient resources, i.e., if they have worked for a reasonable period of time. ASGI also asked the Ministry to consider that, following the adoption of DL 150/2015 for the granting of the right to exemption from participation in health care costs, distinctions can no longer be made between the unemployed and the inactive. On May 9, 2016, the Ministry of Health responded that it had engaged the Ministry of the Economy and the Ministry of Labour and Social Policies in order to obtain a uniform interpretation of these regulations.<sup>1425</sup>

While waiting for the Government to take an official position on the matter, the right to exemption from healthcare spending for unemployed refugees has also been recognized by the Court of Rome, which, on February 17, 2017, ruled on an appeal lodged by an ASGI lawyer for a refugee woman whose request for exemption was refused by the local health authorities because she was considered inactive and not unemployed".<sup>1426</sup>

In 2018, the Civil Court of Rome confirmed the previous decision and accepted the appeal lodged by a Sudanese citizen in subsidiary protection, reaffirming the right to exemption from the "health ticket" for people without work and without income.<sup>1427</sup>

In a judgment of October 22, 2018, the Court of Appeal of Milan upheld the appeal, stating that for the law it is not possible to make any distinction between those who have already had a job and lost it (unemployed) and those who have never had it such as, for example, asylum seekers and refugees (inactive).<sup>1428</sup> The Civil Court of Brescia ruled on July 31, 2018 in a similar manner.<sup>1429</sup>

In 2019 and 2020, again in response to the illegitimate practice of the ASLs of refusing the exemption to beneficiaries of international and national protection, the jurisprudence unanimously reiterated that the distinction between inactive and unemployed is not applicable for purposes of accessing health care services.<sup>1430</sup>

On 19 July 2022, the Council of State (the Upper administrative Court in Italy), replying to the request submitted by the Ministry of Health, expressed the opinion that, following the repeal of Legislative Decree 181/2000, the distinction between unemployed and inactive people for the purposes of exemption from participation in health care costs is to be considered obsolete.<sup>1431</sup>

Moreover, on 12 January 2023, on a case brought by ASGI and Emergency, the Civil Court of Milan ascertained the discriminatory conduct of the Lombardy region which, like other regions, distinguishes, for the purposes of exemption, between the unemployed and the inactive. This particularly affects asylum seekers and refugees who, compared to other categories of foreigners, have been staying in the territory

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<sup>1424</sup> SAI and ASGI, Legal Handbook for Workers - International protection and other forms of protection, July 2019, available at: <https://bit.ly/3u0wRZA>.

<sup>1425</sup> Article 19 LD 150/2015 states that "unemployed" are workers who declare, in electronic form, their immediate availability to exercise work activities.

<sup>1426</sup> Civil Court of Rome, Decision 33627/16, 17 February 2017, available at: <http://bit.ly/2nIv0HF>.

<sup>1427</sup> Civil Court of Rome, Decision 5034/2018, 13 June 2018.

<sup>1428</sup> Court of Appeal of Milan, Decision 1626/2018, 22 October 2018, available at: <https://bit.ly/2uTd5kx>.

<sup>1429</sup> Civil Court of Brescia, Order 5185/2018, 31 July 2018, available in Italian at: <https://bit.ly/2GdgbVJ>.

<sup>1430</sup> Court of Appeal of Venice, Decision 15/2020 of 27 April 2020; Civil Court of Milan, Decision 5688/2019, 18 July 2019, available in Italian at: <https://bit.ly/34SqYFm>; Civil Court of Milan, Decision 3568/2019, 21 May 2019, available in Italian at: <https://bit.ly/3u4mcNA>.

<sup>1431</sup> Council of State, opinion published on 19 July 2022, available at [bit.ly/40byAK4](https://bit.ly/40byAK4)

for less time and, in most cases, have not had previous working relationships before enrolling in the national health service. The Court acknowledged, with specific reference to the category of asylum seekers, how it is "obvious that an asylum seeker cannot claim a previous employment relationship in Italy, especially because, pursuant to art. 22 of Legislative Decree no. 142/2015, asylum seekers can carry out working activities only after 60 days from the request for the relevant residence permit".<sup>1432</sup>

## 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>1433</sup> The Guidelines explicitly specify that also applicants for international protection are entitled to specialised assistance and rehabilitation.

The Guidelines emphasise the importance of early identification of these vulnerable cases in order to provide probative support for the application for international protection, to direct the person to appropriate reception facilities and towards a path of protection even after that international protection has been granted, but also to provide for rehabilitation and assistance. According to the guidelines, the recognition of a traumatic experience is the first step towards rehabilitation. The work of multidisciplinary teams and the synergy of local health services with all those who, for various reasons, come in contact with beneficiaries of international protection or applicants for international protection - reception operators, educators, lawyers - is considered crucial in these cases.

The Guidelines highlight the importance of early detection of such vulnerable cases in order to provide probative support for the international protection 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 in 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, assessing the consistency of the person's statements with the examination findings without expressing any judgment on the truthfulness of the individual's narrative. 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.

Five years after the guidelines' publication, the required activation by each local health authority of a multidisciplinary therapeutic and assistance program - the cornerstone of the assistance and rehabilitation of torture victims - has, however, remained a dead letter: the few services that already existed have barely managed to continue operating, and little to no new ones have been created.

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<sup>1432</sup> Civil Court of Milan, decision of 12 January 2023, available at: [bit.ly/3LwUuDr](https://bit.ly/3LwUuDr).

<sup>1433</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/2EalNAY](https://bit.ly/2EalNAY).

## 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) any 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 generally provides for the withdrawal of reception conditions without any progression and proportion to the contested behaviour.</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. Additionally, 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>