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Asylum Information Database

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European Council on Refugees and Exiles

2023 UPDATE

ITALY

COUNTRY REPORT

Acknowledgements & Methodology

The report was written by Caterina Bove, Matteo Astuti, Chiara Pigato and Giovanni Papotti, of the Association for Legal Studies on Immigration (ASGI), and edited by ECRE.

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

The information in this report is up-to-date as of 31 December 2023, unless otherwise stated.

The Asylum Information Database (AIDA)

The Asylum Information Database (AIDA) is managed by the European Council on Refugees and Exiles (ECRE). It aims to provide up-to date information which is accessible to researchers, advocates, legal practitioners and the general public through the dedicated website www.asylumineurope.org It covers 23 countries, including 19 EU Member States (AT, BE, BG, CY, DE, ES, FR, GR, HR, HU, IE, IT, MT, NL, PL, PT, RO, SE, and SI) and 4 non-EU countries (Serbia, Switzerland, Türkiye, and the United Kingdom). The database also seeks to promote the implementation and transposition of EU asylum legislation reflecting the highest possible standards of protection in line with international refugee and human rights law and based on best practice.

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Glossary & List of Abbreviations

Decree Law	Regulatory act which provisionally enters into force but requires the enactment of a legislative act in order to have definitive force. This process is described as "implementation by law" (conversione in legge), and it is possible for the Decree Law to undergo amendments in the process of enactment of the law.
Foglio Notizie	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.
Fotosegnalamento	Taking of photographs and fingerprinting upon identification and registration of the asylum application
Nulla osta	Certification of the absence of impediments to contracting a marriage
Questore	Chief of the Provincial Police Office
Questura	Provincial Police Office
Verbalizzazione	Lodging of the asylum application through an official form entitled "C3"
ANCI	National Association of Italian Municipalities | Associazione Nazionale Comuni Italiani
ASGI	Association for Legal Studies on Immigration | Associazione per gli Studi Giuridici sull'Immigrazione
ASL	Local Health Board | Azienda Sanitaria Locale
CAF	Fiscal Assistance Centre | Centro assistenza fiscale
CARA	Centre for the Reception of Asylum Seekers | Centro di accoglienza per richiedenti asilo
CAS	Emergency Accommodation Centre | Centro di accoglienza straordinaria
CDA	Accommodation Centre for Migrants | Centro di accoglienza
CIE	Identification and Expulsion Centre | Centro di identificazione ed espulsione
CIR	Italian Council for Refugees | Consiglio Italiano per i Rifugiati
CNDA	National Commission for the right to asylum | Commissione Nazionale per il diritto di asilo
NAC	National Asylum Commission | Commissione nazionale per il diritto di asilo
CPSA	First Aid and Reception Centre | Centro di primo soccorso e accoglienza
CSM	High Judicial Council | Consiglio Superiore della Magistratura
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ECRI	European Committee against Racism and Intolerance
EDAL	European Database of Asylum Law
EUAA	European Union Agency for Asylum
Fumus boni iuris	Requirement for the adoption of interim and precautionary measures in Italy, correspondent to the apparent validity of the claim
INAIL	National Institute for Insurance against Accidents at Work | Istituto Nazionale Assicurazione Infortuni sul Lavoro
INPS	National Institute of Social Security | Istituto Nazionale di Previdenza Sociale
IOM	International Organisation for Migration

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

Statistics

Overview of statistical practice

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

Applications and granting of protection status at first instance: figures for 2023

	Applicants in 2023 (1)	Pending at end of 2023	Total decisions in 2023 (2)	Total rejection (3)	Refugee status	Subsidiary protection	Special protection* (4)
Total	135,820	146,940	47,150	25,260	4,910	6,495	10,485
Guinea	3,385	3,460	-	-	-	-	-
Tunisia	7,785	3,600	5,729	5,038	150	28	513
Ivory Coast	7,120	5,840	2,861	2,282	250	33	296
Bangladesh	23,450	27,770	8,572	6,464	130	45	1,933
Perù	7,528		1,481	862	89	10	520
Pakistan	17,075	23,990	7,078	4,808	290	684	1,296
Nigeria	3,995	3,875	4,792	2,372	673	262	1,125
Egypt	18,295	21,040	4,857	4,229	59	17	552
Morocco	5,225	4,280	2,544	2,218	62	8	256
Burkina Faso	5,680	5,345	529	27	9	372	121

Source: Eurostat data and National Commission for Asylum data obtained by FOIA request.

Note 1: “Applicants in year” refers to the total number of applicants, and not only to first-time applicants. If data is available only on first-time applicants, specify this in the source.
Note 2: Statistics on decisions cover the decisions taken throughout the year, regardless of whether they concern applications lodged that year or in previous years.
Note 3: Total rejections include inadmissibility decisions.
Note 4: Special protection is the humanitarian form of protection available in Italy. See Content of Protection.

Applications and granting of protection status at first instance: rates for 2023

	Overall rejection rate	Overall protection rate (1)	Refugee rate	Subsidiary protection rate	Special protection rate
Total	53.6%	46.4%	10.4%	13.8%	22.2%
Bangladesh	75%	26%	2%	1%	23%
Pakistan	68%	32%	4%	10%	18%
Tunisia	88 %	12 %	3%	0%	9%
Egypt	87%	12%	1%	0%	11%
Nigeria	57%	42%	14%	5%	23%
Ivory Coast	80%	20%	9%	1%	10%
Morocco	87%	12%	2%	0%	10%
Georgia	64%	36%	4%	0%	32%
Afghanistan	10%	90%	54%	35%	1%
Ukraine	9%	92%	5%	85%	2%

Source of the percentages: National Commission for Asylum.

Note 1: Rates include humanitarian protection.

Gender/age breakdown of the total number of applicants: 2023

	Men	Women
Number	114,245	21,570
Percentage	84%	16%

	Adults	Children	
		Accompanied	Unaccompanied
Number	124,940	8,675	2,205
Percentage	92%	6%	2%

Source: MOI

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	http://bit.ly/1PYQbyL (IT)
Amended by: Decree Law no. 13/2017, implemented by Law no. 46/2017	*Modificato*: Decreto Legge 17 febbraio 2017, n. 13, conversione in Legge di 13 aprile 2017, n. 46	Decree Law 13/2017	https://bit.ly/2ItXe3Y (IT)
Amended by: Decree Law no. 113/2018, implemented by Law no. 132/2018	*Modificato:* Decreto Legge 4 ottobre 2018, n. 113, conversione in Legge di 1 dicembre 2018, n. 132	Decree Law 113/2018	https://bit.ly/2G8Bh7W (IT)
Amended by: Law no. 238 /2021 Provisions to adequate to EU obligation - European Law	Modificato: LEGGE 23 dicembre 2021, n. 238, Disposizioni per l'adempimento degli obblighi derivanti dall'appartenenza dell'Italia all'Unione europea - Legge europea 2019-2020	LAW 238/2021	https://bit.ly/3I7jI5Z (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, nonche' norme minime sul contenuto della protezione riconosciuta"	Qualification Decree	http://bit.ly/1FOscKM (IT)
Amended by: Legislative Decree no. 18/2014	*Modificato:* Decreto Legislativo 21 febbraio 2014, n. 18	LD 18/2014	http://bit.ly/1I0ioRw (IT)
Amended by: Legislative Decree 220/2017	*Modificato:* Decreto legislativo 22 dicembre 2017, n. 220	LD 220/17	http://bit.ly/2CJXJ3s (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	http://bit.ly/1PYQjOW (IT) https://bit.ly/2XbAeem (IT)
Amended by: Legislative Decree no. 142/2015	*Modificato:* Decreto legislativo n. 142/2015	Reception Decree	http://bit.ly/1Mn6i1M (IT)
Amended by: Decree Law no. 13/2017, implemented by Law no. 46/2017	*Modificato*: Decreto Legge 17 febbraio 2017, n. 13, convertito con modificazioni dalla Legge del 13 aprile 2017, n. 46	Decree Law 13/2017	https://bit.ly/2ItXe3Y (IT)
Amended by: Decree Law no. 113/2018, implemented by Law no. 132/2018	*Modificato:* Decreto Legge 4 ottobre 2018, n. 113, convertito con modificazioni dalla Legge del 1 dicembre 2018, n. 132	Decree Law 113/2018	https://bit.ly/2G8Bh7W (IT)
Amended by Decree Law no. 130/2020, Implemented by Law no. 173/2020	*Modificato* da Decreto Legge n. 130/2020, convertito con modificazioni dalla Legge 173/2020	Decree Law 130/2020 Law 173/2020	https://encr.pw/ntdAW. (IT)
Amended by: Law no. 238 /2021 Provisions to adequate to EU obligation - European Law	*Modificato*: LEGGE 23 dicembre 2021, n. 238, Disposizioni per l'adempimento degli obblighi derivanti dall'appartenenza dell'Italia all'Unione europea - Legge europea 2019-2020	Law 238/2021	https://bit.ly/3I7jI5Z (IT)
Amended by Decree Law 20/2023, Implemented by L. 50/2023	*Modificato: Decreto Legge 20 Marzo 2023 convertito in L. 50/2023*	Decree Law 20/2023 L. 50/2023 DL 133/23	http://bit.ly/3OICK9K (IT)
Amended by Decree Law 133/2023 Implemented by L. 176/2023	*Modificato:* Decreto legge 133/2023 convertito in L. 176/2023	Converted into L 176/2023	http://bit.ly/3UHF97z (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 *status* di protezione internazionale.”	Reception Decree	http://bit.ly/1Mn6i1M (IT)
Amended by: Legislative Decree 220/2017	*Modificato:* Decreto legislativo 22 dicembre 2017, n. 220	LD 220/2017	http://bit.ly/2CJXJ3s (IT)
Amended by: Decree Law no. 113/2018, implemented by Law no. 132/2018	*Modificato:* Decreto Legge 4 ottobre 2018, n. 113, convertito con modificazioni dalla Legge di 1 dicembre 2018, n. 132	Decree Law 113/2018	https://bit.ly/2G8Bh7W (IT)
Amended by Decree Law no. 130/2020, Implemented by Law no. 173/2020	*Modificato* da Decreto Legge n. 130/2020, convertito con modificazioni dalla Legge 173/2020	Decree Law 130/2020 Law 173/2020	https://encr.pw/ntdAW. (IT)
Amended by Decree Law 20/2023, Implemented by L. 50/2023	*Modificato: Decreto Legge 20 Marzo 2023 convertito in L. 50/2023*	Decree Law 20/2023 L. 50/2023	http://bit.ly/3OICK9K (IT)
Legislative Decree no. 150/2011 “Additional provisions to the Code of Civil Procedure concerning the reduction and simplification of cognition civil proceedings, under Article 54 of the law 18 June 2009, n. 69”	Decreto legislativo 1 Settembre 2011, n. 150 “Disposizioni complementari al codice di procedura civile in materia di riduzione e semplificazione dei procedimenti civili di cognizione, ai sensi dell'articolo 54 della legge 18 Giugno 2009, n. 69”	LD 150/2011	http://bit.ly/2jXfdog (IT)
Legislative Decree no. 24/2014 “Prevention and repression of trafficking in persons and protection of the victims”, implementing Directive 2011/36/EU”	Decreto legislativo 4 marzo 2014, n. 24 “Prevenzione e repressione della tratta di esseri umani e protezione delle vittime”, in attuazione alla direttiva 2011/36/UE, relativa alla prevenzione e alla repressione della tratta di esseri umani e alla protezione delle vittime”	LD 24/2014	http://bit.ly/1Fl2OsN (IT)

Law no. 47/2017 “Provisions on the protection of foreign unaccompanied minors”	Legge di 7 aprile 2017, n. 47 “Disposizioni in materia di misure di protezione dei minori stranieri non accompagnati”	L 47/2017	http://bit.ly/2sYgFd8 (IT)
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 L 50/2023	http://bit.ly/3OICK9K (IT)
Decree Law no 133/2023 Urgent provisions on immigration and international protection, as well as for security policy support and the functionality of the Ministry of the Interior. Converted into L. no. 176/2023	Decreto legge 133/2023 Disposizioni urgenti in materia di immigrazione e protezione internazionale, nonche' per il supporto alle politiche di sicurezza e la funzionalita' del Ministero dell'interno. Convertito con modificazioni dalla- Legge 176 del 1 dicembre 2023	DL 133/23 Converted into L 176/2023	http://bit.ly/3UHF97z (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
Presidential Decree no. 394/1999 “Regulation on norms implementing the consolidated act on provisions concerning the immigration regulations and foreign national conditions norms" *Amended by:* Presidential Decree no. 334/2004 “on immigration”	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" *Aggiornato con le modifiche apportate dal:* Decreto del Presidente della Repubblica 18 ottobre 2004, n. 334 “in materia di immigrazione”	PD 394/1999 PD 334/2004	http://bit.ly/1M33qIX (IT) http://bit.ly/1KxDnsk (IT)

Amended by: Presidential Decree no. 191/2022	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.	PD 191/2022	http://bit.lt/3ZNBoNP (IT)
Presidential Decree no. 21/2015 on "Regulation on the procedures for the recognition and revocation of international protection"	Decreto del Presidente della Repubblica del 12 gennaio 2015 "Regolamento relativo alle procedure per il riconoscimento e la revoca della protezione internazionale a norma dell'articolo 38, comma 1, del decreto legislativo 28 gennaio 2008, n. 25."	PD 21/2015	http://bit.ly/1QjHx8R (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	http://bit.ly/2FwCDZj (IT)
CNDA Circular no. 6425 of 21 August 2017, Request clarifications art. 26, (5) Legislative Decree no. 25/2008, as amended by law n. 47/2017	Circolare della Commissione nazionale per il diritto d'asilo n. 6425 del 21 agosto 2017, Richiesta chiarimenti art. 26, comma 5, d.lgs. n. 25/2008, come modificato dalla legge n. 47/2017	CNDA Circular 6425/2017	http://bit.ly/2Fn38Um (IT)
Ministry of Interior Circular no. 1 of 2 January 2019 "Decree Law 113/2018 implemented by Law 132/2018, applicable profiles"	Circolare del Ministero dell'Interno del 2 gennaio 2019, n. 1 "Decreto Legge 113/2018, convertito con modificazioni dalla legge 132/2018, profili applicativi"	Circular 1/2019	https://bit.ly/2GhrIoj (IT)
Ministry of Interior Circular of 14 January 2019 "Decree Law 113/2018 implemented by Law 132/2018, applicable profiles"	Circolare del Ministero dell'Interno del 14 gennaio 2019, "Decreto Legge 113/2018, convertito con modificazioni dalla legge 132/2018, profili applicativi"		https://bit.ly/2P7G5OZ (IT)
Ministry of Interior Decree, 5 August 2019, published on 7 September 2019, Identification of border or transit areas for the implementation of the accelerated procedure for the exam of international protection applications	Decreto del Ministero dell'Interno del 5 Agosto 2019, pubblicato sulla Gazzetta Ufficiale il 7 Settembre 2019, Individuazione delle zone di frontiera o di transito ai fini dell'attuazione della procedura accelerata di esame della richiesta di protezione internazionale.	MOI Decree 5 August 2019	https://bit.ly/3fzKFlY

Ministry of Interior Circular no. 10380 of 18 January 2019 "Decree Law 113/2018 implemented by Law 132/2018, applicable profiles"	Circolare del Ministero dell'Interno del 18 gennaio 2019, n. 10380 "Decreto Legge 113/2018, convertito con modificazioni dalla legge 132/2018, profili applicativi"	Circular 10380/2019	https://bit.ly/2VGH7UE (IT)
Ministry of 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.*	Ministero Degli Affari Esteri e della Cooperazione Internazionale, *4 Ottobre 2019, Individuazione dei Paesi di origine sicuri, ai sensi dell'articolo 2-bis del decreto legislativo 28 gennaio 2008, n. 25, G.U. 7 ottobre 2019 n. 235.*	Ministry of Foreign Affairs Decree 4 October 2019	https://bit.ly/2yv5PB3
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	https://bit.ly/3dweqlt
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	https://bit.ly/3cgmQ0b
Ministry Of Interior Department of Civil Liberties and Immigration, Circular n. 8560 16 October 2019, implementation of the accelerated procedure ruled by Article 28 bis Procedure Decree	Circolare del Ministero dell'Interno, Dipartimento delle Dipartimento Libertà Civili e Immigrazione n. 8560 del 16 ottobre 2019, attuazione delle procedure accelerate ex art. 28 bis d.lgs 28 gennaio 2008, n. 25	MOI Circular 16 October 2019	https://bit.ly/2WbOvtI
MoI 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	https://bit.ly/2YK3LQ1
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)	MoI Decree 18 November 2019	https://bit.ly/35FVtud

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 forrze armate russe.	MoI 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	https://bit.ly/3LH2VJ0
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	https://bit.ly/38Wxyfw

Overview of main changes since the previous report update

The previous report update was published in **May 2023**.

International protection

- **State of emergency**: The Government extended the state of emergency as a consequence of the exceptional increase in the numbers of third country nationals reaching Italy via the Mediterranean migratory routes from October 2023 to April 2024 and on 10 April 2024 it announced a further six-months extension.

Asylum procedure

- **Key asylum statistics**: In 2023, 136,826 asylum requests were registered in Italy, almost doubled compared to 77,200 in 2022[1] and 60,772 were the first instance decisions issued on asylum applications (compared to 53,060 in 2022).[2] Of these 4,877 (8%) were decisions granting a refugee status, 6,244 a subsidiary protection (10%) and 11,152 (19%) of national protection (*protezione speciale*). Overall, the recognition rate stood at 37%, a decrease compared to 2022 when it was 47%. At the eastern border between Italy and Slovenia, informal readmissions were drastically reduced but border controls were reintroduced according to art. 28 Regulation 2016/399 (Border Schengen Code).[3] The Ministry of Interior announced that, thanks to the border controls, police had intercepted the irregular arrival of 1,600 people, made 76 arrests and denied entry to almost 900 people.[4]

- **Access to the asylum procedure**: Reports from civil society and NGOs confirm that difficulties in accessing the asylum procedure – in particular for those reaching Italy by land - persisted in 2023,[5] and highlighted that illegitimate requirements that hindered the possibility of registering asylum applications were often, such as the request to communicate an official address or the possession of the passport.[6]

- **Safe countries list**: By Ministerial Decree of 7 May 2024, the list of safe countries has been expanded to include additional countries: Bangladesh, Cameroon, Colombia, Egypt, Peru and Sri Lanka.[7]

- **Protocol between Italy and Albania**: On 6 November 2023, the "Protocol between the Government of the Republic of Italy and the Council of Ministers of the Republic of Albania on Strengthening Cooperation in Migration Matters"[8] was signed in Rome. The Italian Parliament ratified the Protocol through Law 14 of 21 February 2024.[9]

1 Eurostat, Final decisions on asylum applications, available at: bit.ly/41jIZ7A.
2 Eurostat, First instance decisions on asylum applications by type of decision, available at: bit.ly/3MUJwZ4.
3 For a more detailed analysis of the reintroduction of border controls at the Italo-Slovenian border, see ASGI Medea, 'Schengen Area: From Free Movement Zone to Labyrinth', 20 November 2023, available at: https://bit.ly/42UYcNH.
4 Ministry of Interior, available at the Government webpage: https://bit.ly/3TtmsDK.
5 See the report "Attendere Prego", 8 April 2024, gli ostacoli al riconoscimento della protezione internazionale in Italia, from ASGI, International Rescue Committee Italy (IRC) Le Carbet, Mutuo Soccorso Milano, Naga ASGI and Intersos, available at https://acesse.dev/afrI0.
6 See ASGI " Mappatura delle prassi illegittime delle questure italiane Lo studio pilota di ASGI" report published on 15 April 2024, available in Italian at https://encr.pw/nu9AJ.
7 Ministry of Foreign Affairs and International Cooperation Decree, 7 May 2024, available at https://acesse.dev/8L1OU.
8 The full text of the Protocol is available in Italian at: https://bit.ly/3uGnzq5. For a comprehensive analysis of the protocol, see CEPS, *The 2023 Italy-Albania Protocol on Extraterritorial Migration Management - A worst practice in migration and asylum policies*, 1 December 2023, available at https://bit.ly/3wrPL0p.
9 Senato della Repubblica, Giovedì 15 Febbraio 2024 - 159ª Seduta pubblica, February 15 2024, available in Italian at: https://bit.ly/3IclK7o.

- **Dublin**: In 2023, 35,563 requests (including both take charge and take back requests) were received in the incoming procedure, which marked a significant increase when compared to the 27,928 incoming requests Italy received in 2022. Regarding the outgoing procedure, there were 6,530 total requests, also considerably higher than in 2022 when 5,315 requests were sent. The suspension of Dublin transfers due to the state of emergency continued throughout the year. However, 61 incoming transfers were realised. Out of these, just 41 incoming transfers were realised based on family criteria, definitely lower compared to the 153 incoming transfers realised in 2022.[10]According to a report published by the Ministry of Labour,[11] in 2023, 21 incoming requests involving minors were accepted. Transfers in the outgoing procedure were only 31, half compared to 2022 when they were 65, and significantly less than the 431 realised in 2020, and 579 in 2019. Out of those, in 2023, 5 took place for family reunifications towards other States. Responding to the FOIA request, the Ministry of Interior stated that, in 2023, the discretionary clause provided by Article 17 of the Dublin Regulation was applied 5 times.[12]

Reception conditions

- **Accommodation**: At the end of 2023, the total number of asylum seekers and beneficiaries of international protection accommodated was 139,388. In May 2023, Law 50/2023, which converted Decree Law 20/2023, came into force. Among the many changes contained in the measure, asylum seekers have been excluded from the possibility to access the SAI system. 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 resettlement or private sponsored humanitarian admission programs). Moreover, Law Decree No. 20/2023[13] excluded the obligation to provide psychological assistance services, Italian language courses and legal and territorial orientation services in favour of asylum seekers accommodated in first reception centers, CAS and temporary centers. Law 50/2023 also introduced a new typology of "provisional" centres where only food, clothing, health care and linguistic-cultural mediation are provided [14]

Detention of asylum seekers

- **Detention conditions**: On 19 October 2023, in the cases A.B. v. Italy, A.M. v. Italy and A. S. v. Italy, the European Court of Human Rights (ECtHR) once again recognized violations of Article 3 (prohibition of inhuman and degrading treatment) and Article 5 (right to liberty and security) of the European Convention on Human Rights and condemned Italy in relation to the detention conditions suffered by a number of foreign nationals at the Lampedusa Hotspot over a period of time between 2017 and 2019.
  On 16 November 2023, in the case A.E. and Others v. Italy, ordered compensation of €27,000 against four Sudanese nationals who, in the summer of 2016, were forcibly transferred from Ventimiglia to hotspots in southern Italy and in some cases, transferred to CPRSs and then returned to their country of origin. The Court found that they had been abused and deprived of their liberty.

- **Information provision**: The decision n. 32070/2023, 20 November 2023 of the Supreme Court of Cassation stated the right to complete and effective information on access to the asylum application from the first contact with the border police, considering insufficient and/or irrelevant, for the purpose of proper information on this right, the information contained in the so-called "foglio

10 Response of the Dublin Unit to the public access information request sent by ASGI.
11 Ministry of Labour, *Monitoring six months report on unaccompanied foreign minors*, 31 December 2023, available at: https://bit.ly/4bM9XKD and Ministry of Labour, *Monitoring six months report on unaccompanied foreign minors*, 30 June 2023, available at: http://bit.ly/49nN2na.
12 Response of 24 February 2024 of the Dublin Unit to the public access information request sent by ASGI. The answer does not specify more.
13 Article 6-ter of Law Decree No. 20/2023.
14 Article 11 (2 bis Legislative Decree No. 142/2015.

notizie" and the consequent illegitimacy of the resulting decree of refoulement and detention order at CPR. Subsequent decisions of the Supreme Court have confirmed this principle (Civil Court of Cassation, decision No. 5797/2024, March 5, 2024; No. 10875/2024, April 23, 2024).

- **Grounds for detention**: L. 162/2023 increased the duration of pre-removal detention at CPR to 18 months: this period provides for the validation of detention for 3 months, which can be subsequently extended every 90 days, up to a maximum of 18 months.

Content of international protection

- **SAI network**: On 28 November 2023, the SAI network comprised 914 projects, for a total of 37,920 places financed, of which 31,155 places for ordinary beneficiaries, 6,006 places for unaccompanied minors and 759 places for people living with mental health conditions or physical disability. 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 Italy.[15] As of November 2023, out of the total places financed, 2,906 were not occupied.[16]

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**: In 2023, 164,070 permits for temporary protection were issued.

- **Scope of temporary protection**: The scope of TPD is not restricted compared to the Council Decision.

- **Documentary evidence**: People fleeing Ukraine are still required to show documentary evidence that they left the country after 24 February 2022 to access temporary protection. The main issues concerning documentary evidence were still those related to the proof of having left Ukraine after 24 February 2022 (mainly by passport stamps).

- **Information provision**: On national territory and depending on the region or municipality, some organisations continued to provide information to people fleeing from Ukraine. The "Blue Dots" information points at the borders are no longer in activity.

Content of temporary protection

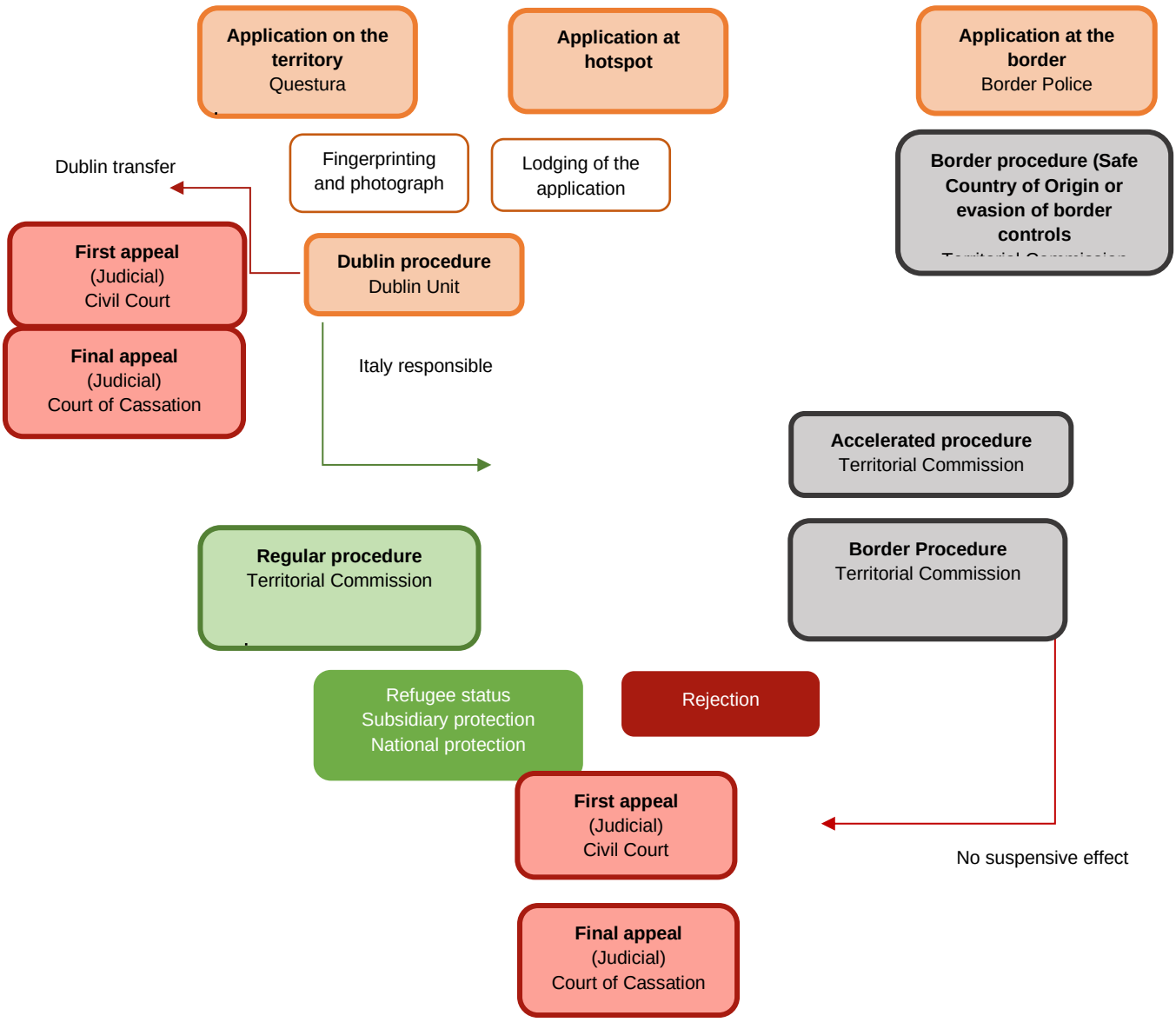
- **Residence permit**: the validity of all the permits for temporary protection has been extended until 31 December 2024. These permits are now convertible into work permits.

15 See I numeri del SAI, November 2023, at: https://acesse.dev/IWeH3.
16 See I numeri del SAI, November February 28th 2023, at: https://www.retesai.it/i-numeri-dello-sprar/; https://acesse.dev/IWeH3.

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:	☒ Yes	☐ No
▪ Prioritised examination:[17]	☒ Yes	☐ No
▪ Fast-track processing:[18]	☐ Yes	☒ No
❖ Dublin procedure:	☒ Yes	☐ No
❖ Admissibility procedure:	☐ Yes	☒ No
❖ Border procedure:	☒ Yes	☐ No
❖ Accelerated procedure:[19]	☒ Yes	☐ No
❖ Other:	☒ Yes	☐ No

Are any of the procedures that are foreseen in the law, not being applied in practice? ☐ Yes ☐ No

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.[20] 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 ❖ At the border ❖ On the territory	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

17 For applications likely to be well-founded or made by vulnerable applicants.

18 Accelerating the processing of specific caseloads as part of the regular procedure, without reducing procedural guarantees.

19 Entailing lower procedural safeguards, whether labelled as "accelerated procedure" in national law or not.

20 Article 28-bis(1-ter) Procedure Decree, as amended by Decree Law 113/2018 and by DL 20/2023 converted by L 50/2023.

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	☒ Yes ☐ 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 of asylum, under the Ministry of Interior. The Territorial Commissions are established under the responsibility of Prefectures.[21] 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[22] 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.[23] As of December 2023 there were 20 Territorial Commissions and 21 sub-Commissions across Italy.[24]

As amended by LD 220/2017, each Territorial Commission is composed at least by 6 members, in compliance with gender balance. These include:[25]

- 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.[26]

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.[27]

Before the appointment of the members of the Territorial Commissions, the absence of conflict of interests must be evaluated.[28] For the President and the UNHCR representative, one or more substitutes are appointed. The assignment is valid for 3 years, renewable.[29]

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.[30] Under the Procedure Decree, the decision on the merits of the asylum claim

21 Article 4(1) Procedure Decree, as amended by LD 220/2017.
22 Article 4(2) Procedure Decree.
23 Article 4(2-bis) Procedure Decree.
24 Ministero dell'Interno, Dipartimento per le liberta civili e l'immigrazione, Commissione Nazionale per il diritto di asilo, available in Italian at: https://bit.ly/3iajZuc.
25 Article 4(3) Procedure Decree, as amended by LD 220/2017.
26 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.
27 Article 4(3) Procedure Decree, as amended by LD 220/2017.
28 *Ibid*.
29 *Ibid*.
30 *Ibid*.

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.[31]

The CNDA has adopted a Code of Conduct for the members of the Territorial Commissions, the interpreters and the personnel supporting them.[32] The CNDA not only coordinates and provides guidance to the Territorial Commissions in carrying out their tasks, but is also responsible for the revocation and cessation of international protection.[33]

These bodies should be independent in taking individual decisions on asylum applications but, being part of the Department of Civil Liberties and Immigration of the Ministry of Interior, in various cases, it was reported they received instructions from the Ministry of Interior. Some examples are the instructions given for the grounds of inadmissibility, manifestly unfoundedness, use of border procedures.[34]

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 EUAA 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.[35] 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 2023, the support offered by the European Union Agency for Asylum (EUAA)[36] 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.[37] Throughout 2023, the EUAA deployed 323 experts in Italy,[38] mostly external experts (182) and temporary agency workers (127). The majority of the experts deployed were reception experts (56), reception expert officers (51), asylum second instance support experts (37), asylum registration experts (35), operations assistants (21), vulnerability expert officers (17), followed by other support staff (*e.g.*, asylum information provision expert officers, asylum and reception legal experts, administration assistants, *etc*.).[39]

As of 19 December 2023, there were 258 EUAA experts present in Italy, mostly reception experts (51), asylum second instance support experts (30) and asylum registration experts (27).[40]

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31 Article 4(4) Procedure Decree.
32 Article 5(1-ter) Procedure Decree.
33 Articles 13 and 14 PD 21/2015.
34 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 .
35 Article 15 Procedure Decree.
36 It should be noted that Regulation 2021/2023 entered into force on 19 January 2022, transforming EASO into the EU Agency for Asylum (EUAA).
37 EUAA, *Operational Plan 2022-2024 agreed by the European Union Agency for Asylum and Italy*, May 2022, available at: https://bit.ly/3yqqMbs.
38 Out of 323 experts deployed in Italy in 2023, 35 were deployed under two or more types of contracts. In addition, EUAA personnel numbers do not include deployed interpreters by the EUAA in support of asylum and reception activities.
39 Information provided by the EUAA, 26 February 2024. 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 2023.
40 Information provided by the EUAA, 26 February 2024.

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.[41] 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.[42]

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.[43] 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.[44] The asylum seeker is then notified by the Questura of the interview date at the Territorial Commission.

Regular procedure

According to the Procedure Decree,[45] 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;

41 Article 3(1) PD 21/2015.
42 Article 3(2) PD 21/2015.
43 Art. 26 Procedure Decree.
44 Article 4 Procedure Decree, as amended by LD 220/2017.
45 Article 27 Procedure Decree.

(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.[46] 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.

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.[47]

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.[48]

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 coming from safe countries of origin making the application at the border or transit areas.[49]

People subject to the border procedure rescued by Italian ships in international waters, are also likely to be subject in the second half of 2024 to the procedure set out by the agreement between Italy and Albania according to which they could be directly transferred to the hotspot and first accommodation centers under Italian jurisdiction to be created in Albania. [50]

Border and transit areas for the accelerated examination of asylum applications were identified by ministerial decree of 5 August 2019,[51] 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.[52] By decree of the Ministry of Foreign Affairs and International Cooperation of 17

46 Article 27 Procedure Decree.
47 Article 28(1) Procedure Decree.
48 Article 28-bis(2) (b)) Procedure Decree, as amended by Decree Law 130/2020 and L 173/2020
49 Article 28 bis (b bis) introduced by L. 50/2023.
50 Article 3(2) L. 14/2024 ratifying the agreement taken by the Italian and Albanian Government, available at bit.ly/44vBGfr.
51 Available at: https://bit.ly/3CJxWcm.
52 Inter-ministerial Decree of 9 March 2022, published on GU n. 59 of 11.3.2022, Article 1, available at: https://bit.ly/3w3ViHW.

March 2023, published in the Official Gazette on 25 March 2023,[53] 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.

By Ministerial Decree of 7 May 2024, the list of safe countries has been expanded to include additional countries: Bangladesh, Cameroon, Colombia, Egypt, Peru and Sri Lanka.[54]

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,[55] and they can be recognized the right to stay pending the appeal only upon request to the court.

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,[56] and 6 months before the Court of Cassation, the actual duration largely exceeds these terms, in some cases even tenfold.[57]

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 does not have 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.

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

54 Ministry of Foreign Affairs and International Cooperation Decree, 7 May 2024, available at https://acesse.dev/8L1OU.

55 Article 19(3) LD 150/2011.

56 Article 35 bis (13) (14) (15) Procedure Decree

57 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.

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
3. Who is responsible for border monitoring? ☐ National authorities ☐ NGOs ☐ Other
4. How often is border monitoring carried out? ☐ Frequently ☐ Rarely ☐ Never

In 2023, according to MOI data,[58] 157,652 people disembarked in Italy, 52,521 more than the previous year, marking a 33,31% increase in the number of disembarkations. Around 97,306 came from Tunisia, and 52,034 from Libya[59], showing a trend that highlights a significant change from 2022 in relation to the departure sites. UNHCR estimates that 192,651 people arrived in Italy through the different external and internal borders.[60] More than 12,000 people on the move were estimated entering Italy from the internal border between Italy and Slovenia.[61]

1.1. Arrivals by sea

As highlighted, in 2023, 157,652 persons disembarked in Italy,[62] with a substantial increase compared to 2022 (105,129) and an even more significant increase when compared to 2021 (67,477) and 2020 (34,154). The number of POM disembarked is the third highest since disembarkation data is recorded, higher than the number of sea arrivals in 2015 (153,842). In 2023, there were a total of 135,820 asylum applications.[63] The highest number of monthly sea arrivals was recorded in August, when 25,673 persons reached the Italian coasts.[64]

The number of unaccompanied minors (Minori Stranieri Non Accompagnati - MSNA) reached 17,319, compared to 14,044 in 2022.[65]

The main nationality of people disembarked was Guinean (18,211 in total), which represented a change compared to 2021, when most of the people disembarked were Egyptian. The number of Guinean nationals registered as asylum seekers in 2023 was 3,385, compared to the 23,450 applicants from Bangladesh, the first nationality of asylum applicants (among them “only” 12,169 arrived through a disembarkation procedure).

Until November 2023, 63% of sea crossings departed from Tunisia (95,861 persons), followed by 32% from Libya (49,111 persons), 4% from Türkiye (6,683 persons), and less than 1% from Algeria (535 persons), Lebanon (214 persons).[66] It must be highlighted that in the second half of the year, Libya became the first country of departures, over Tunisia.[67] The IOM Missing Migrants Project collected evidence of at least 2,500 persons dying along the Central Mediterranean Route throughout the past year.[68]

58 Cfr Ministery of Interior, Cruscotto statistico giornaliero available at: https://bit.ly/49F29sh.
59 See UNHCR, Operational data portal, available at https://bit.ly/3wiHwDI.
60 See UNHCR, Operational data portal, *Fact Sheet Italy/December 2023*, available at: https://bit.ly/3usXryY.
61 Ansa, Migranti: prefetto Trieste, si intensificano arrivi in Fvg, 28 February 2023, available at: bit.ly/41VNWmk.
62 Ministery of Interior, *Cruscotto statistico giornaliero*, availbale in Italian at: https://bit.ly/3HdUq7M.
63 Eurostat data, available at: https://bit.ly/41BaDfZ.
64 See UNHCR, Operational data portal, *Fact Sheet Italy/December 2023*, available at: https://bit.ly/3usXryY.
65 Cfr Ministery of Interior, Cruscotto statistico giornaliero availbale at: https://bit.ly/3HdUq7M.
66 UNHCR, Operational Data Portal, *Italy Sea Arrivals Dashboard November 2023*, available at: https://bit.ly/4bMDgNd.
67 UNHCR, Operational Data Portal , ‘Mediterranean situation – Italy’, available at: http://bit.ly/3wWvsFq.
68 IOM, Missing Migrants Project, available at: https://bit.ly/3I50Fvv.

Italian authorities classify arrivals of migrants in a way that lacks transparency. As explained by Altreconomia,[69] the Italian authorities are mostly considering rescue operations as “law enforcement” interceptions, disembarking most of rescued people on the island of Lampedusa to increase the perception of a chronic emergency.

Furthermore, the approval of Decree Law 1/2023 converted into law 15/2023 had a major impact on the effectiveness of SAR operations conducted by NGOs: as of July 2023, only 4.2% of rescue operations had been conducted by the civil society since January, while 68% had been operated by the Public authority. If compared to 2022, the decrease of the capacity of SAR NGO is quite evident (they had conducted 15,2% of total operations).[70] By the end of 2023, only 8904 people have been rescued by SAR NGOs, less than the 6% of the total number[71]. Once more, this data highlights how misguided the theories attributing a “pull factor” role to NGO vessels for what concerns departures from Libya are.

1.1.1 State rescue operations and shipwreck incidents

On 31 March 2020, the Sophia Operation, started in 2015, definitively ended 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, vessels used for the purpose of rescuing people at sea in one of the main migratory routes no longer operate.[72] 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.[73] 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.[74]

On 26 February 2023, nearby the Calabrian coast - precisely in Steccato di Cutro -, a tragic shipwreck took place.[75] A boat originally departing from Izmir in Türkiye got stranded at a hundred fifty metres from the coast after a five-day journey. The official number of deaths amounted to 94, including 35 minors; survivors were only 80, and around 15 people were missing.[76] 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.[77] Around 2am, 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

[69] Altreconomia, “I dati che raccontano la guerra ai soccorsi nell’anno nero della strage di Cutro”, February 21 2024, available in Italian at https://bit.ly/4ak0glk;

[70] See SKY TG24, ‘Migranti e sbarchi, qual è il ruolo e il peso delle Ong sul totale dei salvataggi’, 27 September 2023, available in Italian at: https://bit.ly/3T2zWWS.

[71] Altreconomia, “I dati che raccontano la guerra ai soccorsi nell’anno nero della strage di Cutro”, February 21 2024, available in Italian at https://bit.ly/4ak0glk

[72] Chamber of Deputies, ‘Emergenza COVID-19: le misure in materia di immigrazione’, 11 March 2021, available at: https://bit.ly/2RsUUAA.

[73] 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.

[74] Council of Europe Commissioner for Human Rights, *A distress call for human rights: The widening gap in migrant protection in the Mediterranean*, March 2021, available at: https://bit.ly/2QX5ikh.

[75] Al Jazeera, ‘Mediterranean shipwreck: Stories of tragedy emerge after 62 drown’, 27 February 2023, available at: http://bit.ly/3LBRlCw and LaStampa, ‘Naufragio di Cutro, la ricostruzione ora per ora di quello che è accaduto la notte del 26 febbraio’, 17 March 2023, available in Italian at: http://bit.ly/3n5QGia.

[76] LaStampa, ‘Cutro due mesi dopo: inchieste congelate e sette cadaveri ancora senza nome’, 5 May 2023, available in Italian at: https://bit.ly/3MTFcsP.

[77] 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.

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 Ministry 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 the public responsibilities of the authorities involved in the management of the operation.[78] Per recent press articles,[79] six law enforcement officials will be charged for failure to assist persons in danger and culpable disaster with different levels of responsibility, which could lead to sentences of up to 12 years in prison. Furthermore, a report prepared by the Fundamental Rights Office, which monitors the activities of the European Border Agency, published by Euractiv,[80] points out that "the Italian authorities present in the Frontex monitoring room in Warsaw (an official from the coast guard and one from the Guardia di Finanza) considered as 'not of particular interest' the report in which the boat on which the migrants were travelling was spotted (hours before the shipwreck)." This would contradict the government stance that they did not receive any alerts from Frontex.[81]

On the other hand, the prosecution of the alleged boat drivers has been carried out by the relevant prosecutors' offices. The Crotone prosecutor's office indicted four people for the crimes of aiding and abetting illegal immigration and death as a result of crime. On 8 February 2024, the judge for the preliminary hearing, following an abbreviated trial, sentenced one of the 4 boatmen to 20 years and a 3 million fine.[82] The Italian government and the Calabria Region also joined the trial as civil parties.[83]

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 on the procedural errors in the management of the situation by Public authorities and on the unlawful and inhumane treatment to which survivors were subjected both in term of reception conditions and access to legal information.[84]

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 286, including at least 60 minors, died at sea.[85] Despite

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78 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.

79 La Repubblica, 'Naufragio di Cutro, ufficiali a processo per mancato soccorso. Finanza e Capitaneria nel mirino', 15 February 2024, available in Italian at: https://bit.ly/3uDv6pC; L'Unità, 'Cosa è successo a Cutro e perché fu strage di Stato: chi pagherà per il mancato salvataggio', 16 February 2024, available at https://bit.ly/3IaWe28.

80 Euractiv, 'Cutro: Italian authorities deemed migrant boat 'not of interest' before shipwreck', 30 January 2024, available at: https://bit.ly/49x4yFk.

81 ANSA, 'Naufragio migranti, Meloni: "Nessun allarme da Frontex. Io non scappo, ora Cdm a Cutro"', 5 March 2023, available in Italian at: https://bit.ly/3OO1aOi.

82 La Repubblica, 'Cutro, prima sentenza per il naufragio: 20 anni e 3 milioni di multa allo scafista', 8 February 2024, available in Italina at: https://bit.ly/3T65YBo.

83 Il Fatto Quotidiano, 'Strage di migranti a Cutro, il governo si costituirà parte civile nei processi agli scafisti', 28 November 2023, available in Italian at: https://bit.ly/3uwY1M6.

84 ASGI, 'Naufragio di Cutro, ASGI: ritardi nell'attivazione dell'accoglienza per i superstiti', 11 March 2023, available in Italian at: https://bit.ly/3JsByTM.

85 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.

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 SAR incident was taking place in Maltese SAR zone). 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. A criminal procedure against the General Commander for the port Authority and the Chief of the branch of CINCNAV control room, indicted for refusal of acts of duty (art. 328 penal code) and involuntary manslaughter (art. 589 penal code), was ongoing. On 15 December 2022, the Court of Rome took a final decision in this case. The Court dismissed the claim on the ground that it was statute barred, even if it recognised the criminal responsibilities of the indicted, highlighting that the attempt to avoid the obligation of coordination and assistance to search and rescue operations constitutes a reason for criminal accountability.[86] 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.[87]

1.1.2 Hindrances in NGO search and rescue

The initial "closure of ports" policy

The Decree Law 130/2020 repealed the law provision introduced by Decree 53/2019[88] 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 SAR activities,[89] thus further increasing the risk of criminalisation of actors involved in these activities. 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/docking 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 or limit the ships' transit. In some cases, they have overlapping competences.[90]

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 legal experts, 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 the authorities of a country that has to be considered as an unsafe destination cannot be considered to comply with the aforementioned rules, which could be the case when the Libyan authority is indicated as the competent authority.[91]

In the Gregoretti case, involving government denial of disembarkation,[92] the former Minister of Interior, Matteo Salvini, faced a criminal trial, but in May 2021 the Court of Catania decided not to indict him for

86 ASGI, 'Strage di bambini dell'11 ottobre 2013: le responsabilità e la cronaca della tragedia nella sentenza sul naufragio', 5 January 2023, available in Italian at: https://bit.ly/3WRnzeV.

87 OHCHR, 'Italy failed to rescue more than 200 migrants, UN Committee finds', 21 January 2021, available at: https://bit.ly/3JsyqZu.

88 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.

89 Article 1 (2) DL 130/2020, converted with amendments by L 173/2020.

90 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.

91 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.

92 By the end of July 2019, the 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

kidnapping.[93] 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 ongoing at the moment of writing.[94] In a hearing, confirmed having denied disembarkation and thus forcibly maintained 147 people aboard the ship.[95]

Search and seizures operations re. NGO rescue boats

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 authorisation 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 sanitisation of the ship. After sanitisation, the Port Authority of Palermo, carried out an inspection as "port state control" (PSC) for unspecified overriding factors recognised 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 European, international or domestic law establish specific requirements regarding the criteria to classify private ships 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.[96]

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.[97]

The Administrative Court decision however was declared void by the High Administrative Court of Sicily,[98] following the appeal submitted by the Minister of Interior.[99]

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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).

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

94 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; Androkonos, 'Open Arms, rinviata al 4 marzo udienza processo a Salvini', 21 January 2022, available in Italian at: https://bit.ly/3CUigmJ.

95 Fanpage.it, 'La difesa di Salvini al processo Open Arms: "Mie scelte condivise dal governo, poi Conte cambiò idea"', January 12, 2024, available in Italian at https://bit.ly/49G0VNh.

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

97 Administrative Court of Sicily, interim decision no. 145 of 2 March 2021.

98 Consiglio per la giustizia Ammnistrativa della Regione Siciliana is the appeal body exercising, only for Sicily, the same functions as the Council of State.

99 LaStampa, "La Sea Watch 4 è nel porto di Trapani di nuovo in fermo amministrativo", May 8 2021, available in Italian at bit.ly/3J1VE7k;

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 Mediterranee 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.[100]

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.[101] 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.[102]

Reinstatement of the "closed ports" policy

By the end of 2022, after the appointment of the new government, the "closed ports" policy was reinstated. On 24 October 2022, the new Ministry of Interior, Matteo Piantedosi, issued a Directive (prot. 0070326)[103] 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.[104] 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.[105] In particular, European institutions raised their concerns[106] and appeals was submitted to local Courts[107] in order to get a decision of illegitimacy with regards to the selective approach introduced by the Directive.

2023 Law decree and law re. NGO search and rescue and disembarkation on Italian territory

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[108] 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

100 Altreconomia, 'Sbarchi, i numeri non tornano. E per il Viminale i naufraghi diventano "persone scortate"', 25 March 2022, available at: https://bit.ly/3NsufwE.

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

102 Il Fatto quotidiano, 'Migranti, archiviata dal gip l'indagine sulla Mare Jonio che salvò 30 migranti', 28 January 2022, available at: https://bit.ly/3t9NxyI.

103 Ministero dell'Interno, 'Direttiva Piantedosi su due navi Ong in navigazione nel Mediterraneo', 25 October 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.

104 Guardian, 'Giorgia Meloni faces first migration test from two NGO rescue boats', 26 October 2022, available at: http://bit.ly/3n5I63e.

105 European Parliament Briefing, *Search and rescue efforts for Mediterranean migrants*, 24 October 2022, available at: https://bit.ly/40lxPOq.

106 Infomigrants, 'EU Parliament chief: Don't forget solidarity toward migrants', 1 November 2022, available at https://bit.ly/40lURVJ.

107 AlJazeera, 'Rescue charity to take Italy to court over migrant boats standoff', 7 November 2022, available at http://bit.ly/3YZw6gI.

108 For a legal analysis of the law, see ASGI, 'Una prima lettura di ASGI del Decreto Legge 1/2023 convertito in Legge', 16 March 2023, available in Italian at: https://bit.ly/3n5gwmJ.

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-14/21 and C-15/21,[109] 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

[109] CJEU, Joined Cases C-14/21 and C-15/21, *Sea Watch eV v Ministero delle Infrastrutture e dei Trasporti and Others*, 1 August 2022, available at: http://bit.ly/3Xp4QaM.

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.

Incidents related to Law 15/2023

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.[110]

- 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".[111]

- On 6 February 2023, the Civil Court of Catania ruled on an appeal lodged by Humanity 1,[112] 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.

- On 2 June 2023, Italian authorities ordered the administrative detention of the ship Mare-Go (in a situation similar to that previously explained regarding the ship Louise Michel) and the Sea-Eye4. In the first case, the Mare-Go ship, after completing multiple rescues, headed to Lampedusa (instead of the assigned port of Trapani) to proceed with disembarkation operations, contravening the instructions given by the Coordination Centre. As a result, a 20-day administrative detention and an administrative fine were ordered. The same measures were also taken against the Sea-Eye4 vessel that arrived at the assigned port of Ortona after carrying out a double rescue, despite the request to return to port at the conclusion of the first operation.[113]

- On 14 June and 28 August, Aurora SAR vessel was twice affected by similar provisions. In both situations the decision was taken due to non-compliance with the disembarkation orders (passengers were again disembarked in Lampedusa, while the assigned port was Trapani).[114] Two appeals were filed before the Civil Court of Palermo and are still pending. The second appeal was moved, due to competence reasons, to the Agrigento Court.

- On 22 August, Open Arms and Sea-Eye4 were both struck by a similar detention order because of delays in reaching the assigned port (Open Arms to Marina di Carrara) or delays in asking for a port of disembarkation (Sea-Eye4 to Salerno). Both organisations filed complaints against the administrative measures.

- For similar reasons, Open Arms received a new sanction on 4 October after reaching the port of Marina di Carrara. Also in October,[115] Mare Jonio and Sea-Eye4 both received the same measure on different grounds: the Mare Jonio rescue vessel because of a delay in the request of a port of disembarkation, while Sea-Eye4 for "having contributed to create a dangerous situation on board

110 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.

111 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.

112 ASGI, 'Sbarco e domanda di asilo devono essere garantiti senza distinzioni. Commento all'ordinanza su SOS Humanity', 14 February 2023, available in Italian at: https://bit.ly/40T6G6M.

113 ANSA, 'Due navi Ong disubbidiscono al decreto migranti, scattano i fermi', 2 June 2023, available in Italian at: https://bit.ly/49kTJ9N.

114 TG La7, 'Migranti, fermo amministrativo di 20 giorni per la nave di Sea Watch', 21 August 2023, available in Italian at: https://bit.ly/3wztxcH.

115 SkyTG24, 'Migranti, tre navi Ong fermate per 20 giorni. Monta polemica sui soccorsi in mare', 23 August 2023, available in Italian at: https://bit.ly/3UPomPX.

or preventing the ship from promptly reaching the port of disembarkation". The disembarkation took place in Vibo Valentia on 30 October after a very complicated and tragic SAR operation.[116] On the same ground, on 2 December 2023, Humanity1 received a similar administrative measure after reaching Crotone port, as did the Ocean Viking twice, on 15 November and 30 December.

- On 21 January 2024, Open Arms, after the conclusion of a Search and Rescue operation in Crotone received the same administrative measures[117] on the basis of non-compliance with instructions given by the so-called Libyan Coastguard.

- Lastly, on 9 February 2024, the Ocean Viking received the same measure (administrative custody for 20 days plus an administrative fine) and decided to appeal against the administrative decision which was based on allegedly contributing 'to creating any dangerous situation on board or preventing the ship from promptly reaching the port of disembarkation' as provided by art 1 paragraph 2bis letter f). With an interim measure decision of 20 February 2024, the Civil Court of Brindisi 'suspended the effectiveness of the administrative detention and custody order of the vessel Ocean Viking'[118] on the basis of "the well-foundedness of the claim regarding the lack of competence of the head of the Italian administrative authority in investing the case; as well as with regard to the non-existence on the merits of the prerequisites for the application of Art. 1, paragraph 2 sexies, of d.l. October 21, 2022, no. 130"[119] and on the basis of the risk for SOS Mediterranée to be "unable to exercise its inviolable rights" such as 'the inviolable right to the freedom of expression of thought (art. 21 Italian Constitution), the freedom of association (art. 18) which could be affected by the denial to continue its rescue activities at sea'.

1.1.3 Relations with third countries

1.1.3.1 Tunisia

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 the North African country in border control activities and in fighting migrant trafficking.[120] 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).[121]

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[122]" 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

116 Sea-Eye, 'PREGNANT WOMAN FIGHTS FOR HER LIFE ON SEA-EYE 4 – ITALY SENDS NO HELP', 27 October 2023, available at: https://bit.ly/4bE5N7o.

117 SkyTG24, 'Migranti, fermo amministrativo per la Open Arms a Crotone', 21 January 2024, available in Italian at: https://bit.ly/3UM9VME.

118 La Repubblica, 'Ong, giudice di Brindisi sospende il fermo amministrativo dell'Ocean Viking: 'Violato il diritto di esercitare attività di soccorso in mare', 21 February 2024, available in Italian at: https://bit.ly/42Mqf1M.

119 Translation by the authors.

120 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.

121 See ASGI, 'Sempre più politiche securitarie: lo studio sui rimpatri in Tunisia', 30 March 2022, available in Italian at: https://bit.ly/3yvpnS9.

122 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.

boats.[123] On July 16 2023, the European Union signed a Memorandum of Understanding with Tunisia.[124] Migration management is one of the five pillars of the agreement: the EU pledges to provide an additional EUR 100 million to Tunisia to strengthen border management, search and rescue operations at sea, and "anti-trafficking" measures to reduce the number of arrivals from the country.[125] Despite the official reasons for the deal including "countering the root causes of migration", the deal mainly risks resulting in preventing those seeking protection from accessing asylum.[126] Despite its approval and the amount of resources deployed, a few weeks after the European Parliament expressed concerns about the effectiveness of the agreement.[127] Euractiv has recently updated on how funds have been allocated with regards to migration management in Tunisia.[128]

1.1.3.2 Libya

Memorandum of Understanding and situation in Libya

On 2 February 2023, the Memorandum of Understanding between Italy and Libya was renewed for the second time after February 2020.[129] 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 through the creation of evacuation programmes from Libya through the UNHCR-managed resettlement mechanism[130] and humanitarian corridors. Recent experience has shown the results of the blockade system, that led to the creation of the Libyan coastguard and its apparatus for managing SAR interventions. This is however not counter-balanced by an effective evacuation mechanisms. The only functioning mechanism available for persons present in Libyia are the voluntary return programmes coordinated by IOM; it should be noted that these programmes areproposed to vulnerable individuals who are not in a position to make a free choice about returning to their countries of origin.[131] In fact, the Libyan 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 fundamental rights violations (see chapter on Detention conditions).[132]

Evidence regarding the dramatic effects of this mechanism and policy has been reported by different institutions such, among others, IOM and UNHCR.[133] From a domestic perspective the Criminal Court of Trapani ruled that the agreement was in contrast with the Italian Constitution and international laws.[134]

123 See Irpi Media, 'Tunisia, il muro della Guardia costiera', available in italian at: http://bit.ly/3xaiQud.

124 European Commission, 'The European Union and Tunisia: political agreement on a comprehensive partnership package', 16 July 2023, available at https://bit.ly/3uM4Kl9.

125 Politico, 'EU finalizes migrant deal with Tunisia', 16 July 2023, available at https://bit.ly/49mmCSI.

126 The big wall - Action Aid, 'Memorandum Ue – Tunisia: l'Unione europea sottoscrive rastrellamenti, deportazioni illegali e violenze contro i migranti', 20 July 2023, available in Italian at: https://bit.ly/4bGoI1r.

127 European Parliament, 'EU-Tunisia Memorandum of Understanding', 11 September 2023, available at: https://bit.ly/3wv1sDj.

128 Euractiv, 'EU-Tunisia Memorandum of Understanding state of play', 25 January 2024, available at: https://bit.ly/3l6kfrq.

129 *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.

130 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.

131 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.

132 OHCHR, *Report of the Independent Fact-Finding Mission on Libya*, 27 March 2023, available at https://bit.ly/3RaqBJQ.

133 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.

134 Criminal Court of Trapani, sentence of 23 May 2019, available in Italian at: https://bit.ly/3dutMHl; 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

The Memorandum was heavily criticised by numerous associations including ASGI,[135] and the Council of Europe Commissioner for Human Rights.[136]

On 9 of December 2022, the Special Representative for Libya of the UN Secretary General, issued a report[137] allegating that "many migrants and refugees continued to endure widespread human rights 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".[138]

Furthermore, on 27 March 2023, the UN Independent Fact-Finding Mission issued a report expressing deep concern about the country's deteriorating human rights situation, highlighting that migrants, in particular, have been targeted and that there is overwhelming evidence that they have been systematically tortured. In particular, the press release[139] underlined that 'there are reasonable grounds to believe migrants were enslaved in official detention centres well as "secret prisons," and that rape as a crime against humanity was committed'.

Italian funding to Libya

Since 2017, the Italian government, through the SIBMILL programme, has provided funding in the context of Libya.[140] For the funding of this programme, Italy planned to spend 44.5 million euros; to date, this has been exceeded, reaching an estimate of 56.5 million, of which 12 million were allocated to the IOM for the development of certain projects. Funds managed directly by Italy were used for support measures for the so-called Libyan Coast Guard, including technical instrumentation and training courses.

The funds for the MRCC come from SIBMILL (Integrated Border Control System in Libya) 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.[141]

Based on the approval of the MOI, 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)[142] to provide Libya technical assistance and

responsible for crimes against humanity. Therefore, the court found that the agreement violates the principle of non-refoulement.

135 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.

136 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.

137 UNMSIL, *Report of the Secretary General*, 9 December 2022, available at: https://bit.ly/3DFSaFh.

138 UN News 'Libya detention centres remain places of violations and abuse', 28 March 2022, available at: http://bit.ly/3lbXCcW.

139 United Nations Human Rights Office of the High Commissioner, 'Libya detention centres remain places of violations and abuse: experts', 27 March 2023, available at: https://bit.ly/3uMus9l.

140 For further details on these previous funding programmes, see AIDA, Country report Italy, available at: https://bit.ly/49lG7tX.

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

142 Analisi difesa, 'Nave Caprera ha sostituito la Capri nel porto di Tripoli', 4 April 2018, available in Italian at: https://bit.ly/2SP6Hag.

training.[143] Nave Capri and Caprera have also coordinated Libyan naval units in the tracking of boats at sea.[144]

With regards to financial support, for the two-year period 2020-2021, the Ministry of Interior had foreseen an additional 1.2 million euros in naval supplies.[145]

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 official purpose is to "monitor" the Libyan "search and rescue" (SAR) area that Italy itself contributed to have established in 2017-2018 and recognised before the International Maritime Organization.

On the other hand, Italy has also provided funding to projects in Libya directly, including to the International Organisation for Migration. On July 2, 2021, the Directorate General for Italians Abroad and Migration Policies (DGIT) of the Ministry of Foreign Affairs and International Cooperation (MAECI) entered into an agreement with the International Organisation for Migration (IOM) whereby it committed to fund an intervention called "Multi-sectoral support for mobile vulnerable populations and communities in Libya" for 4 million euros (for its first phase). Many of the activities to be funded with this are geared towards local community and protection. Special attention is given to support activities to Libyan authorities inside detention centres and in SAR operations, and ultimately – especially in the last phase – engaging more frequently on Assisted Voluntary Return. As of 6 June 2023, EUR 16 million has been allocated and the programme is currently on phase 3, which is focused on AVR, while the second phase, to which EUR 8.5 million was allocated, mainly focused on the condition of the Detention Centres.[146]

Interception at sea, refoulement and following legal actions

The resulting effects of Italy's indirect pushbacks to Libya and the consequences on people suffering inhuman and cruel treatments are now being examined by the European Court of Human Rights in the case *S.S. and others v. Italy* concerning a rescue operation of the Sea Watch ship hindered in November 2017 by the Libyan coastguard through a patrol boat donated by Italy and with the coordination of the Italian MRCC.[147]

From January 2020 to September 2020, at least 9,000 people were tracked down by the Libyan coastguard and brought back to Libya.[148] 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.[149]

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".[150] According to IOM data, from the beginning

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

144 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.

145 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.

146 The Big Wall, 'L'esternalizzazione dei rimpatri dalla Libia in un imbuto umanitario', 9 February 2024, available in Italian at: https://bit.ly/49mpEXm.

147 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.

148 Report of Fondazione Migrantes, Il diritto d'asilo, 2020.

149 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.

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

of 2023 up to 25 November 2023, 15,057 migrants were intercepted at sea and brought back to Libya after attempting to cross the Mediterranean Sea to reach Europe, while 957 died and 1,256 are missing.[151]

"Privatised pushbacks":

- On 18 December 2019, the Global Legal Action Network (GLAN) filed a complaint against Italy with the UN Human Rights Committee in the context of "privatised pushbacks", consisting of requiring commercial ships to return refugees and other persons in need of protection to unsafe locations.[152] However, the complaint was considered inadmissible by the Committee for failure to exhaust domestic remedies in Libya.

- 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 had been handed over to the Libyan Coast Guard by the ship "Vos Triton" and were subsequently taken into detention by the Libyan authorities. The two organisations reiterated that no one should be returned to Libya after being rescued at sea, as under international maritime law, rescued individuals should be disembarked at a place of safety.[153] A case was initially started due to a lack of transparency on a FOIA request submitted by the NGO Sea Watch, who had observed the dynamics of the pullbacks, coordinated by the Italian MRCC, through its aerial assets. Following two grades of administrative procedures, the Council of State confirmed the legality of the denial to access to the document required.[154]At the beginning of 2024, new evidence was handed over to the Italian Public Prosecutor Office in Rome by two Sudanese applicants involved in the Vos Triton pullbacks. The two Sudanese citizens are currently in Sudan and Libya provided the information with the support of ASGI, Comitato Nuovi Desaparecidos, Open Arms, Progetto Diritti, Sea Watch, Mediterranea, Jl Project and Alarm Phone.[155]

- In another case, 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 had intercepted a rubber dinghy with 101 people on board and, having taken on board a Libyan customs officer, the captain 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.[156] The conviction of the ship's captain was confirmed by the Court of Appeal of Naples on 10 November 2022. The Court confirmed the grounds of the first instance decision.[157] On 1 February 2024 the Court of Cassation[158] ruled on the appeal brought by the ship's captain against the decision of the Naples Court of Appeals, upholding the final conviction of the captain of the vessel Asso 28. The Supreme Court, in

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151 IOM, *Libya Maritime update 25 November 2023*, available at: https://bit.ly/49s3hja.

152 Communication to the United Nations Human Rights Committee in the case of SDG against Italy, available at: https://bit.ly/41zjJt7.

153 Available at: https://bit.ly/3F96BBj. See also 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.

154 A reconstruction of the entire Vos Triton affair and the proceedings relating to "state secrets" can be found at the following link: bit.ly/3KDPFGF.

155 L'Unità, 'Stragi di naufraghi e respingimenti illegali, si muovono le Procure: esposto per la deportazione in Libia di 25 migranti', 2 January 2024, available in Italian at: https://bit.ly/4bUybm3.

156 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.

157 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.

158 Judgment No. 4557, full decision available in Italian at https://bit.ly/3UPSJFW.

upholding the convictions on the two charges, reiterated that Libya and the port of Tripoli cannot be considered places of safety given the serious and systematic human rights violations taking place in the country to the detriment of migrants.[159]

1.1.3.3 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 2001, even if it was never ratified by the Italian Parliament.[160] In 2022, readmissions and refoulements were still recorded also towards Albania.[161]

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.[162]

Access to the asylum procedure and to information is very limited, 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.[163] Despite the existence of a bilateral agreement between Italy and Greece, dated 1999, this procedure is adopted also to asylum seekers and minors.

In cases where the person is able to contact the network of NGOs operating at Adriatic ports, they generally 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, they will be held in a police station inside the port, and then taken back to the ferry.

On 7 February 2022, the Adriatic Ports Network sent a new communication to the Committee of Ministers of Europe,[164] 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.[165] 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 behaviour 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

159 Avvenire, 'Cassazione: «La Libia non è un porto sicuro». Reato obbedire ai guardacoste', 16 February 2024, available in Italian at https://bit.ly/4bYYJCG.
160 Available in Italian and Greek at: https://bit.ly/3qHhuVf.
161 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/3IoKGtc.
162 Readmission agreement between Italy and Greece, Article 6.
163 Lighthouse Reports, 'Detained below deck', 18 January 2023, available at: http://bit.ly/3kgpOLp.
164 Available at: https://bit.ly/3KQTUg1.
165 Available at: https://bit.ly/3MMKzHf.

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 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 depending on the individual case, but generally the timing is quite tight and legal counselling is provided.

Through a F.O.I.A request sent to public administrations by Altreconomia, it has been made public that,[166] from 1 January 2022 to 14 November 2022, 1,917 third country nationals received a return order from the Border Police Office at the Adriatic ports cities and that 81 people were informally readmitted to Greece. Among these, 29 Afghan citizens, 15 Iraqi citizens and 11 Albanian citizens.

On 7 July 2023, the same practices that were reported by Lighthouse Reports (e.g, pushbacks at the Adriatic ports, obligation to undress, detention on ferries) were the subject of an important decision adopted by the Court of Rome.[167] The ruling reaffirmed the illegitimacy of the use of informal readmissions that take place at the Adriatic ports because they are adopted without the issuance of an individual measure, because they undermine the right of access to asylum because they lack appropriate information, and because they are adopted without a previous individual assessment of the concrete case. The present case is particularly significant because the applicant was an unaccompanied foreign minor, and an applicant for international protection in Greece, in possession of documentation certifying both of these facts. Nevertheless, the Italian authorities informally readmitted the applicant, forcing him to strip naked and be detained in a ferry compartment for many hours before being returned to the Greek authorities.[168] The decision, in addition to accounting for all the violations indicated, requires the Italian government to take the necessary steps to ensure the applicant's access to Italian territory, suggesting the issuance of a humanitarian visa under Article 25 of EC Regulation 810/2009 (Visa Regulation).

1.1.3.4 The Protocol between Italy and Albania

On 6 November 2023, the "Protocol between the Government of the Republic of Italy and the Council of Ministers of the Republic of Albania on Strengthening Cooperation in Migration Matters"[169] was signed in Rome. The official purpose is to strengthen bilateral cooperation between the states on the management of migratory flows from third countries, through the construction of two centres on Albanian territory under Italian jurisdiction, to which "migrants" who have had been admitted into to border or repatriation procedures will be assigned. The Protocol includes two Annexes, notably one detailing the expenses to be borne by the Italian government for the construction of the centres. The Albanian authorities grant two areas within their territory to construct two detention centres during the spring of 2024, which will run for an initial period of 5 years. The Protocol envisages that the centres will have the capacity to accommodate a maximum of 3 000 individuals at one time. One centre is to be built near the port of Shengjin, where disembarkation, identification, border procedures, and elements related to asylum procedure will take place; the second centre will be built in Gjader, where people deemed ineligible for asylum will be accommodated. The two centres will be managed by the Italian authorities "in accordance with the relevant Italian and European legislation". They will be under the exclusive jurisdiction of the Italian

166 Altreconomia, 'L'ossessione di respingere anche ai confini interni. Via terra e per mare', 1 February 2023, available in Italian at: http://bit.ly/3IoKGtc.

167 Full decision in Italian, available at https://bit.ly/4bMFgot.

168 For a broader description of the case, see ASGI Medea, 'Illegitimacy of informal pushbacks at Adriatic ports and humanitarian visa', 11 August 2023, available at: https://bit.ly/48uzyVl.

169 The full text of the Protocol is available in Italian at: https://bit.ly/3uGnzq5. For a comprehensive analysis of the protocol, see CEPS, *The 2023 Italy-Albania Protocol on Extraterritorial Migration Management - A worst practice in migration and asylum policies*, 1 December 2023, available at https://bit.ly/3wrPL0p.

authorities and will have the sole purpose of carrying out border, asylum and return procedures in accordance with Italian and EU law. The Italian authorities will be responsible for transfers to and from these centres, as well as for "maintaining security and order" within them. The Albanian authorities will be responsible for ensuring "security and public order" at the external perimeter and during transfers to and from the detention centres. The Protocol assigns responsibility for ensuring the detention and "unauthorized exit" of individuals into Albanian territory (both during and after the completion of the procedures, and regardless of the final outcome) to the Italian authorities.

The European Commission response to the Protocol has been ambiguous. When asked about the legality of the Protocol, the Commission first told reporters that it had asked Italian authorities for more detailed information regarding the exact scope and expected impacts of the arrangement, and that 'this must be done without prejudice to the asylum acquis'.[170] In any case, the protocol raises many questions about its compatibility with European Union law[171] and, more broadly, with international human rights law.[172]

After an initial phase of apparent political unwillingness on the part of the government for parliamentary passage to approve the law ratifying the Protocol,[173] on 5 December 2023, the Council of Ministers approved the draft law ratifying the Protocol.[174]. The text introduces a clause equating the Albanian areas provided for in the Protocol to the border or transit zones referred to in Legislative Decree No. 25 of January 28, 2008, in which expedited border procedures are carried out. These areas are equated with the hotspots and detention centres for repatriation provided for in the Immigration Consolidated Act (Testo Unico Immigrazione). On 13 December the Albanian Constitutional Court was called to rule on the appeal filed on 6 December by 30 Members of Parliament, belonging to opposition parties, concerning the constitutionality of the Italy-Albania bilateral protocol. The Albanian legal system, in addition to the subsequent type of constitutionality review, also requires of the Court a minor form of prior review of the compatibility of international agreements with the Constitution, i.e., prior to their ratification. On 29 January 2024, the Albanese Constitutional Court ruled that the agreement was compatible with the constitutional system.[175]

The Italian Parliament ratified the Protocol through Law 14 of 21 February 2024.[176]

1.1.3.5 Attempt to criminalise migrants' refusal to be returned to third countries

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 realised that it was bringing them back to Libya. The judge had recognised they acted in self-defence, and that the act of bringing them back to Libya would have been a crime.[177] Instead, according to the Court of

170 EU Observer, 'EU unclear on legality of Italy-Albania deal to offshore asylum', 7 November 2023, available at https://bit.ly/4bLpXMW.

171 SIDIBlog, 'On the incompatibility of the Italy-Albania protocol with EU asylum law', 15 November 2023, available at https://bit.ly/3PhmwEf.

172 Questione Giustizia, 'Profili di illegittimità del Protocollo Italia-Albania', 28 November 2023, available in Italian at https://bit.ly/4bOIec1. ASGI, 'L'analisi giuridica del Protocollo Italia – Albania', 22 November 2023, available in Italian at https://bit.ly/49FJrRP.

173 ASGI, 'Accordo Italia-Albania, ASGI: è incostituzionale non sottoporlo al Parlamento', 14 November 2023, available in Italian at https://bit.ly/4c1MNjF.

174 Presidenza del Consiglio dei Ministri, Comunicato stampa del Consiglio dei Ministri n. 61, 5 December 2023, available in Italian at: https://bit.ly/49I647A; Sistema Penale, Il Disegno di legge di ratifica ed esecuzione del Protocollo tra Italia ed Albania in materia di immigrazione: analisi del progetto e questioni di legittimità, 28 December 2023, available in Italian at https://bit.ly/3URu57T.

175 BalkanInsight, 'Albanian Court Approves Deal with Italy on Processing Migrants', 29 January 2024, available at https://bit.ly/3STBXmX.

176 Senato della Repubblica, Giovedì 15 Febbraio 2024 - 159ª Seduta pubblica, February 15 2024, available in Italian at: https://bit.ly/3IclK7o.

177 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.

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.[178]

Through Decision n. 15869/2022,[179] 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 proof of collusion with the traffickers.[180]

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.[181]

1.2. Arrivals by air

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.[182]

At the Milan Malpensa airport, since 2020 the cooperative Ballafon is responsible for providing services to asylum seekers arriving at the air border. According to Inlimine ASGI project's FOIA, as of 31 October 2022, 909 third Country nationals were not granted access to the Italian territory at 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.[183]

On 20 June 2023, ASGI, similarly to what was done at Fiumicino Airport, conducted a visit to the offices and transit area of Milano Malpensa Airport, in compliance with Lazio Regional Administrative Court ruling No. 3392/2023. During the visit, the delegation had access to the places used for the stay of foreign nationals who receive refoulement orders. As of the date of the visit (June 20, 2023), there had 546 refusals of entry since the beginning of 2023. The time spent in the transit area awaiting the execution of the refoulement was as follows:

- 313 persons were refused entry in less than 24 hours after being notified of the rejection order;
- 215 persons between 24 and 48 hours;
- 14 persons after a stay in the transit zone of about 48 hours;

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

179 Decision available in Italian at: https://bit.ly/3vzvZgz.

180 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.

181 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', 28 February 2023, available at: http://bit.ly/3J0Lipe.

182 ASGI InLimine, 'La frontiera di Fiumicino: i riscontri della pubblica amministrazione', 10 November 2022, available in Italian at: https://bit.ly/3I3RJGk.

183 ASGI Inlimine, 'La frontiera di Malpensa: alcuni riscontri dalla pubblica amministrazione', 13 November 2022, available in Italian at: https://bit.ly/3k23MMf.

- 3 persons after a stay of three days;
- 1 person from Santo Domingo (for whom, officials report, there are only two direct flights per week) after a stay of four days.

Similarly to the findings at Fiumicino airport, the main critical issues found relate to poor information and access to international protection, ineffectiveness in terms of protecting the entity present at the airport, de facto detention operated, and lack of effective access to the right to defence and communication with the outside.[184]

1.3 Land borders

1.3.1 Arrivals at the Slovenian land border

By the end of August 2023, 13,700 migrants entered through the Friuli Venezia Giulia region, according to the information released by the Minister of Interior in September 2023.[185] 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.[186]

In 2023, according to information collected by Asgi only a few number of readmissions were carried out based on the Readmission Agreement signed by Italian and Slovenian Government in 1996,[187] 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.[188]

On 18 January 2021, the Civil Court of Rome declared that the informal readmission procedures were contrary to the law as, among other reasons, they violated the right to access the asylum procedure and in contrast with the Dublin Regulation. 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.[189]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).[190]

On several occasions, the Government outlined the imminent resumption of readmission procedures.[191] 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".[192]

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, a major increase in the

184 ASGI Inlimine, *La situazione emersa dal sopralluogo della Zona di transito internazionale dell'aeroporto di Milano Malpensa*, December 2023, available in Italian at: https://bit.ly/3TaPmYV.

185 See Ansa, Migranti: Piantedosi, 13.700 ingressi dal Friuli quest'anno, 13 September 2023, available at https://encr.pw/Uj6Cn.

186 Ansa, 'Migranti, il Prefetto di Trieste: si intensificano arrivi in FVG', 28 February 2023, available in Italian at: http://bit.ly/41VNWmk.

187 Readmission agreement between the Italian and Slovenian Government, available at: https://bit.ly/3vwPuGF.

188 Italian Consititution, 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.'

189 Civil Court of Rome, decision of 3 May 2021, available at: https://bit.ly/3KIswAZ.

190 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.

191 Rai news, '"Stop ai cortei, sì alle riammissioni informali", dice il prefetto Vardè', 9 November 2021, available at: https://bit.ly/3w6N9CS.

192 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.

number of arrivals from the Balkan route was reported. Although no official data on entries is available, press articles have pointed to increased interceptions of foreign nationals who are irregularly present.[193] 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.[194] This situation has created obvious unease and led to a new intensification of police controls on the Slovenian side, starting from 2 September 2022.[195] 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.[196] NGOs, such as ASGI, ICS and the network Rivolti ai Balcani regard it as a de facto reinstatement of informal readmissions,[197] 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.[198]

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.[199]

Beyond the intention to reactivate informal readmissions, following a parliamentary question on 13 September 2023, the Italian Ministry of the Interior confirmed that, as of September 2022, the Italian and Slovenian governments had given more structure to cross-border police cooperation actions. Thanks to these initiatives, the government declared that during 2023, bilateral operations prevented 1,900 foreign nationals from entering Italian territory.[200] ASGI therefore presented a FOIA request to receive information about specific elements of this practice, and the Administration confirmed the direct involvement of Italian authorities in mixed patrols on Slovenian territory with powers of observation and information support, under the bilateral agreement on cross-border police cooperation of August 27, 2007, ratified by Law 60 of April 7, 2011.[201] During a hearing before the Parliamentary Schengen Committee, Interior Minister Piantedosi also announced 'the establishment of Mixed Brigades of Police Forces, based on the fruitful experience (...) gained with joint patrol services.'[202] According to a 2 November 2023 news report, police coordination centres involving Italy, Slovenia and Croatia will also be set up in order to consolidate cooperation on countering irregular crossings. These developments fit into the general picture of

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

194 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', 23 October 2022, available in italian at: http://bit.ly/3SyAx0w. For a more comprehensive collection of information related to people on the move present in Trieste, IRC, *Abandoned lives*, December 2022, available at: https://bit.ly/3IbXulF.

195 IlFriuli.it, 'Migranti, ripartono le pattuglie miste al confine', 6 September 2022, available in Italian at: http://bit.ly/3IxupAZ.

196 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.

197 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.

198 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.

199 Altreconomia, 'Respingimenti alla frontiera con la Slovenia, i dati che smontano gli annunci del governo', 9 May 2023, available at: bit.ly/3Mr215M.

200 Camera dei Deputati, XIX LEGISLATURA - Resoconto stenografico dell'Assemblea - Seduta n. 161 di mercoledì 13 settembre 2023, available in Italian at: https://bit.ly/4bQ37DI.

201 FOIA reply from the Ministry of Interior Prot. 0102589 of October 25, 2023, available in Italian at https://bit.ly/3OTrEOs.

202 Ministero dell'Interno, 'Comitato parlamentare Schengen, audizione del Ministro Piantedosi', 7 November 2023, available in Italian at: https://bit.ly/48uWSlR.

increased patrolling of the territory, which had been confirmed through the news[203] of the purchase of 65 photo traps mobile cameras to place in the border areas of Trieste and Gorizia province. 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.

However, the latest and most relevant political change in border management at the Italo-Slovenian border had been the reintroduction of border controls according to art. 28 Regulation 2016/399 (Border Schengen Code).[204] In particular, in a statement published on 18 October 2023,[205] the Italian government announced that it had notified relevant European authorities and partners of the reintroduction of internal land border controls with Slovenia from 21 October 2023 to 30 October 2023 due to the increased threat of violence within the EU as a result of the escalating crisis in the Middle East and the risk of possible terrorist infiltration. According to the government, this picture would be 'further aggravated by the constant migratory pressure on Italy'. Since then, the duration of the border controls have already extended 5 times.[206] The last extension communicated on 19 January 2024 will last for five months and has been justified still with possible risks of "possible terrorist infiltration into irregular migration flows".

The Ministry of Interior announced that, thanks to the border controls, police had intercepted the arrival of 1,600 irregular people, made 76 arrests and denied entrance on the territory to almost 900 people.[207] Another risk factor at the Italian Slovenian border are chain pushbacks from Italy to Bosnia-Herzegovina. On this topic, the Civil Court of Rome, by a decision of 9 May 2023,[208] once again condemned the Italian administration for practices of chain readmissions. The case concerned an action for compensation of the damage suffered by a Pakistani citizen, already entitled of international protection in Italy, by a previous readmission that sent him violently back to Bosnia Herzegovina. The Italian Court stated that 'The illegitimacy inherent in the informal readmission operated by the Italian police authorities at the border between Italy and Slovenia, the inhuman and degrading treatment related to the chain readmission to Bosnia and Herzegovina, and the concomitant lack of access to the political asylum procedure determine a right to compensation for damages in the hands of the recipient of this procedure'. The Tribunal reiterated the illegitimacy of the readmission procedure implemented at Italy's eastern border on the basis of an agreement signed between Italy and Slovenia in 1996 that was never ratified by the Italian Parliament, as previously highlighted by the Court of Rome decision of 18 January 2021. This is the procedure that the Italian government, after suspending it following the January 2021 decision, had reinstated as of November 2022, albeit formally not with respect to those seeking international protection. Contrary to the decision related to the appeal against the 18 January 2021 decision, the ruling also recognises the successful demonstration of facts at trial, through cooperation with Slovenian NGO PIC (Pravni center za varstvo človekovih pravic in okolja - Legal Centre for the Protection of Human Rights and the Environment),[209] of the immediate chain of readmissions suffered by the claimant from Italy to Slovenia and from Slovenia to Croatia and then the claimant's presence in Bosnia.[210]

1.3.2 The situation at the French land borders

Refusals of entry and pushbacks

203 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.

204 For a more detailed analysis of the reintroduction of border controls at the Italo-Slovenian border, see ASGI Medea, 'Schengen Area: From Free Movement Zone to Labyrinth', 20 November 2023, available at: https://bit.ly/42UYcNH.

205 Presidenza del Consiglio dei Ministri, 'Reintroduzione dei controlli delle frontiere interne terrestri con la Slovenia, nota di Palazzo Chigi', 18 October 2023, available in Italian at: https://bit.ly/49IMQP8.

206 European Commission, 'Temporary Reintroduction of Border Control', available at: https://bit.ly/3DmVntw.

207 Ministry of Interior, available at the Government webpage: https://bit.ly/3TtmsDK.

208 Full decision Court of Rome N. R.G. 3938/2022 of May 9, 2023, available in Italian at https://bit.ly/3wFks20;

209 More information on the organisation, available at: https://bit.ly/3PkgfaT.

210 ASGI Medea, Balkan route, evidence and testimonies confirm chain readmissions. Ministerial liability for compensation for damages, August 8, 2023, available at: https://bit.ly/3OYCxyC.

In 2023, the situation at Italian-French internal border, while reproducing some of the dynamics that have been in place for several years, some changes could be observed as of early 2024. 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.[211]

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 Chambery agreements,[212] providing for conjunct actions and cooperation between Italian and French police[213] 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 checks[214], 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.[215] This practice, started in 2020, is still widely implemented.

Regarding pushbacks, as reported by ASGI and other NGOs,[216] 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.[217] Notwithstanding the decision of the Court of Justice of the European Union in the cases C-368/20 and C-369/20[218] 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,[219] the last extension being notified on 1 of November 2022. In May 2022, Anafé and other French CSOs, 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.[220]

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

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

213 The text of the Agreement is available at: https://bit.ly/39wdS2v.

214 Article 23 of the Regulation 399/2016 (Schengen border Code).

215 Regarding ethnic profiling procedure carried out at Ventimiglia train station, ASGI Medea, *Submission to the Committee on the Elimination of Racial Discrimination Review of Italy - 110th Session Racial and ethnic profiling practices in police (border) checks and lack of accessible and effective remedy in Italy*, July 2023, available at: https://bit.ly/3Ict6rl, 16-19.

216 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 Medici Senza Frontiere, *Vietato passare - La sfida quotidiana delle persone in transito respinte e bloccate alla frontiera franco-italiana*, August 2023, available in Italian at: https://bit.ly/3IiO1ZO; Stories in motion, *A Collaborative Research Report of Rights Violations at the Franco-Italian Border*, 1 June 2023, available at: https://bit.ly/49IV8q8; 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.

217 La7, 'Ventimiglia, continuano i respingimenti francesi', 26 June 2021, available in Italian at: https://bit.ly/3q7LTeW.

218 ASGI, 'EU Court of Justice – It is illegitimate to renew internal border controls on the basis of reasons already given', 23 May 2022, available in Italian at: https://bit.ly/3R9JPiW.

219 European Commission, Temporary Reintroduction of Border Control, available at: http://bit.ly/3DmVntw.

220 ASGI, 'The French Council of State ignores the principles on free Schengen circulation reaffirmed by the European Court of Justice', 29 July 2022, available in Italian at: https://bit.ly/3kOeFl2.

The situation appears to have slightly changed in the first weeks of 2024, with CSOs reporting a decrease in pushbacks and, among these reduced numbers of refusals of entry, decisions mostly in line with the bilateral agreements[221]. This change can be explained in light of recent jurisprudence regarding the powers of Member State to issue refusal of entry provisions (Refus d'entrée) at its internal borders, when border controls have been reintroduced. In particular, the Court of Justice of the European Union, with the decision ADDE (C-143/22) of 21 September 2023, reaffirmed the principle - already introduced in the Affum Case (C-47/15) - according to which the Return directive (2008/11/CE), which provides for the possibility of transferring a third-country national in an irregular condition intercepted in the border area if the two countries in question have signed bilateral readmission agreements, must be applied together with the Schengen Borders Code. This entails that, although in such a situation a Member State can still adopt a refusal of entry decision, on the basis of the Schengen Borders Code, the removal must still comply with the common standards and procedures of the Return directive, and thus also the procedures set out in the bilateral readmission agreement. The Return Directive does not allow Member States to exclude third country nationals from the scope of the directive in case of a refusal of entry at the internal border (contrary to the external border, where it is allowed), even in case of temporarily reintroduced border controls.[222] This CJEU preliminary reference was issued by the Court in the context of a French national court case, led by several NGOs challenging the French CESEDA (Code de l'entrée et de séjour des étrangers et du droit d'asile) on this topic before the Council of State, because it allowed the authorities to issue a refusal of entry decision in the context of temporarily reintroduced internal border controls under any circumstances. In light of the CJEU decision, the Council of State confirmed that, to comply with the Return directive, such refusal of entry decisions could only be taken at the internal borders with a view to the person concerned being re-admitted by the Member State from which they came, in application of an agreement existing on the date the Return directive came into force.

One route to France is through the Val di Susa, crossing the Bardonecchia and the Frejus mountain passes, on one side, or, on the other, through Oulx and Claviere leading to the Montgenèvre pass. MEDU,[223] an organisation granting medical assistance to migrants at Oulx, has reported the death of migrants that tried to cross the border walking through the Alps, highlighting the increase in deaths of very young migrants or MSNA. Many NGO signed an appeal consequently the death of migrants at this border.[224]

Among migrants' deaths at the French border is that of Blessing Matthews. 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 Briancon. On the night between 6 and 7 May 2018, Blessing Matthews crossed the Alps from Claviere - Italy but was discovered by 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 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.[225] Due to a counter investigation conducted by Border Forensic,[226] the case was submitted to the Public Prosecutor in May 2022, but again dismissed. On 25 October 2022, an appeal on the case

221 Il Fatto Quotidiano, "Migranti, la Francia si piega al Consiglio di Stato: alla frontiera di Ventimiglia crollano i respingimenti. Attivisti: "Ma militarizzazione prosegue", February 17, 2024, available in Italian at https://bit.ly/4aXEsMz.

222 CJEU, *Reintroduction of border controls at internal borders: the 'Returns' Directive applies to any third-country national who has entered the territory of a Member State without fulfilling the conditions of entry, stay or residence*, 21 September 2023, Press release No. 145/23, available at: https://bit.ly/3PLsLQC.

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

224 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.

225 Altreconomia, 'Le nuove prove sulla morte di Blessing Matthew al confine italo-francese', 1 June 2022, available in Italian at: http://bit.ly/3DiZQ06.

226 Border Forensic, 'The death of Blessing Matthews - a counter investigation on violence at the alpine frontier', available at: http://bit.ly/3wzK25t.

was presented to the European Court of Human Rights.[227] On 18 January 2024, the ECtHR considered the case inadmissible[228], alleging that the French authorities did what was reasonably necessary to be done.

Reception conditions at the Italian border

Regarding the reception conditions on the Italian side of the border, since 2020, due to the pandemic, both transit areas (Ventimiglia and Oulx) were left totally or partially without accommodation facilities. On 31 July 2020, the Roja Camp in Ventimiglia, managed by the Italian Red Cross, was closed,[229] 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. As the practice of pushback from France to Italy was systematically implemented in 2021, humanitarian conditions registered in the Italian towns nearby remained dramatic. No public response was given since the closure of the Roya centre.[230] Hundreds of people were 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.[231]

At the end of 2021, it was announced the imminent opening of a centre for people in transit,[232] but, despite several public statements,[233] there was no official action, and migrants continue living stranded under bridges with the only support of civil society organisations and volunteers.[234] The public debate regarding the opening of a reception centre gained once more traction during the diplomatic crisis between the Italian and French governments. This had already started in late 2022[235] but culminated in August and September 2023 with an intensification of border controls by the French authorities and, as a result, pushbacks. As a result of the increase of people with no shelter in the municipality, the city council of Ventimiglia offered to open a repatriation centre on its territory,[236] but received no positive response from the government.[237]

Violence and court cases on the Italian side

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.[238] On 10 January 2023, the Criminal Court of Imperia convicted three Italian citizens for the

227 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.

228 Mediapart, 'Mort de Blessing Matthew: la justice européenne ne permet pas de rouvrir le dossier', 18 January 2023, available in French at: https://bit.ly/3UXccVy.

229 Parole sul confine, 'Il Campo Roja di Ventimiglia ha definitivamente chiuso', 24 August 2020, available at: https://bit.ly/3uFs7YE.

230 See ASGI, Medea project, Ventimiglia, un territorio che resiste? October 2021, available at: https://bit.ly/3vYAVdI.

231 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.

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

233 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.

234 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.

235 Euronews, 'The simmering migrant crisis at the French-Italian border', 29 December 2023, available at: https://bit.ly/49ufwvE.

236 RaiNews24-Tg Liguria, 'Cpr a Ventimiglia, l'apertura del ministro Piantedosi', 20 September 2023, available in Italian at: https://bit.ly/3uUrXBK.

237 ANSA, 'Piantedosi, un Cpr in Liguria ma non sarà a Ventimiglia', 2 October 2023, available in Italian at: https://bit.ly/3Tb8B4P.

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

aggression, specifically for aggravated injury due to the use of a blunt object.[239] 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. On October 2023, the Turin prosecutor's office sent to trial the facility's director and CPR doctor, charged with involuntary manslaughter, and a police inspector, for forgery and aiding and abetting.[240]

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,[241] was considered unfounded by the Criminal Court of Rome (Judge for the preliminary hearing, GUP) which acquitted the NGO in May 2022.[242]

Lastly, the ECtHR on 16 November 2023 delivered its judgment regard the 2016 "border relief policy" practices. The application was submitted by four Sudanese applicants, which had since been granted international protection in Italy.[243] The events of the case referred to the situation in Ventimiglia in 2016, when, according to the so called "border relief policy",[244] and the concurrent signature of the Memorandum of Understanding between Italy and Sudan for the repatriation of irregular migrants of 24 August 2016,[245] the Italian authorities implemented a strategy of singling out Sudanese nationals, who were subjected to violent, inhumane and degrading methods of identification (confiscation of personal property, obligation to strip naked), forcibly transferred without being issued any order to the Taranto Hotspot (after a journey of nearly 1,200 km), re-identified and subjected to deportation procedures and concomitant removal order without being granted information or legal assistance. Within a few days the identified individuals were again transferred to Ventimiglia and then to Turin to be boarded without their knowledge to Khartoum. The four applicants managed by different circumstances not to be returned and to formalise asylum applications in CPR and obtain international protection. The Court declared that these practices constituted violations of art. 3 of the Convention (prohibition of inhuman and degrading treatments) with regards to the violations to which the applicants were exposed throughout the identification and transfer procedures, and of art. 5 §§ 1, 2 and 4 (right to liberty and security) due to the de facto detention to which the applicants were exposed.

1.4 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

239 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.

240 TGR Piemonte, 'CPR. Per il suicidio di Moussa Balde la Procura chiede tre rinvii a giudizio', 25 October 2023, available in Italian at: https://bit.ly/48rllZz.

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

242 Ansa, 'Migranti: assolto il presidente di Baobab', 3 May 2022, available at: https://bit.ly/39HDjy4.

243 European Court of Human Rights, Applications No. 18911/17 and others, *A.E. and others vs Italy*, 16 November 2023, available at: https://bit.ly/3SRhFKN.

244 A more exhaustive illustration of the "border relief policy" and the subsequent forced transfers to Taranto Hotspot available in the report Hotspot leaks: dossier sulla frontiera di Taranto, prodotto dal progetto STAMP – Sostegno ai
Transitanti, Accoglienza a Migranti e ai Profughi, available in Italian at: https://bit.ly/49GXxly and in Amnesty International, *Hotspot Italia: come le politiche dell'Unione Europea portano a violazioni dei diritti di rifugiati e migranti*, 3 November 2016, available in Italian at: https://bit.ly/49K4XEg.

245 A more exhaustive illustration of the MOU between Italy and Sudan is available on ASGI, 'Memorandum d'Intesa Italia-Sudan: un'analisi giuridica', 30 October 2017, available in Italian at: https://bit.ly/3T9z42B.

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. According to data provided by the Community of Sant'Egidio, from February 2016 to May 2024, 7,226 people arrived through this mechanism - Syrians fleeing the war and refugees from the Horn of Africa and Gaza.[246]

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

The ones from Jordan, Niger and Ethiopia were 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.

In 2023, 183 persons were resettled to Italy and 779 entered through humanitarian corridors. No person reached Italy after evacuation operations.[247] According to information collected by ASGI, resettlement was conducted from Lebanon, Turkyie, Iran and Pakistan. Regarding evacuations, these were stopped in 2023 but on December 2023 a new agreement with Libya was signed and, in early 2024, a person was evacuated and reached Italy.

With reference to the issue of entry visas for humanitarian reasons in situations of need for extraterritorial protection, on 22 November 2023 the Court of Rome upheld the appeal filed by an Iranian citizen, residing in Italy with a study permit, who, not yet having the requirements for family reunification, had asked the Italian Embassy in Iran for the issuance of an entry visa to allow her minor daughter, in serious danger, to reach her. A request to which the Italian Consular Representation has never responded, making it necessary to file an urgent appeal. In the case, the applicant demonstrated the danger to which her daughter was exposed to in Iran, due to her sexual orientation, for having participated in anti-government demonstrations after the assassination of Masha Amini (September 2022) and for behaviors deemed contrary to government religious morality, so much so that on one occasion she was even reprimanded by the morality police.

In terms of jurisdiction, the Court identified a solid link with the Italian State in the presence of the mother in Italy and in her right to protect her daughter, as well as in the right of the latter to live with her mother while escaping the very serious risks to which she is exposed in Iran, thus declining the principle of the best interests of the child referred to in the 1989 New York Convention, but also in the light of art. 8 ECHR and, last but not least, the right to family unity provided for in the Constitution.

In the decision, the Judge also refers to art. 10, paragraph 3 of the Italian Constitution as the right to enter the national territory, leaving to the State to identify the instrument to allow entry.[248]

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

246 See Sant'Egidio webpage at: bit.ly/3RhD1Rl.

247 MOI, available at bit.ly/3VflQRT.

248 Civil Court of Rome, interim measure of 22 November 2023, procedure no. 52019/2023 available in Italian at bit.ly/3VEhTaR.

2021, (16 persons); Operation Aquila Omnia BIS between November 2021 and December 2022 (60 persons).[249]

1.5 Hotspots

Hotspots legal framework

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.[250]
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.[251] 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.[252]

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.[253] 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).[254]

The Standard Operating Procedures (SOPs) adopted in February 2016 and applying at hotpots 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...".[255] 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).[256]

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.[257]

249 Report to Senate of the Minister of Interior, Piantedosi, communicated to the Presidency on 29 November 2022, available at: bit.ly/3yV5brW, 12.
250 EUAA, *Annual Asylum Report (2022)*, available at: https://rb.gy/e1xyjt.
251 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.
252 Ministry of Interior, 'Accoglienza migranti, Piantedosi: «I Paesi di primo ingresso non possono da soli sopportare l'onere esclusivo nella gestione dei flussi»', 11 November 2022, available in Italian at: https://rb.gy/k35ep.
253 Article 10-ter TUI, inserted by Decree Law 13/2017.
254 Article 6(3-bis) Reception Decree, as amended by Decree Law 113/2018.
255 Ministry of Interior, *Standard Operating Procedures applicable to Italian hotspots*, February 2016, available at: http://bit.ly/2kt9JBX, para B.7.2.c.
256 Article 10-ter(3) TUI, inserted by Decree Law 13/2017.
257 Article 28-bis(2) (b) Procedure Decree, as amended by Decree Law 130/2020.

Likely with 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).[258]

Use of hotspots

By the end of 2023, 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 29 February 2024, the hotspots hosted 3 people in Sicily and 5 in Apulia.[259]

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 critical issues.[260] In 2021, ASGI reported many critical issues at the "new border" of Pantelleria, where landed migrants are also channelled in hotspot-like procedures.[261] The new inspection carried out by ASGI in May 2023 in Pantelleria confirmed the critical issues already reported in previous years (see Place of Detention).[262]

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

In 2022, 55,135 persons entered the hotspots, compared to 44,242, in 2021, 28,884 in 2020, 7,757 in 2019 and 13,777 in 2018. The persons mainly originated from Tunisia (12,519), Bangladesh (11,237) and Egypt (8,660). 10,491 were children, of which 7,341 unaccompanied minors.[263] As of 31 March 2023, 22,024 persons had been registered in Italian hotspots since the beginning of the year, of which 3,669 minors.[264]

The monitoring of hotspots by NGOs was particularly difficult in 2020 and 2021 due to the limitations in access to the structures, connected with the pandemic, that prevent access of external people to the facilities.[265] 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.[266]

The organisation also collected relevant data on hotspots at the beginning of 2022,[267] based on which it filed urgent appeals to the European Court of Human Rights, demanding the immediate transfer from the

258 Moi Decree 5 August 2019, Article 2

259 Ministry of Interior, *Cruscotto statistico giornaliero*, 29 February 2024, available in Italian at: https://lc.cx/P_H1G3.

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

261 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.

262 ASGI, 'Report e audio sul Punto di Crisi di Pantelleria: implicazioni sul diritto alla libertà personale', October 2023, available in Italian at: https://rb.gy/ajp1id.

263 Report to Parliament Annexes to the yearly report of the National Guarantor for the rights of detained persons, June 2023, available at: https://rb.gy/r73ey6.

264 *Report to Parliament Annexes to the yearly report of the National Guarantor for the rights of detained persons*, June 2023, available at: https://rb.gy/r73ey6.

265 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/3MMMlrT.

266 ASGI, Report Lampedusa 2022: le criticità, August 2022, available in Italian at: https://rb.gy/litjw5.

267 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.

Lampedusa hotspot of three family units; the Court issued interim measures ordering the Italian government to immediately transfer one of the family units.[268]

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.[269]

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,[270] 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.[271]

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 2022 and 2023.

As reported in previous updates to this country report,[272] as of 2019, an administrative practice was established following the disembarkation of foreign nationals aimed at restricting, preventing or revoking a previous manifestation of willingness to apply for asylum by signing an 'information sheet' or a second 'news sheet'. This signature led to the adoption of a deferred rejection decree and subsequent detention at a CPR.

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.[273]

Recent Court of Cassation judgments[274] have clarified the need for adequate information at the time of disembarkation, which cannot be overcome by stereotypical phrases contained in the 'news sheet' or in refusal orders (see Detention - Procedural safeguards).

Other unlawful practices and violations were recorded in recent visits to the Lampedusa hotspot, notably the visit 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.[275]

In February 2023, the visit revealed very bad reception conditions inside the facility, including a very serious overcrowding situation (against a capacity of 400 places, there were almost 4,000 people), people

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268 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.

269 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.

270 See the *foglio notizie* at: http://bit.ly/1LXpUKv.

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

272 AIDA, *Country Report Italy – Update on the year 2022*, May 2023, available at: https://bit.ly/3PvO1cg, 26-53.

273 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.

274 Civil Court of Cassazione, decision n. 32070/2023, 20 November 2023 and Civil Court of Cassazione, decision n.5797/2024, 5 March 2024.

275 ASGI, Report Lampedusa 2022: le criticità, August 2022, available in Italian at: https://rb.gy/litjw5.

forced to sleep on the floor, lack of food, no medical assistance, and bonfires set up to make up for the lack of heating.[276] All this led to the replacement of the managing body and the subsequent entrusting of the facility to the Italian Red Cross from May 2023. Despite the change of management, the critical issues that had emerged in previous years continue to be denounced by ASGI.[277]

In June 2023, a delegation of ASGI had access to the Pozzallo hotspot and found several problems including the absence of cultural mediators to support the procedures after entering the hotspot (e.g. during the compilation and signing of the so-called "foglio-notizie") and the duration of detention in the hotspot following the manifestation of an application for international protection, which on average is about 10 days but can reach several weeks as stated by some people in the hotspot.[278]

Concerns have been expressed in a 2021 document by “InLimine” on the lack of gender related measures in the hotspots, specifically regarding Lampedusa hotspot.[279]

Further critical issues were reported in the University of Bari's Report on the Taranto hotspot, which denounced the inadequacy of the legal information offered to persons entering the facility, the confusion between intelligence and investigative activities carried out during entry security checks, with potential repercussions on the rights of persons under investigation, the inadequate material reception conditions to guarantee privacy and the protection of persons in particularly vulnerable conditions (women and minors).[280]

ECtHR judgments

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 of the case 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 were kept in *de facto* detention for ten days. The applicants had not received any information regarding 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.

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276 CILD, *L’AFFAR€ CPR.Il profitto sulla pelle delle persone migranti*, June 2023, available in Italian at: https://lc.cx/gY0Ueb.

277 ASGI, ‘Per l’implementazione della libertà di corrispondenza con il mondo esterno e predisposizione di una rete wi-fi presso l’Hotspot di Lampedusa: diverse organizzazioni scrivono alle autorità competenti’, March 2023, available in Italian at: https://lc.cx/maYghO; ASGI, La privazione della libertà personale nell’hotspot di Lampedusa: il riscontro delle autorità competenti, March 2023, available in Italian at: https://lc.cx/gDj3y9; ASGI, ‘The right to information in the Lampedusa hotspot: the responsibilities of UNHCR’, April 2023: https://lc.cx/MnCT6a; ASGI, ‘La Questura di Agrigento su ingressi e uscite dall’hotspot di Lampedusa’, May 2023, available in Italian at: https://lc.cx/zmx60e; ASGI, ‘La gestione dell’hotspot di Lampedusa: la Convenzione con la CRI’, July 2023, available in Italian at: https://lc.cx/w2w1u6.

278 ASGI, ‘Monitoraggio ASGI e Spazi Circolari a Pozzallo: hotspot, Contrada Cifali e il nuovo centro di trattenimento’, 9 October 2023, available in Italian at: https://lc.cx/2n5MBD.

279 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/3Ia6gOJ.

280 Università degli Studi di Bari, *Rapporto sul centro hotspot di Taranto*, Jean Monnet Working Paper 2/2023, October 2023, available in Italian at: https://lc.cx/8otIiD.

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.[281]

In its decision of 23 November 2023 rendered in case no. 47287/17 (A.T. and others v. Italy),[282] the ECtHR condemned Italy for having unlawfully detained several unaccompanied foreign minors in the Taranto hotspot, for having used inhuman and degrading treatment in arranging their reception measures, for not having appointed a guardian nor having provided them with any information on the possibility of challenging this condition in court. The relevance of the decision is immediately perceptible in the current context, in which previous repressive approaches have not been changed. At the time of the ruling's issuance, there were almost two hundred foreign minors de facto detained without any legal basis and without any judicial review inside the Taranto hotspot, some of them even since the previous month of August.[283]

Detention in hotspots per new law 50/2023

The Decree law 20/2023, converted into law 50/2023, introduced a new hypothesis for the detention of asylum seekers in hotspots, governed by 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. According to the Law, detention may take place where the applicant has not presented a valid passport or other equivalent document, or does not provide for suitable financial guarantee.[284]

On 14 September 2023, the expected MoI Decree[285] regarding the financial guarantee was adopted. It detailed that:

- The financial guarantee consists of 4,938 euros;[286]
- It has to be paid in a single payment;
- It has to be paid directly by the person affected by the detention measure and not by third parties;
- It has to be paid via a bank guarantee;[287]
- It should be paid before the fingerprinting done according to Eurodac Regulation and it covers the entire border procedure, up to the decision on the suspensive request in case of appeal.[288]

The Decree states that, in case of absconding before the end of the procedure, the entire amount is destined to the State.[289]

These procedures were first implemented at the end of September 2023. The Court of Catania rejected the Questore's request to validate the detention, on the grounds of incompatibility of the national

281 Case of J.A. and Others v. Italy, application n. 21329/2018, 30 March 2023, available at: https://rb.gy/8uq8v.
282 ECtHR, No. 18911/17 and two others, *A.E. and others v. Italy*, 16 November 2023, available at: https://bit.ly/3VtXyVY.
283 ASGI, 'CEDU: minori stranieri detenuti illegalmente nell'hotspot di Taranto. ASGI: vanno ricollocati', 28 November 2023, available in Italian at: https://lc.cx/VLycMg.
284 Article 6 bis Reception Decree as amended by the DL 20/2023 converted into L. 50/2023.
285 MOI Decree issued on 14 September 2023, as provided by Article 6 bis (2) Reception Decree, available in Italian at: https://bit.ly/3TWwL3p.
286 Moi Decree 14 Semptember 2023, Article 3 (1).
287 Moi Decree 14 Semptember 2023, Article 3 (2).
288 Moi Decree 14 Semptember 2023, Article 3 (3).
289 MoI Decree 14 September 2023, Article 4.

legislation with that of the European Union. According to the Court, Articles 8 and 9 Reception Conditions Directive, as interpreted by CJEU C-924/19 PPU and C-925/19 PPU, prevent Member States from detaining an applicant for international protection for the sole fact that they cannot meet their own needs; and detention cannot take place without the prior adoption of a reasoned decision ordering detention and without the necessity and proportionality of such a measure having been examined.[290]

This decision, together with others adopted on the same date by the Court of Catania, were challenged by the Ministry of the Interior before the Court of Cassation in United Chambers. The latter, by an interlocutory order, referred the matter to the CJEU for the purpose of verifying the compatibility of the domestic legislation relating to the fixed financial guarantee with Articles 8 and 9 of the Reception Conditions Directive.[291] The decision of the EU court is expected in the coming months.

Among the legal changes introduced by Decree-Law 20/2023 is the new formulation of article 10-ter, par. 1-bis, of TUI, which is part of the provisions for the identification of third-country nationals found to be illegally present on the national territory or rescued during SAR 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 using measures that would amount to *de facto* detention, 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.

2. Registration of the asylum application

Indicators: Registration

1. Are specific time limits laid down in law for making an application? ☒ Yes ☐ No
   - ❖ If so, what is the time limit for making an application? 8 working days
2. Are specific time limits laid down in law for lodging an application? ☐ Yes ☒ No
   - ❖ If so, what is the time limit for lodging an application?
3. Are making and lodging an application distinct stages in the law or in practice? ☒ Yes ☐ No
4. Is the authority with which the application is lodged also the authority responsible for its examination? ☐ Yes ☒ No
5. Can an application for international protection for international protection be lodged at embassies, consulates or other external representations? ☐ Yes ☒ No

The Procedures 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.[292]

290 Civil Court of Catania, Decree of 29 September 2023, n. 4117/2023, on the proceeding n. 10459/2023, available in Italian at: https://lc.cx/FFkoBp; see also Questione Giustizia, Il giudice non convalida i trattenimenti di tre migranti tunisini disposti in base alla nuova disciplina delle procedure di frontiera, available in Italian at: https://lc.cx/OsBUJH

291 Court of Cassation, interlocutory order of 8 February 2024, decision n. 3562/2024, R.G. 20674/2023.

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

The Decree also provides for training for police authorities appropriate to their tasks and responsibilities.[293]

2.1 Making and registering the application (*fotosegnalamento*)

Under the Procedures Decree,[294] 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.[295]

PD 21/2015 provides that asylum seekers who express their wish to apply for international protection before Border Police authorities have 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.[296] 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.[297]

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

DL 133/2023 introduced a hypothesis of cancellation of the asylum request, by introducing Article 6 (3 bis) to the Procedure Decree, according to which: in the event that asylum applicants do not present themselves at the police station for the verification of the identity declared and the formalisation of the asylum application, the previous expression of the will to seek asylum does not constitute an asylum application and the asylum procedure is not considered initiated.[298]

2.2 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*).[299] The form is completed with the basic information regarding the applicant's

293 Article 10(1-bis) Procedure Decree, as amended by the Reception Decree.
294 Article 6 Procedure Decree.
295 Article 3(1) PD 21/2015.
296 Article 3(2) PD 21/2015.
297 Article 26(2-bis) Procedure Decree, as amended by the Reception Decree.
298 Article 6 (3 bis) Procedure Decree introduced by DL 133/2023 converted with amendments by L 176/2023.
299 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.

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 2023, the number of registrations carried out by the EUAA in Italy doubled compared to 2022, with 20,197 applicants for international protection registered. Of these, 74% related to the top 10 citizenships of applicants, mainly from Bangladesh (3,088), Egypt (2,679), Peru (2,263), Pakistan (1,592), Ivory Coast (1,552) and Burkina Faso (1,061).[300]

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.[301]

2.3 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 and in 2023, 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. This problem mainly affects people who reach Questure autonomously, after entering in Italy by land or after independent disembarkations or when applying for asylum after staying on the national territory.

On 8 February 2024 the Ministry of Interior decided to stipulate an agreement with the UNHCR in order to intervene on the timing of access to the asylum procedure and the reduction of the backlog relating to the number of applications to formalise.[302]

In parallel, in recent years, this problem also 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 2023, 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).

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.[303] (See Information at the border and in detention).

300 Information provided by the EUAA, 26 February 2024.
301 Article 4(1) Reception Decree.
302 Ministry of Interior note signed on 8 February 2024 which was reported to ASGI
303 Court of Cassation, decision no. 18189/2020 dd. 25.6.2020.

In early 2024, the Court of Cassation expressed an important principle to better stress the importance of the information obligations as a guarantee of access and respect of the asylum rights. With a decision issued on 5 March 2024 the Court affirmed that “Pursuant to art. 10 ter TUI, complete and effective information on the international protection procedure must be ensured for all foreigners brought for rescue and first aid needs at the hotspots, (..) this obligation also exists in the case in which the foreigner has not expressed the need to request international protection, given that silence or any declaration incompatible with the desire to request it, which must in any case be clearly expressed and not in ambiguous formulas, cannot take on significance if it does not appear that the person has been fully informed in advance." Also, it pointed out that it is not sufficient, in order to consider the fulfilment of the information obligation, that the rejection or detention decree generally indicates that the subject has been fully informed, if nothing appears on this matter from the foglio notizie or from other documents, or evidence offered by the administration; and in particular if nothing is apparent regarding the times and methods with which the information was administered, with specific regard to the language used, the presence of an interpreter or cultural mediator and this in order to allow a verification of the comprehensibility of the information provided.[304]

On 13 July 2023, the Supreme Court[305] once again intervened on the timing of the registration of the asylum application stating that in compliance with the provisions of the art. 6, of Directive 2013/32/EU, the application for international protection must be registered within the terms established therein (three or six days depending on the office) and the ten-day extension of the term, provided for by national legislation (last period of 'art. 26, paragraph 2-bis, Legislative Decree 25/2008, introduced by the national legislator with Legislative Decree 142/2015) must be applied only in the case of a high and proven number of applications following consistent and close arrivals.

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 wishing to seek asylum in Italy. In these cases, often Slovenia refused to apply the readmission agreement and sent back people to Italy. On 20 October 2023, Italy started border controls at the border with Slovenia and announced, as of March 2024, to have impeded access of 1,500 people, but it not known to which category of people was refused the possibility to entry.

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

In 2023 as in 2022, there were numerous reports of cases in which access to the asylum procedure was hindered on even on national territory, and practices widely differed among different areas of the territory. Due to the problems of registering the asylum application in Milan, several associations together with ASGI sent a letter to UNHCR.[306]

Similarly, the high number affecting the Questura of Turin, including with regard to the impossibility to formalize the asylum applications, lead ASGI to address the Police with a formal letter,[307] which was then followed by a very participated public protest.[308] Several months after the demonstration, no substantive change in the rules for submitting asylum applications has been registered.

Between May and June 2023, ASGI carried out monitoring through data collected by its members on 55 of the 107 Italian provinces.[309] The outcome was that in 40 cities, asylum seekers cannot access the asylum procedure without an official address. In the period considered this was happening in:

304 Court of Cassation, decision no. 5797 of 5 March 2024.
305 Court of Cassation, order of. 13.7.2023 n. 20028, n. 20070, available at https://l1nq.com/bJv7R.
306 See https://l1nq.com/x7bfb.
307 See Asgi, Gravi violazioni di legge e inefficienze dell’Ufficio immigrazione della Questura di Torino 3 March 2023, available at https://acesse.dev/u0aPT.
308 See ASGI, 20 aprile 2023 – Presidio davanti alla Questura di Torino contro le prassi illegittime verso gli stranieri available at https://l1nq.com/MmHs2.
309 See ASGI “ Mappatura delle prassi illegittime delle questure italiane Lo studio pilota di ASGI” report published on 15 April 2024, available in Italian at https://encr.pw/nu9AJ.

- Alessandria, Turin, Vercelli (Piedmont)
- Ancona, Pesaro Urbino (Marche)
- Bari, Barletta-Andria-Trani, Lecce (Apulia), Taranto
- Bologna, Ferrara, Reggio Emilia, Modena, Ravenna, Parma (Emilia Romagna)
- Bozen (Trentino)
- Brescia, Cremona, Lecco, Milan, Varese Mantova (Lombardy)
- Campobasso (Molise)
- Cosenza, Reggio Calabria (Calabria)
- Firenze, Grosseto (Tuscany)
- Genoa, Savona (Liguria)
- Neaples, Salerno, Benevento (Campania)
- Palermo (Sicily)
- Perugia (Umbria)
- Pescara (Abruzzo)
- Rome (Lazio)
- Sassari (Sardinia)
- Venice, Verona (Veneto)

In other Questure, access to asylum was not allowed without a passport (3 cities) or because a limited number of new asylum requests are allowed every day (in 6 cities: they vary from 5 to a maximum of 15 people per day).

In 24 Questure, the period between the date of registration of the asylum application and formalisation lasts less than 6 months, in 18 Questure it takes more than 6 months and in 3 Questure more than a year. The Civil Court of Rome, on 31 July 2023, once again stated that "the Administration does not enjoy full discretionary power, but it is obliged to provide the necessary means to register the application within the times prescribed by the law, moreover, since the pandemic emergency which led to first eliminating and then significantly limiting access to offices has long been overcome".[310]

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.[311] 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.[312] 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 Prenofacile system as it was actually not allowing people to request an appointment.[313]

Later, Questura decided to allow those who do not have passport to book an appointment through some organisations which declared to be available, such as ACLI.

The Questure of Sassari and Siracusa declared asking people 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 Questure - 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.[314]

310 Civil Court of Rome, decision of 31 July 2023.
311 Civil Court of Milan, decision of 28 March 2023.
312 Information provided by the Questura available at: bit.ly/42QXP63.
313 Civil Court of Milan, decision of 9 May 2023.
314 Civil Court of Rome, Decision of 31 March 2023

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.[315] 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.[316]

On 8 April 2024, the report "Attendere prego" from the International Rescue Committee Italy (IRC) Le Carbet, Mutuo Soccorso Milano, Naga ASGI and Intersos, was published confirming the difficulty in accessing the procedure existing in Milan and in others Italian provinces.[317]

Access to the procedure from detention

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.[318]

As recorded by ASGI, in 2023, 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 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.[319]

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:	33 days
2.	Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing?	☒ Yes ☐ No
3.	Backlog of pending cases at first instance as of (31 December 2023):	146,940
4.	Average length of the first instance procedure in (year of reference):	Not available

315 Civil Court of Trieste, Decision of 24 March 2023

316 See Meltingpot, I richiedenti asilo hanno diritto a documenti e accoglienza, Hanuary 2023, available at bit.ly/42MnRad.

317 See the report "Attendere Prego", 8 April 2024, gli ostacoli al riconoscimento della protezione internazionale in Italia, available at https://acesse.dev/afrI0.

318 Article 6(4) Reception Decree.

319 Civil Court of Turin, decision of 14 October 2022.

According to the Procedure Decree, the Territorial Commission interviews the applicant within 30 days after having received the application and decides in the 3 following working days. When the Territorial Commission is unable to take a decision in this time limit and needs to acquire new elements, the examination procedure is concluded within 6 months of the lodging of the application. The Territorial Commission may extend the time limit for a period not exceeding a further 9 months, where:

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

Exceptionally and in duly justified circumstances, the Territorial Commission 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.[320] 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 respected. 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 2023, 136,826 asylum requests were registered in Italy, almost doubled compared to 77,200 in 2022[321] and 60,772 were the first instance decisions issued on asylum applications (compared to 53,060 in 2022).[322] Of these 4,877 (8%) were decisions granting a refugee status, 6,244 a subsidiary protection (10%) and 11,152 (19%) a national protection (protezione speciale). Overall, the recognition rate stood at 37%, a decrease compared to 2022 when it was 47%.

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*).[323]

The applicant may request the reopening of the suspended procedure within 9 months from the suspension decision, only once.[324] 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 as Subsequent Applications.[325]

Subsequent applications submitted after the termination of the 9-month suspension period are subject to a preliminary admissibility examination.[326] During the preliminary examination, the grounds supporting the admissibility of the application and the reasons of the moving away from the centres are examined.[327]

320 Article 27(2)(3) Procedure Decree.
321 Eurostat, Final decisions on asylum applications, available at: bit.ly/41jIZ7A.
322 Eurostat, First instance decisions on asylum applications by type of decision, available at: bit.ly/3MUJwZ4.
323 Article 23-bis Procedure Decree, inserted by Article 25 Reception Decree.
324 Article 23-bis(2) Procedure Decree as amended by DL 133/2023.
325 Article 2(1)(b-bis) Procedure Decree, inserted by Article 9 Decree Law 113/2018 as amended by L 132/2018.
326 This is a preliminary examination governed by Article 29(1-bis) Procedure Decree, to which Article 23-bis expressly refers.
327 Article 23-bis Procedure Decree, inserted by Article 25(r) Reception Decree.

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 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.[328]

The Procedures Decree, provides for three different procedures depending on whether the recipients of the notifica
tion 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.[329]

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.[330]

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.[331]

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 created further 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

328 Article 11(3) Procedure Decree et seq, as amended by Article 6 Decree Law 13/2017 as amended by L 46/2017.
329 Article 11(3) Procedure Decree, as amended by Article 6 Decree Law 13/2017 and L 46/2017.
330 Article 11(3-bis) Procedure Decree, as amended by Article 6 Decree Law 13/2017 and L 46/2017.
331 Article 11(3-ter) and (3-quater) Procedure Decree, as amended by Article 6 Decree Law 13/2017 and L 46/2017.

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.

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 Procedures 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.[332]

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.[333]
Following the 2023 reform through Law 50/2023, special protection permits are now granted to persons who, according to the law, cannot be expelled or refouled.[334] 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.[335] 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.[336] 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 has already lead, according to ASGI monitoring, to a significative limitation in the number of cases in which this form of protection is recognised.[337]

Additionally, the Dl 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).[338]
The new provisions however do not apply to the procedures already pending as of 6 May 2023. [339]

The law also specifies that those titles which that had already been delivered at the time of entry into force of the Law 50/2023 directly from Questura would be renewed only once for a duration of one year. The law also specifies that they can be changed into work permits.[340]

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332 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.

333 Article 5 (6) as amended by Decree Law 130/2020 and L 173/2020.

334 Article 32(3) Procedure Decree, as amended by Decree Law 130/2020 and L 173/2020.

335 Articles 19(1) as amended by Decree Law 130/2020 and L. 173/2020.

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

337 According to Eurostat, humanitarian permits recognised in 2023 were 380 less than those granted in 2022 (see Eurostat data available at: https://acesse.dev/Il39P. However data have to be read in conjunction with the fact the overall recognition rate is significantly decreased in 2023 passing from 47% in 2022 to 37%.

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

339 Article 7 (2) DL 20/2023.

340 Article 7 (3) DL 20/2023.

However, during 2023 and still in early 2024, Questure denied the possibility to change the special protection permits into work permits, declaring inadmissible all the requests because Article 6 TUI does not allow the change anymore for those special protection permits released by decision of Territorial Commissions as a result of the international protection request.[341]

Many Courts, both ordinary and administrative, upheld appeals filed in this regard, ruling that the transitional rule provided by Article 7 (3) DL 20/2023 has to be applied uniformly, with no admissible difference between special protection permits issued directly by Questure and those issued by decision of Territorial Commissions, as the legal provision for their issuance is the same.

Recalling the transitory provision of Article 7 (3) DL 20/2023, by decision of 22 November 2023, the Administrative Court for Campania region upheld the interim request to suspend the effects of the denial notified to an applicant by the Questura of Naples.[342] The Administrative Court for Tuscany region[343] and the Administrative Court for Piedmont[344] region also decided in the same way. Some other administrative Courts, such as the one for Marche region[345] and Friuli Venezia Giulia Region,[346] instead of deciding only on the interim request, decided to uphold the entire appeal.

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

According to Article 32 (3.1) of the Procedure Decree, in case of rejection of the application for international protection, the Territorial Commission recommends to Questura to issue a permit to stay for health reasons when conditions provided by Article 19 (2 d bis) TUI - as amended by L. 50/2023 - are met.
Law 50/2023 has restricted the possibilities of obtaining this type of permit, providing that it can be issued in case of health conditions deriving from particularly serious pathologies (as before) but adding as a condition the inadequacy of treatment in the country of origin. The pathology has to cause significant damage to the health of the applicant, in case of return to the country of origin or provenance. [347] 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 linked 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.[348]

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.[349]

6. Reject the asylum application as unfounded;

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341 Article 7 DL 20/2023 cancelled the provision before included in lett. a) Article 6 (1 bis) which stated that special protection permits released according to Article 32 Procedure Decree (as an outcome of the asylum request) could be changed into work permits.
342 Administrative Court for Campania region, Interim decision of 22 November 2023, published on 23 November 2023, no. 02178/2023.
343 Administrative Court for Tuscany region, interim decision no. 24/2024 of 10 January 2024.
344 Administrative Court for Piedmont Interim decision no. 10/2024 of 12 January 2024.
345 Administrative Court for Marche region, decision no. 00913/2023 of 28 December 2023
346 Administrative Court for Friuli Venezia Giulia region, decision no. 87/2024 of 27 February 2024
347 Article 32 (3.1) Procedure Decree recalls the requirements referred to in Article 19 TUI (2) (d-bis) as amended by L. 50/2023 which excludes the expulsion or extradition of foreigners who are in such health serious conditions.
348 Article 32 (3.2) Procedure Decree introduced by Decree Law 130/2020 and L 173/2020 and referring to Article 31 (3) TUI.
349 Article 6 (1 bis) TUI introduced by Decree Law 130/2020 and L 173/2020.

7. Reject the application as manifestly unfounded;[350]

According to the Article 28-ter of the Procedure Decree, an application can be deemed to be "manifestly unfounded" where the applicant.

a. Has only raised issues unrelated to international protection;
b. Comes from a Safe Country of Origin;
c. Has 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).[351]

DL 133/2023 extended the applicability of this provision to vulnerable people.[352]

8. Reject the application on the basis that an internal protection alternative is available.[353]

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

According to Article 32 (4) of the Procedure Decree, as amended by L 50/2023, in the event of rejection, withdrawal of the application and inadmissibility, the decision of the Territorial Commission shall also contain a certificate of the obligation to return and the prohibition of re-entry.[354] This certificate produces the effects of the expulsion order[355] and must be challenged together with the appeal against the denial of international and special protection, without prejudice to the effects of suspension governed by the procedures decree.[356]

1.2. Prioritised examination and fast-track processing.

Article 28 of the Procedures Decree, significantly 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;[357]
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,

350 Article 32(1)(b-bis) Procedure Decree, as amended by Decree Law 113/2018 and L 132/2018.
351 Article 28-ter(g) Procedure Decree, citing Article 6(2)-(3) Reception Decree.
352 DL 133/2023 has repealed Article 28 ter (1 bis) According to Article 28 ter as reformed by Decree Law 130/2020 and L 173/2020 according to which the provision does not apply to people with special needs, referring to Article 17 Reception Decree.
353 Article 32(1)(b-ter) Procedure Decree, inserted by Decree Law 113/2018 and L 132/2018.
354 Article 32 (4) as amended by L. 50/2023 referring to Article 13 (13,14) of TUI.
355 Article 13 TUI.
356 Article 35 bis (3,4) Procedure Decree.
357 Before the reform the law stated that it applied to applications likely to be well founded.

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.[358]

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.[359] 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

The Procedure Decree provides for a personal interview of each applicant, which is not public.[360] During the personal interview the applicant can disclose exhaustively all elements supporting his or her asylum application.[361]

The Decree Law 130/2020, by amending Article 12 (1), provided for the possibility of hearings conducted by audio-visual means.[362] 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

358 Article 28(2) C Procedure Decree, as amended by Decree Law 130/2020 and L. 173/2020.
359 Article 6(3) L 47/2017.
360 Article 12(1) Procedure Decree; Article 13(1) Procedure Decree.
361 Article 13(1-bis) Procedure Decree, inserted by the Reception Decree.
362 Article 12 (1) as amended by Decree Law 130/2020 and L 173/2020.

reasons.[363] The applicant recognised as such is allowed to ask for the postponement of the personal interview through a specific request with the medical certificates.[364]

(c) For applicants coming from those countries identified by the CNDA, when considering that there are sufficient grounds to grant them subsidiary protection.[365] 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.[366]

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.

1.3.2. Recording and report

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.[367] 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.[368] 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.[369] 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

363 Article 12(3) Procedure Decree, as amended by the Reception Decree.
364 Article 5(4) PD 21/2015.
365 Article 12(2-bis) Procedure Decree, read in conjunction with Article 5(1-bis).
366 Article 10(4) Procedure Decree, as amended by the Reception Decree.
367 Article 14(2-bis) Procedure Decree, inserted by the Reception Decree.
368 Article 14(1) Procedure Decree, as amended by Article 6 Decree Law 13/2017 and L 46/2017.
369 Article 14(2) Procedure Decree, as amended by Article 6 Decree Law 13/2017.

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,[370] 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.[371] This decision cannot be appealed.[372] 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.[373]

In 2019 and 2020, interviews were still never audio- or video-recorded due to a lack of necessary equipment and technical specifications. 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 March 2024.

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 common.

1.4. Appeal

Indicators: Regular Procedure: Appeal

1. Does the law provide for an appeal against the first instance decision in the regular procedure? ☒ Yes ☐ No
   - ❖ If yes, is it ☒ Judicial ☐ Administrative
   - ❖ If yes, is it automatically suspensive ☐ Yes ☒ Some grounds ☐ No
2. Average processing time for the appeal body to make a decision: Not available

1.4.1. Appeal before the Civil Court

The Procedure Decree provides for the possibility for the asylum seeker to appeal before the competent Civil Court (*Tribunale Civile*) against a decision issued by the Territorial Commissions rejecting the application, granting subsidiary protection instead of refugee status or requesting the issuance of a residence permit for special protection instead of granting international protection.[374]

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.[375] 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.[376]

370 Article 14(5) Procedure Decree, as amended by Article 6 Decree Law 13/2017.
371 Article 14(6-bis) Procedure Decree, as amended by Article 6 Decree Law 13/2017 and L 46/2017.
372 Article 14 (6 bis) Procedure Decree.
373 Article 14(7) Procedure Decree, as amended by Article 6 Decree Law 13/2017 and L 46/2017.
374 Articles 35(1) and 35-bis(1) Procedure Decree.
375 Article 1 Decree Law 13/2017, as amended by L 46/2017.
376 Article 2(1) Decree Law 13/2017, as amended by L 46/2017.

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).[377]

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.[378]

However, the time limit for lodging an appeal is 15 days for persons placed in CPR and negative decisions taken under the Accelerated Procedure.[379]

The appeal has automatic suspensive effect, except where:[380]

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;
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.[381]

Amending Article 35(bis) (4) of the Procedure Decree, the Decree Law 130/2020 specified that the Court takes the decision in collegial composition.[382]

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.[383] 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.

377 Article 4(3) Decree Law 13/2017, as amended by L 46/2017.
378 Article 35-bis(2) Procedure Decree, as amended by Decree law 130/2020.
379 *Ibid*.
380 Article 35-bis(3) Procedure Decree, , as amended by Decree Law 130/2020.
381 Article 35-bis (4) Procedure Decree.
382 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.
383 Moi Circular of 30 October 2020 no. 9075580

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.[384]

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.[385] 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.[386]

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 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 EEUA 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.[387]

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.[388] 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.[389]

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 courtsheld oral hearings with asylum seekers, as set out in the law in case the interview is not video-

384 ASGI, Asilo e procedure accelerate: commento alla circolare del Ministero dell’Interno, 6 March 2020, available in Italian at: https://bit.ly/2zfAv9L.
385 Article 35-bis(7) and (12) Procedure Decree.
386 Article 35-bis(8) Procedure Decree.
387 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.
388 Article 35-bis Procedure Decree, introduced by Article 6(10) Decree Law 13/2017 and L 46/2017.
389 Article 6(11) Decree Law 13/2017.

recorded.[390] 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,[391] but the 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.[392]

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.[393]

As far as cultural mediation in the hearing is concerned, only some courts allow the presence of cultural mediators provided by the 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.

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.[394]

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 to ASGI 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.[395]

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.[396]

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

390 CSM, *Monitoraggio sezioni specializzate*, October 2018, 27-28.
391 Court of Cassation, 1st 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.
392 Art. 35-bis, (10) Procedure Decree
393 L. Perilli, mentioned available in Italian at: bit.ly/3mtqXRa.
394 Article 127-ter of the Code of Civil Procedure, introduced by Legislative Decree no. 149 of 10 October 2022.
395 Article 35-bis(13) Procedure Decree.
396 Ministry of Justice, Analisi procedimenti in materia di protezione internazionale, available in Italian at: https://bit.ly/3CMzIcp.

20% of the total number of civil cases. Out of these, a decision was issued on around 32,800 proceedings per year.[397]

Consequently, ASGI lawyers registered an increase in the duration of the judicial procedure, with some Courts that in 2021, 2022 and 2023 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 (e.g. Milan and Trieste).[398]

According to Eurostat data, the total number of final decisions on asylum applications in 2023 was 14,805, out of which 3,490 (23 %) were rejections.[399]

1.4.2. Onward appeal

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

In case of a negative decision 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.[400]

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.[401]

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.[402]

The 2017 reform sparked strong reactions from NGOs,[403] 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

397 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.

398 For the years 2021 and 2022 information are confirmed in the publication 'L. Minnitii, '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.

399 Eurostat, Final decisions on asylum applications, available at: bit.ly/41CRnPb.

400 Article 35-bis(13) Procedure Decree.

401 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.

402 Article 35-bis(13) Procedure Decree.

403 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.

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[404] and 3,679 in 2021.[405] However, in 2022 there was a substantial decrease, with 1,495 new cases registered.[406]

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.[407]

In 2023, the report from the Court of Cassation does not include detailed information on international protection appeals.[408]

The Court of Cassation ruling at United Sections, with decision n. 15177 published on 1 June 2021,[409] 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.[410] The interpretation given by the Court affected 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.[411]

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."[412]

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, 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.[413]

404 Court of Cassation, Report on the administration of justice in the year 2020, final remarks, 29 January 2021, available at: https://bit.ly/3tEh7ZT.
405 Court of Cassation report on administration of justice in the year 2021, available at: https://bit.ly/3ycmqG1.
406 Court of Cassation, report on administration of Justice in the year 2022, available at: bit.ly/3L5w2sn.
407 Ibid.
408 Court of Cassation, report on administration of Justice in the year 2023, Available at https://l1nq.com/IE4MP.
409 Court of Cassation, decision n. 15177 of June 2021, available in Italian at: https://bit.ly/3Jf43TH.
410 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".
411 The III section Court of Cassation application is available – commented – at: https://bit.ly/3tbN1jt.
412 Constitutional Court, Decision n. 13 of 2022, available in Italian at: https://bit.ly/36nS8Ec.
413 Court of Cassation, report on administration of Justice in the year 2022, available at: bit.ly/3L5w2sn.

In 2023, the cooperation with the EUAA continued for the periodic review of jurisprudence on international protection.[414]

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.[415]

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

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

A distinction should be made between national public funds and those which are allocated by private foundations and associations. In particular, the main source of funds provided by the State is the National Fund for Asylum Policies and Services, financed by the Ministry of Interior. The Procedure Decree provides that the Ministry of Interior can establish specific agreements with UNHCR or other organisations with experience in assisting asylum seekers, with the aim to provide free information services on the asylum procedure as well on the revocation one and on the possibility to make a judicial appeal. These services are provided in addition to those ensured by the manager of the accommodation centres.[416] 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 MoI 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.[417] 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.

414 Court of Cassation, report on administration of Justice in the year 2023, Available at https://l1nq.com/IE4MP., 124.
415 Court of Cassation, Decision 669/2018, 12 January 2018.
416 Article 10(2-bis) Procedure Decree.
417 Article 11(6) TUI.

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.

1.6. 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 2023 € 12,838 and whose case is not deemed manifestly unfounded.[418] 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.[419] 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.[420] Regarding asylum seekers, Article 8 PD 21/2015 clarifies that, in order to be admitted to free legal assistance, the applicant can present a self-declaration instead of the documents prescribed by Article 79 PD 115/2002.

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.[421] 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.[422] 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.[423]

LD 133/2023 has made access to free legal aid extremely difficult in cases related to subsequent applications, applications considered manifestly not founded and to decisions taken in accelerated procedures. According to the new law, the judge has to withdraw the free legal aid recognised to the applicant in case the Court rejects an appeal submitted against:

418 Article 16(2) Procedure Decree.
419 Article 79(2) PD 115/2002.
420 Article 94(2) PD 115/2002.
421 Article 126 PD 115/2002.
422 Article 136 PD 115/2002.
423 Court of Cassation, Decision 26661/2017, 10 November 2017.

- a decision of inadmissibility related to a subsequent asylum request not provided with further evidence or elements (Article 29);
- a decision of inadmissibility related to a subsequent asylum request submitted to avoid the execution of a removal order (article 29 bis procedure decree);
- a decision which rejected the asylum request as manifestly not founded.

However, in the decision, the judge can confirm granting of free legal aid explaining in the decision why the arguments brought with the appeal cannot be considered manifestly not founded.[424]

DL 133/2023 introduced other limits to the free legal aid benefit. According to the law, the Court declares ceased the free legal aid when:[425]

- it rejects the suspensive request included in the appeal submitted by an applicant coming from a safe country and who sought asylum directly at the border or in transit areas;
- It rejects the suspensive request included in the appeal submitted against a refusal taken by the Territorial Commission applying an accelerated procedure (Article 28 bis procedure decree) and Questura informs about the execution of the removal order before a final decision is taken. In these cases, rules on the limits to accessing free legal aid do not apply as the person is not channelled in an accelerated procedure due to reasons connected to their asylum claim, but rather for reasons of public security.[426]

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: 1 January – 31 December 2023

Outgoing procedure				Incoming procedure			
	Requests	Accepted	Transfers		Requests	Accepted	Transfers
Total	**6,530**		31	**Total**	**35,563**		61

Source: Ministry of Interior, Dublin Unit.
*Transfers refers to the number of transfers actually implemented, not to the number of transfer decisions.

424 Article 35-bis(17) Procedure Decree as amended by DL 133/2023, converted with amendments by L. 176/2023.
425 Article 35 bis / 17 bis) Procedure Decree introduced by DL 133/2023, converted with amendments by L. 176/2023.
426 This provision does not apply to the cases ruled by Article 28 bis (1 lett. b), related to applicants under a criminal procedure, and to applicants detained according to Article 6 (2, lett. a, b, c) of the Reception Decree. They correspond to the following cases; 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; b) Is issued an expulsion order on the basis that he or she constitutes a danger to public order or state security; c) the applicant may represent a danger for public order and security.

In 2023, 35,563 requests (including both take charge and take back requests) were received in the incoming procedure, which marked a significant increase when compared to the 27,928 incoming requests Italy received in 2022. Regarding the outgoing procedure, there were 6,530 total requests, also considerably higher than in 2022 when 5,315 requests were sent.

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 would not affect the reunification procedures for minors.

In an August 2023 reply to a request from the Danish Refugee Appeals Board, the Italian authorities informed the Danish Immigration Service that the country was experiencing a significant increase in the number of asylum seekers in the country, which put the national reception system under pressure.

On 8 September 2023, the Board submitted preliminary questions to the CJEU, requesting clarifications about the impact of a Member State's temporary suspension of transfers on the six-month time limit under Article 29 of the Dublin Regulation. [427]

The state of emergency in Italy was extended in October 2023[428] and again in April 2024.[429]

In 2023, the communication was not withdrawn, however 61 incoming transfers were realised. Out of these, just 41 incoming transfers were realised based on family criteria, definitely lower compared to the 153 incoming transfers realised in 2022.[430]According to a report published by the Ministry of Labour,[431] in 2023, 21 incoming requests involving minors were accepted.

Transfers in the outgoing procedure were only 31, half compared to 2022 when they were 65, and significantly less than the 431 realised in 2020, and 579 in 2019. Out of those, in 2023, 5 took place for family reunifications towards other States.

Responding to the FOIA request, the Ministry of Interior stated that, in 2023, the discretionary clause provided by Article 17 of the Dublin Regulation was applied 5 times.[432]

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.

According to the information provided by the Ministry of Interior, in 2023, the number of realised transfers based on family criteria was 46, out of which 41 were incoming transfers and 5 outgoing transfers.[433]

427 See for reference: AIDA Dublin statistical update, available here, pp. 22-23.
428 Dipartimento della Protezione Civile, Delibera del Consiglio dei Ministri del 5 ottobre 2023 - Proroga dello stato di emergenza in conseguenza dell'eccezionale incremento dei flussi di persone migranti in ingresso sul territorio nazionale attraverso le rotte migratorie del Mediterraneo, available in Italian at: https://bit.ly/3sc6Idg.
429 See press release published on the Government website on 9 April 2024: bit.ly/3wsVqDE. To be published in Gazzetta Ufficiale.
430 Response of the Dublin Unit to the public access information request sent by ASGI.
431 Ministry of Labour, *Monitoring six months report on unaccompanied foreign minors*, 31 December 2023, available at: https://bit.ly/4bM9XKD and Ministry of Labour, *Monitoring six months report on unaccompanied foreign minors*, 30 June 2023, available at: http://bit.ly/49nN2na.
432 Response of 24 February 2024 of the Dublin Unit to the public access information request sent by ASGI. The answer does not specify more.
433 Response of the Dublin Unit to the public access information request sent by ASGI.

Family unity involving unaccompanied minors

In 2023 the Dublin Unit dealt with 59 cases of unaccompanied minors eligible for transfers under Articles 8 and 17(2) of the Regulation, significantly less than the 196 examined in 2022. 8 cases were related to outgoing requests.

Between January and June 2023, 17 accepted requests were based on family unity and involving unaccompanied minors, out of which only one was an outgoing request.[434]

Between July and December 2023, 5 accepted requests were based on family unity and involving unaccompanied minors, all related to incoming procedures.[435]

Since 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.[436] The project staff has drawn up and disseminated Guidelines for operators,[437] containing operating procedure 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.[438]

Outgoing procedure involving minors

Of the 8 outgoing practices examined by the Dublin Unit in 2023, 5 were started between January and June 2023 and 3 in the second half of the year.

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

Regarding the degrees of kinship, 3 minors applied to be reunited with a parent, 3 minors with a sibling and 2 others with an uncle.[439]

The breakdown of outgoing requests of unaccompanied children in 2023 was as follows:

Outgoing procedure of children under the Dublin family reunification in 2023	
Country requested	Number of requests
Germany	4
France	3
Finland	1

Source: Ministry of Labour, Monitoring report on unaccompanied foreign minors, 31 December 2023, available at: bit.ly/4bM9XKD.

Incoming procedure involving minors

In 2023, the Dublin Unit dealt with 51 incoming procedures, out of which 40 in the first half of the year and 11 in the second.

434 Ministry of Labour, Monitoring six months report on unaccompanied foreign minors, 30 June 2023, available at: http://bit.ly/49nN2na.

435 Ministry of Labour, Monitoring six months report on unaccompanied foreign minors, 31 December 2023, available at: https://bit.ly/4bM9XKD.

436 Project webpage, available at: https://bit.ly/3kxuY24.

437 Guidelines available at: https://bit.ly/3vwqe34.

438 Multilingual materials accessible and downloadable at: https://bit.ly/3OS7P8I.

439 Ministry of Labour, Monitoring six months report on unaccompanied foreign minors, 31 December 2023, available at: https://bit.ly/4bM9XKD, and Ministry of Labour, Monitoring six months report on unaccompanied foreign minors, 30 June 2023, available at: http://bit.ly/49nN2na.

Regarding the period between January and June 2023:

- 16 requests were accepted, and 8 scheduled for the transfer;
- 10 were rejected;
- 13 were pending by the end of June.

13 minors reached the age of majority during the procedure, 25 were between 14 and 17 years of age and only 2 were younger than 14. Minors were predominantly from Pakistan (16) Somalia (8) and Egypt (8).

Concerning the degree of kinship between the minors involved in incoming requests and their respective family members resident in Italy, 30 minors applied to be reunited with an uncle or an aunt, 8 with a brother or sister, 1 with their father and 1 with their grandfather.

26 family members of the minors live in Northern Italian regions, 5 in those of the Centre, and 9 in the Southern Regions and on the Islands.

Finally, as for the requesting State, almost all of the applications (30 out of 40) came from the Greek Dublin Unit. The remaining applications were sent by Cyprus (8), Bulgaria (1) and Latvia (1).

Of the 11 incoming requests dealt with between July and December:

- 5 were accepted and 3 were transferred in the second half of 2023, while 2 were still awaiting transfer;
- 2 were rejected;
- 4 were still pending by the end of December.

All unaccompanied minors were male. As of 31 December 2023, 1 minor reached the age of majority pending the procedure and the others were between the age of 14 and 17. The most represented country of origin of the minors was Pakistan (6 minors), followed by Egypt (4 minors).

Regarding family ties, 7 minors applied to be reunited with a sibling, 3 with an uncle or an aunt, and just one with their father. Regarding the geographical distribution on the Italian territory of the family members or relatives of unaccompanied minors, 7 lived in the Northern regions, 3 in those of the Centre, and 1 remained unknown.

Almost all the requests came from Greece (10 out of 11). The other came from Switzerland.

2.1.2. The discretionary clauses

For 2023, the Italian Dublin Unit, replying to a FOIA request submitted by ASGI, stated that ‘the discretionary clause (Article 17) was applied 5 times’.

In 2021 and 2022, many Civil Courts – including that of Rome – suspended decisions related to the principle of non 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 were Afghan citizens who appealed against transfers to, respectively, Germany and Sweden, where their asylum application had already been rejected. They claimed that the execution of their transfer would expose them to irreparable damage because of the consequent repatriation to Afghanistan.[440]

[440] 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).

The CJEU published its judgement on 30 November 2023[441] and, recalling the principle of mutual trust, affirmed that the difference in the assessment by the requesting Member State, on the one hand, and the Member State responsible, on the other, regarding the existence of the conditions for protection, is not, in principle, relevant for the purposes of reviewing the validity of the transfer decision. Therefore, the Court observed that the Dublin III Regulation objectives 'preclude the court examining the transfer decision from carrying out a substantive assessment of the risk of refoulement in the event of return'.[442]

For this reason, the CJEU concluded that the Dublin Regulation and the Charter' must be interpreted as meaning that the court or tribunal of the requesting Member State, hearing an action challenging a transfer decision, cannot examine whether there is, in the requested Member State, a risk of infringement of the principle of non-refoulement to which the applicant for international protection would be exposed during his or her transfer to that Member State or thereafter where that court or tribunal does not find that there are, in the requested Member State, systemic flaws in the asylum procedure and in the reception conditions for applicants for international protection. Differences of opinion between the authorities and courts in the requesting Member State, on the one hand, and those of the requested Member State, on the other hand, as regards the interpretation of the material conditions for international protection do not establish the existence of systemic deficiencies'.

On the other hand, with regard specifically to the sovereignty clause (Article 17(1) Dublin Regulation), the CJEU separates two hypotheses stating that:

1) 'Article 17(1) of the Dublin III Regulation, read in conjunction with Article 27 of that regulation and with Articles 4, 19 and 47 of the Charter, must be interpreted as not requiring the court or tribunal of the requesting Member State to declare that Member State responsible where it disagrees with the assessment of the requested Member State as to the risk of refoulement of the person concerned'; and that
2) Due to the optional nature of the provisions of Article 17(1) of the Dublin III Regulation, 'If there are no systemic flaws in the asylum procedure and in the reception conditions for applicants for international protection in the requested Member State during the transfer or thereafter, nor can the court or tribunal of the requesting Member State compel the latter to examine itself an application for international protection on the basis of Article 17(1) of the Dublin III Regulation on the ground that there is, according to that court or tribunal, a risk of infringement of the principle of non-refoulement in the requested Member State'.

As immediately highlighted by a legal study,[443] it is no coincidence that the Court used, for the two hypotheses set out regarding Article 17(1) the expressions "not requiring" and "cannot compel". This difference allows the Court to highlight the existence of the judge's ability to apply the clause. As this study highlights, the express reference to the judge - and not generically to the Member State - as the body that can arrange for the application of the clause is particularly relevant.

Following the CJEU decision, the Civil Courts started resuming the cases suspended pending this decision.

The Civil Court of Bologna, on 20 February 2024, gave the Dublin Unit additional time to consider the possibility to apply the sovereignty clause due to the extraordinary circumstance of the long time passed waiting for the CJEU decision, postponing the court's decision to after the Dublin Unit's decision.[444]

The Civil Court of Rome, considering the long duration of the procedure for determining the responsible State, due to the wait for the CJEU decision, decided to apply the sovereignty clause and declared the

441 Court of Justice of European Union, *Ministero dell'Interno (Brochure commune - Refoulement indirect)*, joined cases, Case C-254/21 and C-297/21, together with Cases C-228/21, C-328/21 and C-315/21, available at: https://bit.ly/3ThqbnN.

442 Ibid, par. 141.

443 See *Nel nome della fiducia reciproca! La Corte di Giustizia si pronuncia sul rischio di refoulement indiretto nei trasferimenti Dublino: l'unica (e sempre più restrittiva) eccezione delle carenze sistemiche e le (limitate) prerogative del giudice nazionale*, by Marcella Ferri, researcher in European Union Law at the Department of Law of the University of Florence, in Eurojus, Fascicolo n. 1 - 2024 available at: https://bit.ly/3uVrXl6.

444 Civil Court of Bologna, decision of 20 February 2024.

Italian responsibility to the exam of the asylum request of the applicant, also considering his integration in Italy.[445]

The Civil Court of Trento, on 29 February 2024, decided to apply the sovereignty clause and established the Italian responsibility to examine the asylum request of the applicant. The Court took into account the long time spent in Italy by the applicant awaiting the Court's decision, suspended awaiting the CJEU's decision, and his personal vulnerabilities which emerged during the appeal and had not been considered by the Italian government for the recognition of the complementary national protection, which could be recognised considering the applicant's origin from the Azad Kashmir (Bhimber, Pakistan).[446]

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 significantly increased in 2018 and benefitted from the support of EASO personnel, mainly in relation to outgoing requests, family reunification and children.

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.[447] However, no peripheral units have been implemented since 2020, including in 2023.

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 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,[448] instead of "applicants for international protection" ("Category 1").[449] 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 had been made; it should also be noted that "Category 3" fingerprints are not stored in the Eurodac database.[450]

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, for which the Dublin Regulation should have been applied, as ruled by the Civil Court of Rome[451] (see Access to the territory).

In 2022 and 2023, no other readmissions of people expressing their will to seek asylum were recorded at the eastern border.

445 Civil Court of Rome, decision of 21 February 2024.
446 Civil Court of Trento, decision of 29 February 2024.
447 Article 3(3) Procedure Decree, as amended by Article 11 Decree Law 113/2018.
448 Article 17 Eurodac Regulation.
449 Article 9 Eurodac Regulation.
450 Article 17(3) Eurodac Regulation.
451 Civil Court of Rome, decision of 18 January 2021, available in English at: https://bit.ly/3hgKr6b.

However, a change brought by DL 133/2023 could affect the Dublin procedure. DL 133/2023 introduced new Article 6 (3 bis), according to which in the event that the third country national citizen does not present themselves at the competent Questura for verification of the identity declared by them or for the formalisation of their asylum application, their expressed intention to seek asylum does not constitute an asylum application and the procedure is considered as never started.

In 2021, the Civil Court of Trieste and the Court of Cassation requested, pursuant to Article 267 of the TFEU, that the European Court of Justice give a preliminary ruling to clarify the scope of information obligations and the effects of their violation on judicial proceedings.[452] The CJEU then published its judgement on 30 November 2023[453] (see Personal interview).

2.2.1. Individualised guarantees

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

In some cases, the Dublin Unit was not informed about vulnerability by Questure. 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 (see Personal interview).

2.2.2. Transfers

In case another Member State is considered responsible under the Dublin Regulation, the asylum procedure is terminated.[454] 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.[455] 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 suspension had been requested and granted.[456] 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, according to information collected by ASGI, 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.

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

452 Court of Cassation, decision no. 8668 of 23 February - 29 March 2021.

453 Court of Justice of European Union, *Ministero dell'Interno (Brochure commune - Refoulement indirect)*,joined cases, Case C-254/21 and C-297/21, together with Cases C-228/21, C-328/21 and C-315/21, available at https://bit.ly/3ThqbnN.

454 Article 30(1) Procedure Decree.

455 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.

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

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.[457] 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 and 2023 no significant changes were recorded in the majority of the cases.

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.[458] The risk is assessed on a case-by-case basis case 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 further 12 days. Before the expiry of this term, the Questore can carry out the transfer by notifying the judge without delay.[459]

In a case decided on 19 August 2023 by the Civil Court of Trieste, the detention was validated considering that the asylum seeker was "homeless, moving along the national territory without financial resources, and was the recipient of multiple criminal complaints".[460]

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.

In 2021 and 2022, many Courts suspended Dublin transfers pending the CJEU's preliminary rulings raised by Courts regarding information obligations. The Court of Cassation,[461] the Civil Court of Trieste[462] and the Civil Court of Milan[463] asked the CJEU to clarify if a violation of the information obligations foreseen

457 Ministry of Labour, *I minori stranieri non accompagnati in Italia*, 31 December 2017, available in Italian at: http://bit.ly/2FvU6Aj, 14.
458 Article 6 ter (1) of the Reception Decree introduced by L. 50/2023 converting into law with amendments the DL 20/2023.
459 Article 6 ter (2 and 3) of the Reception Decree introduced by L. 50/2023 converting into law with amendments the DL 20/2023.
460 Civil Court of Trieste, decision of 19 August 2023.
461 Case C-228/21.
462 Case C-328/21.
463 Case C-315/21.

by Articles 4 and 5 of the Dublin Regulation should always cause cancellation of the transfer or if such cancellation could be ordered only when the applicant proves how the fulfilment of the information obligations and consequently their participation in the procedure could have changed the procedure.[464] The hearing took place on 8 June 2022. The Advocate General delivered her opinion on 20 April 2023, concluding that infringements to 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.[465]

The CJEU started out by stating that the obligation to provide the information under Articles 4 and 5 of the Dublin III Regulation and Article 29 of the Eurodac Regulation "applies both in the context of a first application for international protection and a take charge procedure, under Article 20(1) and Article 21(1) of Regulation No 604/2013 respectively, as well as in the context of a subsequent application for international protection and a situation, as that covered by Article 17(1) of Regulation No 603/2013, capable of giving rise to take back procedures under Article 23(1) and Article 24(1) of Regulation No 604/2013".

Then, the Court clarified the existence of different consequences in case of the infringement of Article 4 (common leaflet) or Article 5 (individual interview). According to the Court:

- A Dublin transfer decision should be annulled in case of an appeal calling into question the absence of the personal interview provided for in Article 5, unless the national legislation allows the person concerned, in the context of that appeal, to set out in person all their arguments against that decision at a hearing which complies with the conditions and safeguards laid down in the latter article, and those arguments do not have sufficient weight to alter that decision.
- In case on an appeal calling into question the violation of Article 4 (common leaflet not provided), the national court responsible for assessing the lawfulness of the transfer decision may order that the decision be annulled only if it considers, in the light of the factual and legal circumstances of the case, that the failure to provide the common leaflet, notwithstanding the fact that the personal interview has taken place, actually deprived that person of the possibility of putting forward their arguments, to the extent that the outcome of the administrative procedure in respect of that person could have been different.

In practice, this means that failure to provide the common leaflet cannot lead to the annulment of the transfer unless the appellant demonstrates how the absence of information concretely affected the Dublin procedure and altered it. Instead, the personal interview is considered an essential phase which, if omitted, must in any case be made up for during the trial by listening directly to the appellant. This, in the Italian context where the interview is often omitted or inconsistent and the court proceedings are mostly written, could take on an important meaning in pending and future trials.[466]

On 3 April 2024, the Court of Cassation recalling the CJEU decision stated that "where the specific information obligations are not fulfilled, in light of the hearing carried out and the information resulting from the allegations and productions of the administrative authority, burdened with proof, the transfer decision must be annulled".[467]

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464 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.

465 Opinion of Advocate General Kokott delivered on 20 April 2023, available at: bit.ly/42LeWWS.

466 Court of Justice of European Union, *Ministero dell'Interno (Brochure commune - Refoulement indirect)*, joined cases, Case C-254/21 and C-297/21, together with Cases C-228/21, C-328/21 and C-315/21, available at: https://bit.ly/3ThqbnN.

467 Court of Cassation, decision of 3 April 2024, no. 12162/2024. Similarly, see Court of Cassation, decision of 17 April 2024, available at https://acesse.dev/ipbCH.

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?

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

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

According to the Procedures Decree, an applicant may appeal the transfer decision before the Civil Court within 30 days of the notification of the transfer.[468]

The assistance of a lawyer is necessary for the lodging of an appeal, but the applicant can apply for free legal aid.

Decree Law 13/2017, implemented by L 46/2017 designated the specialised section of the Civil Courts as competent to decide on appeals against transfer decisions.[469]

- In case applicants are accommodated when notified about the transfer decision, territorial jurisdiction is 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.[470]
- In case of appeals brought by people not accommodated at the time they were notified with the transfer decision, jurisdiction is 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.[471] According to ASGI, this should be interpreted in the sense 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 ASGI's knowledge, in 2022 and 2023, 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.[472] In ASGI's experience, the Civil Courts never complied with these deadlines in 2020, 2021 2022 and 2023.

468 Article 3(3-ter) Procedure Decree, as amended by Article 6 Decree Law 13/2017 and L 46/2017.
469 Article 3(3-bis) Procedure Decree, as amended by Article 6 Decree Law 13/2017 and L 46/2017.
470 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".
471 Article 3(3-quater) and (3-octies) Procedure Decree, as amended by Article 6 Decree Law 13/2017 and L 46/2017.
472 Article 3(3-quater) Procedure Decree, as amended by Article 6 Decree Law 13/2017 and L 46/2017.

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.[473] The court will set a hearing only if it considers it useful for the purposes of the decision.[474]

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.

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.[475]

2.5. Legal assistance

Indicators: Dublin: Legal Assistance

☒ Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice?
   ☐ 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 Dublin decision in practice?
   ☐ Yes ☐ With difficulty ☐ No
   - ❖ Does free legal assistance cover ☐ Representation in courts ☐ Legal advice

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

2.6. Suspension of transfers

Indicators: Dublin: Suspension of Transfers

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

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,

473 Article 3(3-quinquies) and (3-sexies) Procedure Decree, as amended by Article 6 Decree Law 13/2017 and L 46/2017.
474 Article 3(3-septies) Procedure Decree, as amended by Article 6 Decree Law 13/2017 and L 46/2017.
475 Civil Court of Rome, Decision of 2 September 2022, available at: bit.ly/3KHoCMa.

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.[476]

Bulgaria: In September 2016 the Council of State suspended several transfers to Bulgaria on the basis that the country is unsafe.[477] 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.[478] In a ruling of November 2017, the Council of State reaffirmed its position and suspended the transfer of an Afghan asylum seeker to Bulgaria.[479]

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.[480]

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.[481]

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.[482]

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. Moreover, the court confirmed its previous orientation, considering Romania unsafe, 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.[483]

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.[484]

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476 Council of State, Decision 4004/2016, 27 September 2016, available in Italian at: http://bit.ly/2kWlO1d.

477 Council of State, Decisions 3998/2016, 3999/2016, 4000/2016 and 4002/2016, 27 September 2016, available in Italian at: http://bit.ly/2llJzAR.

478 *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.

479 Council of State, Decision 5085/2017, 3 November 2017, available in Italian at: http://bit.ly/2GKtcVA.

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

481 Civil Court of Turin, Decision of 14 July 2021.

482 Civil Court of Rome, Decision of 13 October 2022

483 Civil Court of Rome, Decision of 12 January 2023, available at: bit.ly/3IyzWaH.

484 Civil Court of Rome, Decision of 21 February 2023.

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 social path -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.[485]

Croatia: in early 2024, the Civil Court of Trieste adopted in two cases an interim measure to suspend two transfers to Croatia due to the possible violation of Article 3(2).[486] Also, on 9 June 2023 the Civil Court of Turin annulled the transfer of an asylum seeker to Croatia (..) in consideration of the violation of article 3(2) of the Dublin III Regulation in the part in which it states the impossibility to 'transfer an applicant towards the Member State initially designated as responsible because there are reasonable grounds to believe that there are systemic deficiencies in the asylum procedure and in the reception conditions of applicants in that Member State which entails the risk of inhuman and degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union'.[487]

Austria: on 13 March 2024, the Civil Court of Rome annulled the transfer to Austria of an asylum seeker considering that the transfer would have violated Article 3(2) of the Dublin III Regulation because of the systemic deficiencies in the Austrian reception system and in the asylum procedure. The Court considered that, as underlined in the AIDA report, during 2022, in response to the increase in the number of asylum seekers in the country, Austria has changed the procedure for registering asylum applications which no longer takes place at the border but at the regional police offices. This led to long waits, inadequate reception conditions and the dispersion of asylum seekers.[488]

United Kingdom: 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.[489]

2.7. The situation of Dublin returnees

In 2023, Italy received 61 incoming Dublin transfers. The low numbers are due to the circumstance that Italian authorities still claim the validity of the suspension of incoming transfers to be carried out pursuant to the declared state of emergency.

Reception guarantees and practice

Replying on February 2024 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".[490]

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

485 Civil Court of Bologna, Decision of 3 November 2022, available at: bit.ly/3m80szY.
486 Civil Court of Trieste, decision of 16 February 2024
487 Civil Court of Turin, decision of 9 June 2023.
488 Civil Court of Rome, decision of 13 March 2024.
489 Civil Court of Catanzaro, Decision of 10 December 2022.
490 Answer to the FOIA request, sent on February 2024.

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.[491]

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,[492] 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.[493] 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.[494] It will be only allowed to vulnerable people as defined in the Reception Decree, Article 17.[495]

In an answer (February 2024) to the public access request sent by ASGI, the Dublin Unit replied that "in the reception system there are no places reserved for Dublin returnees from other Member States, "as they are accommodated in the available places, in the same way as other asylum seekers".[496]

In practice, Dublin returnees face the same problems as other asylum seekers in Italy in accessing the asylum procedure and housing in the reception system.

Reports from the civil society and NGOs confirmed the difficulty in accessing the asylum procedure in 2023.[497] A monitoring report made by ASGI between May and June 2023 details illegitimate requirements set to grant access to the asylum procedure, such as the request to present an official address or the possession of the passport[498] (see Access to procedure).

Rules on reception conditions also significantly changed with the introduction of Law 50/2023, which converted Decree Law 20/2023. The reform excluded asylum seekers from the possibility to access the SAI system. 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).

Moreover, Law Decree No. 20/2023[499] does not foresee an obligation to provide psychological assistance services, Italian language courses and legal and territorial orientation services to asylum seekers accommodated in first reception centers, CAS and temporary centers. Law 50/2023 also introduced a

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

492 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.

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

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

495 Article 17 Reception Decree to whom Article 9 of the Reception Decree as amended by L. 50/2023 refers.

496 FOIAanswer from the Dublin Unit in the availability of the writer.

497 See the report "Attendere Prego", 8 April 2024, gli ostacoli al riconoscimento della protezione internazionale in Italia, from ASGI, International Rescue Committee Italy (IRC) Le Carbet, Mutuo Soccorso Milano, Naga ASGI and Intersos, available at https://acesse.dev/afrI0.

498 See ASGI " Mappatura delle prassi illegittime delle questure italiane Lo studio pilota di ASGI" report published on 15 April 2024, available in Italian at https://encr.pw/nu9AJ.

499 Article 6-ter of Law Decree No. 20/2023

new typology of "provisional" centres where only food, clothing, health care and linguistic-cultural mediation are provided. (See Reception Conditions)

It should be also noted that the L. 50/2023 introduced a provision according to which holders of international protection and holders of residence permits which allow access to the SAI lose the possibility of accessing it if, except in cases of force majeure, they do not present themselves at the assigned facility within seven days of the relevant communication.[500]

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, received an expulsion decree and was 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.[501]

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.[502]

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.

Since 2021, the information desk for asylum seekers in Milan Malpensa is operated by the cooperative Ballafon.[503]

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.[504]

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.[505]

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500 L. 50/2023 introduced Article 1 sexies (1- quater) of DL 416/1989.

501 Altreconomia, 'La storia di Abdul, evacuato da Kabul e finito nel Cpr di Gradisca d'Isonzo', 19 January 2022, available at: https://bit.ly/3w62Av6.

502 Civil Court of Trieste, Decision of 12 August 2022.

503 See ASGI, In Limine FOIA access, La frontiera di Malpensa: alcuni riscontri dalla pubblica amministrazione, 13 November 2022, available at: bit.ly/3UPzz15.

504 See ASGI; Ballafon relation on activities carried out from February to November 2022, available at: bit.ly/43JowdO.

505 See ASGI, In Limine, La frontiera di Fiumicino: i riscontri della pubblica amministrazione, 10 November 2022, available at: bit.ly/3GZzbav.

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.[506]

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.[507]

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.[508]

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.[509] 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.[510] 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.[511]

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

506 See ASGI, In LImine FOIA request, ITC relation on activities carried out at Fiumicino airport, available at: bit.ly/43O8jUD.

507 See, ASGI In Limine, FOIA request, Detailed information on ITC activities, available at bit.ly/43C4z8G.

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

509 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.

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

511 For more details, see ASGI, *Il sistema Dublino e l'Italia, un rapporto in bilico*, 2015, available in Italian at: https://bit.ly/3lE3GrH, 28.

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,[512] 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*).[513] The amendments made by the Decree Law 133/2023 entail that, after the expiry of 9 months from the suspension, the procedure is automatically concluded. The new application will be considered a Subsequent Application and the request will subject to the preliminary assessment of the President of the Territorial Commission also to evaluate the reasons for absconding.[514]
- 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.[515]
- In take back cases when the person, being regularly convocated for the personal hearing, failed to present themselves to the appointment without giving any justified reason, the Territorial Commission 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,[516] 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.[517]

Also, as already mentioned, the recent change introduced by DL 133/2023 in the asylum procedure could affect also Dublin returnees: the DL 133/2023 introduced the new Article 6 (3 bis) according to which in the event that the third country national citizen does not present at the competent Questura for verification of their declared identity or for the formalisation of the asylum application, their expressed intention to seek asylum does not constitute an asylum application and the procedure is considered as never started.

3. Admissibility procedure

3.1. General (scope, criteria, time limits)

Article 29 of the Procedures Decree sets out the grounds for inadmissibility. Decree Law 130/2020 has amended Article 29-bis introduced by Decree Law 113/2018 to the Procedures Decree, setting out an additional inadmissibility ground (see ground 4). Decree Law 20/2023 has amended Article 29 Procedures Decree and DL 133/2023 has significantly amended Article 29 - bis of the Procedure Decree, applicable when a subsequent request is submitted during the execution of the removal order.

512 Article 13 Dublin III Regulation.
513 Article 18(1)(c) Dublin III Regulation.
514 Article 23(bis) Procedure Decree as amended by DL 133/2023 converted with amendments by L 176/2023.
515 Article 12(5) Procedure Decree
516 Article 18(1)(d) Dublin III Regulation.
517 Article 11(3-ter) and (3-quater) Procedure Decree, as amended by Article 6 Decree Law 13/2017 and L 46/2017.

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

1. Has already been recognised refugee or subsidiary protection status[518] by a state party according to the 1951 Refugee Convention and can still enjoy such projection;[519]
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.[520]
3. Has made a Subsequent Application during the execution of an imminent removal order (Article 29-bis).[521]
4. Has made a **subsequent application** after the previous application has been terminated by the Territorial Commission after the expiry of 9 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.[522]
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.[523]

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 or have been submitted by the applicant to the granting of international protection and to evaluate whether the delay in the submission of such new elements or evidence can or cannot be attributed to the applicant's fault, who needs to provide specific evidence that it cannot be attributed to them.[524]

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 to evaluate the reasons given to support the admissibility of the application in the specific case.[525]

Even if the law distinguishes the phases of the preliminary assessment, attributed to the President, and the decision, attributed to the Commission, in some cases the Presidents of the Territorial Commissions have taken the decisions of inadmissibility on their own. With an interim decision of 1st March 2024, the Civil Court of Trieste clarified that such decisions of inadmissibility have to be taken by the Territorial Commission and not by the President.[526] In other cases, according to ASGI's experience, CT Presidents have omitted the preliminary assessment.

In case of a first subsequent application made during the execution of an imminent removal order, the Procedures Decree has been amended by DL 133/2023. According to Article 29 bis of the Procedure Decree law, 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).

518 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.
519 Article 29(1)(a) Procedure Decree.
520 Article 29(1)(b) Procedure Decree as amended by L. 50/2023.
521 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 and by DL 133/2023.
522 Article 23 bis (2) Procedure Decree.
523 Article 12 (5) Procedure Decree.
524 Article 29(1-bis) Procedure Decree, as amended by L 50/2023.
525 Article 29 (1 bis) Procedure Decree as amended by L 50/2023.
526 Civil Court of Trieste, interim decision of 1 March 2024

The exclusive role reserved for the President of the Territorial Commission, and not for the Territorial Commission itself, appears inconsistent with the Procedure Decree.[527]

ASGI is of the opinion that, Article 29-bis of the Procedure Decree is likely to violate the recast Asylum Procedures Directive, as the lodging of a subsequent application for the sole purpose of delaying or frustrating removal is not among the grounds of inadmissibility in Article 33(2) of the Directive (see Subsequent application). The provision does not clarify which phase is considered the execution of an imminent removal order.[528] Moreover, worryingly, the law provides that in the event of an application declared inadmissible, the applicant can be detained[529] (see Detention).

More worryingly, DL 133/2023 amended Article 29 -bis introducing the paragraph 1-bis and giving specific power to the Head of Police Station to determine, except for the first subsequent application, if the asylum request is admissible.

The law now states that, in case the subsequent application is not the first one, where the applicant's detention has been already validated by the Judge of the Peace (Giudice di Pace), the Questore (Head of Police Station), after asking for an opinion from the President of the Territorial Commission where the removal is taking place, immediately proceeds with the preliminary assessment of the application and declares it inadmissible, allowing the execution of the removal order, when there are no new relevant elements for the recognition of international protection pursuant to article 29, paragraph 1, letter b), and no grounds to apply the expulsion bans referred to in article 19 TUI arise. When there are new elements relevant for the recognition of international protection or the ban on expulsion, the competent Territorial Commission proceeds with the further examination.[530]

No suspensive effect is recognised to the appeal including a suspensive request in case of a decision that declares inadmissible or rejects, for the second time, a further subsequent asylum application pursuant to article 29, (1) b), or declaring the asylum application inadmissible pursuant to article 29-bis of the Procedure Decree.[531]

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, and more following Decree Law 133/2023 it is possible for certain Subsequent applications to be automatically dismissed as inadmissible without an interview.

527 It appears not consistent with the provision of Articles 4, 28 and 29 of the Procedure Decree.
528 The Court of Cassation will rule on this issue following the order no. 11660/2020.
529 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.
530 Article 29-bis (1 bis) introduced by DL 133/2023, converted into L 176/2023
531 Article 35 bis (4) Procedure Decree.

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 automatically suspensive ☐ Yes ☐ Some grounds ☒ No

For applications dismissed as inadmissible, the law provides the possibility to submit an appeal to the specialized section of the competent Civil Court. The judicial procedure provided for accelerated procedure applies, which means that the time limit for appealing a negative decision is 15 days, and the appeal has no automatic suspensive effect.

Also, after the coming into force of L. 50/2023, the law provided that the submission of the appeal does not allow the applicant to legally remain in the national territory in case of appeals against decisions which refused or declared as inadmissible another subsequent application, after a first subsequent application had been refused or declared inadmissible.

The same happens when the appeal is submitted against a decision issued on the base of Article 29 bis of the Procedure Decree (subsequent application made during the execution of an imminent removal order).[532]

However, the decision taken on 29 April 2024 by the United Civil Sections of the Court of Cassation in a case related to a denial dismissed as manifestly unfounded due to the fact that the applicant came from a safe country of origin (See Safe countries) started bringing some changes. The Court stated that in case the accelerated procedure has not been respected by the Territorial Commission, the ordinary procedure will apply to the appeal, including the automatic suspensive effect."[533]

Following this decision, some Civil Courts decided to apply the same principle to other cases: this is the case of the Civil Court of Catania which, on 2 May 2024, declared the measure of inadmissibility pursuant to Article 29 of Legislative Decree 25/2008 automatically suspended in application of the principle expressed by the United Sections of the Court of Cassation, considering that: “the same principle is applicable, by reason of the same ratio, also to the present case, concerning a decree of inadmissibility following a subsequent application, adopted without observing the terms of art. 28 bis of the Legislative Decree 25/2008".[534]

3.4. Legal assistance

Indicators: Admissibility Procedure: Legal Assistance
☒ Same as regular procedure

1. Do asylum seekers have access to free legal assistance during admissibility procedures 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 an inadmissibility decision in practice? ☐ Yes ☐ With difficulty ☐ No
   - ❖ Does free legal assistance cover ☐ Representation in courts ☐ Legal advice

532 Article 35-bis(53) Procedure Decree, as amended by Decree Law 113/2018 and L 132/2018.
533 Court of Cassation, United Civil Sections, Sentence no. 11399/2024 of 29 April 2024, available in Italian at https://l1nq.com/vQ78k.
534 Civil Court of Catania, interim decision of 2 May 2024, case no. 13099/2023.

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.[535] The law still refers to a MoI decree, which was issued on 5 August 2019 and published on 7 September 2019, for the definition and implementation of the procedure.[536]

The MoI Decree designated the transit and border areas where the accelerated procedure applies.[537]

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.[538]

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[539] 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.[540]

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.

535 Article 28-bis (2)(b) Procedure Decree, as amended by Decree Law 130/2020 and L 173/2020
536 MoI Decree, 5 August 2019, published on Gazzetta Ufficiale as of 7 September 2019: https://bit.ly/3e8wXES.
537 Article 28 bis (1) (1-ter) and (1 – quater) of the Procedure Decree.
538 Moi Decree 5 August 2019, Article 2.
539 Article 28 bis (4) Procedure Decree.
540 Article 28-bis(2)(2) Procedure Decree, as amended by Decree Law 130/2020.

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.[541]

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.[542]

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.[543]

Detention can last a maximum of 4 weeks;[544] it can apply only during the border procedure and up to the judicial decision on the suspensive effect in case of appeal.[545]

It can also apply only where the applicant lacks a passport and economic guarantees.[546] On 14 September 2023, the MoI decree was issued and detailed the rules concerning the financial guarantee (see Hotspot). In two circulars issued on 16 October 2019 and 18 October 2019,[547] the MoI gave directives for the application of the border procedure and it attached the specific C3 form to be used to register the asylum application in these cases.

In accordance with the 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,[548] 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.[549] 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).

541 Article 28 bis (2 b) bis) of the Procedure Decree introduced by L. 50 of 5 May 2023 converting the DL 20/2023.
542 Article 28-bis(2) (b) Procedure Decree as amended by Decree Law 130/2020 and L 173/2020.
543 Article 6 bis Reception Decree introduced by L. 50 of 5 May 2023 converting the DL 20/2023.
544 Article 6 bis (3) Reception Decree introduced by L. 50 of 5 May 2023 converting the DL 20/2023.
545 Article 6 bis (1) Reception Decree introduced by L. 50 of 5 May 2023 converting the DL 20/2023.
546 Article 6 bis (2) Reception Decree introduced by L. 50 of 5 May 2023 converting the DL 20/2023.
547 MoI Circular, 16 October 2019 available at: https://bit.ly/3cYKrTs; MOI Circular, 18 October 2019, available at: https://bit.ly/3cZWXSL.
548 Article 28 (1 bis) Procedure decree.
549 Pursuant to Article 28 bis (1-ter).

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 MoI 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.[550]

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.[551]

The law provides for specific information obligation to be carried out before the formalisation of the asylum application under the border procedure. The dedicated C3 merely indicates the application of the border procedure in Italian and the reasons why it is applied, also informing about the exclusion from the accelerated procedure for vulnerable people.

Among the first cases of border procedure’s applications in Trieste, as of December 2019, three Pakistani asylum seekers have been subject to the accelerated procedure simply because they encountered police not far away from the Slovenian border.

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 up to August 2023, when it was again applied to some Bangladesh and Pakistani asylum seekers, who were considered having avoided the border controls entering from the land border. The asylum applications were examined under the accelerated procedure applied because of the border procedure and the cases were denied as manifestly unfounded.

The Civil Court of Trieste upheld the suspensive requests included in the appeals and observed that, contrary to what the Territorial Commission of Trieste assumed in its decree, there is no legal provision imposing to deny as manifestly unfounded asylum applications under the border procedure.[552]

Regarding 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 changed due to the extension of the border procedure to people coming from safe countries of origin, as provided by the Procedure Decree as amended by the L. 50/2023 and, in general, due to the entry into force of this law.[553]

The aforementioned legislation was applied for the first time in September 2023 with a series of detentions adopted regarding asylum seekers from safe countries of origin. The Court of Catania refused to validate the detentions, as it decided to disapply the provision which allows detention during the border procedure in case of lack of financial guarantee as detailed in the Moi Decree of 14 September 2023, considering it

550 Article 28-bis(5) Procedure Decree, citing Article 27(3) and (3-bis).
551 ASGI note, Le zone di transito e di frontiera, September 2019, available at: https://bit.ly/3gmYOmX.
552 Civil Court of Trieste, decree of 14 August 2023, case no. 3156/2023.
553 Article 28 bis (2 b) bis) of the Procedure Decree introduced by L. 50 of 5 May 2023 converting the DL 20/2023.

incompatible with the Reception Directive. This led the Ministry of the Interior to challenge these decisions before the Court of Cassation, which, on 8 February 2024, made a preliminary reference to the Court of Justice of the European Union in order to assess the compatibility of the new legislation with EU law. The decision of the Luxembourg Court is expected in the coming months (see Access to procedure and registration, Hotspot).

4.2. Personal interview

Indicators: Border Procedure: Personal Interview
☒ Same as regular procedure

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

The same guarantees are those applied during the Regular Procedure: 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? ☒ Yes ☐ No
   - ❖ If yes, is it ☒ Judicial ☐ Administrative
   - ❖ If yes, is it automatically suspensive ☐ Yes ☐ Some grounds ☒ No

An appeal against a negative decision in the border procedure has to be lodged before the competent Civil Court within 15 days.[554] However, the appeal does not have automatic suspensive effect.[555]

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.[556]

4.4. Legal assistance

Indicators: Border Procedure: Legal Assistance
☒ Same as regular procedure

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

The rules and criteria for legal assistance are the same as in the Regular Procedure: Legal Assistance.

5. Accelerated procedure

554 Article 35-bis(2) Procedure Decree, as amended by Decree Law 130/2020 and L 173/2020.
555 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.
556 Article 35-ter Procedure Decree introduced by L. 50/2023 which converted with amendments the DL 20/2023.

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

Article 28-bis of the Procedures Decree, entirely amended by Decree Law 130/2020, implemented by L 173/2020, and again amended by DL 133/2023 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:[557]

1. The applicant makes a Subsequent Application without presenting new elements.[558]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,[559] when grounds for detention raise among those provided by Article 6 (2, a, b, c) of the Reception Decree,[560] or by a person convicted - even not definitively - for one of those crimes. In this case the applicant must be heard.

7-day procedure: The Territorial Commission takes steps to organise the personal interview and decides within 7 days, where:[561]

1. 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;
2. The asylum application is made at the borders or in transit areas by an applicant coming from a safe country of origin.[562]

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:[563]

1. The asylum application is made by a person detained in a CPR or in a hotspot or first reception centre;[564]
2. The applicant comes from a Safe Country of Origin;[565]
3. The application is manifestly unfounded.[566] (see Regular Procedure: General);
4. 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.

557 Article 28-bis(1) Procedure Decree, as amended by Decree Law 130/2020

558 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.

559 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.

560 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.

561 Article 28 bis (2 bis) introduce by L. 50/2023.

562 Article 28 bis (2 lett. b-bis) introduced by L. 50/2023.

563 Article 28 bis (2) as amended by Decree Law 130/2020 and L 173/2020.

564 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.

565 In cases not involving vulnerable people.

566 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.[567] 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.[568]

In some cases, Civil Courts have released asylum seekers detained in CPR for failure to comply with the terms of the accelerated procedure. 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 a first instance interview having been set.[569] The Court of Cassation also stressed the principle according to which an asylum seeker cannot be detained for longer than the times scheduled under the accelerated procedure, unless other reasons for detention arise,[570] principle that clashes with recent decisions of the Supreme Court of Cassation to the contrary[571] (see also Judicial Review).

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 falls under the regular procedure and that it becomes automatically suspensive.[572] The Civil Court of Florence maintained this position during 2023 and early 2024.[573]

567 Article 28-bis(5) Procedure Decree, citing Article 27(3)-(3-bis).
568 *Ibid*.
569 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/IyO8NjY.
570 Court of Cassation, decision no. 2458/2021 published on 2 February 2021.
571 Court of Cassation, decision no. 20656/2022 published on 28 June 2022; Court of Cassation, decision no. 9042/2023 published on 30 March 2023; Court of Cassation, decision no. 14/2024 published on 2 January 2024; Court of Cassation, decision no. 15/2024 published on 2 January 2024; Court of Cassation, decision no. 17/2024 published on 2 January 2024.
572 Civil Court of Florence, decision of 30 March 2023.
573 See for example, Civil Court of Florence, Decree of 31 January 2024.

However, during 2023, other Courts such as the one of Trieste, interpreted the law differently, considering that exceeding the deadlines provided for the accelerated procedure does not have repercussions on the appeal procedure, primarily on the non-automatic suspension of the appeal.

5.2. Personal interview

Indicators: Accelerated Procedure: Personal Interview

☒ Same as regular procedure

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

The same guarantees as those applied during the Regular Procedure: Personal Interview are applied. By Circular Note of 15 February 2024, the CNDA clarified that the practice of setting the date for the hearing before the Territorial Commission the same day as the formalisation of the asylum request (C3) following a quick agreement between Questura and Territorial Commissions, before any preliminary assessment requested by law of the President, does not respect the law. Therefore, the hearing before the Territorial Commission can no longer be written down on the C3 form, as before, but it will be separately notified to the applicant after the President's assessment on the procedure to apply. Notifications will be made by Questure in order to comply with the deadlines established by law.[574]

5.3. Appeal

Indicators: Accelerated Procedure: Appeal

☐ Same as regular procedure

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

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

Time limits for appeals in accelerated procedures: Article 35-bis(2) and 35 ter Procedure Decree[575]		
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

574 CNDA, Circular of 15 February 2024.
575 Article 35 bis Procedure Decree as amended by Decree Law 130/2020 and L 173/2020.

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,[576] 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),[577] 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[578] and the Civil Court of Naples[579] 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.[580] The appeal in the accelerated procedure generally has no automatic suspensive effect, except for applications subject to the Border Procedure.

5.4. Legal assistance

Indicators: Accelerated Procedure: Legal Assistance
☒ Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice?
   ☐ Yes ☐ With difficulty ☐ No
   - ❖ Does free legal assistance cover: ☐ Representation in interview ☐ Legal advice

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

The same rules apply as under the Regular procedure.

6. The immediate procedure

576 Sentenza Cassazione Civile n. 18518, 30 June 2021, available in Italian at: https://bit.ly/3P0hmuy.
577 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.
578 Civil Court of Bologna, decree of 15 September 2022, available at: bit.ly/3Z7w7PK.
579 Civil Court of Naples, decree of 18 November 2022, available at: bit.ly/3JE1eNa.
580 Article 35-bis(3) Procedure Decree, as amended by Decree Law 130/2020 and L 173/2020.

The immediate procedure introduced by Decree Law 113/2018 was 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:[581]

- Is subject to investigation for crimes which may trigger exclusion from international protection, and the Grounds for Detention in a CPR apply;[582]
- 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.[583]

In case of rejection, the law provides that the suspensive effect of a potential appeal is not automatic and has to be requested.[584] 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: Special Procedural Guarantees

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, women, (and no longer only pregnant women, as specified by DL 133/2023 [585]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.[586]

1.1. Screening of vulnerability

There is no procedure defined in law for the identification of vulnerable persons. However, the Ministry of Health published guidelines for assistance, rehabilitation and treatment of psychological disorders of

581 Article 28-bis (1) (b) of the Procedure Decree, as amended by Decree Law 130/2020 and L 173/2020.

582 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.

583 Before the Decree Law 130/2020 this possibility was provided by Article 32(1-bis) Procedure Decree, now repealed.

584 Article 35 bis (3)(d-bis) and (4) of the Procedure Decree as amended by Decree Law 130/2020 and L 173/2020.

585 (Article 2(1 lett. h-bis) as amended by Article 7 DL 133/20233 converted with amendments by L. 176/2023),

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

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.[587]

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.[588] 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.[589]

The Presidential Decree 191/2022 of 4 October 2022,[590] published on 13 December 2022 introduced an important change for unaccompanied children who seek asylum while underage. 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.

In 2023, the Ministry of Labour traced the presence in Italy of 23,226 unaccompanied minors.[591] 27,476 entered in Italy in 2023, out of which more than 15,000 in the second semester of 2023.[592] 17,319 arrived

587 Article 8(3-bis) Qualification Decree.
588 Article 19(7) Reception Decree.
589 Article 13(3) Procedure Decree.
590 Presidential Decree no. 191/2022 of 4 October 2022, published on 13 December 2022, available in Italian at: bit.ly/3ZNBoNP. The Presidential Decree has been issued pursuant to Article 22 of Zampa Law, L. no. 47/2017.
591 Ministry of Labour, *Monitoring six months report on unaccompanied foreign minors*, 31 December 2023, available at: https://bit.ly/4bM9XKD.
592 Ministry of Labour, *Monitoring six months report on unaccompanied foreign minors*, 31 December 2023, available at: https://bit.ly/4bM9XKD.

by sea.[593] Compared to 2022, the data shows a decrease in the number of UAMs arrivals, due to the significant drop in Ukranian UAMs who went from 7,107 arriving in 2022 to just 207 Ukrainian minors registered entering in 2023.

The most represented nationalities were Egypt, Ukraine, Tunisia, Gambia, Guinea, Ivory Coast and Albania (all together representing 75.4% of the total minors).

The Regions where the most minors were accommodated were Sicily and Lombardy, followed by Emilia Romagna, Campania and Lazio.

In 2023, 2,352 unaccompanied minors applied for international protection, a significant increase when compared to 2022, when 1,661 UAMs submitted international protection requests.

In the first semester of 2023, 64% of UAMS were recognised international protection.

Unaccompanied asylum-seeking children: 2023	
Nationality	Number
Gambia	330
Pakistan	311
Mali	287
Guinea	238
Ivory Coast	161
Afghanistan	132
Tunisia	115
Turkey	77
Somalia	61
Others	640
Total	**2,352**

Source: Ministry of Labour, Monitoring six months report on unaccompanied foreign minors, 31 December 2023, available at: https://bit.ly/4bM9XKD.

As of 31 December 2023, 10,000 unaccompanied children had left the reception system during 2023. Of these, 87% entered Italy in 2023.

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.[594]

Torture survivors

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.

593 MOI, *Cruscotto statistic giornaliero*, 31 December 2023, available at https://bit.ly/48VIQtT.

594 Ministry of Interior and UNHCR, *Standard Operating Procedures*, 31 December 2021, available in Italian at: http://bit.ly/3Lk71Kq.

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.[595]

Guidelines were issued on 22 March 2017,[596] but their application is still limited according to ASGI experience, including in 2023.

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.[597] 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.[598]

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.[599]

In January 2021, UNHCR Italy issued its Guidelines addressed at Territorial Commissions for the recognition of international protection, [600] 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.[601]

The Reception Decree clarifies that trafficked asylum seekers shall be channelled into a special programme of social assistance and integration.[602] 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[603] (see Special Reception Needs).

1.2. Age assessment of unaccompanied children

The Procedures 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.[604] Competent authorities can request to conduct an age assessment 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

595 Article 17(8) Reception Decree.
596 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.
597 Article 32(3-bis) Procedure Decree.
598 Article 13 L 228/2003; Article 18 TUI.
599 CNDA and UNHCR, *L'identificazione delle vittime di trata tra i richiedenti protezione internazionale e procedure di referral*, September 2017, available in Italian at: http://bit.ly/2FttAeK.
600 UNHCR Guidelines, *L'identificazione delle vittime di tratta tra i richiedenti protezione internazionale e procedure di referral*, available at https://bit.ly/3KwhQoD.
601 European Commission, EMN Bulletin, May 2021, available at: https://bit.ly/3s2wrBY, 16.
602 Article 17(2) Reception Decree in conjunction with Article 18(3-bis) LD 286/1998 and LD 24/2014.
603 Article 9 (1 bis) introduced by L 50/2023 which converted with amendments the DL 20/2023.
604 Article 19(2) Procedure Decree.

unaccompanied child or of his or her legal guardian.[605] 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.[606] 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.[607] 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.[608]

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).[609]

The report shows that correct application of the legislation was 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.[610]

In September 2022, the INMP published its report, drafted after a monitoring carried out by inviting the 118 Health authorities, 102 of which adhered to the request to complete the questionnaire.

37 Health authorities replied that a multidisciplinary team operated within them. Of these, only 18 adopted the protocol approved in the Unified Conference and 11 a multidisciplinary approach similar to it, while 8 resorted to using a method for determining age not aligned, in procedures and approach, with the protocol adopted. The report concluded that “to date, the adoption of the protocol by the health authorities appears to be limited” and that “the implementation of the protocol by the authorities appears as sustainable; however, there is great variability in the adoption of the agreement between the various Regions, sometimes even within them”.[611]

The recent amendments made by Decree-Law 133/2023, converted by Law 176/2023, introduced exceptions in ascertaining the age of unaccompanied minors in case of large, multiple and close arrivals, following search and rescue activities at sea, or found at the border or in transit zones. In such cases,

605 *Ibid.*
606 Article 19-bis Reception Decree, inserted by Article 5 L 47/2017.
607 Article 5 L 47/2017.
608 Guarantor for the rights of detained persons, *Report to Parliament*, June 2021, available at: https://bit.ly/35UHwx5, 229.
609 Defence for Children and Cespi Report for 2021, *Minorenni stranieri non accompagnati*, Legge 47/2017, published on June 2022, available in Italian at: http://bit.ly/3li1SI0.
610 Ibidem, 134.
611 Report from INMP (National Institute for the promotion of the health of migrant populations and for the fight against the diseases of poverty), *Primo rapporto sull’attuazione del protocollo per la determinazione dell’età dei minori stranieri non accompagnati*, 22 September 2022, available at: http://bit.ly/3IDuH9U.

wide discretion is granted to the public security authorities in the identification procedures, by carrying out anthropometric or other health assessments, including X-rays, aimed at identifying age. The only limit for the public security authorities is the request for authorisation that must be sent in writing by the Public Prosecutor's Office at the Juvenile Court. In particularly urgent cases, authorisation may be given orally and only subsequently confirmed in writing.[612]

ASGI pointed out how the new provisions introduced by Law Decree 133/2023 run the risk of nullifying the rules and protocols that were in force until then, which, although not formally affected, are weakened in relation to the possible extension of the application of the new derogatory procedure, which focuses on the rapidity of the outcome to the detriment of the guarantees for the person.

On a completely discretionary basis because there are no parameters or reference indications laid down by law, the public security authorities can decide whether to start the ordinary procedure, which, as seen, requires an assessment based on several methods to be applied together and the initiation of proceedings at the Juvenile Court with the adoption of a final decree, or whether to, outside of the multidisciplinary approach, also subject a person claiming to be a minor to individual examinations, including radiological examinations, the (un)reliability of which has been debated for years.[613]

Identification documents and age assessment methods

The law states that, in the absence of identification documents,[614] 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.[615] 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.[616]

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.[617]

Pending the outcome of the procedure, the applicant benefits from the provisions on reception of unaccompanied children.[618] The benefit of the doubt shall be granted if doubts persist following the examination.[619]

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.[620]

Currently, however, according to ASGI's experience and as the mentioned INMP report proved, L 47/2017 is not applied uniformly on the national territory. In some areas, the multidisciplinary teams required by

612 Article 19 bis (6bis) Reception Decree, as amended by Article 5 Decree Law 133/2023 converted by L 176/2023.
613 ASGI, Informal hearing as part of the examination of Bill C. 1458, converting Decree-Law No. 133 of 2023 on urgent provisions on immigration and international protection, as well as on support for security policies and the functionality of the Ministry of the Interior, October 2023, available at: https://encr.pw/At4V5.
614 Article 19-bis(3) Reception Decree.
615 Article 19-bis(4) Reception Decree.
616 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.
617 Article 19-bis(5) Reception Decree.
618 Article 19-bis(6) Reception Decree.
619 Article 19-bis(8) Reception Decree.
620 Article 19-bis(7) Reception Decree.

law have been established- Consequently, age assessment is still conducted through wrist X-ray, with results not indicating the margin of error.[621]

In 2020, a national protocol on multidisciplinary age assessment was signed by the Conference State region,[622] 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,[623] Messina,[624] and Ancona.[625] In 2022, as mentioned, only 18 health authorities adopted the protocol approved in the Unified Conference and 11 a multidisciplinary approach similar to it.

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 mentioned in the previous AIDA report,[626] and reported by several organisations belonging to the network Tavolo Minori Migranti,[627] two directives published in the **Friuli Venezia Giulia** region on 31 August and 21 December 2020 by the Public Prosecutor at the Juvenile Court of Trieste authorised - 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.[628] 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, in 2021 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.[629] However, it is possible that, due to the new regulatory provisions provided for by Decree-Law 133/2023, converted by Law 176/2023, the practice may be implemented again.

Challenging age assessments

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.[630] Before this law, in the absence of a specific provision, children were often prevented from challenging the outcome of age assessments.

621 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.
622 Available in Italian at: https://bit.ly/384KZtJ.
623 Milan Protocol available in Italian at: https://bit.ly/3LYxqLr.
624 Available in Italian at: https://bit.ly/3OVDUfP.
625 Available in Italian at: https://bit.ly/37YepKj.
626 See Aida 2022, https://asylumineurope.org/wp-content/uploads/2023/05/AIDA-IT_2022-Update.pdf p. 99
627 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.
628 See Ansa, ‘Migranti: 12 associazioni contestano Procura Minori Trieste’, 10 February 2021, available at https://bit.ly/3uBXbIw; see also ASGI, ‘Accertamento dell’età, due direttive della Procura della Repubblica per i minori di Trieste in contrasto con la legge’, 10 February 2021, available at: https://bit.ly/3hha0nL.
629 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.
630 Article 19-bis(9) Reception Decree.

On 21 October 2022, in the case Darboe and Camara, the ECtHR condemned Italy for violations:

- Of Article 3 – having regard to the length and conditions of the applicant's stay in the adult reception centre in Cona;
- Of Article 8 ECHR – as the Italian authorities failed to apply the principle of presumption of minority, which the Court deems to be an inherent element of the protection of the right to respect for private life of a foreign unaccompanied individual declaring to be a minor;
- Of Article 13 of the Convention taken in conjunction with Articles 3 and 8 of the ECHR, as the remedies mentioned by the Government with specific reference to the applicant's age-assessment procedure turned out to be ineffective in the applicants' cases.[631]

As mentioned, the procedure set out in Law Decree No. 133/23 "in case of substantial, multiple, and closely spaced arrivals resulting from search and rescue activities at sea, tracking at the border or in transit areas [...], tracking within the national territory following illegal entry evading border controls" significantrly derogates from the ordinary rules.

According to Article 19 bis (6 bis) Reception Decree, as amended by Law Decree No. 133/2023 an appeal can be submitted before the Juvenile Court within 5 days from the age assessment and, if a suspension request is included in the appeal, the judge shall decide within 5 days.

As pointed out by ASGI in the supervision procedure under Rule 9.2 of the Rules of the Committee of Ministers, Law Decree No. 133/23 lacks minimal procedural safeguards to uphold the principle of presumption of minority, protected by Article 8 of the Convention. Additionally, it does not provide access to an effective remedy in age assessment procedures, as interpreted by the Court in the Darboe and Camara cases, since:

- No reference is made to the existence of a well-founded doubt as to the age declared by the person concerned as a precondition for carrying out the assessment of age, nor is any mention made of the relevance of any personal documents in the possession of the person concerned;
- It does not provide for the appointment of a guardian, access to a lawyer and the informed participation of the person concerned in the age determination procedure;
- It is based exclusively on the "carrying out of anthropometric or other health assessments, including radiographic ones, aimed at identifying age", expressly derogating from the provisions of paragraph 6 of Article 19-bis of Legislative Decree 142/15 that provides for a multidisciplinary approach;
- It is ordered by the public security authority rather than the judicial authority, which merely authorises it (even orally, in cases of particular urgency) and ends not with the adoption of an age-assignment order by the judicial authority, but with the notification of the public security authorities' report;
- It provides for extremely short deadlines for lodging an appeal (5 days) completely impossible to meet.[632]

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".

631 ECtHR, Application No 5797/17, *Darboe and Camara v. Italy*, 21 July 2022, available at: https://bit.ly/3PA9UIs.

632 Communication by ASGI in the Camara and Darboe supervision procedure under Rule 9.2 of the Rules of the Committee of Ministers, 16 November 2023, available at https://bit.ly/49T0b8b. See also the submission sent on February 2024, available at https://bit.ly/3TB2w1P.

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.[633] 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.[634]

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.[635]

2.2. Prioritisation and exemption from special procedures

Vulnerable persons are admitted to the prioritised procedure.[636] The Territorial Commission must schedule the applicant's interview "in the first available seat" when that applicant is deemed as vulnerable.[637] 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.[638]

Following the 2020 reform, the Procedures Decree exempts unaccompanied children and/or persons in need of special procedural guarantees from the accelerated procedure.[639]

However, Decree Law 133/2023 has cancelled the law provision which exempted vulnerable persons from the possibility to receive a manifestly unfounded rejection to their international protection request.[640]

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.[641]

633 Article 13(2) Procedure Decree.
634 Article 18(2-bis) Reception Decree.
635 Article 32(3-bis) Procedure Decree.
636 Article 28(2) (b) Procedure Decree.
637 Article 7(2) PD 21/2015.
638 Article 6(2) Procedure Decree.
639 Article 28 bis (6) Procedure Decree, as amended by Decree Law 130/2020 and L 173/2020.
640 DL 133/2023 has abrogated Article 28 ter (1 bis).
641 Article 3 Qualification Decree.

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.[642] The applicant can also ask for the postponement of the personal interview providing the Territorial Commission with pertinent medical documentation.[643]

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).[644] When no medical examination is provided by the Territorial Commission, the applicants may, on their own initiative and at their own cost, arrange for such a medical examination and submit the results to the Territorial Commission for the examination of their applications.[645]

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.[646] 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.[647] 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.[648]

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.[649]

642 Article 12(2) Procedure Decree.
643 Article 5(4) PD 21/2015.
644 Article 27(1-bis) Qualification Decree.
645 Article 8(3-bis) Procedure Decree.
646 Article 343 et seq. Civil Code.
647 Article 18(2-bis) Reception Decree, inserted by L 47/2017.
648 Article 18(2-ter) Reception Decree, inserted by L 47/2017.
649 Article 18(5) Reception Decree.

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.[650]

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.[651] The Juvenile Court is the sole competent authority following the 2017 reform.

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

Where a guardian has not yet been appointed, the manager of the reception centre is allowed to support the child for the lodging of the asylum application at the Questura.[652] As clarified by the CNDA, however, the guardian remains responsible for representing the child in the next steps of the procedure.[653]

4.2. Duties and qualifications of the guardian

According to the Procedures 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.[654] 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.[655] 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.[656]

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.[657]

650 Article 6(3) Procedure Decree.
651 Article 19(5) Reception Decree, as amended by LD 220/2017.
652 Article 26(5) Procedure Decree, as amended by L 47/2017.
653 CNDA Circular No 6425 of 21 August 2017, available in Italian at: http://bit.ly/2Fn38Um.
654 Article 19(1) Procedure Decree.
655 Article 13(3) Procedure Decree.
656 *Ibid*.
657 Article 11 L 47/2017.

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.[658] 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).[659] 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.

Critical issues regarding the guardians were reported in the survey published in December 2020 by Defense 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.[660]

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.

According to ASGI's observations, these problems remain relevant for 2023.

Up to the time of writing, the Children's Ombudsperson published 5 general monitoring reports on voluntary guardianship.[661]

In November 2023, within the voluntary guardianship system monitoring project, the Children's Ombudsperson published the fifth general survey,[662] reporting that, as of 31 December 2022, there were 3,783 voluntary guardians appointed by the Juvenile Court, a slight increase compared to the 3,457 at the end of 2021. However, a number still too low considering that, by the end of 2022, the number of UAMs was 20,089. Most guardians are registered to the Juvenile Courts of Turin (504) Rome (440), Milan (267), Bologna (230), Palermo (227) and Perugia (202).

As emerges from the report, by the end of 2022, Italian guardians were mainly female (74%), with a university degree (59.37%) and aged over 46 (69.72%). In 2022, guardians under the age of 36 decreased, in particular those between 18 and 24 who went from 11.55% to 0.20%.

A total of 10,000 tutor-foreign minor pairings were accepted in 2022. The most frequent reasons due to which the volunteer guardians renounced the voluntary guardianship were the distance from the domicile of the minor and the excessive burden of responsibility.

As in the past, the concentration of minors in some regions (such as Sicily and Lombardy) more than in others has a direct impact on the possibility of finding enough guardians.

On 19 September 2022 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.[663]

658 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.
659 Article 11 L. 47/2017 as amended by Article 2 (3) LD 220/2017.
660 Defence for Children, Cesp, Observatory on unaccompanied foreign minors, available at: bit.ly/3lqFQD5.
661 All reports are available at the Children's Ombudsperson (AIGIA) page, available at: bit.ly/3ZXZfds.
662 *Fifth monitoring report on the voluntary guardianship*, November 2023, available at: https://bit.ly/43fn4QH .
663 Decree of 8 August 2022 on the reimbursements in favour of the voluntary guardians of unaccompanied minors, available at bit.ly/3JKExXZ.

The decree provides for the reimbursement to private employers of voluntary tutors up to 60 hours per year.[664] 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.[665] 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.[666]

E. Subsequent applications

Indicators: Subsequent Applications

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

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

Decree Law 113/2018, implemented by L 132/2018, has introduced a definition of "subsequent application" (*domanda reiterata*).[667] 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;[668]
- ❖ The previous application has been terminated or rejected after the expiry of 9 months from suspension on the basis that the applicant was unreachable (*irreperibile*).[669]
- ❖ 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.[670]

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.[671]

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

664 Decree of 8 August 2022, Article 2.
665 Ibid. Article 3.
666 Ibid. Article 4.
667 Article 2(1)(b-bis) Procedure Decree, introduced by Article 9 Decree Law 113/2018 and L 132/2018.
668 Article 23 Procedure Decree.
669 Article 23-bis(2) Procedure Decree as amended by DL 133/2023.
670 Article 12 (5) Procedure Decree.
671 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

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.[672]

Decree Law 20/2023 amended Article 29 of the Procedure Decree and DL 133/2023 significantly amended Article 29 - bis of the Procedure Decree, applicable when a subsequent request is submitted during the execution of a removal order.

The President of the Territorial Commission makes a preliminary assessment in order to evaluate whether new elements have been added to the asylum application.[673] The President of the Territorial Commission shall conduct a preliminary assessment of the admissibility of the application, to ascertain whether new elements have emerged or have been submitted by the applicant concerning the personal condition of the asylum seeker or the situation in their country of origin, relevant to the granting of international protection, and to evaluate if the delay in the submission of such new elements or evidence cannot be attributed to the applicant's fault, who needs to provide specific evidence of such situation.[674]

Even if the law distinguishes two phases that are the preliminary assessment, attributed to the President, and the decision, attributed to the Commission, in some cases the procedure has been not regularly followed, resulting in omitting the first or the second phase.

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 to evaluate the reasons given to support the admissibility of the application in the specific case.[675]

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 or subsidiary protected in other Countries the law provides that the President of the Territorial Commission sets the hearing of the applicant.[676]

- 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.[677]

- In case of a first subsequent application made during the execution of an imminent removal order, 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. Upon literal reading, the law seems to charge the President of the Territorial Commission with taking an admissibility decision on their own but, according to ASGI, a systemic interpretation of the law, also considering Article 4(4) and Article 28-bis of the Procedure Decree allows to consider that in these cases the decision should also be attributed to the entire Commission.

- During 2019, some Questure automatically declared the inadmissibility of such subsequent applications, inter alia by interpreting the execution phase of a removal order in a broad way.

672 Article 28-bis(1-bis) Procedure Decree.
673 Article 29(1)(b) Procedure Decree.
674 Article 29(1-bis) Procedure Decree, as inserted by the Reception Decree and amended by L 50/2023.
675 Article 29 (1 bis) Procedure Decree as amended by L 50/2023.
676 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.
677 Article 23 bis (2) Procedure Decree.

Some rulings of national courts had clarified that this application was contrary to Article 40 of the recast Asylum Procedure Directive. [678]

- In 2023, the DL 133/2023 significantly amended Article 29 bis introducing the paragraph 1-bis and giving a specific power to the Head of Police Station to determine, out of the first subsequent application, if the asylum request is admissible (see Admissibility).[679] According to ASGI this provision is not legitimate as Questure are not entitled and prepared to carry out an assessment of the merit of the asylum request.

As stated by decree Law 130/2020, in this case, if the application is declared inadmissible, the applicant can be detained[680] (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.[681]

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;[682]
b. Wishes to make a further subsequent application following a final decision declaring the first subsequent application inadmissible, unfounded or manifestly unfounded.[683]

The law does not foresee a specific procedure to appeal against a decision on inadmissibility for subsequent applications. The Procedures 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.[684] 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

678 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.
679 Article 29-bis (1 bis) introduced by DL 133/2023, converted into L 176/2023.
680 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.
681 Article 23(1) Reception Decree.
682 Article 7(2)(d) Procedure Decree.
683 Article 7(2)(e) Procedure Decree, as amended by Article 9 Decree Law 113/2018 and L 132/2018.
684 Article 35-bis(5) Procedure Decree, as amended by L. 50/2023.

the prerequisites of the invoked special protection".[685] In 2023 Court of Cassation again affirmed this principle.[686]

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 concept

Indicators: Safe Country Concepts

1.	Does national legislation allow for the use of "safe country of origin" concept?	☒ Yes ☐ No
	❖ Is there a national list of safe countries of origin?	☒ Yes ☐ No
	❖ Is the safe country of origin concept used in practice?	☒ Yes ☐ No
2.	Does national legislation allow for the use of "safe third country" concept?	☐ Yes ☒ No
	❖ Is the safe third country concept used in practice?	☐ Yes ☒ No
3.	Does national legislation allow for the use of "first country of asylum" concept?	☒ Yes ☐ 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.[687]

1.1 Definition and list of safe countries of origin

According to the law, a third country can be considered a safe country of origin if, on the basis of its legal system, the application of the law within a democratic system and the general political situation, it can be shown that, generally and constantly, there are no acts of persecution as defined in the Qualification Decree, nor torture or other forms of inhuman or degrading punishment or treatment, nor danger due to indiscriminate violence in situations of internal or international armed conflict.[688]
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:[689]

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.[690]

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.[691] The first list was adopted by decree of 4 October 2019 and entered into force

685 Court of Cassation, decision n. 37275 of 20 December 2022; see also Court of Cassation, decision n. 6374, 25 February 2022.
686 Court of Cassation, decision no. 29832 of 22 September 2023, available in Italian at: https://bit.ly/49Tyz2u.
687 Article 2-bis Procedure Decree, inserted by Article 7 Decree Law 113/2018 and L 132/2018.
688 Article 2-bis(2) Procedure Decree.
689 Article 2-bis(3) Procedure Decree.
690 Article 2-bis(4) Procedure Decree.
691 Article 2-bis(1) Procedure Decree.

on 22 October 2019,[692] and initially included the following countries: Albania, Algeria, Bosnia and Herzegovina, Cape Verde, Ghana, Kosovo, North Macedonia, Morocco, Montenegro, Senegal, Serbia, Tunisia and Ukraine.

Even if the law provides that the designation of a safe country of origin can be done with the exception of parts of the territory or of categories of persons,[693] 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,[694] categories of persons or parts of the country for which the presumption of safety cannot apply.[695]

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.[696]

In any case, as highlighted by ASGI,[697] 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 legal 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.[698]

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[699] 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.

692 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.
693 Article 2 bis (2) Procedure Decree.
694 This is the case of Algeria, Ghana, Morocco, Senegal, Ukraine and Tunisia.
695 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.
696 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.
697 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.
698 Council of State, Decision n. 118 of 2022, available at: https://bit.ly/3MLTeui.
699 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.

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.

Thanks to a FOIA access and later to other sources ASGI obtained the Country sheets and published them.[700]

By Ministerial Decree of 7 May 2024, the list of safe countries has been expanded to include additional countries: Bangladesh, Cameroon, Colombia, Egypt, Peru and Sri Lanka. [701]

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.[702]

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.[703]

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.[704]

An application submitted by applicants coming from a safe country of origin can be rejected as manifestly unfounded,[705] 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.[706]

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.[707]

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700 See ASGI; available at: https://bit.ly/4aYHrUf.

701 Ministry of Foreign Affairs and International Cooperation Decree, 7 May 2024, available at https://acesse.dev/8L1OU.

702 Article 2-bis(5) Procedure Decree.

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

704 Article 28-bis (2) (c) as amended by Decree Law 130/2020.

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

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

707 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

In practice, according to ASGI's experience, Territorial Commissions do not in practice reject as manifestly unfounded all asylum applications in case of safe country of origin.

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.[708] 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.[709]

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.[710]

On 18 November 2022, the Civil Court of Naples[711] 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.[712]

The Court of Naples by decree of 12 September 2022 reached the same conclusions regarding an applicant from Senegal, who declared being homosexual.[713]

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

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.

708 Civil Court of Florence, interim decision of 22 January 2020, cited above; see also: https://bit.ly/3bWqjA4.

709 Article 35 -bis (3) Procedure Decree.

710 Court of Cassation, judgment 19252/2020, mentioned in Court of Cassation decision ceiling of 2020, available at: https://bit.ly/3eDGDdS.

711 Civil Court of Naples, decree of 18 November 2022, available at: bit.ly/3JE1eNa.

712 Civil Court of Rome, Decree of 7 October 2022, available at: bit.ly/40agRTM.

713 Civil Court of Naples, Decision of 12 September 2022, available at: bit.ly/42wPODD.

situation of the country, considered that there were serious reasons to suspend the effects of the negative provision.[714]

On 20 September 2023 the Civil Court of Florence suspended the effects of the denial notified to an asylum seeker from Tunisia. The court noted that, under the Asylum Procedure Directive Article 37 (2), the sources based on which a country is included in the safe countries list must be constantly updated and the inclusion itself should be subject to review if there is a change of the situation in the country. Moreover, national law (Article 3 of Qualification Decree and Articles 8 and 27 (1 bis) of the Procedure Decree) requires the judge to examine the asylum application on an individual basis, in light of precise and updated information about the general situation existing in the country of origin of asylum seekers. According to the Court, the need for an updated evaluation does not only concern the merit of the international protection application but also the usability of the "safe countries procedure", which involves a series of more burdensome procedural peculiarities for the asylum applicant.

According to the Court, the sources on the current security conditions in Tunisia highlight a crisis of the democratic system of the country considering, in particular, the mass arrests, the suspension of numerous judges and the non-transparency of the elections. The updated situation does not allow, according to the Court, to consider compliance with the principle of non-refoulement in case of repatriation to Tunisia. Therefore, the Safe countries decree becomes ineffective and the appeal has to be subjected to an ordinary procedure with the automatic right of the appellant to remain in the national territory until the appeal is decided.

By 3 other Decrees issued immediately after the latter, in October 2023, the Civil Court of Florence confirmed the previous positioning.[715]

Other Courts, however, decided to apply or not the ordinary procedure to appeals submitted by Tunisians only on an individual base. This is the case, for example, of the Civil Court of Milan which, on 1 December 2023, deemed as not founded the suspensive request requested by the Tunisian applicant considering that no serious reasons had been given to believe that Tunisia was not safe for him.[716] Then, on 18 December 2023, the same court suspended the effects of the rejection decision issued to a Tunisian asylum seeker, considering that, due to his individual situation and on the base of a summary evaluation, the country could not be considered safe.[717]

On 29 April 2024, the United Civil Sections of the Court of Cassation issued an important decision, ruling that in case the accelerated procedure has not been respected by the Territorial Commission, the ordinary procedure will apply to the appeal, including the automatic suspensive effect. The Court pronounced the following principle of law: "in the event of a judicial appeal concerning the manifestly unfounded provision issued by the Territorial Commission for the recognition of International Protection against a person coming from a safe country, there is an exception to the general principle of automatic suspension of the contested provision only if the Territorial Commission has applied a correct accelerated procedure. (..)

In the opposite case, when the accelerated procedure has not been respected in its procedural aspects, the ordinary procedure will be reinstated and the general principle of automatic suspension of the Territorial Commission's provision will be re-expanded."[718]

2. Safe third country

The safe third country concept is not included in Italian law.

714 Civil Court of Catania, decision of 7 July 2022, available at: bit.ly/3yWJoAe.
715 Civil Court of Florence, no. 3 decisions of 26 October 2023, cases no. 11464/2023, 3773/2023, 4988/2022
716 Civil Court of Milan, decision of 1 December 2023.
717 Civil Court of Milan, decision of 18 December 2023.
718 Court of Cassation, United Civil Sections, Sentence no. 11399/2024 of 29 April 2024, available in Italian at https://l1nq.com/vQ78k.

3. 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[719] by a state party to the 1951 Refugee Convention and can still enjoy such projection.[720] 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,[721] 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.[722]

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.[723]

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.[724] 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.[725]

PD 21/2015 provides that unaccompanied children shall receive information on the specific procedural guarantees specifically provided for them by law.[726]

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

719 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.
720 Article 29(1)(a) Procedure Decree.
721 Article 10(1) Procedure Decree.
722 *Ibid*, as amended by Article 7 Decree Law 113/2018 and L 132/2018.
723 Article 28 (1) Procedure Decree as amended by DL 130/2020.
724 Article 3 Reception Decree.
725 Article 3 (3) Reception Decree.
726 Article 3(3) PD 21/2015.

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.[727]

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.[728]

Firstly, the CJEU started stated that the obligation to provide the information under Articles 4 and 5 of the Dublin III Regulation and Article 29 of the Eurodac Regulation 'applies both in the context of a first application for international protection and a take charge procedure, under Article 20(1) and Article 21(1) of Regulation No 604/2013 respectively, as well as in the context of a subsequent application for international protection and a situation, as that covered by Article 17(1) of Regulation No 603/2013, capable of giving rise to take back procedures under Article 23(1) and Article 24(1) of Regulation No 604/2013'.

Then, the Court clarified the existence of different consequences in case of the infringement of Article 4 (common leaflet) or Article 5 (individual interview).

According to the Court, the failure to provide the common leaflet cannot lead to the annulment of the transfer unless the appellant demonstrates how the absence of information concretely affected the Dublin procedure and altered it. Instead, the personal interview is considered an essential phase which, if omitted, must in any case be made up for during the trial by listening directly to the appellant.

This, in the Italian context where the interview is often omitted or inconsistent and the court proceedings are mostly written, already had an important meaning in pending trials: on 3 April 2024 the Court of Cassation, recalling the CJEU decision stated that "where the specific information obligations are not fulfilled, in light of the hearing carried out and the information resulting from the allegations and productions of the administrative authority, burdened with proof, the transfer decision must be annulled".[729]

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.[730]

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

727 Court of Cassation, decision no. 8668 of 23 February - 29 March 2021.
728 Opinion of Advocate General Kokott delivered on 20 April 2023, available at: bit.ly/42LeWWS.
729 Court of Cassation, decision of 3 April 2024, no. 12162/2024. Similarly, see Court of Cassation, decision of17 April 2024, available at https://acesse.dev/ipbCH.
730 Article 10-bis(1) Procedure Decree, inserted by the Reception Decree.

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.[731]

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.[732]

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.[733] 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.[734]

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 between 2020 and 2023, observed that 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."[735] In this case, however, the detention was validated as the Court found that the asylum application was presented only in order to avoid repatriation.

In other rulings, the Civil Court of Trieste held that there was no evidence that the detainee, on the occasion of crossing the border, had been enabled to consciously manifest his will to apply for asylum, as required by Article 10 ter, (1), TUI and that therefore there were no reasons to consider the request as a pretext (i.e. submitted for the sole purpose of delaying or preventing expulsion) even if not presented

731 Article 10 ter (3) as amended by DL 130/2020.
732 Article 6(4) Reception Decree.
733 Article 7 (4) Reception Decree.
734 Article 10 (4) Procedure Decree, to which Article 7 (4) reception decree expressly refers to.
735 Civil Court of Trieste, decision of 15 September 2020.

before the Giudice di Pace because even before that hearing it was not proven that the information obligation had been fulfilled.[736]

As already represented in the AIDA report 2021,[737] 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 they have already expressed their 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[738] 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.

With a decision of 20 November 2023, the Court of Cassation ruled that the Public Administration has the duty to document "the timing and manner in which the information was administered". Neither the information contained in the foglio notizie nor the style clause usually included in refoulement decrees can be considered sufficient.[739]

2. Access to NGOs and UNHCR

Indicators: Access to NGOs and UNHCR

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

The Procedure Decree expressly requires the competent authorities to guarantee asylum seekers the possibility to contact UNHCR and NGOs during all phases of the asylum procedure.[740] 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[741]. The SOPs also foresee that authorised humanitarian organisations will provide support to the Italian authorities in the timely identification of vulnerable persons who have special needs, and they will also carry out information activities according to their respective mandates. Currently in the hotspots, UNHCR monitors activities, performs the information service and, as provided

736 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.
737 See AIDA, *Country Report Italy – Update on the year 2021*, May 2022, available at: https://bit.ly/49cu3Lx, 106.
738 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.
739 Court of Cassation, decision of 20 November 2023, no. 32070, available at https://l1nq.com/3aMMu.
740 Article 10(3) Procedure Decree.
741 SOPS, paragraph B.2.

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.[742]

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,[743] 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".[744]

Access of UNHCR and other organisations assisting refugees at border crossing 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.[745]

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:

2. Are applications from specific nationalities considered manifestly unfounded?[746] ☒ 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.

Statistics on decisions regarding asylum applications in 2023 show high recognition rates for certain nationalities, in particular around 90% for Afghans, 92% for Ukrainians, 93% for Somalis, 84% for Russians, 93% for Venezuelans, 87% for Malians, 84% for Iraqis.[747]

742 Article 7 (3) Reception Decree.
743 Administrative Court of Sicily, interim decision no. 943 of 24 September 2020.
744 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/3Ic5L6P.
745 Article 10-bis(2) Procedure Decree.
746 Whether under the "safe country of origin" concept or otherwise.
747 NCA, Response to the FOIA request presented by ASGI.

The issue of the Safe Country of Origin decrees has directly affected the treatment and prerogatives of asylum seekers whose nationalities are indicated by the decrees.

Egypt and Bangladesh, among the top ten main countries of origin of applicants for international protection in 2023 - with 18,295 and 23,450 asylum applications respectively - have been included in the list of safe countries of origin by the Ministerial Decree of 7 May 2024, 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 further 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 and at Questure. 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".[748] 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).[749]

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.[750]

748 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.

749 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.

750 J. and others v. Italy, Application no. 21329/18, 30 March 2023, available at HUDOC: bit.ly/42TBqVD.

Reception Conditions

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. The model the Reception Decree initially outlined created a common reception system, articulated in different phases but centred on the Reception and Integration System (SAI, former SPRAR, then SIPROIMI) as the standard form of reception of asylum seekers. Since 2015, the regulatory text has undergone several reforms.

After the exclusion of asylum seekers from the SAI system through Law Decree No. 113/2018, Law Decree No. 130/2020 partially restored the previous model, reintroducing a single reception system for both asylum seekers and beneficiaries of national and international protection, without, however, providing for an adequate and proportional expansion of the number of available places.

In May 2023, Law 50/2023, which converted Decree Law 20/2023, came into force. Among the many changes introduced, all marked by a strongly restrictive and penalising approach towards asylum seekers, one of the most significant concerns is that, once more, asylum seekers have been excluded from the possibility to access the SAI system. The reception system is then set to 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, adopting a similar approach as the so-called "Salvini Decree" (DL 113/2018). The only novelty compared to said Decree is the provision establishing that access to the SAI will be granted to asylum seekers who have been identified as vulnerable and to those who have legally entered Italy through complementary pathways (government-led resettlements or private sponsored humanitarian admission programs).[751]

Law 50/2023 also introduced a new type of "provisional" centres: pending the identification of the availability of places in governmental reception centres or in CAS, the Prefect may order that reception take place, for the time strictly necessary, in temporary reception facilities where only food, clothing, health care and linguistic-cultural mediation are provided (Article 11 (2 bis) Legislative Decree No. 142/2015). Moreover, Article 6-ter of Law Decree No. 20/2023 excluded the obligation to provide psychological assistance services, Italian language courses and legal and territorial orientation services in favour of asylum seekers accommodated in first reception centres, CAS and temporary centres.

The picture that emerges now is one of a reception system fragmented into different "reception" places with different reception measures to which foreign nationals are sent according to the stage of access to the asylum procedure, or to the way they enter the territory, or to their particular psychophysical conditions.

It should be noted that the Government extended the state of emergency "as a consequence of the exceptional increase in the flows of migrant people entering the national territory via the Mediterranean migratory routes" from October 2023 to April 2024.On 10 April 2024, a further extension of six months was announced.[752]

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

751 See also M. Giovannetti, Il prisma dell'accoglienza: la disciplina del sistema alla luce della legge n. 50/2023, in Questione Giustizia, available in Italian at: https://acesse.dev/zt1rw.

752 See press release published on the Government website on 9 April 2024: bit.ly/3wsVqDE. To be published in Gazzetta Ufficiale.

asylum.[753] This is why access to reception is directed affected by the problems in accessing - or re accessing - the asylum procedure (see Access to procedure).

As mentioned, after the 2023 reform, access to the SAI system is only be granted to asylum seekers identified as vulnerable and to those who have entered Italy through government-led resettlements or private sponsored humanitarian admission programs.[754]
At least three factors, which have characterised the Italian reception system since its creation, 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 is done on a voluntary basis: 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 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.
3. The conceptualisation of reception obligations 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 ordinary reception system is largely insufficient when compared to the existing needs, therefore access to the reception system for all those entitled to it, is a utopia.

It should also be noted that the modalities to access the reception system are different depending on the mode of arrival. Those who are disembarked after search and rescue operations - directly moved to hotspot facilities (eventually facing the hotspot procedure, see Hotspots). All other sea or land arrivals often have to wait for months to access the asylum procedure and consequently reception conditions (See Access to procedure).

Moreover, by L. 14 of 21 February 2024, the Italian Parliament has ratified the Protocol signed in Rome on 6 November 2023 between the Italian and the Albanian Government aimed at cooperation on migration matters[755] and, in the government's intent, this will introduce a further variable in the reception process for those who intend to request international protection: people rescued in international waters by Italian ships,[756] subject to the border procedure, will be transported directly to Albania where, according to the agreement, three centres will be established under Italian jurisdiction: one, in the locality of Shengjin, to provide health screening, identification and collection of asylum applications and two others in the locality of Gjader, one functioning as accommodation centre (880 places) and the other one as repatriation centre (CPR) (144 places).

The government published the notice for the award of the contract on March 21, 2024 with a deadline until March 28 to submit offers.[757]

Finally, the management of these centres has been entrusted to the cooperative Medihospes, the same managing the collective centre Cavarzerani, in Udine (see Reception conditions).

Reception facilities

753 Article 1 (2) Reception Decree.
754 Article 1 sexies (1 bis) DL 416/1989 converted into L. 39/1990, as amended by DL 20/2023
755 L. 14/2024, available at: bit.ly/44vBGfr.
756 According to Article 3 (2) L. 14/2024, those are the ones who could be subject to the procedure.
757 See the notice published on 21 March 2024 available in Italian at: bit.ly/4by66Qr.

After the 2023 reform, the reception system is comprised of first governmental centres, temporary centres (CAS), provisional centres, and SAI centres.

L. 50/2023 introduced a new typology of reception facilities, the provisional centres, which only provide basic services (see below, “Services provided”). The regulatory provision[758] is included within the law governing temporary centres (CAS) even if these centres are conceived as structures to be used for the "strictly necessary time" to identify available places in the government centres or in CAS facilities.

The provision presents both positive and critical aspects. On one hand, it could offer greater protection pending the identification of suitable reception places, as it makes it easier to find structures and bodies capable of offering this type of service; on the other hand, it could lead to asylum seekers being hosted n centres providing lower standards in terms of reception conditions for indefinite periods of time.

Moreover, DL 133/2023, converted with amendments by L. 176/2023, allowed, in cases of extreme urgency, to derogate from the maximum capacity parameters established by law for government reception centres and CAS facilities, occupying up to double of the places foreseen for these centres, in order to face “ the needs of public order and security connected to the management of migratory flows”.[759]

Decree Law 124/2023, converted into L. 162/2023, entrusted the Ministry of Defence with the creation of reception centres, hotspots and CPRs.[760]

For the realisation of such facilities the law also provides that the Ministry of Defence is authorised to make use of the “highest urgency procedures and civil protection procedures" (pursuant to art. 140 of Legislative Decree 31 March 2023, no. 36).

At the same time, the law provides that, by Decree of the President of the Council of Ministers, upon proposal of the Ministers of the Interior and Defence, in agreement with the Minister of Economy and Finance, it will be approved the Extraordinary Plan for the identification of the areas interested in the creation of a suitable number of hotspots, CPR, government centres and CAS, also through the valorisation of existing properties.[761]

As underlined by a study, these new provisions have a significant weight because “facilities for migrants, without distinction, from those aimed at reception to those dedicated to detention and deprivation of liberty, will be implemented by adopting "highly urgent procedures", thus crystallising the systemic emergency approach. Centers and structures that will be built on the basis of a plan adopted by the Council of Ministers based on the indications provided by the Minister of the Interior and the Minister of Defence, in contrast with what it is provided for by the Reception Decree in terms of planning and consultation, and forgetting that «the reception system for applicants for international protection is based on fairness collaboration between the different levels of government involved" (art. 8 Legislative Decree no. 142/2015)”.[762]

Services provided

The 2018 “Security Decree” marked a net change in the reception approach, preferring a system based on large 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 and the

758 Article 11 (2 bis) Reception Decree

759 Article 7 DL 133/2023 amending Article 11 (2) LD 142/2015

760 Article 21 (1) Decree Law 124/2023 converted into L. 162/2023

761 Article 21 (2) Decree Law 124/2023 converted into L. 162/2023

762 M. Giovannetti, Il prisma dell’accoglienza: la disciplina del sistema alla luce della legge n. 50/2023, in Questione Giustizia, available in Italian at: https://acesse.dev/zt1rw.

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.

Decree Law 130/2020 maintained the distinction between a range of services addressed to asylum seekers and others reserved exclusively to beneficiaries of protection, thus replicating the policy 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 considerably slowing down the process of regaining self-sufficiency for asylum seekers.

As highlighted by ActionAid and Openpolis in their report,[763] 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.

After the 2023 reform, on 27 March 2024, the new tender specification schemes for reception services in government centres and CAS were published.[764]

The new schemes[765] allow discretion to reception bodies regarding the provision of services that were instead compulsory under DL 130/2020. According to Article 2 of the tender specifications schemes, psychological assistance, Italian language courses and professional training, legal and territorial orientation, are listed as possible subcategories of social assistance, but there is no obligation for the service provider to ensure their accessibility to asylum seekers.

In addition, in the new provisional centres, the services are even more limited, as just services relating to food, accommodation, clothing, healthcare and linguistic-cultural mediation are ensured.

If applicants are admitted into SAI centres, they still 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.[766]

The 2023 reform unfortunately reflects the same approach as the 2018 reform and maintains the limits of the 2020 reform: SAI are still activated on a voluntary basis at the local level; access to SAI centres is limited to few categories of asylum seekers and essential services are no longer mandatory and therefore left to the discretion of the managing body.

With increasing frequency since 2022, beneficiaries of international protection are notified of the termination of reception conditions in CAS immediately after receiving the residence permit or even the mere decision recognising the international or special protection, 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) and those who reached the majority of age while still within the reception system and benefit from an administrative extension of guardianship, also entitled to access SAI, still remain, in practice, excluded from these centres.

763 Actionaid and Openpolis, Centri d'Italia. Report 2022. Il vuoto dell'accoglienza, available at: https://bit.ly/3KZSaVo.

764 As per Minister Decree, 4 March 2024. Schemes and Decree available at: bit.ly/3JU5KaZ.

765 Available at: bit.ly/3ws5KvP.

766 Article 1 sexies (2 bis) DL 416/1989, introduced by DL 130/2020.

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Accommodation for people escaping the Ukrainian conflict

See Annex on Temporary Protection.

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".[767]

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.

The expenditure forecast for 2021 was a total of 1.75 billion, out of which 1.068,59 million for Cas and first accommodation facilities. For 2022, the expenditure was 1,834.20 million and for 2023 it was 1,807.38 million,[768] but the actual expenditure is not known at the time of writing.

In attributing the responsibility for the creation of reception centres, hotspots and CPR to the Ministry of Defence, Decree Law 124/2023 (converted into L. 162/2023) also established a specific fund, with an allocation of 20 million euros to the Ministry of Defence[769] for 2023 and authorised the expenditure of 1,000,000 euros per year[770] starting from the year 2024 as a contribution to the functioning of the reception and repatriation structures and of 400,000 euros for the year 2023 for the costs deriving from the establishment and functioning of the related technical structures to the preliminary stages of construction (preparation of areas, security and surveillance).

DL 133/2023 introduced a financial measure to support municipalities affected by significant and close in time arrivals of migrants on their territory providing that the waste collection connected to the activities of government centres, hotspots and to the transit of migrants in border municipalities located near the border with other EU states can be insured by the territorially competent Prefect until 31 December 2025. For this activity, the DL 133/2023 has foreseen a maximum expenditure of 500,000.00 euros for 2023 and 2,000,000.00 for each of the years 2024 and 2025.[771]

DL 145 of 18 October 2023, converted in L. 191/2023, provided for the establishment of a Ministry of the Interior fund for the reception of migrants and minors of 46,859 million euros for the year 2023[772] and authorised, for extraordinary first aid emergencies, a 1,000,000 euros expenditure for 2023.[773]

Later, the 2024 Budget Law stated that the Fund is refinanced in the amount of 172,739,236 euros for the year 2024, of 269,179,697 euros for the year 2025 and of 185,000,000 euros for the year 2026.[774]

Albania

767 Openpolis, Il ministero dell’interno e il bilancio dell’accoglienza, July 2021, available at: https://bit.ly/3vP8gYP.
768 See Senate report for the years 201-2023 available at: bit.ly/3JXhF7W.
769 Article 21 (4) DL 124/2023 converted into L. 162/2023.
770 Article 21 (6) DL 124/2023 converted into L. 162/2023.
771 Article 8 DL 133/2023.
772 Article 21 (1) DL 145/2023 converted in L 191/2023.
773 Article 21 (7) DL 145/2023 converted in L 191/2023.
774 Law 213/2023, Article 1 (361).

As regards the preparation of the project in Albania, the Government has estimated, for the reception provided there, an annual fee to the managing body of approximately €34 million.[775]

Furthermore, in the technical report, the estimated cost for the operation over 5 years is of approximately 653 million euros.[776]

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,[777] of 11,335.320 euros for 2021 and of 44,971,650 euros for each year in 2022 and 2023,[778] 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[779] - and allow for the opening of 2,000 additional SAI places, the budget Law of 30 December 2021 no 234[780] 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.[781]

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,[782] and precisely: 37,702,260 € for the year 2022 and 44,971,650 € for each of the years 2023 and 2024.[783]

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.[784]

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.[785]

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.[786] 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.[787]

775 See notice published on 21 March 2024 available at: bit.ly/4by66Q.
776 Available at: bit.ly/3UWwLAM.
777 Article 1-septies of Legislative Decree 416/1989 converted into Law 39/1990.
778 Article 7 DL 139/2021, as amended by Article 5 quarter DL 14/2022 converted with modification into L 28/2022.
779 Article 5-quater (6) extended the provision also to people fleeing from Ukraine.
780 Article 1 (390) L 234/2021 as amended by Article 5 quater (6) DL 14/2022 converted with modification into L 28/2022.
781 Article 1-septies of Legislative Decree 416/1989 converted into Law 39/1990.
782 Article 1-septies LD no. 416/1989.
783 Article 5-quater (3) DL 14/2022 as modified by the conversion L 28/2022.
784 Article 5-quater (9) DL 14/2022 as modified by the conversion L 28/2022.
785 Article 44 (4) DL 50 of 17 May 2022 converted by L. 91 of 15 July 2022.
786 LD 1/2018 Article 44.
787 Article 31 (4) LD 21/2022.

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,[788] 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".[789]

DL 145/2023, converted by L 191/2023[790] authorised the expenditure of 180 million euros for the year 2023, while L. 213 of 30 December 2023[791] (Budget Law) provided for further 274 million euros for the year 2024 dedicated to assistance activities in the national territory for the Ukrainian population.

Article 1, par. 388 of L. 213/2023 also allocated the amount of 7,650,000 euro to ensure the extension of the hosting programs already in place.

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,[792] 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.[793]

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.[794]

L. 213/2023, article 1, par. 391 also allocated 40,000,000euros to improve social services in the municipalities that host a significant number of holders of Temporary Protection.[795]

Management and Coordination

The Ministry of Interior is responsible for the overall management of the national reception system,[796] while its peripheral administrations, Prefectures or Local Government Bureaus, are in charge of managing reception at the provincial level.

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788 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.

789 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.

790 Article 21 (9) DL 145/2023 converted in L 191/2023.

791 Article 1 (389) amending Article 21 (9) DL 145/2023.

792 Article 31 (4) LD 21/2022, which refers to the fund ruled by Article 44 LD 1/ 2018.

793 Article 38 LD 21/2022 which refers to the fund ruled by Article 1 quarter DL 137/ 2020 converted into L 176/2020.

794 Article 38 (2) and Article 37 LD 21/2022.

795 L. 213/2023, art. 1, par. 391, available at: https://bitly.cx/MRGtN.

796 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.[797] 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.[798] 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[799] of 10 July 2014,[800] 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, Italian Governments have often shown both a chronic lack of foresight in terms of contingency planning on reception, as well as a tendency to centralise choices on the reception system, reducing to the minimum concertation and co-decision with other stakeholders. Proof of this is the fact that, still in 2023, 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 -[801], but also most decisions in this sense were taken by the central government, without consultation with other relevant actors.[802] 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.[803] The most recent example of a proposed solution to this problem is the declaration of the state of emergency of 11 April 2023 which was then extended from October 2023 to April 2024[804] and again, on 10 April 2024, announced for further six months[805] according to the national Government, such measure was necessary to ensure the proper management of reception needs following disembarkations but the Italian regions were not involved in the decision-making process.

Monitoring

797 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.

798 This plan was developed only once, in 2016, and has been largely unapplied. Source: MoI, Piano Accoglienza 2016, available at: https://bit.ly/3UaCv81.

799 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.

800 The text of the agreement is available at: https://bit.ly/3Kq3ZDx.

801 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.

802 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.

803 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.

804 See the Resolution of the Council of Ministers of 5 October 2023, available at: bit.ly/4amLIAP.

805 See the press release published on the Government website on 9 April 2024: bit.ly/3wsVqDE, published in Gazzetta Ufficiale no. 122 of 27 May 2024.

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.[806] 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.[807]

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).[808] 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.[809]
Data on inspections carried out in 2022 and 2023 is not publicly available.

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.[810] 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.[811]

The other key aspect regards the quality of the controls. While it is true that the specifications scheme is the common reference at national level for services, it remains an administrative tender document, which

806 Article 20(1) Reception Decree.

807 The 2020 and 2021 reports available at: https://bit.ly/3y8bRCN.

808 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.

809 See Circular Letter Ministry of Interior, n. 12498, 26 June 2020.

810 For data about inspection controls in 2019, see ActionAid, Centri d'Italia, Report 2022, available at: https://bit.ly/3Je6et6.

811 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.

establishes only quantitative indications, therefore inadequate as a reference for a minimally thorough inspection. Italian Prefectures have historically lacked a qualitative-quantitative tool aimed specifically at inspections, despite some attempts have been made over the years,[812] 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. Decree-Law 20/2023 (Article 6) 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. As highlighted by ActionAid, the use of a generic formula such as "serious breaches" does not appear sufficiently clear in delimiting the perimeter of this intervention. Moreover, it is not clear why prefectural officials with no experience in managing social services should be better able to restore correct management nor why the law provides for the use of direct award to assign the contract again (Article 6 (3) Cutro Decree).[813]

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.[814] 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.[815] 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

812 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.

813 Actionaid, "Il decreto Cutro e il commissariamento dei centri di accoglienza", available at: bit.ly/3JZryBV.

814 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.

815 Ministry of Interior Decree 18 November 2019.

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 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,[816] 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".[817] 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 allow access to material reception conditions for asylum seekers in the following stages of the asylum procedure?

❖ Regular procedure	☒ Yes	☐ Reduced material conditions	☐ No
❖ Dublin procedure	☒ Yes	☐ Reduced material conditions	☐ No
❖ Admissibility procedure	☒ Yes	☐ Reduced material conditions	☐ No
❖ Border procedure	☒ Yes	☐ Reduced material conditions	☐ No
❖ Accelerated procedure	☒ Yes	☐ Reduced material conditions	☐ No
❖ First appeal	☒ Yes	☐ Reduced material conditions	☐ No
❖ Onward appeal	☐ Yes	☒ Reduced material conditions	☐ No
❖ Subsequent application	☐ Yes	☒ Reduced material conditions	☐ No

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

The Reception Decree sets out the reception standards for third-country nationals making an application for international protection on the territory, including at the borders and in the transit zones or in Italian territorial waters.[818]

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,[819] without establishing additional requirements to access to reception measures.[820]

816 Article 20(1) Reception Decree.
817 See Circular Letters from MoI DCLI no. 6021 of 23 May 2019 and no. 12246 of 12 July 2019.
818 Article 1(1) Reception Decree.
819 Article 1(2) Reception Decree.
820 Article 4(4) Reception Decree.

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*).[821]

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, Prefectures are required to verify that the conditions, including economic conditions, which have determined access still occur. In 2023, similarly to 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 now conceived to accommodate beneficiaries of international protection (refugee status and subsidiary protection), unaccompanied foreign minors and, in case of available places, to vulnerable asylum seekers, to asylum seekers who legally entered Italy through complementary pathways (government-led resettlements or private sponsored humanitarian admission programs) and to holders of the following national permits and complementary protections:[822]

- 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 (but no longer SAI centres) at the same conditions as the other asylum seekers with no places reserved.[823] (See Dublin)

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 [824]. When accommodated, the following placement of the host follows a national and regional dispersion policy, which should follow agreed criteria.[825]

- 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 or she is present or has a domicile. In these cases, the new provision introduced by article 4

821 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.

822 Article 1-sexies(1) Decree Law 416/1989, as modified by Decree Law 130/2020.

823 Article 1(3) Reception Decree. For more information about access to reception for Dublin transferees, please see the relevant paragraph in the Procedures chapter.

824 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.

825 See paragraph 4.1 "Dispersal of asylum seekers", page XXXX.

of the DL 133/2023[826] started to negatively impact asylum seekers' possibilities to access the asylum procedure. According to this rule, in case the asylum seeker does not present themselves at the Questura to lodge the asylum application, the previously expressed intention to seek asylum does not constitute an application according to the Procedures Decree. In practice, in these cases, it rarely happens that accommodation is granted immediately after the expression of the intention to seek asylum and, waiting for an address to be connected to the asylum seeker, even the formalisation is postponed for weeks or months during which people are left without any assistance. In order not to live on the street people accept temporary hospitality or try to formalise to other Questure and, when coming back to the competent one, they are starting to find their asylum application and their accommodation request not anymore existent. They are then requested to register again, risking in some cases that their application is considered as a subsequent one. 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,[827] 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 number 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 periodically (most recently in August 2022) sends operational indications to the Prefectures on reporting regarding reception in SAI.

- Moreover, after the Cutro Decree (DL 20/2023) came into force, the passage from CAS or first governmental centres to SAI centres for asylum seekers has been impeded and it is not rare that, after the recognition of a title of protection people are ordered to leave the accommodation project without even checking for availability of places in SAI projects. Once out of the accommodation system it is then very difficult to re-access it.

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.

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

826 Introducing Article 6 (3-bis) to the procedure decree.

827 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.

application by State Police.[828] 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.[829]

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. 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[830] 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 5,000 places were left unoccupied in 2022 as a reserve for unexpected arrivals through disembarkations.

On 31 July 2020 the Roja Camp in Ventimiglia, managed by the Italian Red Cross at the land border with France, was closed.[831] 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.[832]

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". [833]

In November 2021, the imminent opening in Ventimiglia of a centre for people in transit was announced during a visit by the Chief of the Department for Civil Liberties and Immigration.[834] More than one year later, no reception centre has been opened and issues are still arising.[835] 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,[836] and again later in April 2023, in anticipation of a potential increase in arrivals in Italy,[837] decided to further strengthen internal border controls by increasing police

828 In Italy, the registration and lodging phases are integrated into one step.

829 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.

830 Altreconomia, Inchiesta sull'accoglienza selettiva: chi arriva in Italia via terra resta fuori, in Altreconomia 254, December 2022, available at: https://bit.ly/42bf2XP.

831 Parole sul confine, "Il Campo Roja di Ventimiglia ha definitivamente chiuso", 24 August 2020, available at: https://bit.ly/3y5pnWA.

832 See ASGI, Medea project, 21 February 2021, available at: https://bit.ly/3y0oJtr.

833 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/3OR2Ip6, 12.

834 Ministry of Interior, A Ventimiglia un centro di transito per accogliere i migranti, 19 November 2021, available at: https://bit.ly/3YxPpxF.

835 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.

836 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.

837 See Repubblica, Ventimiglia, Parigi blinda 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.

presence, carrying out systematic checks on vehicles in transit from Italy[838] and increasing the number of pushbacks, also against the unaccompanied minors.[839]

While people took refuge in makeshift camps near the railroad, which are frequently cleared by police forces[840] and more recently were rendered illegal through a Decree from the responsible Mayor,[841] 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,[842] "a network of mini-centres should have been established, scattered throughout the territory, within a system already in place, without creating other structures and facilities.

However, only one PAD was opened, with 20 places, dedicated to women and to women with children. People can stay in the centre for up to 4 days. The centre is financed by the Prefecture.

Another reception facility, managed by Save the Children and Waldensian Diakonia, can host up to 12 unaccompanied minors.

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[843] 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 expressly provided for this possibility,[844] 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[845] 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

838 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.

839 Source: Infomigrants, France sending unaccompanied minors back to Italy, MSF, 9 May 2023, available at: https://bit.ly/3pYn0Fa.

840 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.

841 See Riviera24, Lotta al degrado, il commissario De Lucia firma ordinanza anti-bivacco a Ventimiglia, 23 March 2023, available at: https://bit.ly/3p7KNSB.

842 See Secolo XIX, Emergenza migranti a Ventimiglia, l'accoglienza diffusa è la nuova strategia, March 8th 2023, available at: https://bit.ly/3ZRl91O.

843 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 or when people asking asylum at the border or in transit zones come from a country included in the list of safe countries. See the Procedures chapter.

844 See Circular Letter from MoI DCLI n. 8560 of 16 October 2019.

845 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".

centres in northern Italy, following ministerial transfers. 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 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. In this regard, it is important to recall the provision in DL 20/2023 which introduced paragraph 1 bis to the Article 10-ter Tui, providing the possibility to transfer third country nationals hosted in hotspots to similar facilities ("*strutture analoghe*") on the national territory for the carrying out of rescue activities, first assistance and identification.[846]

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.[847]

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; (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 2023 (in original currency and in €): Approximately €75 in CAS[848] and 45 to 75 in SAI[849]

846 Article 5 bis (3) DL 20/2023 converted into L. 50/2023 introducing Article 10 ter (1 bis) TUI.

847 Article 14(4) Reception Decree.

848 See attachment B point 11, to the tender specification scheme valid for first reception centres and CAS published on 27 March 2024 and available at: bit.ly/3ws5KvP.

849 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/3LMWea4.

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.[850]

The latest decree approving the tender specifications schemes (*capitolato d'appalto*) was adopted on 27 March 2024.[851]

Under the tender specification schemes issued following L. 50/2023, the daily amount per person awarded to the centres' management was increased compared to the 2021 tender scheme: €37 for non-collective structures up to 50 places, compared to the previous €28. However, the items corresponding to the necessary costs have remained almost unchanged (slightly lower amount for staff and slightly higher for the management of the structure). Higher costs are instead foreseen for additional and possible services including the on-call intervention of a night operator.[852]

This amount does not appear sufficient to favour small facilities. For collective structures, costs are higher (40 euros 3 for collective structures up to 50 places) and this confirms the limited interest in adopting policies that favour the reception in small structures 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 but, in line with the changes introduced by Law 50/2023, indicates the following services as purely optional and as mere subcategories of social assistance: Italian language courses; orientation to local services; psychological support, legal information service, professional training, leisure activities and job orientation.

Some of these services, (job orientation and professional training) are discretionary in CAS, and completely absent for the (few) asylum seekers within the SAI system, that only benefit from first level services.

The new tender schemes distinguish the supply of staff depending on the number of guests and depending on the nature of the centre, i.e. depending on whether they are individual housing units or collective centres.

In table below it is possible to compare the schemes provided, for example, for reception facilities made of individual housing units and collective centres, in case they host from 41 up to 50 guests: in collective centres the demand for personnel and therefore the services requested are lower than the ones in collective centres. As a result, linguistic mediation, which is already low in non-collective centres, corresponding, in the case of 50 guests, to 28 minutes per person per week, in collective centres it becomes even lower, corresponding to 16 minutes per person. The hours of social worker, 36 per week in non-collective centres and just 14 in collective centres, make clear how the services that will be provided will be scarce and insufficient considering that they will include Italian courses, legal assistance, professional orientation and psychological assistance.

850 Article 12(1) Reception Decree.

851 Ministry of Interior Decree published on 27 March 2024 available in Italian at bit.ly/3ws5KvP:

852 See Attachment B to the tender specification scheme valid for first reception centres and CAS published on 27 March 2024 and available at: bit.ly/3ws5KvP.

Staff	41 up to 50 places individual housing units	41 up to 50 places collective centres
Daytime worker	1 worker 14 hours a day	1 worker 12 h a day
Night time worker	available 1 worker 8 hours a day	1 worker 8 h a day
Director	10 h a week	8 h a week
Doctor	Available 4 h a day for 7 days	Available 4 h a day for 7 days
Social operator	32 h a week	26 h a week
Linguistic mediation	24 h a week	14 h a week

Source: attachment A (table) to the tender specification schemes, MoI.[853]

In relation to financial allowances i.e. pocket money for personal needs, each asylum seeker hosted in governmental reception centres and CAS receives €2.50 per day.

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 law 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:[854]

(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.[855]

In recent years, several judicial decisions had underlined how the provision was contrary to the Reception Directive.

853 MoI website, Attachment A available at: https://bit.ly/3tCYghX.
854 See also Article 13 Reception Decree.
855 L. 50/2023 cancelled Article 23 (1) (e)

According to the new rules, this kind of behaviour can instead motivate a reduction of reception conditions,[856] to be adopted on an individual basis and in accordance with the principle of proportionality (Art. 23, co. 2-bis, Legislative Decree No. 142/2015).

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.

Among the novelties introduced in this regard by Law No. 50/2023 is also the provision that the decisions of reduction and revocation of reception measures have to be communicated to the competent Territorial Commission.

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.[857]

According to ASGI's experience, in most cases Prefects do not conduct an assessment regarding the risk of destitution before disposing the withdrawal of reception conditions.

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.[858] To this end, they can benefit from free legal aid.

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 2020-2023.

According to ASGI's experience, following the legislative reform related to the serious violation of the internal regulation of the reception centre or violent behaviour no longer allowing withdrawal decisions, withdrawal decisions based on the supposed sufficiency of personal resources increased.

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.[859] 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.[860]

Certain Prefectures have strictly interpreted this ground:

Lazio: in the case of a Bangladeshi asylum seeker who had found an evening job and had not been able to sign the daily form to attest his presence, the Administrative Court for Lazio, recalling the decision taken by the Council of the State (Consiglio di Stato) on 13 July 2022, no. 5492, clarified, with a decision of 13 September 2023, that it is necessary to distinguish between abandonment and absence from the center.

856 Article 23 (2) Reception Decree as amended by L. 50/2023
857 Article 23 (2 bis) Reception Decree introduced by L. 50/2023.
858 Article 23(5) Reception Decree.
859 Article 23(3) Reception Decree.
860 Article 23(3) Reception Decree.

The court clarified that being absent from the centre for one night cannot be configured as abandonment, given the action would be lacking the psychological element of wanting to abandon the reception facility.[861]

Veneto: in the case of an asylum-seeking woman who was a trafficking victim, 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 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.[862]

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.[863]

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.[864]

On 9 May 2022, the Administrative Court of Tuscany overturned the withdrawal where the applicant demonstrated not having understood the consequences deriving from abandoning the structure.[865]

Friuli Venezia Giulia: in September 2023, the Prefect of Gorizia withdrew reception conditions to an asylum seeker who had left the reception facility in the evening time and returned after two days having been placed under arrest. In December 2023, after the submission of the appeal, the Prefecture restored the reception measures according to the rule established by the art. 23 (3) of the Reception Decree. The Friuli Venezia Giulia Court therefore declared the case resolved and rejected the request for compensation.[866]

Lombardy: As reported by NAGA,[867] 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 immediately communicated. 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.[868]

On 5 March 2024, the Administrative Court of Lombardy presented a request for a preliminary ruling to the CJEU regarding the possibility of deciding to revoke the reception measures due to failure of asylum

861 TAR Lazio, decision of 13 September 2023, available at: https://rb.gy/aj4p6s.
862 TAR Veneto, decision of 11 November 2020, case n. 851/2020, available at: https://bit.ly/3y5uxli.
863 Council of State, decision 06454/2019 of 26 September 2019.
864 Consiglio di Stato, decision 1322/2019, 14 May 2019, available in Italian at: https://bit.ly/2TwonIk.
865 Administrative Court of the Region of Tuscany, section II, Decision of 9 May 2022, no. 644/2022
866 Administrative Court for Friuli Veneiza Giulia, Decision 33/2024 published on 19 January 2024
867 NAGA, Senza Scampo, December 2019, available in Italian at: https://cutt.ly/byOB3Wr.
868 Administrative Court of Lombardy, decision 329/2020, 19 February 2020.

seekers to present themselves to the assigned centre. The court asked the CJEU to clarify whether this decision, taken in this case due to failure to accept the transfer to another centre, is compatible with the need to prevent any damage to the basic life needs of the asylum seeker (according to Article 20 of the Reception Conditions Directive).[869]

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 (L. 50/2023), 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.[870]

After Law 50/2023 came into force in May 2023, no cases of reduction of reception conditions have been recorded by ASGI.

The T.A.R. of Campania, with decision no. 4353 of 17 July 2023, decided to grant an asylum seeker who had received by the Prefecture of Benevento a withdrawal of reception measures in 2022 based on the violation of the rules of the centre, a compensation of 3,000 euros as moral damage and 600.00 euros as material damage for the lack of pocket money.[871]

3.3 Possession of sufficient resources

A 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).

Article 23, (1) letter. d), LD 142/2015, provides for the possibility of revoking reception conditions in case it is verified the applicant has sufficient economic resources available", to be calculated based on "the annual amount of the social allowance" (article 14 (3) LD 142/2015) corresponding, for 2023, to 6,542 euros.

Prefectures should 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.[872]

The regulatory provision did not correctly transpose the Directive 2013/33/EU both because it did not provide for a gradual reduction of reception measures in this case and it does not condition the sanction to the evaluation of whether a dignified standard of living would be ensured nor to the presence of the conditions that allow to believe of the applicant concealed their resources.

The lack of reference in the internal rule to the "concealment of resources" has led the Administrations to apply the provision in mere cases of possession of deemed economic self-sufficiency by the asylum seeker.

Some Administrations have therefore considered it possible to refer to the amount of the social allowance calculated on the single monthly salary, while others have made a prognostic, but not current, judgement regarding the exceeding of the annual amount of the social allowance, due to the presence of a medium or long-term employment contract.

After initial diverging decisions, administrative jurisprudence overall aligned in the view that the annual amount of the social allowance constitutes the legislatively established parameter for evaluating the

869 Administrative Court for Lombardy, 5 March 2024, available at: https://rb.gy/03c141.
870 Article 23(4) Reception Decree as amended by the L 50/2023, which converted into law DL 20/2023.
871 TAR for Campania region, decision of 17 July 2023, available at: https://rb.gy/r8pvwr.
872 Article 23(6) Reception Decree.

adequacy of the resources for the support of the asylum seeker, and that the literal tenor of the rules imposes to believe that the "sufficient means", equal to or greater than "the annual amount of the social allowance" must be of a stable and/or lasting nature and, in any case, must refer to a minimum time period of 1 year, a judgement which in any case must be carried out in light of the current availability of the resources themselves.

On March 2023, the Council of State[873] 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 due to having exceeded the set income threshold 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 exceeding the income threshold but to cancel the request for reimbursement as it was deemed disproportionate.[874]

However, despite the clarifications offered by the jurisprudence, in 2023 the prefectures continued to notify withdrawal notices based on an erroneous interpretation of the law and asking the asylum seeker to reimburse significant costs deriving from reception measures considered as having been unduly received, often linked to the per capita cost per day recognized to the managing body.

In some cases, the Administrative Courts declared the competence of the ordinary judges to decide about the reimbursement payments asked by Prefectures to the asylum seekers for the period of undue reception.[875]

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.[876]

873 Council of State, Decision no. 2386/2023 of 9 February 2023, published on 7 March 2023.

874 Administrative Court for the Emilia Romagna Region, decisions no. 136, 137 and 138 of 8 March 2023, published on 16 March 2023.

875 This happened both in the hypothesis of simultaneous adoption of the measure of revocation of the reception measures (Lombardy Regional Administrative Court, judgement of 29 December 2021, No. 2932/2021), as well as in that in which they were independently adopted, (TAR Tuscany, judgement of 27 September 22, No. 1055, confirmed by judgement of 22 February 2023 No. 190/2023).

876 Article 23(7) Reception Decree.

3.4 Civil Registration

Decree Law 113/2018 repealed the rules governing civil registration (*iscrizione anagrafica*) of asylum seekers,[877] and stated that the residence permits issued to them were not valid titles for registration at the registry office.[878]

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.[879] 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.[880]

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, on July 2023 the Civil Court of Trieste accepted the appeal submitted by an asylum seeker recognising his right to retroactively obtain civil registration.[881] The Municipality of Trieste appealed the decision and the procedure is still pending at the time of writing behind the Court of Appeal of Trieste with the last hearing carried out on 7 May 2024.

On the same matter, the Civil Court of Florence, on 27 July 2023, decided to recognise as well to the applicant, an asylum seeker, the right to obtain the civil registration for the period it was denied in force of the law declared contrary to the Constitution.[882]

According to the law, the applicant for international protection, in possession of a residence permit for asylum request[883] or of the receipt certifying the request[884] is registered in the registry of the resident population.[885] 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.[886]

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.[887]

After registration, asylum seekers obtain an identity card valid for three years.[888]

877 Article 5-bis Reception Decree was repealed by Article 13 Decree Law 113/2018 and L 132/2018.
878 Article 4(1-bis) Reception Decree, inserted by Article 13 Decree Law 113/2018 and L 132/2018.
879 Decision no. 186/2020 of 31 July 2020, available at: https://bit.ly/2SCXDbl.
880 Article 5 bis Reception Decree.
881 Civil Court of Trieste, decision of 31 July 2023, available at: bit.ly/3wIdfyP.
882 Civil Court of Florence, decision of 27 July 2023, case no. 476/2023.
883 Article 4 (1) Reception Decree.
884 Article 4 (3) Reception Decree.
885 Article 5 bis (1) Reception Decree, re-introduced, with amendments, by Decree Law 130/2020 and L 173/2020.
886 Article 5 bis (3) Reception Decree.
887 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.
888 Article 5 bis (4) introduced by Decree Law 130/2020.

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.[889] In practice, this provision has never been applied so far.

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[890] of 10 July 2014, Government, regions and local authorities reached an agreement on a National Operational Plan,[891] 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 acknowledged 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[892] 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

889 Article 5(4) Reception Decree.

890 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.

891 The text of the agreement is available at: https://bit.ly/3Kq3ZDx.

892 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.

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, both for political reasons (e.g. linked to changes in local political majorities weary of applying agreements reached by previous majorities),[893] and due to the lack of effective planning in view of the implementation of planned interventions. Another crucial element 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 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.[894]

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

893 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.

894 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.

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,[895] 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 reception centres already present in said territory should have been removed or transformed into SPRAR.[896]

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 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 before May 2023, when L. 50/2023 entered into force, once more excluding the majority of asylum seekers from SAI, the territories still saw a very strong imbalance in the distribution of reception places.

At the end of 2023, the total number of asylum seekers and beneficiaries of international protection accommodated was 139,388 (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 2023				
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	18,003	12%	3,024	16%
Emilia-Romagna	12,914	9%	3,325	25%
Sicily	10,380	7%	5,192	50%

895 See Minister’s Directive of 11 October 2016, available at: https://bit.ly/3Mma5pH.

896 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.

Lazio	12,231	9%	2,486	20%
Piedmont	12,417	9%	2,329	18%
Tuscany	9,788	7%	1,799	18%
Campania	11,053	8%	3,923	35%
Veneto	7,612	5%	764	10%
Calabria	6,151	4%	2,909	47%
Apulia	7,182	5%	3,045	42%
Liguria	5,891	4%	1,027	17%
Friuli-Venezia Giulia	4,557	3%	238	5%
Marche	4,311	3%	1.307	30%
Abruzzo	5,151	4%	886	17%
Umbria	2,684	2%	437	16%
Basilicata	2,664	2%	795	29%
Trentino-Alto Adige	1,663	1%	191	11%
Molise	1815	1%	832	45%
Sardinia	2,784	2%	273	9%
Valle d'Aosta	137	0.1 %	34	24%
National total	**139,388**	**100%**	**34,816**	**24%**

Source: Ministry of Interior, Cruscotto statistico giornaliero, 31 December 2023.

As can be observed, the distribution of asylum seekers and protection holders in Italy still remains highly imbalanced between regions.[897]

[897] 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.

According to data collected and processed by Openpolis and published in May 2024,[898] in 2022 the number of beneficiaries of reception measures represented approximately 0.18% of the resident population in Italy.

In the north-eastern regions, the situation appeared particularly worrying: reception was almost exclusively of a governmental nature (CAS and initial reception), while the Sai covered just 21% of places. In the Friuli Venezia Giulia Region, government centres covered 92.9% of reception, and, in the province of Gorizia, there were no places in the Sai system. In the North West the situation was similar as the SAI covered just 26%. In the south the proportion is different, the SAI covered 56% of the places.

At a regional level, as regards the distribution between municipalities, Emilia Romagna's reception system was the one with the most spread out centres, with one centre in 60.6% of the municipalities, followed by Tuscany (60.1%) and Apulia (49%). At the bottom of the ranking there were Abruzzo (16.1%), Valle d'Aosta (9.5%) and Sardinia (8.5%).

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.[899] 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.[900]

As mentioned above, on 5 March 2024 the Administrative Court of Lombardy asked the CJEU to clarify if the withdrawal of the reception measures decided in case the transfer is not accepted is compatible with the Reception Directive which requires not exposing the asylum seeker to the deprivation of the basic needs of life.[901]

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).[902] In 2023 the lack of transfers from Trieste, Gorizia and Udine led to a critical increase of people staying in the abandoned area behind the railway train

898 Openpolis, L'accoglienza in Italia in assenza di una prospettiva, 10 May 2024, available in Italian at assenza-di-una-prospettiva, available at: rb.gy/649k4b.

899 Article 15 (4) Reception Decree.

900 Article 23 (1 a) Reception Decree.

901 Administrative Court of Lombardy, available at: https://rb.gy/03c141.

902 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/3Hw4I4f. 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.

station in Trieste (the so-called Silos), in the overcrowding occupancy of CARA in Gradisca d'Isonzo (Gorizia) and in the "informal" accommodation of hundreds of people in an unofficial area of Caserma Cavarzerani (Udine) (see Conditions in reception).

Considering the uneven 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 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.

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,[903] 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. 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 SAI centres.

4.2 Restrictions in accommodation in reception centres

The Reception Decree clarifies that asylum applicants are free to exit from first reception centres during daytime but they have the duty to be return in the night. The applicant can request 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.[904] 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).

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.

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.[905] It provides that the hosted migrant loses the right to stay in reception after 72 hours of unjustified

903 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.

904 Article 10(2) Reception Decree.

905 Text of the note is available, in Italian, at: https://bit.ly/3zVrCOf.

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, etc.) 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". 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,[906]

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.[907]

B. Housing

1. Types of accommodation

Indicators: Types of Accommodation

1. Number of reception centres: Not available[908]
2. Total number of places in the reception system: Not available
3. Total number of places in private accommodation: Not available

4. Type of accommodation most frequently used in a regular procedure:
   ☒ Reception centre ☐ Hotel or hostel ☒ Emergency shelter ☐ Private housing ☐ Other

5. Type of accommodation most frequently used in an accelerated procedure:
   ☒ Reception centre ☐ Hotel or hostel ☐ Emergency shelter ☐ Private housing ☒ CPR

At the end of 2023, the number of asylum seekers and beneficiaries of international protection in the reception system was 139,388, which represents a significant increase compared to 2022, when it was 107,677 and to 2021, when 78,644 migrants were present. Out of the total number, at the end of 2023, 103,334 were in first reception facilities (CAS and first governmental centres) and 34,816 in SAI.[909]

The numbers show that, at the end of 2023, 7 out of 10 asylum seekers were still accommodated in extraordinary centres.

Occupancy of the reception system: 31 December 2023			
Hotspots	CAS and first governmental centres	S.A.I.	Total
1,238	103,334	34,816	139,388

Source: Ministry of Interior, Cruscotto statistico giornaliero.

906 A model of these regulations is available as an annex to the Operations Manual, see: https://bit.ly/3GFiQYk.

907 For more information about the differences in reception conditions at various levels of the system, see the paragraph Conditions in Reception Facilities.

908 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.

909 Source: MoI Cruscotto statistico giornaliero, available at: rb.gy/tz3tpz.

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.[910] Data regarding 2022 and 2023 are not available.

1.1. First aid and identification: CPSA / Hotspots

The Reception Decree states that for 'rescue, first aid and identification needs', people can be placed in the so called crisis points set up in the principal places of disembarkation and in governmental centres.[911] These are First Aid and Reception Centres (CPSA),[912] created in 2006 for the purposes of first aid and identification before persons are transferred to other centres, and now formally operating as Hotspots.[913] 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.
By the end of 2023, four hotspots were operating in: Apulia (Taranto) and Sicily (Lampedusa, Pozzallo, and Messina). An additional centre is operating in Pantelleria; its use as a hotspot has been recently confirmed by the Ministry of Interior responding to a FOIA access made by Asgi.[914] The hotspot on the island of Pantelleria was opened at the beginning of August 2022[915] and mainly directed at managing arrivals from Tunisia, A total of 1,238 persons, out of which 1,119 in Sicily and 119 in Apulia, were accommodated in hotspots at the end of the year 2023.[916]

In 2022, in the first reception centre of Crotone, a space had 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 was abundant and compelling evidence that hotspot operational procedures were de facto implemented there, although the facility was not formally identified as such.[917]

In 2023, 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 submitted to the Prefecture of Reggio Calabria, from which it emerged, first of all, that a new hotspot was about to be realised in Roccella Jonica and that the necessary preparatory activities were in progress.[918]

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.[919] 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.[920] 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.[921]

910 The 2020 and 2021 Governmental reports can be accessed at: https://bit.ly/3y8bRCN.
911 Article 8(2) Reception Decree as amended by DL 20/2023 converted into L. 50/2023, and Article 10 ter TUI.
912 L 563/1995.
913 Article 10-ter TUI, inserted by Article 17 Decree Law 13/2017 and L 46/2017.
914 See ASGI, In Limine, reply from MOI of 15 April 2024, available in Italian at: https://rebrand.ly/8n9otas.
915 See MoI, Migranti, a Pantelleria il nuovo Punto-Crisi, available at: https://bit.ly/4053sw2.
916 MOI, Cruscotto Statistico Giornaliero, Ministry of Interior, Cruscotto statistico giornaliero, 31 December 2023 available in Italian at: bit.ly/48VIQtT.
917 See ASGI, Il centro di accoglienza di Crotone: dati generali, i minori e le procedure di redistribuzione, available at: https://bit.ly/3LQf7sE.
918 Source: ASGI, Roccella Ionica: situazione attuale e implementazione "approccio hotspot", 21 February 2023, available in Italian at: https://bit.ly/43u1Fmv.
919 Article 5-bis (2) Decree Law 20/2023 converted with modifications into Law 50/2023.
920 Article 5-bis (3) Decree Law 20/2023 converted with modifications into Law 50/2023.
921 Article 2 (1a) Decree of the Chief of the Department of Civil Protection 984/2023.

In May 2024, the Ministry of the Interior, responding to a Foia request made by Asgi, informed that the hotspots identified and available to be used for the border procedures are the facilities in:

- Augusta (Siracusa, Sicily), with a capacity of 250 places;
- Catania (Sicily), with a capacity of 650 places;
- Isola di Capo Rizzuto (Crotone, Calabria), within the existing reception centre, with a capacity of 80 seats;
- Lampedusa (Agrigento, Sicily)), with a capacity of 640 seats;
- Messina (Sicily) with a capacity of 200 seats;
- Porto Empedocle (Agrigento, Sicily), with a capacity of 280 seats;
- Pozzallo-Modica (Ragusa, Sicily), with a capacity of 489 seats
- Roccella Jonica (Calabria), with a capacity of 250 seats
- Taranto (Apulia) with a capacity of 293 seats
- Vibo Valentia (Calabria), with a capacity of 280 seats[922]

The opening a new hotspot in Friuli Venezia-Giulia, probably in Trieste, to manage the identification and detention of migrants reaching Italy through the Balkan Route, was communicated in 2023.[923] However, no further information are available, and it is likely this plan will not move forward.

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.[924]

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	Number of Places[925]
Gorizia (CARA Gradisca d'Isonzo)	Friuli-Venezia Giulia	303
Udine (Caserma Cavarzerani)	Friuli-Venezia Giulia	590
Foggia (Borgo Mezzanone)	Apulia	
Bari (CARA Palese)	Apulia	600
Brindisi (Restinco)	Apulia	120
Crotone (Sant'Anna center, Isola di Capo Rizzuto)	Calabria	641
Caltanissetta (Pian del Lago)	Sicily	456
Messina	Sicily	300
Treviso (ex Caserma Serena)	Veneto	400

Source: MoI, available at: https://bit.ly/3y7vo52.

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 MoI are the one of

922 ASGI, Quali hotspots sono operativi? Reply from the MOI, May 2024, available in Italian at: https://rebrand.ly/t2hd9cf.

923 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.

924 Article 9(2) Reception Decree.

925 Source: Openpolis, Centri d'Italia.

Fernetti, in Trieste, called Casa Malala, and the one in Pordenone, Caserma Monti, both in Friuli Venezia Giulia.[926]

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.[927] In any case, the law does not condition activation on obtaining a favourable opinion. Instead, it only establishes an opinion should be requested. 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.[928]

Following the reform of the accommodation system made by Decree Law 20/2023, the CAS are specifically designed for the first accommodation phase and no longer conceived as temporary solutions for the time “strictly necessary” until the transfer of asylum seekers to the SAI system.[929] The services guaranteed are the same as in the first reception centres (see Forms and Levels of Material Reception Conditions).[930]

By the end of 2022 there were over 5,474 CAS established across Italy[931] and, in October 2023, the Minister of Interior informed the Parliament about the existence of 6,114 CAS facilities.[932] As underlined (see Forms and Levels of Material Reception Conditions), following the 2018 MoI 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.

926 See MoI, available at: https://bit.ly/3y4dbFm.
927 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.
928 See new Tender Specification Schemes, Ministerial Decree 4 March 2024. Schemes and Decree available at: bit.ly/3JU5KaZ.
929 Article 11 (3) Reception Decree, as amended by Decree Law 20/2023.
930 Articles 10 (1) and 1 1(2) Reception Decree.
931 Source: Openpolis, Centri d’Italia
932 Hearing in Parliament of the Minister of Interior, 17 October 2023, available in Italian at: https://encr.pw/qhEfu.

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 just food, lodging, clothing, health care and linguistic-cultural mediation are the services ensured.[933]

1.5. Second reception - SAI system

The SAI system (Reception and Integration System, Sistema di Accoglienza e Integrazione, formerly known as SPRAR and then SIPROIMI) is dedicated mainly to beneficiaries of international protection and unaccompanied minors.[934]

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,[935] holders of special protection, holders of a permit for special cases (former humanitarian protection),[936] and former unaccompanied minors, who obtained a prosecution of assistance.[937] Holders of special protection, when in case of application of the international protection exclusion clauses, are instead excluded.

Law 50/2023, which converted Decree Law 20/2023, once again (as in 2018) excluded asylum seekers from the possibility to access the SAI system. Access to the SAI is now only possible for 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).

Women are now also included among vulnerable asylum seekers, with priority given to the pregnant women.[938]

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.[939]

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 the will of local administrations.[940] As mentioned,

933 Article 11 (2 bis) Reception Decree introduced by L 50/2023.

934 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.

935 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.

936 Ibid, mentioning Articles 1 (9) DL 113/2018 (special cases); Article 19, (1, 1.1) TUI, amended by DL 130/2020.

937 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 “prosieguo amministrativo”, administrative continuation.

938 Article 17 (1) LD 142/2015.

939 The funding application and assessment mechanism for the project is governed by the Ministerial Decree 18 November 2019.

940 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.

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 to the system, even for the limited number of asylum seekers who would be entitled to it.

On 28 November 2023, the SAI network comprised 914 projects, for a total of 37,920 places financed, of which 31,155 places for ordinary beneficiaries, 6,006 places for unaccompanied minors and 759 places for people 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 Italy.[941]

While the SAI system has been slowly but constantly expanded throughout the country in the 20 years since it was set up,[942] the total amount of available places is still largely inadequate to meet the existing needs. 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,[943] 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[944] 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 of November 2023, out of the total places financed, 2,906 were not occupied.[945]

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,[946] 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.[947] It can be argued however, that this was done in the attempt to

941 See I numeri del SAI, November 2023, at: https://acesse.dev/IWeH3.

942 See Rapporto Annuale SAI 2021, available at: https://bit.ly/3Z9qQbt.

943 ActionAid, Centri d'Italia, Mappe dell'accoglienza. Report 2022, available at: https://bit.ly/3SQiQKd.

944 Altreconomia, Scarsa programmazione, posti vuoti e persone al freddo: così ai migranti è negata l'accoglienza, available at: https://bit.ly/3ZMLD4D.

945 See I numeri del SAI, November February 28th 2023, at: https://www.retesai.it/i-numeri-dello-sprar/; https://acesse.dev/IWeH3.

946 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.

947 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.

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.

1.5 Private accommodation with families and churches

In addition to the abovementioned reception centres, there is also a network of private accommodation facilities which are not part of the national 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.

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.[948]

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.[949]

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.[950]

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
4.	Are single women and men accommodated separately?	☐ Yes ☐ No

Reception conditions vary considerably not only among different reception centres but also between the same type of facility. While the services provided are supposed to be the same, the quality can differ depending on the entity managing the centres. While the SAI system publishes annual reports on its functioning,[951] 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

948 Bologna, Camelot presenta Vesta, per ospitare rifugiati in famiglia, available at: https://bit.ly/3y9ALDf.
949 Ohana project, see: https://bit.ly/3jD0v28.
950 Source Refugees Welcome Italia, Cosa facciamo, available at: https://bit.ly/42pAXdA.
951 See SAI website, https://l1nq.com/CqISE.

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. (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 products, telephone card.[952] 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, in practice, and without a legal basis, 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.[953]

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.[954] In this context of severe health and hygiene issues, three people died in early 2023.[955]

All this led to the replacement of the managing body and the subsequent entrusting of the facility to the Italian Red Cross from May 2023.[956] Despite the change of management, the critical issues that had emerged in previous years continue to be denounced by ASGI.[957]

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952 See MoI 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.

953 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/3o4I0K3.

954 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/3Ij9IcV. 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.

955 La Repubblica, Lampedusa, giovane ivoriana muore nell'hotspot sovraffollato. Il terzo caso in tre mesi, 19 February 2023, available at: https://bit.ly/454T2iZ.

956 Article 5-bis (2) Decree Law 20/2023 converted with modifications into Law 50/2023.

957 ASGI, 'Per l'implementazione della libertà di corrispondenza con il mondo esterno e predisposizione di una rete wi-fi presso l'Hotspot di Lampedusa: diverse organizzazioni scrivono alle autorità competenti', March 2023, available in Italian at: https://lc.cx/maYghO; ASGI, La privazione della libertà personale nell'hotspot di Lampedusa: il riscontro delle autorità competenti, March 2023, available in Italian at: https://lc.cx/gDj3y9; ASGI, 'The right to information in the Lampedusa hotspot: the responsibilities of UNHCR', April 2023, available

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.[958] UNICEF also noted severe crowding and delays identified as risk factors for the most vulnerable.[959]

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.[960]

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.[961]

In March 2023, the ECtHR delivered its judgement on the case *J.A. and Others v. Italy*,[962] 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 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,[963] but also increasing the service of ferries from the island to Sicily.[964]

As for the Taranto hotspot, in its decision of 23 November 2023 rendered in case no. 47287/17 (A.T. and others v. Italy),[965] the ECtHR condemned Italy for having unlawfully detained several unaccompanied minors in the hotspot, for having used inhuman and degrading treatment in arranging their reception measures, for not having appointed a guardian nor having provided them with any information on the possibility of challenging this condition in court.

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at: https://lc.cx/MnCT6a; ASGI, 'La Questura di Agrigento su ingressi e uscite dall'hotspot di Lampedusa', May 2023, available in Italian at: https://lc.cx/zmx60e; ASGI, 'La gestione dell'hotspot di Lampedusa: la Convenzione con la CRI', July 2023, available in Italian at: https://lc.cx/w2w1u6.

958 Save the Children, Hotspot sovraffollato a lampedusa: le condizioni critiche dei minori, 12 April 2023, available at: https://bit.ly/41YgFqV.

959 UNICEF, Cronache di frontiera. Lampedusa: vite in hotspot, 10 May 2023, available at: https://bit.ly/3MfcWiC.

960 ASGI, Report sulla visita al Centro hotspot di Lampedusa, Agosto 2022, available at: https://bit.ly/3Oh74rW.

961 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.

962 J.A. and Others v. Italy (dec.), no. 21329/18, 30 March 2023, available at: https://hudoc.echr.coe.int/eng/?i=001-223716.

963 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.

964 See Avviso per la reperibilità di navi per il trasporto di persone migranti dall'isola di Lampedusa, available at: https://bit.ly/3HNxaP8.

965 ECtHR, No. 18911/17 and two others, A.E. and others v. Italy, 16 November 2023, available at: https://bit.ly/3VtXyVY.

In June 2023, a delegation of ASGI had access to the Pozzallo hotspot and found several problems including the absence of cultural mediators to support the procedures after entering the hotspot (e.g. during the compilation and signing of the so-called "foglio-notizie") and the duration of detention.[966]

2.2 Overall conditions

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,[967] and of medical tests for the detection of vulnerabilities, to take into account for a subsequent and more focused placement.[968]

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.[969] 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, again drastically reduced the services to be mandatory provided within governmental centres and CAS, to: health care, social assistance and linguistic-cultural mediation. These new regulations were followed by a new set of tender schemes specifications for these centres, published on 27 March 2024.

The new schemes, as explained above (See Overview, Services provided) include other services (such as psychological assistance, Italian language courses and professional training, legal and territorial orientation) within the scope of social assistance. These services can be provided at the discretion of the managing body.[970]

In Udine (Friuli Venezia Giulia Region), as observed by the NGO Ospiti in Arrivo and by Rete Dasi in a field investigation, at least 150 migrants were sleeping crowded together and without basic services inside the Cas Cavarzerani centre, without however being regularly registered as guests of the centre and despite having been already photographed.[971]

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.[972]

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966 ASGI, 'Monitoraggio ASGI e Spazi Circolari a Pozzallo: hotspot, Contrada Cifali e il nuovo centro di trattenimento', 9 October 2023, available in Italian at: https://lc.cx/2n5MBD.

967 Article 9(1) Reception Decree.

968 Article 9(4) Reception Decree.

969 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.

970 According to Article 2 of the tender specification schemes, as per Minister Decree, 4 March 2024. Schemes and Decree available at: bit.ly/3JU5KaZ.

971 Invisibili ed escluse, a Udine centinaia di persone tagliate fuori dall'accoglienza, Altreconomia, 2 May 2024, available in italian at: https://bit.ly/3VaCkdL.

972 Articles 11(2) and 10(1) Reception Decree.

Following the reform provided by the Decree Law 20/2023 converted into L. 50/2023, services were drastically reduced (see conditions in first reception centres) Also, DL 133/2023 converted into L. 176/2023, provided that, in cases of extreme urgency, it is possible to direct entrusting of the management of the centres to the managing bodies and to wave the capacity limits of the centres and governmental facilities structures allowing access to up to double the places foreseen for each centre.[973]

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,[974] while the new tender specification scheme is keeping the reception panorama unchanged.

On the 16th of November 2023, the European Court of Human Rights (ECtHR) issued the judgement on the case of Sadio v. Italy, no. 3571/17. The case regarded a Malian national who stayed in a reception centre in Cona, Italy, for a period of almost eight months.

He alleged that his conditions in the reception facility were in contravention of Article 3 ECHR, citing overcrowding, lack of proper heating and hot water, lack of medical, psychological, and legal assistance, as well as the centre having insufficient staff members and interpreters. He supported his allegations with photos, reports and a parliamentary question relating to the Cona centre. Additionally, he complained that there had been no effective remedy available in order to challenge this set of circumstances, tantamount to a violation of Article 13 ECHR.

The Court relied on the previous case of Darboe and Camara v. Italy and saw no significant divergence in material conditions there from those of the present case. The Court unanimously considered, accordingly, that the length and conditions of Sadio's stay in Cona had constituted a breach of Article 3 ECHR. Given that the Italian Government "failed to indicate any specific remedy by which the applicant could have complained about his reception conditions in Cona", the Court again unanimously agreed with the applicant, upholding that Article 13 ECHR had been violated.

973 Article 11(2) Reception decree as amended by DL 133/2023. See the analysis from Actionaid, 18 October 2023, available in Italian at: https://l1nq.com/dnM01.

974 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/7yONsIR. In Livorno, Tuscany, in 2019, the vast majority of third sector managers have decided not to participate in the new tenders. Therefore, all small and many medium-sized centres have closed and the number of available places in reception has drastically decreased. The migrants hosted in centres that have been closed have often been transferred to other locations. Others, not to abandon the integration paths developed over time, have decided to stay in Livorno with high risks of social marginality. See Openpolis and ActionAid, second report, available in Italian at: https://cutt.ly/uyONs8z.

2.4 Conditions in Provisional centres

These centres have been introduced by the DL 20/2023 converted into L. 50/2023[975] according to which, in case of unavailability of places in government centres and in CAS centres, people can be accommodated in provisional centres where only food, accommodation, clothing, healthcare and linguistic-cultural mediation are ensured.

Starting from the first half of August 2023, two temporary camps, consisting of container tents and gazebos, were set up in Parma, the Martorano and Cornocchio camps. The Ciac Onlus association immediately highlighted the disastrous situation in which the people brought to these centres found themselves, even directly after their arrival. For months, people did not have formal access to the asylum procedure and could therefore not be transferred to the CAS or SAI. Between August and October 2023, the Ciac Onlus association collected over 130 declarations of intention to ask for asylum and sent them to the competent Questura. CIAC reported 42 vulnerable people. However, only six of them were actually welcomed into SAI.[976]

2.5 Conditions in SAI

The SAI network is mainly constituted by small facilities and rented apartments,[977] located in – or close to - city centres or, alternatively, well connected to cities through public transport. There, the few categories of asylum seekers who can now access SAI can benefit from first level services, which include more services than the ones guaranteed in 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.[978]

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.[979] (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.

2.6 Conditions in makeshift camps

Informal settlements with limited or no access to essential services are spread across Italy. The situation even worsened as a consequence of the 2018 reform. A report by MSF published in February 2018 described the situation in some makeshift camps.[980] By the end of 2018, some of these camps had been rapidly evacuated.[981]

975 Article 11 (2 bis) LD 142/2015.

976 See Chiusi dentro, Carnocchio e Martorano, due campi vissuti da vicino, Michele Rossi, pubblicazione a a cura di Rivolti ai Balcani. See also Ciac Onlus, Tre mesi di campi: diritti violati e zero servizi Possiamo accettare tutto questo in silenzio? available at: https://bit.ly/4aLtkBJ.

977 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.

978 Article 1-sexies (2 bis, a) DL 416/1989, introduced by DL 130/2020.

979 Article 1-sexies (2 bis, b) DL 416/1989.

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

981 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: sgomberate le ultime due palazzine. Salvini: stop a nuove arbitrarie intrusioni, 30 July 2019, available in Italian at: https://cutt.ly/syONdnk.

Since January 2018, the Naga network has been monitoring the informal settlements in **Milan.**[982] A 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.[983]

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. [984] It is estimated that at least 7,000 migrants were living within informal settlements, within the Capitanata area in 2022.[985]

In 2022, the Government allocated 200 million euros from the National Program for Recovery and Resilience (PNRR)[986] 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.[987]

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.

Such examples, beyond Borgo Mezzanone, are S. Ferdinando, Cassibile, the Felandina in Metapontum area, Campobello, in Mazara, Castel Volturno (Caserta) and Saluzzo.[988]

The final report "The Bad Season" (La Cattiva Stagione)[989] 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.[990]

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

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982 Naga, Senza Scampo, December 2019, available in Italian at: https://cutt.ly/1yONfN4.

983 Naga, Più fuori che dentro, available in Italian at: https://bit.ly/3tgw4Vf.

984 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.

985 See Tra le piaghe del caporalato: azioni e idee per superare i ghetti, 27 July 2022, available at: https://bit.ly/41ToQEF.

986 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.

987 See Human Rights Watch, Better Solutions Needed for Migrant Workers’ Makeshift Settlements in Italy, 4 April 2023, available at: https://bit.ly/41TrcDv.

988 FLAI- CGIL, Quinto report su Agromafie e Caporalato, 2020, available in Italian at: https://bit.ly/3CKEAyS.

989 Medici per i diritti umani, report La Cattiva Stagione, 21 October 2019, available in Italian at: https://cutt.ly/JyONhtH.

990 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.

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 2023, many asylum seekers staying in Silos area waiting access to reception measures and to the asylum procedures[991] were notified of the starting of the criminal procedures to have occupied the private area.

In **Ventimiglia**, as reported by Refugees Rights Europe and Progetto 20K,[992] after the closure of the Roja Camp, people started once more to create informal settlements around the city.

A 2022 report[993] showed that at least 10,000 migrants lived 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[994] 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.[995]

991 See, RAI News, A Trieste migranti nell'inferno del Silos, tra acqua e fango. Centinaia i richiedenti asilo senza una sistemazione costretti a vivere in una tendopoli improvvisata. In media attendono due mesi, 9 November 2023, available in Italian at: https://encr.pw/CVyNn. See also the report "Vite Abbandonate" published by associations operating in Trieste: ICS-Ufficio Rifugiati, DONK, IRC, LInea D'Ombra, Waldensian Diakonia, San martino al Campo, available at: https://l1nq.com/xaiRR.

992 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/3OR2Ip6, 12.

993 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.

994 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.

995 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 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.

C. Employment and education

1. Access to the labour market

Indicators: Access to the Labour Market	
1. Does the law allow for access to the labour market for asylum seekers?	☒ Yes ☐ No
❖ If yes, when do asylum seekers have access the labour market?	2 months
2. Does the law allow access to employment only following a labour market test?	☐ Yes ☒ No
3. Does the law only allow asylum seekers to work in specific sectors?	☐ Yes ☒ No
❖ If yes, specify which sectors:	
4. Does the law limit asylum seekers' employment to a maximum working time?	☐ Yes ☒ No
❖ If yes, specify the number of days per year	
5. Are there restrictions to accessing employment in practice?	☒ Yes ☐ No

According to the Reception Decree, an asylum seeker can start to work after 60 days from the moment they lodged the asylum application.[996] Even if they start working, the asylum seeker permit cannot be converted into a work or residence permit.[997]

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.[998]

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.

To this, it should be added that the DL 20/2023 cancelled the obligation to provide Italian courses and job orientation in reception centres.

996 Article 22(1) Reception Decree.
997 Article 22(2) Reception Decree.
998 CJEU decision, joined cases C322/19 and C385/19, 14 January 2021.

2. Access to education

Indicators: Access to Education		
1.	Does the law provide for access to education for asylum-seeking children?	☒ Yes ☐ No
2.	Are children able to access education in practice?	☒ Yes ☐ No

Italian legislation provides that all children until the age of 16, both nationals and foreigners, have the right and 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.[999] 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.[1000] 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

999 Article 21(2) Reception Decree.

1000 Article 34 TUI; Article 16 PD 21/2015; Article 21 Reception Decree.

means that it reflects the delay in lodging the asylum claim, which corresponds to several months in certain regions (see Registration).

Pending enrolment, asylum seekers only have access to medical treatment ensured by Article 35 TUI to irregular migrants: they have access to emergency care and essential treatments and they benefit from preventive medical treatment programmes aimed at safeguarding individual and public health.[1001]

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.[1002] 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.[1003] 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.[1004] 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.[1005]

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.[1006] 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.[1007] Therefore asylum seekers and refugees often do not address their general doctor and go to the hospital only when their disease gets worse. These

1001 Article 21 Reception Decree; Article 16 PD 21/2015.

1002 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".

1003 Ministry of Interior Circular of 1 September 2016; Revenue Agency Circular No 8/2016.

1004 Article 42 PD 394/1999.

1005 Article 22 Qualification Decree.

1006 See M Benvenuti, *La protezione internazionale degli stranieri in Italia*, Jovene Editore, Napoli 2011, 263.

1007 *Ibid*.

problems are worsening due to the adverse conditions of some accommodation centres and of informal settlements (see conditions in makeshift camps).

2. Contribution to health care costs

Asylum seekers benefit from free of charge health services on the basis of a self-declaration of destitution submitted to the competent ASL. The medical ticket exemption is due to the fact that asylum seekers are treated under the same rules as unemployed Italian citizens,[1008] 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".[1009]

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.

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.'[1010]

1008 Ministry of Health Circular No 5 of 24 March 2000.

1009 Civil Court of Milan, decision of 12 January 2023, available at: bit.ly/3LwUuDr.

1010 EC, EMN Bulletin, May 2021, available at: https://bit.ly/3Fioz4r, 5.

In October 2023 the Regions of Emilia - Romagna, Lazio, Tuscany and Sicily created a training program, co-funded by the Asylum, Migration and Integration Fund of the European Union, aimed at improving the competences of healthcare professional employed in the public healthcare system and in refugees' and asylum seekers' hosting programs, especially concerning the forensic certifications for victims of torture.[1011]

From 2022 to 2023 in the Veneto region the SPIRNET project was active, funded by the Asylum, Migration and Integration Fund of the European Union. It was aimed specifically at individuating and taking care of asylum seekers and refugees affected by severe psychological distress. The partners were Prefectures, Municipalities and local health authorities (ASLs)[1012] (see also Content of international protection).

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, women, with priority given to the pregnant ones,[1013] 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.[1014] The Decree provides, in theory, that special services addressed to vulnerable people with special needs shall be ensured in first reception centres.[1015]

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 extended the protection afforded to asylum seekers in first reception facilities by extending the number of services to be provided. However, as described above, DL. 20/2023 converted into L. 50/2023, marked a return to a similar situation as in 2018, cancelling important services such as psychological assistance which, according to the new tender schemes, can currently be provided on a discretionary basis. Therefore, even if DL 20/2023 provides for the possibility for vulnerable asylum seekers to access SAI,[1016] it will be increasingly difficult to identify vulnerabilities that are not evident.

According to the law, special reception services should be provided in the reception centres for vulnerable asylum seekers with special needs, also ensured in collaboration with the competent health districts. These services should guarantee special care measures and adequate psychological support.[1017]

1011 Program available in Italian at: https://bitly.cx/cABp.
1012 Overview of the project available in Italian at: https://bit.ly/3UGXm3o.
1013 See Article 17 LD 142/2015 as amended by DL 133/2023 converted into L. 176/2023
1014 Articles 9(4) and 11(1) Reception Decree.
1015 Article 17(3) Reception Decree.
1016 Article 9 (1 bis) LD 142/2015.
1017 Article 17 (3) Reception Decree.

These services should also guarantee an initial assessment and periodic verification by qualified personnel about the conditions of vulnerability.[1018]

Where possible, adult vulnerable people are placed together with other adult family members already present in the reception centres.[1019] 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.[1020]

In short, it is not clear how these guarantees can be ensured at all.

Currently, only 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.[1021]

The access to Sai is only an eventuality: February 2023, SAI Central Service reported that there were only 41 projects specialised in the care of forced migrants with mental distress and disabilities, corresponding to 803 places. In August 2023,[1022] the number of places for these applicants was 797 and in November 2023 659.[1023]

The number of regions not provided with a dedicated place since 2020 are 9: Abruzzo, Basilicata, Friuli Venezia Giulia, Campania, Liguria, Molise, Sardinia, Trentino Alto Adige, Valle d'Aosta and Veneto.[1024]

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,[1025] 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.

1018 Article 17 (6) Reception Decree.

1019 Article 17(5) Reception Decree.

1020 Article 17(7) Reception Decree.

1021 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.

1022 I numeri del SAi, August 2023, available at: https://acesse.dev/sFROp.

1023 I numeri del SAI, February 2023, available at: https://bit.ly/3LJ7xC0. See I numeri del SAI, November 2023, at: https://acesse.dev/IWeH3.

1024 I numeri del SAI, February 2023, available at: https://bit.ly/3LJ7xC0. See I numeri del SAI, November 2023, at: https://acesse.dev/IWeH3.

1025 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.

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.[1026]

With respect to the accommodation for LGBTQI+ people, 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.[1027] 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.[1028] In late 2022, the Municipality of Rome opened a call for tenders for a pilot SAI project dedicated to the reception of LGBT+ migrants.[1029]

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 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.[1030]

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.[1031] 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.

1026 Fra, Migration: Key Fundamental Rights Concerns, Quarterly Bulletin, February 2021, available at: https://bit.ly/37WS13N, 17.

1027 Link to the RARO project led by Quore, available at: https://bit.ly/3vwYzPA.

1028 Link to the project available at: https://bit.ly/3vFf2Qt.

1029 Comune di Roma, Bando SAI, progetto pilota per migranti LGBT+, available at: https://bit.ly/3TCuuZi.

1030 See also: Large movements, Prassi del sistema accoglienza e migranti LGBTQ+, 28 June 2021, available at: https://bit.ly/3OqqBDX.

1031 Article 10(1) Reception Decree.

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.[1032] 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.[1033]

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 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.[1034]

In 2023, 17,319 unaccompanied minors disembarked in Italy[1035] and, by December 2023, the total number of unaccompanied minors arrived in Italy was 27,476 (2,448 less than in 2022, marking an 8% decrease). The reduction is largely attributable to the decrease in the number of arrivals of minors from Ukraine, which went from 7,107 in 2022 to 207 in 2023. However, considering countries other than Ukraine, the number of minors reaching Italy in 2023 was higher than that in 2022, with 27,269 minors entering in 2023 compared to 22,818 in 2022. The main region of arrival for unaccompanied minors was Sicily: 13,671 unaccompanied minors, equal to 51% of the total entries into the country and these were mainly minors disembarked in the ports of Lampedusa (69%), Pantelleria (5.4%), Messina (5.3%) and Trapani (4.9%). The second Region for the number of arrivals of unaccompanied minors in 2023 was Friuli-Venezia Giulia, with 2,204 arrivals, equal to 8% of the total.[1036]

The total number of unaccompanied minors present in Italy on 31 December 2023 was 23,226. Out of these, 23,121 were accommodated.[1037]

In 2023, 24,375 unaccompanied foreign minors left the reception system, in almost half of the cases (48%) due to reaching the age of majority. In 41% of cases, however, the exit was motivated by the minor's will.[1038]

In 2023, unaccompanied foreign minors are predominantly male (88.44%). With reference to age, 46.05 % were 17, 27.29% 16, 11.2% 15 and 15.45 % under 15.

As of 31 December 2023, the main countries of origin of unaccompanied minors were Egypt (20.14%) Ukraine (17%), Tunisia (10.49%), Gambia (9.22%), Guinea (8.28%), Ivory Coast (5.43%), Albania

1032 Court of Cassation, 3 April 2019, decision 9199/2019.
1033 Article 18(1) Reception Decree.
1034 Article 18(2) Reception Decree.
1035 See Ministry of Interior, Cruscotto Statistico, available in Italian at bit.ly/48VIQtT
1036 Ministry of Labour, Monitoring report on unaccompanied foreign minors, 31 December 2023, available at: bit.ly/4bM9XKD.
1037 Ministry of Labour, statistical data, 31 December 2023, available at: https://encr.pw/YbEnY.
1038 Ministry of Labour, Monitoring report on unaccompanied foreign minors, 31 December 2023.

(4.03%) and Pakistan (3.53%). Taken together, these five nationalities represent more than 70% of the total figure.

80% were accommodated in reception facilities out of which 27% in first reception facilities and 53% in second reception facilities while 20% were accommodated in private housing (with families). Most of the minors accommodated into families come from Ukraine (76%),

At the end of 2023, there were 3,509 reception facilities hosting unaccompanied children, of these, 421 are dedicated to the first reception and each receives an average of 15 minors, and 3,088 to the second reception, with an average of 4 minors each.

The majority of unaccompanied children accommodated in first reception centres were accommodated in **Sicily**, followed by **Lombardy**, Calabria Emilia-Romagna. The second reception facilities were more distributed throughout the territory, mainly around the cities of Milan, Rome and Bologna. The Regions with the greatest presence of these structures were Lombardy (18% of the national total), Lazio (13%), Emilia-Romagna (12%) and Sicily (11%) [1039]

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.[1040] 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. DL 145/2023 created the Fund for the reception of migrants and minors with an endowment of €46,859 million for the year 2023[1041] and the 2024 budget Law stated that the Fund is refinanced in the amount of 172,739,236 euros for the year 2024, of 269,179,697 euros for the year 2025 and of 185,000,000 euros for the year 2026.[1042]

Meltingpot highlighted that the measure will move an amount equal to 45 million euros from funds for the reception of minors to the armed forces for the next 3 years.[1043]

The interventions in favour of unaccompanied foreign minors are also funded by resources from the European Asylum, Migration and Integration Fund (AMIF) 2014-2020[1044] and 2021-2027.

1.1. 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.

On 6 October 2023, the Law Decree No. 133, which introduced significant changes related to the reception of unaccompanied foreign minors and age assessment, came into effect.

Worryingly the decree, providing a normative basis for what was already happening in practice, established that in case of unavailability of temporary accommodation facilities for minors, the Prefect may order the temporary reception of the minor aged no less than 16 years in a dedicated section in

1039 Ministry of Labour, Monitoring report on unaccompanied foreign minors, 31 December 2023, available at: bit.ly/4bM9XKD.

1040 2015 Stability Law (Law 190/2014, Article 1 (181-182).

1041 Fund regulated by Article 21(1) DL 145/2023 converted into L. 191/2023.

1042 Law 213/2023, Article 1 (361).

1043 Meltingpot, Minori non accompagnati senza tutele e diritti, abbandonati in hotspot e grandi centri, 4 January 2024, available in Italian at: https://l1nq.com/UadWy. As also highlighted by ASGI, the appropriations envisaged in the original text of the budget plan, amounting to 190 million for 2024, 290 million for 2025 and 200 million for 2026, were reduced to 172,739,23 euro for 2024, 269,179,697 euro for 2025 and 185,000,000 euro for 2026. 'Government cuts Fund for child migrants: so the money goes for increases to the police force', available at: https://bit.ly/4bGTEOT. See also: https://bit.ly/3KrXPSr.

1044 Chamber of Deputies, Study Service, 19 March 2020, available in Italian at: https://cutt.ly/myO8ddD.

governmental first reception centres for adults or in extraordinary reception centres (so-called CAS) for adults.[1045]

The Decree also extended the possible stay in first reception centres from 30 to 45 days and establishing minors are to be destined to SAI centres after an initial stay in "first phase" accommodation centres, thus making the SAI a second level reception system.[1046]

Due to the reform, the reception system for unaccompanied foreign minors now includes two levels of reception.

The facilities reserved for first reception include:

- the government first reception facilities established pursuant to Article 19 (1) LD 142/2015 and financed with resources from the "Asylum, Migration Fund and integration 2014-2020" (AMIF);
- temporary accommodation facilities pursuant to art. 19 (3-bis) Reception Decree;
- temporary accommodation facilities activated by the Prefecture exclusively dedicated to UASC, with a maximum capacity of 50 places for each structure, where the services guaranteed for first reception facilities pursuant to article 19 (1), should be ensured. This category includes the Extraordinary Reception Centres for minors established by order of Prefect (so-called "CAS minors");
- first reception facilities authorised by the Municipalities or Regions;
- first reception facilities for minors/adults established pursuant to art. 5 co.1 letter a of the LD 133/2023 converted with amendments by Law 176/2023 where minors over sixteen years of age could be accommodated in a specific section for a maximum period of 90 days, extendable by a maximum of a further 60 days;
- other emergency and temporary structures, not included in the previous categories such as hotels or other types of emergency reception solutions also managed by the Municipalities (Law no. 563/1995).

To the second level accommodation facilities belong:

3. the SAI system facilities, financed with the National Fund for Asylum Policies and Services[1047];

reception facilities financed with AMIF resources and intended as secondary level facilities,

reception facilities authorised at regional or municipal level, whose reception is financed through a contribution to the Municipalities from the National Fund for the reception of UAMS.[1048]

As pointed out by the Ministry of Labour in its report, by the end of 2023 70% of the structures had a municipal level authorization, 24% had authorizations at a regional level, the remaining 6% was represented by structures with authorization from the Ministry of the Interior.[1049]

Before the reform introduced by Law 176/23, Article 19 of Legislative Decree 142/15 provided that minors who could not be placed in the governmental first reception centres or in the SAI, due to the lack of places, were placed in the Municipality facilities for minors outside SAI and only as a last resort in the CAS for minors. On the other hand, placing UAMs in adult facilities was not allowed by the law either. Law no. 176/23 has completely overturned the previous system, providing that UAMs who cannot be placed in the governmental first reception centres for minors or in the SAI must be placed in the CAS for minors or, in the absence of places and with reference to minors over the age of 16, in the CAS for adults or in the governmental first reception centres for adults, and only as a last resort in the Municipality facilities for minors outside SAI.

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

1045 Article 5, par. 1, lett. a) LD no. 133/23

1046 Article 5 (1 lett.a) LD 133/2023

1047 Article 1 septies DL 416/1989 converted by L. 39/1990.

1048 See the report made by the Ministry of Labour, Monitoring report on unaccompanied foreign minors, 31 December 2023.

1049 Ministry of Labour, Monitoring report on unaccompanied foreign minors, 31 December 2023. See also the scheme created by ANCI, available at: https://encr.pw/nH0vL.

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[1050].

Given the recent significant increase of arrivals, whereas the capacity of the childcare 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.[1051] 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 minors, deemed strongly necessary, but the proposal was rejected several times by both the Parliament and the Government.[1052]
- On 4 August 2022, the Ministry of Interior published a public call 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.[1053] 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.[1054]
- The 15 winners of the call approved in May 2023 started their project activities between July and October 2023. Of the 15 projects, 8 are operational in Sicily and 3 in Basilicata. In the regions of Abruzzo, Campania, Molise and Tuscany it has been approved one project for each region for a total of 750 places (250 places less than expected), of which almost 10% reserved for reception of female minors.
    - On 2 November 2023, in relation to the need to cover the remaining 250 places, not covered by the notice of May 2023, a new notice was published by the Ministry of the Interior which provides the financing of reception projects for a total amount of just over 15 million and half euros
    - Furthermore, with Decree prot. n 0004376 of 04 August 2023, the MOI has published the Notice for the presentation of projects to be financed by AMIF 2021-2027 with 6 million

1050 See Children’s Ombudsman, 2021 report to Parliament, available at: https://bit.ly/438B0L0.

1051 See Circular letter from the Department of Civil Liberties to Prefects on 19 May 2022 and Circular Letter of 17 January 2024.

1052 Source ANCI, Biffoni: “Ingestibile concentrazione minori stranieri non accompagnati in certi Comuni”, 14 April 2023, available at: https://bit.ly/42TlrHg.

1053 The full documentation of the public notice is available at: https://bit.ly/407wg7l.

1054 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.

euros, above all to enhance and increase foster care family members of UASC as an alternative measure to community placement.[1055]

- Lastly, the Government 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.[1056]

SAI

As previously mentioned, DL 133/2023 modified the law which previously provided that accommodation of unaccompanied children primarily takes place in SAI facilities.

Article 19 (2) of the Reception Decree now provides that access to the SAI takes place at the end of the initial reception phase in the government structures referred to in the art. 19 (1), thus making the SAI a second level system.

Children reaching adulthood in SAI centres can remain there until a final decision on their asylum application.[1057] 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.[1058] Decree Law 130/2020 finally authorised the access to SAI for unaccompanied minors who became adults obtaining an administrative extension of their placement.[1059]

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.[1060]

As of November 2023, 6,006 places for unaccompanied foreign minors were financed in SAI projects.[1061] The number of places dedicated to unaccompanied children still falls short of current needs, given the over 6,240 unaccompanied children currently present in the first reception system.[1062]

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

1055 Ministry of Labour, Monitoring report on unaccompanied foreign minors, 31 December 2023.

1056 See Order of the Chief of Department for Civil Protection no. 994 of 11 May 2023, available at: https://bit.ly/45lRK3e.

1057 Article 12(5-bis) Decree Law 113/2018, as amended by L 132/2018.

1058 Article 38 Moi Decree 18 November 2019.

1059 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.

1060 MoI Decree, 18 November 2019, Article 35, available in Italian at: https://cutt.ly/hyO8jXD.

1061 See I numeri del SAI, November 2023, at: https://acesse.dev/IWeH3.

1062 Data as of 31 December 2023, Ministry of Labour.

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; 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,[1063] 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, 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.

Where implemented, stay in first reception centres cannot exceed 45 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.[1064]

The Ministry of Interior Decree issued on 1 September 2016 has identified the structural requirements and the services ensured in such centres.[1065] 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.[1066]

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.[1067] 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

1063 Ministry of Labour, Monitoring report on unaccompanied foreign minors, 31 December 2023, available at: bit.ly/4bM9XKD.

1064 *Ibid*.

1065 Ministry of Interior Decree of 1 September 2016 on the establishment of first reception centres dedicated to unaccompanied minors.

1066 Article 3 Ministry of Interior Decree of 1 September 2016.

1067 Children's Ombudsperson, *I movimenti dei minori stranieri non accompagnati alle frontiere settentrionali*, 29 March 2019, available in Italian at: https://bit.ly/2v2oNt6.

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 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".[1068]

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.[1069] 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.[1070]

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.[1071] However, the law now states that, in cases of extreme urgency, the construction or expansion of Cas minors are permitted in derogation of the established capacity limit, up to double the number of places.[1072] 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 SAI facilities.[1073] 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.[1074]

In the report "The Frontier of Rights - Migrant and Refugee Minors and UNICEF's Intervention in Italy" published in December 2023, UNICEF reports that "(..) these centres, which are often isolated, do not provide for the activation of a whole range of services essential to foster the protection and inclusion of children, girls and boys, from Italian courses to legal information, from mediation to specialised services. Under these conditions, teams on the ground often find important gaps in the effective identification and referral mechanisms of the most vulnerable cases, often also due to the fact that the number of minors is very high compared to the number of caseworkers present. In many of these settings, there is often a lack of access to basic goods (including hygiene kits and clean clothing) and services, including health, psychosocial and cultural mediation support for necessary information."[1075]

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.[1076]

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.[1077]

1068 CRC Group, 12° Updated report 2022, Chapter VIII, available at: https://bit.ly/3q0yXKD.
1069 Article 19(3) Reception Decree.
1070 Article 19(3-bis) Reception Decree, citing Article 11.
1071 Article 19 (3–bis) Reception Decree.
1072 Article 19 (3 bis) Reception Decree
1073 Article 19(3-bis) Reception Decree, citing Article 19(2)-(3).
1074 Article 19(3-bis) Reception Decree.
1075 UNICEF, "La frontiera dei diritti – Minori migranti e rifugiati e l'intervento dell'UNICEF in Italia", December 2023, available at: https://encr.pw/2AdBu, 22-23.
1076 Article 19(3) Reception Decree, as amended by Article 12 Decree Law 113/2018 and L 132/2018.
1077 MoI Guidelines available in Italian at: https://cutt.ly/2yO8nAN.

1.2. Children accommodated with adults and left destitute

Unaccompanied children cannot be held or detained in CPR.[1078]

On 31 August 2023, the European Court of Human Rights condemned Italy for the violation of art. 3 of the ECHR (inhuman and degrading treatment) regarding the reception reserved to a single minor girl, in situations of promiscuity and without the assistance she needed for 8 months at an adult centre in Como (M.A. v. Italy, no. 70583/17).

On 14 September 2023, the ECtHR delivered its judgement Diakitè v. Italy, no. 44646/17 founding that Italy violated Article 8 ECHR by failing to diligently assess a minor's age and unlawfully placing him in an adult centre.

However, DL 133/2023 amended the Reception Decree allowing accommodation of minors within dedicated sections of adults accommodation centres.

With a MOI circular dated 17 January 2024, it was established that the sections dedicated to unaccompanied minors over-16 year olds in the adults centres, have to provide the same services and quality standards than those guaranteed in the centres dedicated to minor (those ruled by Article 19 of the Reception Decree).

However, it is not clear how this could happen in practice if those centres do not provide those services. Moreover, as stressed by the associations belonging to Tavolo Minori, reception in adult facilities is not compatible with the protection to be granted to single minors according to the Convention on the Rights of Children and Adolescents, which in art. 20 establishes that the minor without his family must be placed in family foster care or in specific structures for minors, excluding the possibility of placement in adult structures. Furthermore, this provision conflicts with the Reception Directive 2013/33/EU, which in art. 24 establishes the possibility of housing unaccompanied minors who have reached the age of 16 in reception centres for adults, but only "if it is in their best interests, as required by article 23, paragraph 2.

In 2023, the associations part of the "Tavolo Minori" for minors also recorded minors accommodated in completely emergency situations, such as tents or containers, where they remained for several months in reception conditions that do not ensure minimum hygiene standards and essential services and where the minors remained in the inability to access fundamental rights such as the right to education or the right to apply for international protection or a permit for minors.

An example is what was found at the Martorano camp in Parma and at the Rosolini centre (Syracuse),[1079] closed in December 2023 following an urgent intervention by the Juvenile Court of Catania.[1080] after a letter signed by ARCI, ASGI, CNCA, Defence for Children International Italia, INTERSOS and Oxfam Italia.[1081]

As underlined by ASGI to the Committee of Ministers in January 2024,[1082] in the Rosolini camp no adequate water supply was guaranteed (the minors were often forced to wash with water from bottles), and only five showers (with no hot water) and ten toilets, located outside and often malfunctioning, were provided, evidently insufficient for the 180 minors housed in the facility (reaching 210 at times of

1078 Article 19(4) Reception Decree.

1079 Altreconomia, "Chiudere la struttura per minori di Rosolini": l'appello della società civile, 27 December 2023, available at: https://l1nq.com/p0G0j.

1080 See Asgi Il Tribunale per i Minorenni di Catania interviene a tutela dei minori collocati nella tensostruttura di Rosolini, 4 January 2024, available at: https://l1nq.com/L43UV.

1081 ASGI, Il Tribunale per i Minorenni di Catania interviene a tutela dei minori collocati nella tensostruttura di Rosolini, 4 January 2024, available at: https://bit.ly/4bZvjUC; A parliamentary question was also presented to the Minister of the Interior on the Rosolini facility, available at: https://bit.ly/4elePHW, 5938.

1082 See Communication submitted by ASGI on 31 January 2024 under Rule 9.2 of the Rules of the Committee of Minister concerning the case of Darboe and Camara v. Italy (Application No. 5797/17) available at: https://bit.ly/45bcDyD.

overcrowding). The minors slept on cots, with no guarantee of privacy, the heating was insufficient and the minors were not provided with blankets by authorities. There were no dining areas, tables and chairs. The minors did not have a guardian appointed and had not had the opportunity to apply for asylum or a residence permit. There were also no legal support or educational activities. According to information provided by the Prefecture of Syracuse[1083] between 2 September and 1 December 2023, 512 UAMs were placed in this facility (91 under 16 years of age), for an average stay of 60 days, which for some minors lasted more than three months; 264 minors left independently and unprotected.

In 2023, ASGI also recorded cases where minors were detained in CPRs as adults (see Detention).

Between October and December 2023, the European Court of Human Rights intervened on three occasions with urgent precautionary measures in favour of unaccompanied foreign minors, de facto detained in the reception centre, ordering their immediate transfer to suitable centres: these were the case of a minor detained for 5 months in the Sant'Anna government centre for adults (Isola di Capo Rizzuto, Crotone) in conditions of degradation and severe isolation;[1084] in another of a minor held in the Restinco adult centre for 2 months[1085] and in the last one of a minor under 14 years of age held at a police station in Rome for 6 days.[1086]

Regarding the situation of minors in Rome, as underlined by Asgi to the Committee of Ministers in November 2023,[1087] since late 2022, UASC who arrive at police stations and cannot be accommodated in dedicated facilities due to capacity constraints are temporarily held in the police stations while awaiting placement. This arrangement is made under the directives of the judicial authorities and the Municipality of Rome. As stated by the police themselves, the minors "are camped in inhuman conditions, forced to sleep on benches, because there are no suitable lodgings or rooms to accommodate them."[1088] According to data released by the Municipality of Rome, at the beginning of September 2023, 15-20 minors were 'housed' in Police Stations[1089]

With reference to the condition of minors at the Sant'Anna reception centre in Isola Capo Rizzuto (Crotone), the condition of deprivation of liberty and promiscuity in which minors remained was also confirmed by the Guarantor Authority for Childhood and Adolescence, who visited the reception centre in Isola Capo Rizzuto on 13 and 14 November 2023, representing how minors inside the structure live "in contact with other adult migrants despite having a part of the camp reserved for them. In fact, there are not enough separation and surveillance systems to avoid promiscuity situations that should always be prevented" and, also, that "(...) the time spent in the centre is much longer than the law provides. Some boys, in particular, told me that they had been there for six or seven months."[1090]

Regarding the Restinco centre, a monitoring access made by a Parliamentarian on 7 December 2023 allowed to ascertain the condition of de facto detention in which 88 minors were living (including 15 fifteen-year-olds and 2 fourteen-year-olds) in very precarious hygienic and housing conditions.

Even after the urgent precautionary measure issued by the ECtHR on 29 December 2023 in favour of one of the minors (detained since October 2023), this practice was not changed: several associations

1083 See ASGI, Inlimine, available at: https://bit.ly/4c2BKGw.
1084 European Court of Human Rights, Decision on interim measures, Application no. 41645/23, 5 December 2024 (Annex n. 1).
1085 European Court of Human Rights, Decision on interim measures, Application no. 42909/23, 19 December 2024 (Annex n. 2).
1086 Appeal under art. 39 before the European Court of Human Rights (case no. 36616/23).
1087 Communication made by ASGI to the Committee of Minister on 16 November 2023, concerning the case of Darboe and Camara v. Italy, available at: https://bit.ly/4c5o6BT.
1088 See Roma Today, https://encr.pw/QrGbp.
1089 See: https://encr.pw/MYyj3.
1090 See Communication submitted by ASGI on 31 January 2024 under Rule 9.2 of the Rules of the Committee of Minister concerning the case of Darboe and Camara v. Italy (Application No. 5797/17) available at: https://bit.ly/45bcDyD.

continued to monitor how, in particular following disembarkation, unaccompanied minors continue to be transferred to this centre, with identical reception conditions and de facto detention.

On 5 October 2023, the head of the Italian Authority for Child Protection, Carla Garlatti, was in Restinco and was able to directly verify the presence of 18 unaccompanied minors, aged between 15 and 16, in inadequate conditions.[1091] Some had been there for 45 days and most of them came from Lampedusa, Taranto and Calabria, so their stay in places unsuitable for the reception of minors and in conditions of deprivation of liberty was even longer.

On 23 November 2023, the ECtHR condemned Italy for the illegitimate detention of many minors, accommodated in inhuman and degrading conditions and without a guardian in the Taranto hotspot (case A.T. and others v. Italy, Appeal no. 47287 /17). As of November 2023, 185 minors were held in this centre, some since August 2023.

Similarly, Asgi monitored such a situation of minors deprived of their personal freedom at the hotspot of Pozzallo/Contrada Cifali and Lampedusa (see Detention).
Regarding the condition of unaccompanied minors at the border between Italy and France ASGI found that in Ventimiglia[1092] the Italian authorities proceed, in many cases, to notify the person concerned of deferred rejection or administrative expulsion measures without carrying out any age assessment. In particular, this happens in all cases where the person, mistakenly identified as an adult after landing or arriving on the territory, is stopped by the French border authorities and returned to Italy.

In its report "The Frontier of Rights - Migrant and Refugee Minors and UNICEF's Intervention in Italy" published in December 2023, UNICEF notes that, "In other places - such as Porto Empedocle, Augusta, Roccella Jonica - tensile structures have been set up. These are tents, often placed inside port areas, unsuitable in both summer and winter, because they lack any form of ventilation and heating, thus being particularly hot in summer and very cold in winter. In these facilities – often set up only with cots to sleep on – the sanitary conditions are often precarious, and many times minors are unable to access even basic necessities, including clothes and blankets. Many complain of not having access to mobile devices, which are essential after the journey to notify family that they have arrived at their destination. Placed near the main disembarkation sites, hotspots and tensile structures are supposed to house people no longer than is necessary to carry out identification procedures, but – except for the island of Lampedusa, where recent months have seen faster transfers – often the stay lasts much longer than expected. Similar to the previous ones are the emergency centers that often are placed in disused buildings – such as the old school complex in Ardore or the sites in Stilo, Siderno and Portigliola, which at times of intensified arrivals can be used as temporary reception centers.[1093]

On 21 July 2022, the ECtHR condemned Italy in the case *Darboe and Camara v. Italy* (no. 5797/17).[1094] 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

1091 ANSA, Garante, minori stranieri devono essere separati da adulti, available at: https://bit.ly/4e6lNQU.

1092 See Asgi, Medea, Breve restituzione del sopralluogo a Ventimiglia e considerazioni a margine della sentenza della Corte di Giustizia c143/22, September 2023, available at: https://acesse.dev/R8fX1.

1093 UNICEF, "La frontiera dei diritti – Minori migranti e rifugiati e l'intervento dell'UNICEF in Italia", December 2023, available at: https://encr.pw/2AdBu, 22-23.

1094 ECtHR, Darboe and Camara v. Italy, Application No 5797/17, Communicated on 14 February 2017, available at: https://bit.ly/3Z8AtWY.

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.

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.[1095] UNICEF also noted severe crowding and delays identified as risk factors for the most vulnerable.[1096] 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.[1097]

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.[1098]

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).[1099] 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.[1100]

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.[1101] 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.[1102] It has been proven that there is a clear link between authorities' detention practices and information-giving

1095 Save the Children, Hotspot sovraffollato a lampedusa: le condizioni critiche dei minori, 12 April 2023, available at: https://bit.ly/41YgFqV.

1096 UNICEF, Cronache di frontiera. Lampedusa: vite in hotspot, 10 May 2023, available at: https://bit.ly/3MfcWiC.

1097 See Repubblica, Protesta dei minori non accompagnati all'hotspot di Lampedusa, 1 May 2023, available at: https://bit.ly/3okux0P.

1098 See ASGI, Roccella Ionica: situazione attuale e implementazione "approccio hotspot", 21 February 2023, available at: https://bit.ly/3pXsL65.

1099 Article 10(1) Procedures Decree.

1100 Article 3(3) Reception Decree and Article 10 Procedures Decree.

1101 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.

1102 See ASGI, Il diritto all'informazione nell'hotspot di Lampedusa: le responsabilità di UNHCR, 27 March 2023, available at: https://bit.ly/3I0lEjl.

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.[1103]

The National Commission for the Right of Asylum has edited a Practical Guide for Applicants for International Protection,[1104] currently available in 12 languages,[1105] 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, regarding information provision on reception issues, through its activities ASGI was observed 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.[1106] 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.[1107] The Prefect establishes rules on modalities and the time scheduled for visits by UNHCR, lawyers, NGOs as well as the asylum

1103 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/3Id658j.

1104 Guida pratica per i richiedenti protezione internazionale in Italia, available at: https://bit.ly/3LICXH4.

1105 Italian, English, French, Spanish, Arabic, Somali, Kurdish, Amharic, Urdu, Bengali, Farsi and Tigrinya.

1106 Article 10(3) Reception Decree.

1107 Article 10(4) Reception Decree.

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.

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. [1108]

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, provided for the activation of a further 3,000 places in SAI[1109] and Article 1 (390) L 234/2021 provided additional **2,000 places.**

These were reserved places, which were then extended to those who fled Ukraine by Article 5 quarter (5) and (6) DL 14/2022 converted into L 28/2022.

According to L. 50/2023, Afghan citizens applying for international protection who reach Italy in implementation of the evacuation operations carried out by the Italian authorities can be accommodated in the Sai system (art. 5-ter, (4) DL 20/2023 converted by L. 50/2023.

Accommodation for people escaping from the Ukrainian conflict

See Annex on Temporary Protection.

1108 Article 7 Ministry of Interior Decree of 1 September 2016.

1109 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	
1. Total number of persons detained in 2023[1110]	
❖ CPR	Not available
❖ Hotspots	Not available
2. Number of persons in detention as of 31 March 2023:[1111]	
❖ CPR	1,850
❖ Hotspots	22,024
3. Number of detention centres:	
❖ CPR	10
❖ Hotspots	4
4. Total capacity of detention centres:	
❖ CPR	804[1112]
❖ Hotspots	Not available[1113]

The Reception Decree prohibits the detention of asylum seekers for the sole purpose of examining their asylum application.[1114] 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.[1115]

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, introduced several amendments to the previous legislative framework on detention of asylum applicants.

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;[1116]
- it allows to detain asylum seekers who are in a Dublin procedure (see Dublin);
- it enlarges the cases of detention for identification purposes;[1117]

Additional grounds for detention of asylum seekers

1110 In 2022, 6,383 people were detained in CPR, and 55,135 in hotspots. See *Report to Parliament Annexes to the yearly report of the National Guarantor for the rights of detained persons*, June 2023, available at: https://rb.gy/r73ey6.

1111 See *Report to Parliament Annexes to the yearly report of the National Guarantor for the rights of detained persons*, June 2023, available at: https://rb.gy/r73ey6.

1112 Effective capacity by December 2022. As of the end of 2022, 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 2023, available at: https://rb.gy/r73ey6.

1113 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.

1114 Article 6(1) Reception Decree.

1115 Article 6(3-bis) Reception Decree, inserted by Article 3 Decree Law 113/2018 and L 132/2018.

1116 Article 6 (2) (d) of the Reception Decree as replaced by the L. 50/2023.

1117 Article 6 (3-bis) as amended by the L. 50/2023 converting into law the DL 20/2023.

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 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.

On 14 September 2023, the Moi decree detailing the rules related to the financial guarantee was adopted. The Civil Court of Catania decided not to validate the detention orders issued on the base of the lack of a financial guarantee, considering that the provisions were incompatible with the European law. The Court of Cassation, on 8 February 2024, requested a preliminary judgement from the CJEU[1118] (See hotspots and border procedure).

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, 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 to access assisted voluntary returns 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

[1118] Court of Cassation, Interlocutory order of 8 February 2024, decision n. 3562/2024, R.G. 20674/2023.

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 CPRs are subject to the Accelerated Procedure.

In 2022, as reported by the Guarantor for the rights of detained persons, 6,383 people – 99% of them men – had been detained in CPRs; around 49% (3,154) were actually returned. Tunisia is by far the most represented country of nationality amongst detained migrants, and the country with the highest return rate (3,284 out of 6,383 detained migrants are Tunisians and 2,248 out of 3,154 returned migrants are returned to Tunisia).[1119]

As of 31 March 2023, 1,850 people – only 9 of which were women – were detained in CPRs. Out of the total number, 805 were actually returned. Out of the 1,850 detained migrants, 792 (43%) were Tunisians; out of the 805 returned migrants, 508 (63%) were Tunisians.[1120]

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 2022, the official capacity was 1,359 places; effective capacity was of 804 places.

The number of persons entering the hotspots in 2023 was not available at the time of writing. In 2022, 55,135 persons – including 10,491 unaccompanied minors – entered in hotspots, 46,087 of which – including 6,235 unaccompanied minors – in Lampedusa.[1121] High pressure on the hotspot of Lampedusa continued in 2022, 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

1. In practice, are most asylum seekers detained
   - ❖ on the territory: ☒ Yes ☐ No
   - ❖ at the border: ☐ Yes ☒ No
2. Are asylum seekers detained during a regular procedure in practice?
   ☐ Frequently ☒ Rarely ☐ Never
3. Are asylum seekers detained during a Dublin 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 to which facility a third country national should be assigned. 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,[1122] and that a priority has to be given in any case to citizens of countries with which repatriation agreements exist.[1123]

1119 *Report to Parliament of the National Guarantor for the rights of detained persons*, June 2023, available at: https://rb.gy/r73ey6.

1120 *Report to Parliament of the National Guarantor for the rights of detained persons*, June 2023, available at: https://rb.gy/r73ey6.

1121 *Report to Parliament Annexes to the yearly report of the National Guarantor for the rights of detained persons*, June 2023, available at: https://rb.gy/r73ey6.

1122 According to Article 4 (3) and 5 (5) TUI.

1123 Article 14 (1.1) TUI.

In its report to Parliament of June 2023, 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.[1124]

As of 31 March 2023, out of 1,850 people who passed through the CPRs, 534 (29%) were released because the detention was not considered legitimate by the Judge. 805 (44%) people were repatriated.[1125]

1.1 Asylum detention

Asylum seekers shall not be detained for the sole reason of the examination of their application.[1126] 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 and by DL 20/2023 converted into L. 50/2023 these cases arise when:[1127]

(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.[1128]

(a bis) He or she submits a subsequent application during the execution of a removal order, according to Article 29 bis Procedure Decree.[1129]

(b) Is issued an expulsion order on the basis that he or she constitutes a danger to public order or state security,[1130] 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,[1131] including with the intention of committing acts of terrorism;[1132]

(c) 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.[1133] 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, 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.

(d) It is necessary to determine the elements on which the application for international protection is based which could not be acquired without detention and there is a risk of absconding.[1134]

The assessment of such risk is made on a case by case basis, when the applicant has previously and systematically provided false declarations or documents on his or her personal data in order to avoid the adoption or the enforcement of an expulsion order, or when the applicant has not complied with alternatives to detention such as, stay in an assigned place of residence determined by the competent authority or reporting at given times to the competent authority.[1135]

Following Decree Law 13/2017, implemented by L 46/2017, and the subsequent Decree Law 130/2020, converted into L 173/2020, repeated refusal to undergo fingerprinting at

1124 *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.

1125 *Report to Parliament Annexes to the yearly report of the National Guarantor for the rights of detained persons*, June 2023, available at: https://rb.gy/r73ey6.

1126 Article 6(1) Reception Decree.

1127 Article 6(2) Reception Decree.

1128 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.

1129 Introduced by Decree Law 130/2020 converted by L 173/2020.

1130 Article 13(1) TUI.

1131 Article 13(2)(c) TUI.

1132 Article 3(1) Decree Law 144/2005, implemented by L 155/2005.

1133 Article amended by Decree Law 130/2020 converted by L 173/2020

1134 Article 6(2) lett. d), amended by Decree Law 20/2023 converted by L. 50/2023.

1135 Article 13 (4bis)(a, c, d, e), 13(5.2) and 14 to which Article 6 Reception Decree refers.

hotspots or on the national territory also constitutes a criterion indicating a risk of absconding.[1136]

1.2 Dublin detention

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.[1137] The risk is assessed on a case-by-case basis case 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 oneself 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 further 12 days six weeks. Before the expiry of this term, the Questore can carry out the transfer by notifying the judge without delay.[1138]
In a case decided on 19 August 2023 by the Civil Court of Trieste, the detention was validated considering that the asylum seeker was 'homeless, moving along the national territory without financial resources, and was the recipient of multiple criminal complaints.[1139]

1.3 Pre-removal detention

The Reception Decree also provides that:

(e) Third-country nationals who apply for asylum when they are already held in CPR and are waiting for the enforcement of a return order pursuant to Article 10 TUI or an expulsion order pursuant to Articles 13 and 14 TUI shall remain in detention when, in addition to the 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.[1140]

1.4 Detention for identification purposes

Furthermore, a 2018 amendment to the Reception Decree has added that:

(f) Asylum seekers may be detained in hotspots or first reception centres for the purpose of establishing their identity or nationality, including through the use of photo fingerprinting operations and the verification of databases.[1141] If the determination or verification of

1136 Article 10-ter(3) TUI, inserted by Decree Law 13/2017 and L 46/2017.
1137 Article 6 ter (1) of the Reception Decree introduced by L. 50/2023 converting into law with amendments the DL 20/2023.
1138 Article 6 ter (2 and 3) of the Reception Decree introduced by L. 50/2023 converting into law with amendments the DL 20/2023.
1139 Civil Court of Trieste, decision of 19 August 2023, procedure no.3333/2023
1140 Article 6(3) Reception Decree.
1141 Provision of Decree Law 20/23, converted in L. 50/23.

identity or nationality is not possible in those premises, they can be transferred to a CPR.[1142]

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.[1143] 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.[1144]

While the law does not clarify the procedure relating to the validation of this form of detention, the Ministry of Interior Circular of 27 December 2018 generically refers to validation by the judicial authority. According to ASGI, the same procedure envisaged for other grounds for detention of asylum seekers should apply to these cases.

In addition, the law does not specify in which cases the need for identification arises, thus linking detention not to the conduct of the applicant but to an objective circumstance such as the lack of identity documents. According to ASGI, the new detention ground represents a violation of the prohibition on detention of asylum seekers for the sole purpose of examining their application under see Article 8(1) of the recast Reception Conditions Directive. People fleeing their countries often do not have identification documents and cannot contact the authorities of the countries of origin as this could be interpreted as re-availing themselves of the protection of that country.

The number of persons entering the hotspots in 2023 was not available at the time of writing: as of 31 March 2023, 22,024 people entered the hotspots, of whom 3,669 were minors[1145]. In 2022, out of 6,383 persons detained in CPRs, 869 (14%) were released given that they were not identified in the timeframe foreseen by the law. In the first three months of 2023, out of 1,850 persons detained in CPRs, 161 (9%) were released because they were not identified in the timeframe foreseen by the law.[1146]

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

1142 Article 6(3-bis) Reception Decree, inserted by Article 3 Decree Law 113/2018 and L 132/2018 amended by DL 130/2020 and L. 173/2020 and DL 20/23 and L 50/23.

1143 Guarantor for the rights of detained persons, *Relazione al Parlamento*, 15 June 2018, available in Italian at: http://bit.ly/2TZy9ol, 233.

1144 ASGI et al., *Hotspot di Lampedusa: sempre più un luogo di confinamento*, August 2021, available in Italian at: https://bit.ly/3Js3OVu.

1145 *Report to Parliament Annexes to the yearly report of the National Guarantor for the rights of detained persons*, June 2023, available at: https://rb.gy/r73ey6.

1146 *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.

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:[1147]

- 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:

1. The obligation to hand over passport to the police until departure;
2. The obligation to reside in a specific domicile where the person can be contacted;
3. 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.[1148]

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[1149] shall be immediately adopted or executed. The repatriation request corresponds to a withdrawal of the application for international protection.[1150]

In case the applicant is the recipient of an expulsion order,[1151] 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.[1152]

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.[1153]

Since 2020, the association Mosaico for Refugees created the “Channels of Solidarity” project offering support to vulnerable people at risk of detention.[1154]

1147 Articles 13(5.2) and 14-ter TUI.

1148 LASCIATECIENTRARE, *Dietro le mura. Abusi, violenze e diritti negati nei CPR d’Italia*, October 2022, available in Italian at: https://rb.gy/daoyns.

1149 Pursuant to Article 13(4) and (5-bis) TUI.

1150 Article 6(9) Reception Decree.

1151 The expulsion order to be executed according to the procedures set out in Article 13(5)-(5.2) TUI.

1152 Article 6(10) Reception Decree.

1153 CILD and Progetto Diritti, *Alternatives to detention: towards a more effective and humane migration management*, 2021, available at: https://bit.ly/3q794WI.

1154 Mosaico for Refugees, ‘Channels of Solidarity’, available at: https://rb.gy/vnune1.

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[1155]

The law explicitly provides that unaccompanied children can never be detained.[1156] 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.[1157] 10,491 children entered in hotspots in 2022; 7,341 were unaccompanied and 3,150 accompanied children.[1158]

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,[1159] 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 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.[1160]

In October 2023, a delegation of the Asylum and Immigration Table visited the Pozzallo hotspot and its Contrada Cifali extension for unaccompanied foreign minors, finding a condition of social isolation and de facto deprivation of liberty of these minors.[1161]

The European Court of Human Rights, in its decision of 23 November 2023 rendered in Case No. 47287/17 (A.T. and Others v. Italy),[1162] condemned Italy for unlawfully detaining several unaccompanied foreign minors in the Taranto hotspot (Art. 5, paras. 1, 2, and 4 of the European Convention on Human Rights), for having used inhuman and degrading treatment in arranging their reception measures (Art. 3 of the Convention), for not having appointed a guardian nor having provided them with any information on the possibility of challenging this condition in court (Art. 13 of the Convention, in relation to Art. 3).

1155 See also for an overview on these cases, the communications sent by ASGI under Rule 9.2 of the Rules of the Committee of Minister concerning the case of Darboe and Camara v. Italy (Application No. 5797/17) on November 2023, available at https://bit.ly/4c5o6BT and on January 2024, available at: https://bit.ly/45bcDyD.

1156 Article 19(4) Reception Decree.

1157 ASGI, *Unaccompanied minors: critical conditions at Italian internal and external borders*, June 2021, available at: https://bit.ly/34PNMpg.

1158 *Report to Parliament Annexes to the yearly report of the National Guarantor for the rights of detained persons*, June 2023, available at: https://rb.gy/r73ey6.

1159 National Guarantor for the rights of detained persons, *Rapporto sulle visite effettuate nei CPR (2019 - 2020)*, available in Italian at: https://lc.cx/iBkl4R.

1160 ASGI, *Unaccompanied minors: critical conditions at Italian internal and external borders*, June 2021, available at: https://bit.ly/34PNMpg.

1161 ASGI, 'A 12 anni nell'hotspot "dedicato" ai minori: Report da Pozzallo e Cifali', October 2023, available in Italian at: https://lc.cx/KYzoKq.

1162 ECtHR, No. 47287/17, *A.T. and others v. Italy*, 23 November 2023, available at: https://bit.ly/3PxZCZ1.

Despite the fact that the judgement refers to events in 2017, the persistent situation in which previous repressive approaches to the detention of unaccompanied foreign minors in hotspots have not been changed requires respect for the rights guaranteed by the Convention.[1163]

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.[1164] 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 psycho-somatic symptomatology" and a "reactive anxiety and psychosomatic symptomatology that are expressed in a condition of psycho-emotional vulnerability".[1165] 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).[1166]

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.[1167]

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, are immediately taken in charge by competent authorities and that transfer to suitable structures is immediately arranged.[1168]

The recent amendments made by Decree-Law 133/2023, converted by Law 176/2023, introduced exceptions in ascertaining the age of unaccompanied minors in case of large, multiple and close arrivals,

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1163 ASGI, 'CEDU: minori stranieri detenuti illegalmente nell'hotspot di Taranto. ASGI: vanno ricollocati', November 2023, available in Italian at: https://rb.gy/kjrj8l.

1164 LASCIATECIENTRARE, *Dietro le mura. Abusi, violenze e diritti negati nei CPR d'Italia*, October 2022, available in Italian at: https://rb.gy/daoyns.

1165 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.

1166 National Guarantor for the rights of detained persons, *Rapporto sulle visite effettuate nei CPR* (2019 - 2020), available in Italian at: https://bit.ly/3MPri93.

1167 ASGI, *Unaccompanied minors: critical conditions at Italian internal and external borders*, June 2021, available at: https://bit.ly/34PNMpg.

1168 Ibidem.

following search and rescue activities at sea, or apprehension at the border or in transit zones. In such cases, wide discretion is granted to the public security authorities in the identification procedures, by carrying out anthropometric or other health assessments, including X-rays, aimed at identifying age. The only limit for the public security authorities is the request for authorisation that must be sent in writing to the Public Prosecutor's Office at the Juvenile Court who has to give authorization. In particularly urgent cases, authorisation may be given orally and only subsequently confirmed in writing.[1169]

ASGI pointed out how the new provisions introduced by Law Decree 133/2023 run the risk of nullifying the rules and protocols that were in force until then, which, although not formally affected, are weakened in relation to the possible extension of the application of the new derogatory procedure, which focuses on the rapidity of the outcome to the detriment of the guarantees for the person.

On a completely discretionary basis, because there are no parameters or reference indications laid down by law, the public security authorities can decide whether to start the ordinary procedure, which, as seen, requires an assessment based on several methods to be applied together and the initiation of proceedings at the Juvenile Court with the adoption of a final decree, or whether to, outside of the multidisciplinary approach, also subject a person claiming to be a minor to individual examinations, including radiological examinations, the (un)reliability of which has been debated for years.[1170]

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. The law also prohibits the detention of vulnerable persons,[1171] although in practice shortcomings regarding identification and age-assessment procedures at the hotspot means that this is not always ensured.[1172] 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.[1173] 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. As of March 2024, no protocol on early identification of and assistance to vulnerable persons, and on the referral system to specialised services and/or reception centres was 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,[1174] and Article 4(i) of the Directive of Minister of Interior of May 2022,[1175] which deleted the previous 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.[1176] ASGI's monitoring of CPRs has stressed that in these places, vulnerabilities are often ignored and unaddressed: minors,

1169 Article 19(6bis) Reception Decree, as amended by Article 5 Decree Law 133/2023 converted by L 176/2023.
1170 ASGI, Informal hearing as part of the examination of Bill C. 1458, converting Decree-Law No. 133 of 2023 on urgent provisions on immigration and international protection, as well as on support for security policies and the functionality of the Ministry of the Interior, October 2023, available at: https://lc.cx/8nQzrf.
1171 Article 7(5) Reception Decree, as amended by Article 8 Decree Law 13/2017 and L 46/2017.
1172 ASGI, *Unaccompanied minors: critical conditions at Italian internal and external borders*, June 2021, available at: https://bit.ly/34PNMpg.
1173 Article 7(5) Reception Decree.
1174 Article 7(1) Reception Decree.
1175 Ministry of Interior, 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/tjhasw.
1176 National Guarantor for the rights of detained persons, *Summary document concerning the CPRs, also in the light of the monitoring activities carried out by the local Guarantors in the exercise of the visit powers conferred to them by the National Guarantor in January-March 2023*, April 2023, available at: https://rb.gy/lqzpdg.

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.[1177]

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 2022, only 57 women were detained in the CPR, only 18 of which was returned (30 were released following non-validation of the detention order by the judge, 2 dismissed for other reasons, 2 discharged because they were not identified by the deadline, 1 has been arrested inside the CPR and 4 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.[1178]

From the beginning of the year to 31 March 2023, 9 women had been detained in the CPR; only 3 of them were returned, while 4 were released after the non-validation of the detention ordered by the judges, 1 released because she was not identified by the deadline and 1 as she applied for international protection.[1179]

The enhanced vulnerability of women in detention and the many criticalities of the women's section of Rome's CPR have been repeatedly noted.[1180]

Women represent a minority in hotspots, representing only 10% of the total number of persons held in hotspots in 2021 (5,278 out of 55,135). The most represented nationalities were Ivorian (2,155), Guinean (1,181), Tunisian (709), Cameroonians (369), Syrian (154) and Nigerian (109).[1181] 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.[1182]

This situation continued into 2022[1183] and 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

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1177 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.

1178 *Report to Parliament Annexes to the yearly report of the National Guarantor for the rights of detained persons*, June 2023, available at: https://rb.gy/r73ey6; National Guarantor for the rights of detained persons, *Relazione al Parlamento*, June 2020, available in Italian at: https://bit.ly/3ibI5ov.

1179 *Report to Parliament Annexes to the yearly report of the National Guarantor for the rights of detained persons*, June 2023, available at: https://rb.gy/r73ey6.

1180 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 rinchiuse nel centro di espulsione di Roma', *Internazionale*, February 2019, available at: http://bit.ly/3KT7qQD.

1181 *Report to Parliament Annexes to the yearly report of the National Guarantor for the rights of detained persons*, June 2023, available at: https://rb.gy/r73ey6.

1182 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.

1183 ASGI, *Report sulla visita al Centro hotspot di Lampedusa*, August 2022, available in Italian at: https://rb.gy/nnzol1.

units; as a consequence, the Court ordered the Italian government to immediately transfer one of the families.[1184]

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 — 5 days in Lampedusa, Pozzallo and Taranto, 23 in Messina[1185]

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 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.[1186] The provision of a detention period up to 30 days and extendable to up to 90 plus 30 days in the CPR seems incompatible with the principle laid down in Article 9 of the recast Reception Conditions Directive according to which an applicant shall be detained only for as short a period as possible. For asylum seekers, this cannot be justified as - given the impossibility of contacting the authorities of the country of origin - it could only coincide with the *fotosegnalamento*, which certainly cannot take more than a few days.[1187]

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.[1188]

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

1184 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.

1185 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 2023, available at: https://rb.gy/r73ey6.

1186 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.

1187 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.

1188 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.

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".[1189] The Guarantor had previously defined the condition of applicants detained for identification 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.[1190]

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.[1191]

As of 2022, 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.[1192]

As already mentioned, no data on persons identified in hotspots is available for 2023. In 2022, out of 6,383 persons detained in CPRs 869 (14%) were released because they were not identified within the timeframe foreseen by the law. In the first three months of 2023, out of 1,850 persons detained in CPRs, 161 (9%) were released because they were not identified within the timeframe foreseen by the law.

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.[1193] In 2021, ASGI reported many critical issues at the "new border" of Pantelleria, where newly arrived migrants are also channelled in hotspot-like procedures.[1194] The new inspection conducted by ASGI in May 2022 confirmed the critical issues that emerged the previous year, which include unlawful detention practices, obstacles in access to the right of defence, violation of freedom of phone correspondence – in light of the seizure of phones –, inadequate detention conditions and promiscuity.[1195]ASGI carried out a new inspection in Pantelleria in May 2023, finding and denouncing the same critical issues already highlighted in the previous one: unlawful detention practices and obstacles in access to the right of defence; inadequacy of information activities and the total absence of legal assistance; practices hindering access to asylum applications; violation of freedom of telephone correspondence, in the light of the unlawful seizure of the phones of arriving persons, who remain, therefore, in total isolation.[1196]

4.2 Duration of asylum and pre-removal detention

The maximum duration of detention of asylum seekers is 12 months.[1197] The duration of pre-removal detention increased from 90 days, plus 30 days in cases of repatriation agreements with the countries of

1189 Guarantor for the rights of detained persons, *Parere sul decreto-legge 21 ottobre 2020*, n. 130, available at: https://bit.ly/33IUnO8.

1190 The Left, *LOCKED UP AND EXCLUDED Informal and illegal detention in Spain, Greece, Italy and Germany*, December 2020, available at: https://bit.ly/37q36JY.

1191 Guarantor for the rights of detained persons, *Report to Parliament*, March 2020, available at: https://bit.ly/3okpJnx, para. 22, pp. 105-107.

1192 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.

1193 ASGI, *Report sopralluogo giuridico: la Sardegna come luogo di frontiera e di transito*, December 2020, available at: https://bit.ly/2SPky3r.

1194 ASGI, *La frontiera di Pantelleria: una sospensione del diritto Report del sopralluogo giuridico di ASGI*, June 2021, available at: https://bit.ly/39ovdKB.

1195 ASGI, *La frontiera di Pantelleria: una sospensione del diritto Report del sopralluogo giuridico di ASGI*, August 2022, available at: https://rb.gy/9ndftw.

1196 ASGI, 'Report e audio sul Punto di Crisi di Pantelleria: implicazioni sul diritto alla libertà personale', October 2023, available in Italian at: https://rb.gy/ajp1id.

1197 Article 6(8) Reception Decree.

origin[1198], to 18 months: this period provides for the validation of detention for 3 months, which can be subsequently extended every 90 days, up to a maximum of 18 months.[1199]

According to ASGI, the increase to 18 months of the maximum detention period could further highlight the dubious constitutionality of Article 14(5) of Legislative Decree 286/98, as amended, with Article 13(2) of the Constitution.[1200]

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 for the completion of the procedure related to the examination of the asylum application.[1201] 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) their application for international protection.[1202] The same conclusions were reached by the Specialised Section of the Courts of Trieste[1203] and Milan[1204] 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".[1205] The merits of the issue were declared inadmissible by the Constitutional Court with decision n. 212/2023.[1206]

Recently, the Court of Cassation ruled that the 48-hour time limit for the validation of the second detention ordered by the Questore pursuant to Article 6 cited above does not start from the manifestation of the applicant's willingness to apply for international protection, but from the adoption of the aforementioned second restrictive measure.[1207]

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,[1208] 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.[1209]

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.[1210] 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.[1211] The way the

1198 Article 14(5) TUI, as amended by Decree Law 130/2020 and L. 173/2020.
1199 Article 14(5) TUI, as amended by art. 20(1) Decree Law 124/2023 and L. 162/2023.
1200 ASGI, 'CPR: serve una riforma organica e non misure irragionevoli e costose. Le nostre osservazioni alla Commissione Bilancio', October 2023, available in Italian at: https://rb.gy/jszrmx.
1201 Article 6(5) Reception Decree.
1202 ASGI, 'Il Tribunale di Roma: i termini per la convalida del trattenimento decorrono dalla manifestazione di volontà di chiedere asilo in CPR', 20 January 2022, available in Italian at: https://bit.ly/3qa9iwo.
1203 Tribunale di Trieste, proceeding 81/2023, decision 18 January 2023.
1204 Tribunale di Milano, proceeding 23/2023, decision 18 January 2023.
1205 Tribunale di Milano, proceeding 42304/2022, decision 11 December 2022.
1206 Constitutional Court, proceeding 212/2023, decision 4 December 2023, available in Italian at: https://rb.gy/5jd1qq.
1207 Court of Cassation, decision no. 36522/2023 published on 29 December 2023.
1208 Pursuant to Article 28-bis(1) and (3) Procedure Decree.
1209 Article 6(6) Reception Decree.
1210 Article 35-bis(4) Procedure Decree.
1211 Article 6(7) Reception Decree, as amended by Article 8 Decree Law 13/2017 and L 46/2017.

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.[1212]

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 interview date having been set.[1213] The Court of Cassation also stressed the principle according to which an asylum seeker cannot be detained for longer than the time limits scheduled under the accelerated procedure, unless other reasons for detention arise,[1214] a principle that clashes with recent decisions of the Supreme Court of Cassation to the contrary[1215] (see also Judicial Review). In December 2021, the Specialised Section of the court of Lecce 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.[1216] 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.[1217]

The average duration of detention in CPR is not available. As reported above, in 2022, 14% of persons detained in CPRs were released because they were not identified in the timeframe foreseen by the law, while in the first three months of 2023, they were 161 out of 1,850 (9%).

The average length of stay in hotspots in 2022 was of 5 days in Lampedusa, Pozzallo and Taranto, and 23 days in Messina. There are no figures for 2023, not even for the first months of the year.

C. Detention conditions

1. Place of detention

Indicators: Place of Detention

1. Does the law allow for asylum seekers to be detained in prisons for the purpose of the asylum procedure (i.e. not as a result of criminal charges)? ☐ Yes ☒ No
2. If so, are asylum seekers ever detained in practice in prisons for the purpose of the asylum procedure? ☐ Yes ☒ No

1.1 Pre-removal detention centres (CPR)

Under the Reception Decree, asylum seekers can be detained in CPRs – previously known as CIEs –, where third-country nationals who have received an expulsion order are generally held.[1218] The

1212 Article 6(8) Reception Decree.
1213 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/IyO8NjY.
1214 Court of Cassation, decision no. 2458/2021 published on 2 February 2021.
1215 Court of Cassation, decision no. 20656/2022 published on 28 June 2022; Court of Cassation, decision no. 9042/2023 published on 30 March 2023; Court of Cassation, decision no. 14/2024 published on 2 January 2024; Court of Cassation, decision no. 15/2024 published on 2 January 2024; Court of Cassation, decision no. 17/2024 published on 2 January 2024.
1216 ASGI, Trattenimento nel CPR, impossibile prorogare un termine già scaduto, January 2022, available in Italian at: https://bit.ly/3CUIaGL.
1217 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.
1218 Article 6(2) Reception Decree.

functioning of CPRs and their essential rules are laid out in the CIE Regulation adopted in 2014.[1219] This Regulation was abolished through the Interior Ministry Directive of the 19 May 2022.[1220] 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 2022 and the first three months of 2023 was reduced: by the end of 2022, only 804 places were available,[1221] while as of 31 March 2023 the official capacity of the centres was of 701 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.[1222] As of April 2024, 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 2022:[1223]

Capacity and detentions by CPR		
CPR	Official capacity[1224]	Persons detained up to 31 December 2022[1225]
Bari-Palese	126	627
Brindisi-Restinco	48	251
Caltanissetta-Pian del Lago	92	1,074
Gradisca d'Isonzo (Go)	150	802
Macomer (Nu)	50	202
Palazzo San Gervasio (Pz)	128	844
Roma Ponte Galeria	210	657
Torino	210	806
Trapani-Milo	205	606
Milano	140	457
Total	**1,359**	**6,326**

Source: Guarantor of detained persons, updated as of 31 December 2022.

As of 31 December 2022, according to data reported by the National Guarantor, Caltanissetta, Potenza, Gorizia and Turin were the CPRs with the highest numbers of persons hosted. 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.[1226] 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.[1227]

Article 21 of the Decree Law 124/2023, converted in L. 162/2023, simplified and implemented procedures for the design and implementation of reception, stay and repatriation facilities.

1219 Ministero dell'Interno, *Regolamento Unico CIE*, 2014, available in Italian at: https://bit.ly/3JgGYjp.
1220 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.
1221 *Report to Parliament Annexes to the yearly report of the National Guarantor for the rights of detained persons*, June 2023, available at: https://rb.gy/r73ey6.
1222 CILD, 'Chiude il Cpr di Torino: la speranza è che non riapra più'', 30 March 2023, available in Italian at: https://rb.gy/0ee2.
1223 *Report to Parliament Annexes to the yearly report of the National Guarantor for the rights of detained persons*, June 2023, available at: https://rb.gy/r73ey6.
1224 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.
1225 Ibid.
1226 Article 19(3) Decree Law 13/2017 implemented by L 46/2017.
1227 Article 2(2) Decree Law 113/2018, implemented by L 132/2018.

The situation as of 31 March 2023 in the 10 CPRs can be described as follows:[1228]

- Milan's CPR, situated at the outskirts of the city has an official capacity of 120 places; as of March 2023, the total actual capacity of the centre was of 56 places. Throughout 2022, a total of 457 people had been detained. The new call for tender issued in October 2022 foresaw 72 places and has been won by Martinina srl, that took over Engel Italia with the sale of the company branch. Following the investigation of the managing entity by the Milan Public Prosecutor's Office and the request for preventive seizure of the facility, in December 2023, the Judge for Preliminary Investigations of Milan appointed a judicial administrator for the CPR and banned Martinina srl from contracting with the public administration for one year.[1229]
- Turin's CPR, which was first opened in 1999, currently has an official capacity of 210 places. It closed in March 2023 and remains closed as of February 2024.[1230] On 31 December 2022, 806 persons were detained. It has been managed since 2015 by Gepsa, 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.[1231] 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 –,[1232] who had deemed detention in this area as an inhumane and degrading treatment and called for its immediate and definitive closure.[1233] 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.[1234]
- Gorizia's CPR, which was first activated in 2006 but was closed from 2013 to 2019 following protests on its conditions, had an official capacity of 150 places; as of March 2023, it has an effective capacity of 100 places; during 2022 802 persons were detained.
- 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; on December 2022, it hosted 202 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 250 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. Throughout the year 2022, 657 persons (600 men and 57 women) were detained in the centre.
- 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 128 places and, on throughout 2022, 844 persons were reportedly detained there (in 2022, 13% 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

1228 *Report to Parliament Annexes to the yearly report of the National Guarantor for the rights of detained persons*, June 2023, available at: https://rb.gy/r73ey6.

1229 ANSA, Giudice commissaria il CPR di Milano, accolta istanza dei PM, December 2023, available at: https://lc.cx/nfw9lV.

1230 CILD, 'Chiude il CPR di Torino: la speranza è che non riapra più', March 2023, available in Italian: https://lc.cx/jcWz9Q.

1231 Ilaria Sesana, La detenzione amministrativa dei migranti è un affare. Anche in Italia, Altraeconomia, 2017, available in Italian at: https://bit.ly/3IeVMxt.

1232 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.

1233 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.

1234 CILD, 'Chiude il CPR di Torino: la speranza è che non riapra più', March 2023, available in Italian: https://lc.cx/jcWz9Q.

criminal investigations for serious malpractices in the management of the CPR.[1235] 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.[1236] Throughout the 2022, 627 people were detained out of 90 places available.

- Brindisi's CPR has an official capacity of 90 places and as of 31 December 2022 251 persons were detained (less than 4% of the total of persons detained in CPRs were detained here in 2022). On 31 December 2022 the effective capacity was reduced to 14 places due to a critical event that rendered part of the facility unusable (before there were available 48 places).
- Caltanissetta's CPR currently has an official capacity of 92 places; in 2022, 1,074 persons (around 17%) 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 204 places; as of December 2022, 606 persons were detained here, out of an effective capacity of 51 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.[1237] 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[1238]

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[1239] as well as by ASGI[1240] 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.[1241]

1235 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.

1236 Prefettura di Bari, provvedimento di esclusione Badia Grande Soc. Coop. Sociale, 25 November 2022, availabe in Italian at: https://rb.gy/avqavv.

1237 TAR Sardegna, 838/2021, published on 24 December 2021, available in Italian at: https://bit.ly/35YBFH4; TAR Piemonte, 360/2021, published on 6 April 2021, available in Italian at: https://bit.ly/3qcz1nI; TAR Sicilia, 2169/2020, published on 21 October 2020, available in Italian at: https://bit.ly/37CPFqn.

1238 ASGI, 'I diritti umani devono entrare nei CPR!', January 2023, available in Italian at: https://rb.gy/lxw29j.

1239 National Guarantor, *Opinion on LD 113/2018*, October 2018, available in Italian at: https://bit.ly/3KJJ63i.

1240 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/3MXOtxI.

1241 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.

The last report of the National Guarantor for Detainees shows how 'locali idonei' have been made operational or, in any case, put in the pipeline by a substantial number of Police Headquarters (36 Police Headquarters state that they have "locali idonei" for the detention of foreigners during the executive phase of expulsion and 15 report the use of security rooms for the same purpose), accentuating the proliferation of administrative detention facilities and the risk of nullifying their related, already fragile, guarantees. The Guarantor also believes that their use appears particularly in line with the current strategy of the Union policies, which are less focused on the detention capacity of individual States and more aimed at creating conditions that guarantee the simplification of procedures and increasingly rapid returns.[1242]

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[1243] – 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.[1244]

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.[1245]

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.[1246]

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.[1247] 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

1242 *Report to Parliament Annexes to the yearly report of the National Guarantor for the rights of detained persons*, June 2023, available at: https://rb.gy/r73ey6.

1243 National Guarantor, *Opinion on LD 130/2020*, November 2020, available in Italian at: https://bit.ly/3id2N7z.

1244 National Guarantor, *Thematic report on suitable structures used for detention of third-country nationals*, August 2021, available in Italian at: https://bit.ly/3Jh0aNS.

1245 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/3MXOtxI.

1246 National Guarantor, *Thematic report on suitable structures used for detention of third-country nationals*, August 2021, available in Italian at: https://bit.ly/3Jh0aNS.

1247 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.

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.[1248]

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 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.[1249]

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.[1250]

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). Messina's hotspot reopened as of 28 October 2022.

Hotspot	Capacity
Lampedusa	250
Pozzallo	230
Taranto	400
Messina	250
Total	**1,130**

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.[1251]

With reference to the new critical issues that have emerged at the new border of Pantelleria, please refer to what has been reported above under Duration of detention.

1248 Ibid.
1249 Ibid.
1250 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.
1251 ASGI, 'Un resoconto della visita di ASGI al Centro di accoglienza di Monastir', April 2021, available in Italian at: https://bit.ly/3CKQecX.

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) 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.[1252] The Grand Chamber judgement of 15 December 2016 confirmed the violation of such fundamental rights.[1253] 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.[1254] Regarding the unlawfulness of detention, the Government asserted that it had fully implemented the Khlaifia judgement by enacting L 173/2020.[1255] 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.[1256]

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.[1257]

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.[1258]

1252 ECtHR, *Khlaifia and Others v. Italy*, Application No 16483/12, Judgement of 1 September 2015.

1253 ECtHR, *Khlaifia and Others v. Italy*, Grand Chamber, Judgement of 15 December 2016.

1254 ASGI, 'Trattenimento in hotspot: c'era un giudice a Strasburgo', January 2022, available in Italian at: https://bit.ly/3JkBXpX.

1255 Rappresentanza permanente d'Italia presso il Consiglio d'Europa, *Communication of the Italian Government*, February 2021, available at: https://bit.ly/34NItGJ.

1256 National Guarantor, *Opinion on DL 130/2020*, November 2020, available in Italian at: https://bit.ly/3id2N7z.

1257 Guarantor for the rights of detained persons, *Relazione al Parlamento*, 15 June 2018, available in Italian at: http://bit.ly/2TZy9ol, 233.

1258 ASGI, *Manifeste illegittimita' 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.

In the *J.A. and Others v. Italy* case[1259] 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.

In three different judgments rendered in the cases A.B. v. Italy, A.M. v. Italy and A. S. v. Italy, published on 19 October, the European Court of Human Rights (ECtHR)[1260] once again recognised violations of Article 3 (prohibition of inhuman and degrading treatment) and Article 5 (right to liberty and security) of the European Convention on Human Rights and condemned Italy in relation to the detention conditions suffered by a number of foreign nationals at the Lampedusa Hotspot over a period of time between 2017 and 2019. These pronouncements are still relevant given the practices still found in hotspots and informal facilities that are multiplying in different regions of the country.[1261]

A further conviction against Italy by the European Court of Human Rights (ECHR) on the 16 November 2023[1262] ordered compensation of €27,000 against four Sudanese nationals who had been stripped naked, mistreated and deprived of their liberty in the summer of 2016 during the so-called operations to 'relieve the pressure at the border' in Ventimiglia, when hundreds of migrants were forcibly transferred to hotspots in southern Italy and, in some cases, transferred to CPRs and then returned to their country of origin.[1263]

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 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 frequently used by the authorities for arrivals 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

1259 ECtHR, No 21329/2018, *J.A. and Others v. Italy*, 30 March 2023, available at: https://rb.gy/8uq8v.
1260 ECtHR, No. 18911/17 and two others, *A.E. and others v. Italy*, 16 November 2023, available at: https://bit.ly/3VtXyVY.
1261 ASGI, 'Trattamenti inumani e degradanti: l'Italia condannata a risarcire i migranti detenuti illegittimamente a Lampedusa', 23 October 2023, available in Italian at: https://lc.cx/8hmVZl.
1262 ECtHR, No 18787/17, *W.A. and others v. Italy*, 16 November 2023, available at: https://bit.ly/3TTgX1n.
1263 MELTING POT EUROPA, 'Denudati, maltrattati e privati della libertà: la CEDU condanna nuovamente l'Italia', 21 November 2023, available in Italian at: https://lc.cx/rjsAQ6.

the basis that these areas are considered as 'sterile', meaning that only certain categories of persons may have access.[1264]

Responding, on 10 October 2019, to an open letter from ASGI, the Ministry of Interior, Central Directorate for Immigration, declared that a permanence – even if lasting several days - in the transit area should not 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.[1265]

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.[1266] 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 ai border crossings does not take place immediately and people be 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.[1267]

In 2022, 6,120 persons received refusals of entry at the borders (3,869 at the air border and 2,224 at sea borders). The main nationality registered is Albanian with 3,699 people (60%). The National Guarantor reported of 187 detained at the transit zones as follow:[1268]

Police border office	2 days	3 days	4 days	5 days	6 days	7 days	Total
Bergamo Orio al Serio	44	25	5	-	1	-	75
Bologna airport	-	1	-	-	-	-	1
Milano Malpensa	26	14	3	-	-	-	43
Roma Fiumicino	-	12	8	2	1	1	24
Venezia airport	38	4	2	-	-	-	44
Total	108	56	18	2	2	1	187

Article 13 (5 bis) TUI, as amended by DL 113/2018,[1269] introduced the possibility of detaining people, to be expelled after being in Italy, in suitable premises at the concerned border office.

1264 ASGI, *Le zone di transito aeroportuali come luoghi di privazione arbitraria della liberta*, January 2021, available in Italian at: https://bit.ly/3CLdOqh.

1265 Letter from Ministry of Interior, 8 October 2019, available in Italian at: https://lc.cx/H_QxA9.

1266 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.

1267 *Report to Parliament Annexes to the yearly report of the National Guarantor for the rights of detained persons*, June 2023, available at: https://rb.gy/r73ey6.

1268 Ibidem.

1269 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.

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.[1270] The situation remained unchanged in 2022, as reported by ASGI's through the InLimine Project,[1271] and in 2023.

With judgement no. 3392/2023, published on 28 February 2023, the Administrative Court (TAR) of Lazio in Rome recognised ASGI's right to access the airport transit areas of Fiumicino and Malpensa airports. In general, the TAR recognised the detention nature of such areas and therefore the right of civil society to conduct visits there. This ruling followed the appeal filed by ASGI against the decision of the Department of Public Security rejecting the Association's request to access and visit the transit areas of the Rome-Fiumicino and Milan-Malpensa airport border crossing.[1272]

On the basis of this judgement, between May and June 2023 two delegations of ASGI carried out inspections in the transit areas of the Milan-Malpensa and Rome-Fiumicino airports, finding in both places serious deficiencies regarding information on access to the asylum procedure, availability of cultural mediators or interpreters, the right of defence and communication with the outside world.[1273]

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

2.1. Overall conditions

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.[1274] 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.[1275] 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.[1276] 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

1270 Article 13 (5 bis) TUI.
1271 ASGI, 'Il trattenimento in attesa di allontanamento in "locali idonei" presso gli uffici di frontiera: le informazioni ottenute dalle autorità competenti', 10 November 2022, available in Italian at: https://rb.gy/llvjb4.
1272 ASGI, 'Le zone di transito aeroportuale di Roma Fiumicino e Milano Malpensa: posizionamento e monitoraggio di ASGI', 6 December 2023, available in Italian at: https://lc.cx/2qjkl3.
1273 Ibidem.
1274 Article 7(1) Reception Decree.
1275 Article 14 (2) TUI as amended by Article 3 (4 a) of Decree Law 130/2020.
1276 Article 14 (2 bis) TUI.

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.[1277] 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.[1278]

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,[1279] 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.[1280]

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.[1281]

2.2. 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.[1282] Notwithstanding, the implementation supervision procedure has been closed in December 2021. Civil society expressed

1277 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.
1278 Article 6(4) Reception Decree.
1279 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.
1280 CILD, *Buchi Neri*, available in Italian at: https://bit.ly/3JgTwY8.
1281 Consiglio d'Europa, '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.
1282 Open Migration, 'The shameful topicality of the Khlaifia case', November 2021, available at: https://bit.ly/35Wvaoc.

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.[1283]

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.[1284]

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.[1285]

This situation remained unchanged through 2022 as showed by data collected through ASGI's InLimine Project.[1286]

In February 2023, the reception conditions inside the facility were very poor, with very serious overcrowding situations (against a capacity of 400 places, there were almost 4,000 people), people forced to sleep on the floor, lack of food, no medical assistance, and bonfires set up to make up for the lack of heating.[1287] All this led to the replacement of the managing body and the subsequent entrusting of the centre to the Italian Red Cross from May 2023 onwards. Despite the change of management, the criticisms that had emerged in previous years continue to be denounced by ASGI.[1288]

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

1283 ASGI, 'Trattenimento in hotspot: c'era un giudice a Strasburgo', January 2022, available in Italian at: https://bit.ly/3JkBXpX.

1284 ASGI, 'Una prospettiva di genere sull'Hotspot di Lampedusa: la sistematica e colposa violazione dei diritti delle donne', 15 October 2021, available in Italian at: https://bit.ly/3tgdRHf.

1285 MSF, 'Lampedusa: approccio emergenziale poco efficiente, serve intervento strutturale', 30 September 2021, available in Italian at: https://bit.ly/37uJlRz.

1286 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.

1287 CILD, *L'AFFAR€ CPR.Il profitto sulla pelle delle persone migranti*, June 2023, available in Italian at: https://lc.cx/gY0Ueb.

1288 ASGI, 'Per l'implementazione della libertà di corrispondenza con il mondo esterno e predisposizione di una rete wi-fi presso l'Hotspot di Lampedusa: diverse organizzazioni scrivono alle autorità competenti', March 2023, available in Italian at: https://lc.cx/maYghO; ASGI, 'La privazione della libertà personale nell'hotspot di Lampedusa: il riscontro delle autorità competenti', March 2023, available in Italian at https://lc.cx/gDj3y9; ASGI, 'The right to information in the Lampedusa hotspot: the responsibilities of UNHCR', April 2023: https://lc.cx/MnCT6a; ASGI, *La Questura di Agrigento su ingressi e uscite dall'hotspot di Lampedusa*, May 2023, available in Italian at: https://lc.cx/zmx60e; ASGI, *La gestione dell'hotspot di Lampedusa: la Convenzione con la CRI*, July 2023, available in Italian at: https://lc.cx/w2w1u6.

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.[1289] 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.[1290]

In June 2023, a delegation of ASGI had access to the Pozzallo hotspot and found several problems including the absence of cultural mediators to support in the procedures after entering the hotspot (e.g. during the compilation and signing of the so-called "foglio-notizie") and the duration of detention in the hotspot following the manifestation of an application for international protection, which on average is about 10 days but can reach several weeks as stated by some people in the hotspot.[1291]

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 support for vulnerable persons.[1292] 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.[1293]

The European Court of Human Rights, in its decision of 23 November 2023 rendered in case no. 47287/17 (A.T. and others v. Italy),[1294] condemned Italy for having unlawfully detained several unaccompanied foreign minors in the Taranto hotspot, for having used inhuman and degrading treatment in arranging their reception measures, for not having appointed a guardian nor having provided them with any information on the possibility of challenging this condition in court. The relevance of the decision is immediately perceptible in the current context, in which previous repressive approaches have not been changed. ASGI noted the importance of the ruling because at the time of its issuance, there were almost two hundred foreign minors *de facto* detained without any legal basis and without any judicial review inside the Taranto hotspot, some of them even since the previous month of August.[1295]

Further critical issues were reported in the University of Bari's Report on the Taranto hotspot, which denounced the inadequacy of the legal information offered to persons entering the facility, the confusion between intelligence and investigative activities carried out during entry security checks, with potential repercussions on the rights of persons under investigation, the inadequate material reception conditions to guarantee privacy and the protection of persons in particularly vulnerable conditions (women and minors).[1296]

1289 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"', 1 September 2020, available in Italian at: https://bit.ly/3D1uNEZ.

1290 Repubblica, 'Migranti, incendio all'hotspot di Pozzallo: 30 in fuga', July 2021, available in Italian at: https://bit.ly/3CLcSlI.

1291 ASGI, *Il monitoraggio della scuola di ASGI e Spazi Circolari: la frontiera di Pozzallo e le sue evoluzioni*, October 2023, available in Italian at: https://lc.cx/2n5MBD.

1292 ASGI, 'Visita all'hotspot di Taranto', 16 July 2019, available in Italian at: https://bit.ly/3teIHjr.

1293 Corriere del Mezzogiorno, 'Taranto, fece scappare 16 ospiti: arrestato dalla polizia', November 2021, available in Italian at: https://bit.ly/3tVK2e8.

1294 ECtHR, No. 18911/17 and two others, *A.E. and others v. Italy*, 16 November 2023, available at: https://bit.ly/3VtXyVY.

1295 ASGI, 'CEDU: minori stranieri detenuti illegalmente nell'hotspot di Taranto. ASGI: vanno ricollocati', 28 November 2023, available in Italian at: https://lc.cx/VLycMg.

1296 Università degli Studi di Bari, *Rapporto sul centro hotspot di Taranto*, Jean Monnet Working Paper 2/2023, October 2023, available in Italian at: https://lc.cx/8otIiD.

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.[1297] In 2020, it was mostly used as quarantine facility.[1298]

During 2023, ASGI monitored the operability of the Messina hotspot through civic accesses that allowed for the acquisition of primary information on it.[1299]

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 int 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.[1300]

In 2021, ASGI reported many criticalities in Pantelleria, where newly arrived migrants are also channelled in hotspot-like procedures.[1301] 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.[1302] As mentioned above, the new inspection conducted by ASGI in May 2022 confirmed the critical issues that emerged the previous year.[1303]

In September 2023, a new facility was inaugurated in the Pozzallo-Modica territory, a "Centre for the Detention of Asylum Seekers" intended for the carrying out of border procedures pursuant to Article 28-bis of Legislative Decree No. 25 of 28 January 2008 and the administrative detention of applicants for international protection pursuant to Article 6-bis of Legislative Decree 142/2015, which is characterised by serious critical issues strongly affecting the rights of arriving persons (see Border Procedure).

CPR

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 expansion of the role of 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 MoI's Department of Civil Liberties and Immigration. Even if the regulation does not suffice to ensure a legal

1297 ASGI, Cosa succede ai migranti nell'hotspot di Messina, 11 February 2019, available in Italian at: https://bit.ly/3tisWZ7.
1298 ASGI, *Hotspot di Messina*, December 2020, available in Italian at: https://bit.ly/3Ijhfpb.
1299 ASGI, *L'hotspot di Messina: alcuni riscontri della pubblica amministrazione*, January 2023, available in Italian at: https://lc.cx/LGBYav.
1300 ASGI, 'Un resoconto della visita di ASGI al Centro di accoglienza di Monastir', 28 April 2021, available in Italian at: https://bit.ly/3CKQecX.
1301 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.
1302 Ibid.
1303 ASGI, *La frontiera di Pantelleria: una sospensione del diritto Report del sopralluogo giuridico di ASGI*, August 2022, available at: https://rb.gy/9ndftw.

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.[1304]

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.[1305] 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.[1306]

"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.[1307] 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.[1308]

Concerning overall conditions of detention in CPRs, several issues have been reported, mainly regarding:[1309]

- 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;
- 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

1304 National Guarantor for the rights of detained persons, *Yearly report to the Parliament 2021*, June 2021, available in Italian at: https://bit.ly/3Nl1P6T.
1305 Article 6(2) Reception Decree.
1306 National Guarantor for the rights of detained persons, *Rapporto sulle visite effettuate nei CPR (2019 - 2020)*, available in Italian at: https://bit.ly/35UHwx5.
1307 National Guarantor for the rights of detained persons, *Rapporto sulle visite effettuate nei CPR (2019 - 2020)*, available in Italian at: https://bit.ly/3MPri93.
1308 Ibidem
1309 CILD, *Buchi Neri*, January 2020 – July 2021, available in Italian at: https://bit.ly/3JgTwY8.

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.[1310]

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.[1311]
Several cases of self-harm and/or suicide attempts in CPRs have been reported in Milan, Turin, and Bari.[1312] 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.[1313]

The National Guarantor reported that, in the course of 2022 five people died inside CPRs.[1314] In February 2024, Ousmane Sylla, a young Guinean boy, committed suicide in the CPR in Rome.[1315]

Locali idonei

Very limited information on "locali idonei" is available.

The National Guarantor 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

1310 Civil Court of Milan, decision of 23 February 2021, available at: https://bit.ly/3bopoLe.
1311 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.
1312 CILD, *Buchi Neri*, January 2020 – July 2021, available in Italian at: https://bit.ly/3JgTwY8.
1313 Ibidem.
1314 *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.
1315 Altreconomia, 'Un altro suicidio nei Cpr. Roma non è un caso, le condizioni disumane a Caltanissetta', February 2024, available in Italian at: https://lc.cx/-FKERq.

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.[1316]

As mentioned above, in May 2022 ASGI had access to the places used by the Questura in Milan.[1317] 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.[1318]

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 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 2022, 6,120 persons were pushed back at borders (3,896 air borders, 2,224 at sea borders). The main nationality registered was Albanian, with 3,699 people refused entry at the borders (60% of the total).[1319] The National Guarantor reported as of 31 December 2022, 187 persons were detained in the areas of Bergamo Orio Al Serio, Bologna, Milan Malpensa, Roma Fiumicino and Venezia airports: the detention time lasted from 2 days to as long as 7 days in some cases registered at Roma Fiumicino.[1320]

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%).[1321] In the same period, there were 105 asylum applications, 28 from Turkish people (27%).[1322]

Following the inspection carried out in June 2023 at the Milan-Malpensa airport, ASGI reported that from 1 January to 20 June 2023, 214 applications for international protection were lodged at that border crossing.[1323]

2.3. Activities

According to article 4(m) of the Directive of the Ministry of the Interior issued in May 2022, 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."

1316 National Guarantor, *Thematic report on suitable structures used for detention of third-country nationals*, August 2021, available in Italian at: https://bit.ly/3Jh0aNS.

1317 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.

1318 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.

1319 *Report to Parliament Annexes to the yearly report of the National Guarantor for the rights of detained persons*, June 2023, available at: https://rb.gy/r73ey6.

1320 *Report to Parliament Annexes to the yearly report of the National Guarantor for the rights of detained persons*, June 2023, available at: https://rb.gy/r73ey6.

1321 ASGI, 'La frontiera di Fiumicino: i riscontri della pubblica amministrazione', November 2022, available in Italian at: https://rb.gy/ylyc6u.

1322 Ibid.

1323 ASGI, *La situazione emersa dal sopralluogo della Zona di transito internazionale dell'aeroporto di Milano Malpensa*, available in Italian at: https://lc.cx/xltsAA.

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.[1324] 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.[1325]

2.4. Health care and special needs in detention

Access to health care is guaranteed to all persons in detention. The law provides, as a rule, that full necessary assistance and respect of dignity shall be guaranteed.[1326] The law further states that the fundamental rights of detained persons must be guaranteed and that inside detention centres essential health services are provided.[1327]

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 assessment of the conditions of vulnerability requiring special reception measures must be ensured.[1328] 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 enter 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.”[1329] 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 run from 1 July 2021 to 31 December 2021. The other was aimed at issuing a STP code to detainees who do not have it and run from 1 July 2021 to 30 June 2022. It appears unclear why such strict time limits have been set for their validity. It seems unreasonable to have waited so long for the

1324 CILD, *Buchi Neri*, January 2020 – July 2021, available in Italian at: https://bit.ly/3u710qg.
1325 National Guarantor for the rights of detained persons, Rapporto sulle visite effettuate nei CPR (2019 - 2020), available in Italian at: https://lc.cx/iBkl4R.
1326 Article 14(2) TUI.
1327 Article 21(1) and (2) PD 394/1999.
1328 Article 7(5) Reception Decree.
1329 Art. 3(2), Directive of the Ministry of the Interior of May 2022.

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.[1330]

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.[1331]

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.[1332]

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,[1333] and to the absence of risk prevention protocols, despite the numerous episodes of self-harm occurring in the Centres.[1334]

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. The continuing precarious situation within the CPR is well described and denounced by the October 2023 report of the NAGA association and the Network Mai Più Lager - No ai CPR.[1335]

1330 CILD, *Buchi Neri*, January 2020 – July 2021, available in Italian at: https://bit.ly/3u710qg.
1331 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.
1332 CILD, *Buchi Neri*, January 2020 – July 2021, available in Italian at: https://bit.ly/3u710qg.
1333 Intended as Doctors who are specialised in the assistance and treatment of migrants (such as SAMIFO or INMP in Rome) or S.I.M.M. (Italian society of Migration Medicine).
1334 National Guarantor for the rights of detained persons, *Rapporto sulle visite effettuate nei CPR (2019 - 2020)*, available in Italian at: https://bit.ly/3tgziIq.
1335 NAGA, *Al di là di quella porta. Un anno di osservazione dal buco della serratura del Centro di Permanenza per il Rimpatrio di Milano*, October 2023, available in Italian at: https://lc.cx/jnT66s; see also a summary of the report in English here: https://lc.cx/dY-qTM.

- 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;[1336]
- 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".[1337]

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[1338], 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.[1339] In Rome's CPR, according to the competent health authority, the percentage of detainees who are given psychotropic 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.[1340]

The critical issues highlighted are also reflected in the latest CILD report, which denounces deficiencies in health care, abuses in the administration of psychotropic drugs and the conflict of interest in the health suitability for detention assessment, which is certified by doctors employed by the managing body, which takes a daily fee for each detainee.[1341]

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.

1336 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.

1337 CILD, *Buchi Neri*, January 2020 – July 2021, available in Italian at: https://bit.ly/3u710qg.

1338 Altraeconomia, 'Rinchiusi e sedati: l'abuso quotidiano di psicofarmaci nei Cpr italiani', 1 April 2023, availabe 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.

1339 Monica Cristina Gallo, *Garante per i diritti delle Persone private della Libertà personale del Comune di Torino*, Relazione annuale attività 2022, 27 March 2023, available in Italian at, https://rb.gy/p030i.

1340 CILD, *Buchi Neri,* January 2020 – July 2021, available in Italian at: https://bit.ly/3u710qg.

1341 CILD, *L'AFFAR€ CPR.Il profitto sulla pelle delle persone migranti*, June 2023, available in Italian at: https://lc.cx/gY0Ueb.

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.[1342]

In two judgments of January 2023,[1343] the TAR Lombardia ruled that the refusal to grant access to this documentation was unlawful and ordered the manager of the Milan CPR to comply with a specific obligation, namely to provide two detainees with complete medical records.[1344]

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.[1345] 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.[1346]

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 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.[1347] The broader issue of confinement in sanitary rooms in CPRs remains to be addressed.

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.[1348] No cases were publicly reported in 2023. At the beginning of February 2024, the young Guinean Ousmane Sylla committed suicide in the CPR in Rome.[1349] 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 deaths, doubts about the suitability of these persons to be placed in this

1342 National Guarantor for the rights of detained persons, *Relazione al Parlamento*, June 2021, available in Italian at: https://bit.ly/3qfLXtg.

1343 TAR Lombardia, Judgment n. 86, 5 January 2023; TAR Lombardia, Judgment n. 87, 5 January 2023.

1344 MELTING POT EUROPA, 'CPR - Le persone trattenute hanno diritto all'accesso al proprio diario clinico', February 2023, available in Italian at: https://lc.cx/xl0A8z.

1345 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*, 10 April 2018, available at: https://bit.ly/3InPE6e.

1346 National Guarantor for the rights of detained persons, *Rapporto sulle visite effettuate nei CPR (2019 - 2020)*, available in Italian at: https://bit.ly/3tgziIq.

1347 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/3Jmspuu.

1348 Melting Pot Europea, 'Brindisi, un'altra morte di CPR', 22 December 2022, available in Italian at: https://rb.gy/wmtyi.

1349 Altreconomia, 'Un altro suicidio nei Cpr. Roma non è un caso, le condizioni disumane a Caltanissetta', February 2024, available in Italian at: https://lc.cx/-FKERq.

restricted community setting in the first place, and the risks arising from inadequate protection of the health of detainees.[1350]

3. Access to detention facilities

Indicators: Access to Detention Facilities

1. Is access to detention centres allowed to
   - ❖ Lawyers: ☐ Yes ☒ Limited ☐ No
   - ❖ NGOs: ☐ Yes ☒ Limited ☐ No
   - ❖ UNHCR: ☐ Yes ☒ Limited ☐ No
   - ❖ Family members: ☐ Yes ☒ Limited ☐ 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.[1351] 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.[1352]

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.[1353] 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;[1354] 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.[1355]

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 regarding access to Caltanissetta's CPR.[1356]

1350 CILD, *Buchi Neri*, available in Italian at: https://bit.ly/3u710qg.
1351 Article 7(2) Reception Decree.
1352 Article 7(3) Reception Decree.
1353 Article 6 (4) and (5) Moi Decree 20 October 2014
1354 ASGI, 'Accesso agli hotspot da parte della società civile', October 2020, available in Italian at: https://bit.ly/3wjtAr1.
1355 ASGI, 'Hotspot di Lampedusa: Tar Sicilia conferma il principio di accessibilità della società civile ai luoghi di trattenimento', 22 September 2021, available at: https://bit.ly/3KV0wdl.
1356 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.

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.[1357]

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.[1358]

As of November 2019, ASGI asked access to the transit zones but the competent authorities never answered to the request.[1359] 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.[1360]

The appeal lodged by ASGI against the negative decision of the Department of Public Security not to authorise the visit of a delegation of the association to the transit areas of the Rome-Fiumicino and Milan-Malpensa airports, led to sentence No. 3392/2023 of the Lazio Regional Administrative Court, which recognised the detention nature of such areas and consequently the right of civil society to conduct visits there.[1361]

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? ☒ Yes ☐ No

2. If yes, at what interval is the detention order reviewed?
   3 months for irregular migrants and up to 60 days for asylum seekers

Asylum seekers should not be sent to CPR before they have had the possibility to apply for asylum, due to lack of proper information on the asylum procedure or because they are denied access to the procedure (see Registration). This however happens in practice. 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.[1362] 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

1357 ASGI, 'I diritti umani devono entrare nei CPR!', 19 January 2023, available in Italian at: https://rb.gy/lxw29j.
1358 ASGI, *Le zone di transito aeroportuali come luoghi di privazione arbitraria della liberta*, January 2021, available in Italian at: https://bit.ly/3wjvmIG.
1359 ASGI, In Limine Project, 18 February 2020, see: https://cutt.ly/6yO5rMM.
1360 ASGI, 'Accesso della società civile alle zone di transito aeroportuali: il diniego della pubblica amministrazione', 16 April 2021, available in Italiana at: https://rb.gy/ji6und.
1361 ASGI, 'Le zone di transito aeroportuale di Roma Fiumicino e Milano Malpensa: posizionamento e monitoraggio di ASGI', 6 December 2023, available in Italian at: https://lc.cx/2qjkl3.
1362 i.e. Civil Court of Trieste, decision of 20 November 2020.

contained in the 'foglio notizie' signed by the asylum seeker at the time of disembarkation is not sufficient 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.[1363]

On this point, a recent judgement of the Court of Cassation established the insufficiency and irrelevance of what is contained in the "foglio notizie", in the absence of a complete and effective information on international protection to all migrants brought to the hotspots, and not only to those who express the will to seek international protection. Moreover, the style clause usually inserted in the rejection decrees, according to which the foreigner "has been fully informed in accordance with Directive 2008/115/EC" is insufficient, as it is a mere stereotyped formula, lacking appropriate normative references and actual content.[1364]

The subsequent pronouncement of the Court of Cassation, in addition to reiterating what had already been expressed by the previous judgement, specified that the obligation of adequate information 'subsists even in the case where the foreigner has not expressed the need to request international protection, given that silence or a possible declaration incompatible with the will to request it, which must in any case be clearly expressed and not by ambiguous formulas, cannot assume importance if it does not appear that the person has been fully informed beforehand'.[1365]

The detention decision must be validated within 48 hours by the competent Magistrates' Court (*giudice di pace*). After the initial period of detention of 90 days, the judge, upon the request by the Chief of the Questura, may prolong the detention in CPR for an additional 90 days.[1366] After this first extension, the Questore may request one or more extensions of three months to a lower civil court, where it is decided by a Magistrates' Court, up to a further period of 12 months in cases where, despite all reasonable efforts having been made, the removal operation has lasted longer because of the detainee's lack of cooperation or delays in obtaining the necessary documentation from third countries. It follows that, following the recent amendments, the detention of an irregular migrant can last up to 18 months. 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.[1367]

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.[1368]

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

1363 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.

1364 Civil Court of Cassation, decision n. 32070/2023, 20 November 2023; see also ASGI, 'Cassazione: Chi entra in Italia ha diritto a informativa completa ed effettiva sull'asilo dal primo contatto con polizia', 22 November 2023, available in Italian at: https://lc.cx/OJ1hgh.

1365 Civil Court of Cassation, decision n.5797/2024, 5 March 2024.

1366 Article 14(5) TUI, as modified by art. 20, Decree Law 124/2023, converted in Law 162/2023.

1367 Article 14(6) TUI.

1368 Article 13(5-bis) TUI, inserted by Article 4 Decree Law 113/2018 and L 132/2018.

Specialised Section of the competent Civil Court, having regard to the place where the centre is located.[1369]

The Questore's order related to the detention or the extension thereof shall be issued in writing, accompanied by an explanatory statement, and shall indicate that the applicant may submit to the court section responsible for validating the order, personally or with the aid of a lawyer, statements of defence. Such order shall be communicated to the applicant in the first language that the applicant has indicated or in a language that the applicant can reasonably understand.[1370]

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.[1371] The lawyer is thus forced to choose between being present next to the client or next to the judge at the validation hearing.[1372]

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.[1373] 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,[1374] 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.[1375]

A long-standing practice of holding detention validation/extension hearings in CPRs exists,[1376] 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[1377] – continues.[1378] Another critical issue is the absence of concerned persons in hearings, since their attendance is not always guaranteed;[1379] 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.[1380] The

1369 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.

1370 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.

1371 Article 6(5) Reception Decree, as amended by L 46/2017.

1372 Senate, *2017 CPR Report*, December 2017.

1373 Article 6(5) Reception Decree.

1374 Pursuant to Article 28-bis(1) and (3) Procedure Decree.

1375 Article 6(6) Reception Decree.

1376 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.

1377 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 giustifichino il ricorso al supporto logistico delle questure per l'organizzazione della suddetta udienza". Available in Italian at: https://bit.ly/3N0Zui4.

1378 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.

1379 CILD, *Buchi Neri*, available in Italian at: https://bit.ly/3u710qg.

1380 Supreme Court of Cassation, I Civil Section, 5520/2021, published in March 2021 and available in Italian at: https://bit.ly/3Jk6dl1.

party's absence at the hearing, led to the Supreme Court upholding of the appeal in its decision of February 2023.[1381]

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.

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;[1382] 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.[1383] 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.[1384] Various recent decisions of the Supreme Court are in line with earlier ones.[1385]

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.[1386]

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.[1387]

The practice of the “double information paper” – for which a decision of the EU court is expected in the coming months to assess 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

1381 Supreme Court, I Civil Section, 4961/2023, 16 February 2023.
1382 Supreme Court, I Civil Section, 9440/2021, available in Italian at: https://bit.ly/3CMAciZ.
1383 Supreme Court, III Civil Section, 13172/2021, available in Italian at: https://bit.ly/3CPHkeo.
1384 Court of Cassation, decision of 23 July 2020, published on 9 December 2020, no. 28063.
1385 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.
1386 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.
1387 Civil Court of Trieste, decision 16 March 2021.

(*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.[1388] In 2020, in two relevant cases the Court of Cassation confirmed the inadequacy of "foglio notizie" to determine the legal status of migrants. The principle has been recently confirmed by the Civil Court of Cassation in decisions n. 32070/2023, 20 November 2023 and n. 5797/2024, 5 March 2024 (see Information at the border).[1389]

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 Interior Ministry Directive of the 19 May 2022, that abolished 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.[1390]

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.[1391] Free legal aid is also provided for the validation of the detention order for 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.[1392]

CPRs' managing bodies are in charge of organising a "normative information provision" service. The funds for such service, however, have been drastically cut in 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.[1393]

1388 Civil Court of Palermo, decision available in Italian at: https://cutt.ly/myO5LIE.

1389 See ASGI, 'Cassazione sulle prassi hotspot: il secondo foglio notizie non può limitare l'accesso al diritto di asilo', 10 September 2020, available at: https://bit.ly/3u8sI5O; see also ASGI, 'Cassazione: Chi entra in Italia ha diritto a informativa completa ed effettiva sull'asilo dal primo contatto con polizia', 22 November 2023, available in Italian at: https://lc.cx/OJ1hgh.

1390 LASCIATECIENTRARE, *Dietro le mura. Abusi, violenze e diritti negati nei CPR d'Italia*, October 2022, available in Italian at: https://rb.gy/daoyns.

1391 Article 13(5-bis) TUI.

1392 Article 6 (7) LD 142/2015.

1393 CILD, *Buchi Neri*, available in Italian at: https://bit.ly/3u710qg.

Another relevant obstacle which limits the possibility for persons detained in CPR to 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.[1394] The critical issues encountered in past years still persist, as evidenced by the latest CILD report of June 2023.[1395]

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.[1396] 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 March 2023, the most represented countries of origin of individuals detained in CPRs were Tunisia (792 persons, representing almost 43% of CPRs' population), Morocco (268 persons, 14%), Egypt (158, 9%) Nigeria (129, 7%) and Gambia (86 persons, 5%).[1397] 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%).[1398]

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 2022, as reported by the Guarantor for the rights of detained persons, 6,383 people - 99% of them men - had been detained in CPRs, roughly 49% out of which (3,154) were actually returned. Tunisia is by far the most represented nationality amongst detained migrants and the country with the highest return rate (3,284 out of 6,383 detained migrants are Tunisians and 2,248 out of 3,154 returned migrants are returned to Tunisia).[1399] As of March 2023, 1,850 migrants had been detained in CPRs, out of which 805 (less than

1394 Ibidem.
1395 CILD, *L'AFFAR€ CPR.Il profitto sulla pelle delle persone migranti*, June 2023, available in Italian at: https://lc.cx/gY0Ueb.
1396 ASGI, 'Il Tribunale di Milano: consentire l'utilizzo del cellulare all'interno del CPR', 16 March 2021, available in Italian at: https://rb.gy/bcmuot.
1397 *Report to Parliament Annexes to the yearly report of the National Guarantor for the rights of detained persons*, June 2023, available at: https://rb.gy/r73ey6.
1398 Ibid.
1399 Ibid.

44%) were returned. Tunisia remains the most represented nationality (43%, followed by Morocco, whose nationals represent 14% of detained migrants) and the country where most of the returns (50%) take place.[1400]

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.[1401]

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.[1402] Record numbers of returns to Nigeria were registered in 2019, with 734 persons returned via 8 charter flights.[1403] In 2022, 89 Nigerian nationals were repatriated, while as of 31 March 2023, 40 had been repatriated since January 2024, demonstrating a decrease in the number of repatriations to Nigeria.[1404]

For an analysis of the phenomenon from a gender perspective, see section on Detention of vulnerable applicants.

1400 Ibid.
1401 CILD, *Buchi Neri*, available in Italian at: https://bit.ly/3u710qg.
1402 Open Migration, Perché sono i nigeriani a venire rimpatriati più spesso, July 2017, available at: https://bit.ly/3tgbuV1.
1403 National Guarantor for the rights of detained persons, *Relazione al Parlamento*, June 2020, available in Italian at: https://bit.ly/3CPliIB.
1404 *Report to Parliament Annexes to the yearly report of the National Guarantor for the rights of detained persons*, June 2023, available at: https://rb.gy/r73ey6.

Content of International Protection

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.[1405]

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 Questure 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.[1406]

As mentioned in previous AIDA reports, to discourage such practice, in 2015, the Ministry of Interior issued a circular 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 being sufficient a declaration by the person concerning their domicile is considered sufficient.[1407] In 2019, the Civil Court of Rome had accepted an urgent appeal submitted by a beneficiary of subsidiary protection on the matter.[1408] 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.[1409] 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 not happen is that the procedure to withdraw protection status started due to the beneficiary having committed a serious crime.

1405 Article 23(1) and (2) Qualification Decree.

1406 Please refer to CSD Diaconia Valdese, Monitoring report on illegitimate practices by Questure, July 2021, available in Italian at: https://bit.ly/3CPIo1S.

1407 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.

1408 Civil Court of Rome, 25 June 2019, decision available in Italian at: https://bit.ly/36qfUiY.

1409 Article 23(2) Qualification Decree.

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.[1410]

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.[1411]

In 2018, humanitarian reasons for national protection were circumscribed to certain hypotheses and the government introduced, for this purpose, some new residence permits for medical treatment,[1412] particular civil value,[1413] and for natural calamity.[1414]

Decree Law 130/2020 and L 173/2020 reintroduced the need to consider, in rejecting residence permits, the existence of constitutional and international obligations, and changed the substance of the special protection (*protezione speciale*) permits which could be granted when the hypothesis of non-expulsion or refoulement rises.[1415] Decree Law 130/2020 specified that the refoulement or expulsion of a person was 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.[1416]

In such cases, special protection permits (*protezione speciale*) were 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.

Law 50/2023 has significantly changed previous rules, by deleting from Article 19 TUI any reference to the protection of private and family life. Even if these rights are covered by Article 8 of ECHR, this led Territorial Commissions to limit the number of cases in which national protection is recognised.[1417]

1410 Civil Court of Brescia, Decision 18250/2019, 31 January 2020, available in Italian at: https://bit.ly/3u84JDZ.

1411 Civil Court of Brescia, Decision of 10 March 2022.

1412 Article 19(2)(d-bis) TUI, inserted by Article 1(1)(g) Decree Law 113/2018 and L 132/2018.

1413 Article 42-bis TUI, inserted by Article 1(1)(q) Decree Law 113/2018 and L 132/2018.

1414 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.

1415 Articles 19(1) as amended by Decree Law 130/2020 and L. 173/2020.

1416 Article 32 (3) Procedure Decree and Article 19 (1.1) TUI as amended by Decree Law 130/2020 and L 173/2020.

1417 According to Eurostat, humanitarian permits recognised in 2023 are 380 less than those granted in 2022 (see Eurostat data available at: https://acesse.dev/Il39P). However, these statistics should be read keeping in mind that the overall recognition rate is significantly decreased in 2023 going from 47%in 2022 to 37%.

L. 50/2023 also cancelled the possibility to submit a direct request for a special protection permit to Questura.

Special protection permits have a duration of two years and are renewable - upon expression of a favourable opinion by the Territorial Commission.[1418]

Based on L. 50/2023, the permits to stay for special protection issued after the entry into force of the new law, will be not convertible in labour residence permits.[1419]

However, a transitional regime was introduced, so that the new provisions on special protection permits do not apply to all pending cases before the Territorial Commissions, and to requests submitted to the Questore before the coming into force of the law itself (6 May 2023).[1420]

During 2023, in several cases the Administrative regional Courts stated that special protection is unique regardless of the authority that recognizes it (Territorial Commission or Questore) and therefore there must be no difference between the convertibility regimes. (see the decisions[1421] mentioned in the Regular procedure, Outcomes of the procedure).

2. Civil registration

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,[1422] and stated that the residence permit issued to them did not constitute a valid title for registration at the registry office.[1423]

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 have violated 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.[1424]

On 31 July 2020 the Constitutional Court declared the denial of the civil registration for asylum seekers introduced by the legislative Decree 113/2018 was contrary to the principle of equality enshrined in the Italian Constitution[1425] 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'

1418 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.

1419 L 50/2023 repealed Article 6 (1 bis a) referring to special protection permits among the permits which can be converted into labour permits.

1420 Article 7 (2) and (3) DL. 20/023 converted with amendments by L 50/2023.

1421 Administrative Court for Tuscany region, interim decision no. 24/2024 of 10 January 2024; Administrative Court for Piedmont Interim decision no. 10/2024 of 12 January 2024; Administrative Court for Marche region, decision no. 00913/2023 of 28 December 2023; Administrative Court for Friuli Venezia Giulia region, decision no. 87/2024 of 27 February 2024.

1422 Article 5-bis Reception Decree was repealed by Article 13 Decree Law 113/2018 and L 132/2018.

1423 Article 4(1-bis) Reception Decree, inserted by Article 13 Decree Law 113/2018 and L 132/2018.

1424 Article 6(7) TUI.

1425 Decision no. 186/2020 of 31 July 2020, available at: https://bit.ly/3y4Hfka

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.[1426]

In some cases, the duration of the registration allows for 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 5 August 2020, and only with effect from that application.[1427] This is the case of the municipality of Trieste, against which two asylum seekers lodged an appeal before the Civil Court of Trieste.

On 31 July 2023, the Civil Court of Trieste upheld the appeal,[1428] but the Municipality of Trieste lodged an appeal against the decision before the Court of Appeal of Trieste, which is still pending at the time of writing.

No data on beneficiaries of international or national protection resident in Italy is available.

However, according to Istat, the number of foreign citizens residing in Italy grew from 5,141,341 in 2023, to 5,307,598 in 2024.[1429]

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.[1430] 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

1426 Article 5(3) Reception Decree, as amended by Article 13 Decree Law 113/2018 and L 132/2018.

1427 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.

1428 Civil Court of Trieste, decision of 31 July 2023, available in Italian at: https://bit.ly/4aLTQLl.

1429 Istat, Foreign population residing in Italy, available at: https://l1nq.com/oXzkM.

1430 Article 116 Civil Code.

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.[1431]

The law does not provide a solution for applicants for international protection and beneficiaries of **subsidiary or 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.

3. Long-term residence

Indicators: Long-Term Residence	
1. Number of long-term residence permits issued to beneficiaries in 2023:	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, corresponding to 2,341,857 residence permits.[1432]

Data for the years following 2021 is not available.

According to Article 9(1-bis) TUI, refugees and subsidiary protection beneficiaries residing in Italy for at least 5 years can obtain a long-term resident status if they have an income equal or higher than the minimum income guaranteed by the State. The starting point to count the period of stay for beneficiaries of international protection is the date of submission of the application for international protection.[1433]

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.[1434]

The application to obtain the long-term residence permit is submitted to the Questura and should be issued within 90 days.[1435] 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.[1436]

1431 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.

1432 Istat, Non-EU Citizens in Italy, in 2021- 2022, October 2022, available in Italian at: bit.ly/3ZmjL6W. See also ASGI in-dept sheet, 12 January 2024, available at: https://bit.ly/4aM6eLs.

1433 Article 9(5-bis) TUI.

1434 Article 9 (1-ter) and (2-ter) TUI.

1435 Article 9(2) TUI.

1436 Ministerial Decree of 8 June 2017.

4. Naturalisation

Indicators: Naturalisation	
1. What is the waiting period for obtaining citizenship?	
1. Refugee status	5 years
2. Subsidiary protection	10 years
2. Number of citizenship grants to beneficiaries in 2023:	Not available

In 2021, a total of 109,594 citizenships were granted, down by 8% compared to 2020.[1437] Disaggregated data on citizenship grants to beneficiaries of international protection are not available, nor are general data for the year 2022 nor for 2023.

However, according to a study by the ISMU Foundation, in 2022 a total of 213,716 citizens with a migratory background acquired Italian citizenship, mainly people originating from Albania (38 thousand), Morocco (31 thousand) and Romania (16 thousand). These three countries represented 40% of total acquisitions. In fourth place Brazil (11 thousand), followed by India, Bangladesh and Pakistan, which overall recorded 20 thousand new acquisitions. In relative terms, significant increases compared to 2021 were detected for Argentinians, Brazilians, Moldovans and Ukrainians (whose citizenship acquisitions were more than doubled).

Among those who acquired Italian citizenship in 2022, 26% are children aged between 0 and 14. Considering the 15-19 age group, this amounts to 37% of all acquisitions.

As for their origin, children between 0 and 14 who became Italian in 2022 mainly originate from Pakistan (44%), Bangladesh (42%), Egypt (41%) and Morocco (39%). The lowest percentages are found among Brazilians (5%), Argentinians (7%) and Ukrainians (10%).[1438]

Italian citizenship can be granted to **refugees** legally resident in Italy for at least 5 years.[1439] 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.[1440]

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.[1441] Applications presented after 5 December 2018 without meeting this requirement have been rejected.[1442]

1437 Istat, Non-EU Citizens in Italy, in 2021- 2022, October 20221, available in Italian at: bit.ly/3ZmjL6W.

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1438 See Integrazione migranti, Cittadinanza, in Italia il maggior numero di acquisizioni nell'UE, 19 March 2024, available in Italian at: https://bit.ly/3VrMdVR.

1439 Articles 9 and 16 L 91/1992 (Citizenship Act).

1440 Article 9(1)(f) Citizenship Act.

1441 Article 9.1 Citizenship Act, inserted by Article 14 Decree Law 113/2018 and L 132/2018.

1442 Ministry of Interior Circular No 666 of 28 January 2019.

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.[1443] The law does not provide any guarantee to prevent statelessness.

From a territorial point of view, in 2021 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).[1444]

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 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.[1445]

The application is subject to the payment of a €250 fee.

The evaluation of the citizenship application is largely discretionary. As consistently confirmed by the case law of the Administrative Courts,[1446] 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.[1447] 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.[1448] 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.[1449]

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

1443 Article 10-bis Citizenship Act, inserted by Article 14 Decree Law 113/2018 and L 132/2018.
1444 Istat, Non-EU Citizens in Italy, in 2021- 2022, October 2022, available in Italian at: bit.ly/3ZmjL6W.

1445 Civil Court of Rome, decision 21785 of 13 November 2019.
1446 See e.g. Administrative Court of Lazio, Decision 8967/2016, 2 August 2016.
1447 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.
1448 Article 19-ter Citizenship Act, inserted by Article 14 Decree Law 113/2018 and L 132/2018.
1449 Administrative Court of Lazio, Decision 1323/2019.

law.[1450] Thus, the previous term of 730 days will be applied to the applications submitted before the entry into force of Decree Law 113/2018.[1451]

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.[1452]

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. However, if they are exceeded, it is possible to appeal to the court.

The person concerned is notified about the conclusion of the procedure by the Prefecture. In case of approval, he or she is invited to give, within 6 months, the oath to be faithful to the Italian Republic and to observe the Constitution and the laws of the State. In case of denial, he or she can appeal to the Administrative Court.

5. Cessation and review of protection status

Indicators: Cessation

1. Is a personal interview of the beneficiary 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.

1450 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.

1451 According to Article 3 DPR 18.4.1964 n. 362.

1452 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.

The change of circumstances which led to the recognition of protection constitutes also a ground for cessation of **subsidiary protection**.[1453]

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.[1454] 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.[1455]

In practice, Territorial Commissions may express a negative opinion on the renewal of subsidiary protections (art. 14 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.[1456]

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.[1457]

5.2. Cessation procedure

The NAC is responsible for deciding on cessation of international protection.[1458] According to the law, cessation is declared on the basis of an individual evaluation of the refugee's personal situation.[1459] No specific group of beneficiaries in Italy face cessation of international protection.

However, on 7 October 7 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.[1460] No circular was however adopted during 2022 nor 2023.

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.

1453 Article 15(1) Qualification Decree.
1454 Articles 9(2) and 15(2) Qualification Decree.
1455 Articles 9(2-bis) and 15(2-bis) Qualification Decree.
1456 Articles 9(2-ter) and 15(2-ter) Qualification Decree, inserted by Article 8 Decree Law 113/2018 and L 132/2018.
1457 EMN, Studio del Punto di Contatto Italiano European Migration Network (EMN), 2020, available at: https://bit.ly/3fiWCwP.
1458 Article 5 Procedure Decree; Article 13 PD 21/2015.
1459 Article 9(1) Qualification Decree.
1460 UNHCR, UNHCR recommends the cessation of refugee status for Ivorians, 7 October 2021, available at: https://bit.ly/3idupt4.

DL 20/2023 converted by L. 50/2023 amended the Qualification Decree, establishing that both for refugee status and subsidiary protection, any return to the country of origin - even if for a short time - is relevant to open a cessation procedure, unless justified by serious and proven reasons and for the period strictly necessary.[1461]

In a case recorded by Asgi in early 2024, the cessation procedure was started, according to Article 9 (1 lett. a) because the refugee was found in possession of his national passport. The procedure is ongoing before the NAC.

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.[1462]

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 international protection to the beneficiary. The appeal has automatic suspensive effect and follows the same rules as in the Regular Procedure: Appeal.[1463]

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 beneficiary 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**.

1461 Article 9 ter DL 20/2023 amended Article 9 (2 ter) and Article 15 (2 ter) of LD 251/2007.

1462 Articles 32(3) and 33 Procedure Decree; Article 6(1-bis)a TUI; Article 33 Procedure Decree; Article 14 PD 21/2015.

1463 Article 35-bis(3) Procedure Decree.

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-relatd offences.[1464]

- 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,[1465] and the appeals against it,[1466] 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.

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 a 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,[1467] 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.

1464 Articles 12(1)(c) and 16(d-bis) Qualification Decree, as amended by Article 8 Decree Law 113/2018 and L 132/2018.
1465 Article 33 Procedure Decree; Article 14 PD 21/2015.
1466 Article 19(2) LD 150/2011.
1467 Article 29-bis TUI, citing Article 29(3) TUI.

Beneficiaries may apply for reunification with:[1468]

- 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, practises that factually hinder 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.[1469]

In 2024, the Civil Court of Rome was charged to decide a case regarding a Pakistani refugee whose visa request for his wife and children was pending for two years. After the submission of the appeal and before the hearing the Embassy released the visas.[1470]

Pursuant to Article 30 of TUI, and Article 20 of LD 50/2011, the decision accepting the appeal may order the issuance of the visa even in the absence of a ‘nulla osta’. However, in many cases between 2022 and 2023, as in 2021, the Civil Court of Rome intervened by ordering the competent embassy to make an appointment for the visa request or for the legalisation of documents. Only in some cases, the Court directly ordered the issuance of family visas.

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

1468 Article 29(1) TUI.

1469 Caritas Italiana, Consorzio Communitas, UNHCR, Family First - In Italy with your family, November 2019, available in Italian at: https://bit.ly/3IqmPq0.

1470 Civil Court of Rome, case no. 19464 / 2024.

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.[1471]

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.[1472]

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.[1473]

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.[1474]

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 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.[1475]

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.[1476] 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

1471 Civil Court of Rome, Decision, 5 February 2021, available at: https://bit.ly/36nuk3t.

1472 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.

1473 Civil Court of Rome, Decision 12457/2021, 17 March 2021, available in Italian at: https://bit.ly/3IqnkQU; see also Civil Court of Rome, Decision 39375/2021, 15 July 2021, available at: https://bit.ly/3u7PuL4.

1474 Civil Court of Rome, decision of 11 February 2023.

1475 Civil Court of Rome, decision of 10 June 2022.

1476 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.

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 18 March 2022 the Court of Rome accepted the appeal presented by an Afghan refugee who had obtained a nulla-osta for his family members but then was impeded to book an appointment. Later, the embassy in Islamabad had made an appointment communicated less than 24 hours' before, not allowing them to show up as they were returned to Afghanistan awaiting the date.

The Court ordered the embassy to make the appointment to the appellant's family members within 5 days of the order.[1477]

The Civil Court of Florence, with a decision of 20 September 2022, accepted the appeal presented by a beneficiary of subsidiary protection and ordered the issuance of the family visa even if, due to the lack of response from the competent prefecture, they had not obtained a nulla osta. The court considered the serious and dangerous situation in which the applicant's wife found herself in Afghanistan.[1478]

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.[1479]

The Court of Cassation,[1480] 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.[1481]

1477 Civil Court of Rome, decision of 18 March 2022.

1478 Civil Court of Florence, decision of 20 September 2022.

1479 Civil Court of Rome, Decision 72951/2021, 24 December 2021;

1480 Court of Cassation, decision 20127 of 14 July 2021, available at: https://bit.ly/37hKk84.

1481 Meltingpot, Status di rifugiato e ricongiungimento familiare – La sola presenza di figli nel Paese di origine non esclude l'ingresso del genitore infrasessantacinquenne, available at: https://bit.ly/3xMAplA.

Regarding the frequent cases in which reunification with parents is denied due to lack of proof that they are dependent on the applicant, the Court of Cassation with a decision of 24 January 2023, [1482] affirmed the need to extend the benefits provided for by the art. 29-bis, (2), TUI for refugees to the beneficiaries of subsidiary protection. The Court further ruled that these provisions should not be interpreted in a restrictive sense, as intended solely for the demonstration of the family bond. In the case submitted to it, the Court rejected the appeal of the Ministry of Foreign Affairs presented against the decision which had deemed met the conditions for issuing the nulla-osta to reunite the applicant with his parent, also considering that the affidavit on the dependence of the parent by the applicant himself can be considered as atypical evidence freely assessable by the judge.

On the same matter, the Civil Court of Rome, with a decision of 2 February 2024, upheld the appeal submitted by a Somali subsidiary protected, considering the money transfer receipts filed in court (around twenty receipts) sufficient to provide proof of the financial support provided by the appellant to the mother in a continuous and prolonged manner. Regarding the absence of other sons/daughter in the country of origin, the Court considered that the reported disappearance of the other sons following their expulsion from Saudi Arabia was credible because it coincided with what the appellant had already reported in 2017 during the hearing before the Territorial Commission, and because the administration had not provided elements capable of casting doubt on the truth of the statements.[1483]

2. Status and rights of family members

According to the law and in application of the principle of family unity,[1484] 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.[1485] 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 also in case the family member was previously not in possession of a valid residence permit and was irregularly present on the territory.[1486] These provisions do not apply to family members who are or would be excluded from international protection[1487]

The application for international protection for minor children of beneficiaries has to be submitted by a pat. According to the law, this provision 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.[1488]

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.[1489] In the implementation of the Qualification Decree, the best interests of the child are taken into consideration as a priority.[1490]

A circular issued by NAC in July 2014,[1491] definitively clarified that, pursuant to Articles 19(2-bis) and 22(1) of the Qualification Decree, minor children born in Italy after the recognition of refugee or subsidiary

1482 Court of Cassation, Decision of 24 January 2023, no. 2168.
1483 Civil Court of Rome, decision of 2 February 2024.
1484 Article 22 Qualification Decree.
1485 Article 30 TUI.
1486 Article 30 TUI.
1487 Occurring cases governed by Articles 10 and 16 Qualification Decree.
1488 Article 6(2) TUI.
1489 Article 31(1) TUI.
1490 Article 19(2-bis) Qualification Decree.
1491 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.

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.

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.[1492] 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 Questure.

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

[1492] 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.

but also to assess the request and adopt an express decision on the application.[1493] As for the 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, despite several rulings from ordinary judges although there is no lack of rulings by the ordinary judge, administrative jurisprudence has affirmed its competence by recalling art. 133, paragraph 1, letter u), of the administrative procedure code 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.[1494]

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.[1495]

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[1496] 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.

1493 Regional Administrative Court of Catania, Decision 179/2015, available in Italian at: https://bit.ly/3Ijcs7f.

1494 Regional Administrative Court of Rome, Decision 7390/2014, 30 September 2015, available at: https://bit.ly/3JeiIOR; Regional Administrative Court of Rome, Decision 7768/2011, 2 March 2015, available at: https://bit.ly/3thuPFe.

1495 Regional Administrative Court of Lazio, Decision 11465/2015, 30 September 2015, available at: https://bit.ly/3uoT2sP.

1496 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.

In 2003 the Ministry of Interior,[1497] - responded to several clarification requests received by different Questure 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. It 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. By its very nature this situation, although not equivalent 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 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).

On 13 July 2022, the Council of State upheld the appeal submitted by a national protection holder 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.[1498]

D. Housing

Indicators: Housing	
1. For how long are beneficiaries entitled to stay in/SAI?	6 months[1499]
2. Number of beneficiaries staying in reception centres as of 31 December 2023:	33,848[1500]

As underlined in the Reception condition chapter, Decree Law 20/2023 converted into Law 50/2023 introduced a new reform of the reception system, providing a clear division between the reception system for asylum seekers (hosted in government centres, CAS and provisional centres) and the reception system for beneficiaries of international protection in SAI system. The latter, given the scarcity of places in turn and due to the fact that many prefectures turn away the beneficiaries when they obtain protection without waiting for access to the SAI, becomes even more a mere eventuality.

1497 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.

1498 Council of State, Decision 5947 published on 13 July 2022, available at: bit.ly/3q0Mt0M.

1499 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.

1500 Source: MoI Cruscotto statistico giornaliero, available at: https://bit.ly/3SQSqYx. 33,848 is the total number of people hosted in SAI projects. A breakdown on the respective numbers of asylum seekers and beneficiaries of protection are not yet available.

The system remains based on the voluntary adhesion of the municipalities and still does not have enough places to meet the reception needs of all those who are entitled to accessing it.

A solution always presented by Asgi would be 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.[1501]

On the paper, access to SAI is open to some categories of asylum seekers (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, (see reception).

However, also due to the reform, the SAI system is conceived and indicated as primarily intended for beneficiaries of international protection and unaccompanied foreign minors. Other third-country nationals could only access SAI in case of available places.[1502]

It is also important to underline that L. 50/2023 introduced Article 1 sexies (1- quater) of DL 416/1989, according to which holders of international protection and holders of residence permits which allow access to the SAI lose the possibility of being accommodated in SAI centres if, except in cases of force majeure, they do not show up at the assigned facility within seven days of the relevant communication, unless that there are objective and justified reasons for delay, according to the assessment of the prefect of the Province where the beneficiary is located.

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 people are discharged from the reception centre where they were accepted as beneficiaries of international protection 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. 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.

By decision published on 2 August 2021, the Administrative Court for the Marche Region upheld the appeal submitted by a woman, beneficiary of international protection and affected by mental distress, cancelling the denial made by the SAI system to her access to a project, motivated by the absence of available places. According to the Court, the absence of places and the scarce adhesion from local

1501 According to Article 118 of the Italian Constitution, administrative functions are attributed to the municipalities. See ASGI, *Manifeste illegittimita' 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.

1502 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.

authorities to SAI projects for vulnerable people cannot go to[1503] the detriment of those who need reception. The Court also recalled the guarantees provided by the SAI Guidelines of 2019 which identify, among the minimum mandatory services, that of psycho-social-health protection.

2. Accommodation in SAI

Following the 2023 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, people who have obtained some other residence permits for specific reasons (among which beneficiaries of national protection) and some applicants for international protection.

Unaccompanied children should have immediate access to SAI even if after the 2023 reform, SAI is indicated as a second reception step (see Reception). 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 particular civic value.[1504] Moreover, Decree Law 130/2020 stated that local authorities can also accommodate in these facilities beneficiaries of special protection, beneficiaries of a special cases permit (former humanitarian protection),[1505] and former unaccompanied minors who turned 18 and obtained the continuation of assistance.[1506] Access to the SAI is precluded to beneficiaries of special protection who have obtained the permit because of international protection exclusion clauses.[1507]and to asylum seekers, except for asylum seekers identified as vulnerable and to those who have legally accessed Italy through complementary pathways.[1508]

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.[1509] Such Decree,[1510] 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

1503 TAR Marche, decision no. 632/2021 published on 2 August 2021.

1504 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.

1505 Ibid, mentioning Articles 1 (9) DL 113/2018 (special cases); Article 19, (1, 1.1) TUI, amended by DL 130/2020, special protection.

1506 Article 1 sexies (1 bis) DL 416/1989, introduced by DL 130/2020.

1507 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.

1508 Article 1 sexies (1 bis) DL 416/1989 converted into L. 39/1990, introduced by DL 20/2023 converted by L. 50/2023.

1509 Article 34 MoI Decree 18 November 2019.

1510 Decree of the Ministry of Interior, 18 November 2019, published on 18 November 2019 on Gazzetta Ufficiale, available in Italian at: https://cutt.ly/ayPqqeE.

psychological assistance, linguistic-cultural mediation, the teaching of Italian language courses and legal and territorial guidance services.[1511]

- Second level services: only available for beneficiaries of an international or special protection, include support for integration, job research, job orientation and professional training.[1512]

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, as of November 2023,[1513] SAI comprised 914 smaller-scale decentralised projects. The projects funded a total of 37,920 accommodation places.[1514] Of the SAI projects currently funded, 31,155 are ordinary places, 6,006 for unaccompanied minors, and 759 for people with mental distress or physical disabilities.

By December 2023, a total of 34,816 people were accommodated in this system.[1515]
The Moi Decree of 18 November 2019 establishes that reception in the SAI system lasts six months (for holders of a form of protection).[1516]

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 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.[1517]

Decree Law 130/2020 did not specifically regulate the duration of the reception in the SAI. However, it stated 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.[1518] 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.[1519]

According to the SAI report published in 2022, beneficiaries who left SAI facilities in 2022 were 22,233. Out of the total number, less than half (43.5,0%) chose to leave the project, while over the half (51.9%) % had to leave due to the expiration of the reception period.[1520]

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,[1521] identifies interventions on:

1. linguistic training aimed at the knowledge of Italian language at least at A1 level;
2. knowledge of the fundamental rights and duties enshrined in the Constitution of the Italian Republic;

1511 Article 1 sexies (2 bis, a) DL 416/1989, introduced by DL 130/2020.
1512 Article 1 sexies (2 bis) DL 416/1989, introduced by DL 130/2020.
1513 I numeri del SAI, November 2023, at: https://acesse.dev/IWeH3.
1514 Ibid.
1515 See Ministry of Interior, Cruscotto Statistico, 31 December 2023, available in Italian at: bit.ly/48VIQtT.
1516 Article 38 MoI Decree 18 November 2019.
1517 Article 39 MoI Decree 18 November 2019.
1518 Article 5 (1) Decree Law 130/2020 converted by L 173/2020.
1519 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/3weRsMl.
1520 Rapporto Sai Siproimi 2022, available at: https://acesse.dev/6oiB6, 86.
1521 According to Article 29 (3) of the Qualification Decree.

3. orientation to essential public services;
4. orientation to job placement.[1522]

The withdrawal of reception conditions governed by the Accommodation Decree only refers to first reception facilities and CAS.

The MoI 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.[1523]

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 flows.[1524] As observed by some studies,[1525] this clause makes it unlikely that the SAI will actually be able to accommodate the categories of people, 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 8 October 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.[1526]

In December 2021, 2,000 additional SAI places were activated, to meet accommodation needs of Afghan asylum seekers.[1527]

Later, DL 16 of 28 February 2022,[1528] 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.[1529]

To implement them, Article 5 quater (3) of DL 14/2022 allocated part of the National Fund for asylum policies and services, referred to in article 1-septies of DL 416/1989, in the amount of 37,702,260 euros for the year 2022 and 44,971,650 euros for each year in 2023 and 2024.

1522 Article 5 (2) Decree Law 130/2020 converted by L 173/2020.

1523 Article 40 MoI Decree 18 November 2019.

1524 Article 14 (3) Decree Law 130/2020 converted by L 173/2020.

1525 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.

1526 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

1527 2,000 places according to Article 3(4) DL 16/2022, modifyng 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.

1528 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.

1529 Article 5 quater DL 14/2022 converted with modifications into L 28/2022.

While the SAI system has been slowly but constantly expanded throughout the country in the 20 years since it was set up[1530], the total amount of available places is still falling short and largely inadequate to meet the existing needs. 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,[1531] 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,[1532] 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).

As of November 2023, 2,906 places were unoccupied.[1533]

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 European law 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.

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.[1534]

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.[1535]

However, some structural characteristics of the Italian housing system limit its responsiveness 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

1530 See Rapporto Annuale SAI 2021, available at: https://bit.ly/3Z9qQbt.

1531 ActionAid, Centri d'Italia, Mappe dell'accoglienza. Report 2022, available at: https://bit.ly/3SQiQKd.

1532 Altreconomia, Scarsa programmazione, posti vuoti e persone al freddo: così ai migranti è negata l'accoglienza, available at: https://bit.ly/3ZMLD4D.

1533 ReteSAI, see: https://bit.ly/4e7cqQU.

1534 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/3weRsMl.

1535 Ministry of the Interior, National Integration Plan for beneficiaries of international protection, 2017, available at: https://bit.ly/34PTS99.

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.[1536]

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.[1537]

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.[1538]

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, 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.[1539]

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.[1540]

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

1536 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.

1537 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/3weRsMl.

1538 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/3weRsMl.

1539 Ibid.

1540 Ibid.

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.[1541] In the same judgement, the Constitutional Court 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.[1542]

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.

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 relevant projects are financed through EU funds.[1543]

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

1541 Ibid.

1542 Article 119 Navigation Code.

1543 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.

one person claims to be open to the possibility; all the others argue that they will move back to their home country.[1544]

In January 2024, the Welcome-in-one-click platform was launched online, created by UNHCR, in collaboration with the Adecco Foundation, to facilitate refugees and asylum seekers' access to the job market. The platform is linked to the Welcome program "Working for refugee integration", created by UNHCR in 2017 with the aim of promoting the work integration of refugee people. As of January 2024, UNHCR had involved around 700 companies in the Welcome program and promoted around 30,000 work inclusion paths.[1545]

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.[1546]

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.[1547]
- 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.[1548]

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 8-10 hours per week dedicated to Italian language labs (about 2 hours per day) for a duration of 3-4 months.[1549]

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,[1550] 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.

1544 Rapporto di ricerca "Rifugiati al lavoro - Quali reti? Quali politiche?", IRES Piemonte, December 2021, available at: https://bit.ly/3MBXhZg.

1545 See Integrazione migranti, 24 January 2024, available at: https://acesse.dev/4mFwc.

1546 Article 38 TUI; Article 45 PD 394/1999.

1547 Article 45(2) PD 394/1999.

1548 Article 192(3) LD 297/1994.

1549 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.

1550 Article 26 Qualification Decree.

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”.[1551]

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”.[1552]

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 result was 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 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.[1553]

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.[1554]

1551 Article 26 Qualification Decree.

1552 Information Centre on Academic Mobility and Equivalence (Cimea), Recognition of qualifications held by refugees, available at: https://bit.ly/3Ijdxfj.

1553 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.

1554 Article 27 Qualification Decree.

Social security contributions in Italy are mainly provided by the National Institute of Social Security (*Istituto Nazionale di Previdenza Sociale*, INPS), the National Institute for Insurance against Accidents at Work (*Istituto Nazionale Assicurazione Infortuni sul Lavoro*, INAIL), municipalities and regions.

The provision of social welfare is not conditioned on residence in a specific region but in some cases is subject to a minimum residence requirement on the national territory. This is namely the case for income support (*Reddito di Cittadinanza*), to be paid from 1 April 2019, which is subject to 10 years of residence on the national territory out of which at least 2 years' uninterrupted residence.[1555]

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."[1556]

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.[1557] 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.[1558] 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 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, among which Friuli-Venezia Giulia and Apulia, currently extend the exemption until the beneficiaries of international and national protection actually find a job.[1559]

Following the adoption of DL 150/2015 distinctions can no longer be made between the unemployed and the inactive about the granting of the right to exemption from participation in health care costs. After ASGI and other NGOs urged the Ministry of Health to implement Article 17(4) of the recast Reception Conditions

1555 Article 2(1)(a)(2) Decree Law 4/2019.
1556 EUAA, Annual Asylum Report (2022), available at: https://bit.ly/43bVK4W, 55.
1557 Article 34 TUI; Article 16 PD 21/2015; Article 21 Reception Decree.
1558 Article 42 PD 394/1999.
1559 SAI and ASGI, Legal Handbook for Workers - International protection and other forms of protection, July 2019, available at: https://bit.ly/3u0wRZA.

Directive and to put in place policies guaranteeing effective access to healthcare, 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.[1560]

While waiting for the Government to take an official position on the matter, from 2017 to 2022 different Courts and Courts of Appeal repeatedly reaffirmed the right to exemption from healthcare spending for unemployed refugees, unanimously reiterated that the distinction between inactive and unemployed is not applicable for purposes of accessing health care services.[1561]

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.[1562]

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 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".[1563]

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.[1564] 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

1560 Article 19 LD 150/2015 states that “unemployed” are workers who declare, in electronic form, their immediate availability to exercise work activities.

1561 Civil Court of Rome, Decision 33627/16, 17 February 2017, available at: http://bit.ly/2nIv0HF; Civil Court of Rome, Decision 5034/2018, 13 June 2018; 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.

1562 Council of State, opinion published on 19 July 2022, available at: bit.ly/40byAK4

1563 Civil Court of Milan, decision of 12 January 2023, available at: bit.ly/3LwUuDr.

1564 Ministry of Health, Linee guida per la programmazione degli interventi di assistenza e riabilitazione nonché per il trattamento dei disturbi psichici dei titolari dello status di rifugiato e dello status di protezione sussidiaria che hanno subito torture, stupri o altre forme gravi di violenza psicologica, fisica o sessuale, 22 March 2017, available in Italian at: http://bit.ly/2EaINAY.

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.

In October 2023, the Regions of Emilia - Romagna, Lazio, Tuscany and Sicily created a training program, co-funded by the Asylum, Migration and Integration Fund of the European Union, aimed at improving the competences of healthcare professional employed in the public healthcare system and in refugees' and asylum seekers' hosting programs, especially concerning the forensic certifications for victims of torture[1565]

From 2022 to 2023 in the Veneto region the SPIRNET project was active, funded by the Asylum, Migration and Integration Fund of the European Union. It was aimed specifically at identifying and taking care of asylum seekers and refugees affected by severe psychological distress. The partners were Prefectures, Municipalities, and local health authorities (ASLs).[1566]

[1565] Program available in Italian at: https://bitly.cx/cABp.

[1566] Overview of the project available in Italian at: https://bit.ly/3UGXm3o.

ANNEX I – Transposition of the CEAS in national legislation

Directives and other CEAS measures transposed into national legislation

Directive	Deadline for transposition	Date of transposition	Official title of corresponding act	Web Link
Directive 2011/95/EU Recast Qualification Directive	21 December 2013	21 February 2014	Legislative Decree of 21 February 2014, no. 18	
Directive 2013/32/EU Recast Asylum Procedures Directive	20 July 2015	18 August 2015	Legislative Decree 18 August 2015, no. 142	
Directive 2013/33/EU Recast Reception Conditions Directive	20 July 2015	18 August 2015	Legislative Decree 18 August 2015, no. 142	
Regulation (EU) No 604/2013 Dublin III Regulation	Directly applicable 20 July 2013		Decree Law no. 13 of 17 February 2017 ruled the appeal procedure against the transfer measures issued by the Dublin unit (Article 27 of the Dublin III Regulation) by amending Article 3 of the Procedure Decree LD 25/2008	

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
Directive 2011/95/EU 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
Directive 2013/32/EU Recast Asylum Procedures Directive	Article 40	Article 29 bis Procedure Decree	Article 29 bis allows to automatically avoid the exam of the subsequent asylum application in cases not included in the Procedures Directive
	Article 41 and Article 46 (5) (6) and (8)	Article 35 bis (5) Procedure Decree	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.
	Articles 43 and 31 (8)	Article 28 bis (1 ter) Procedure Decree	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	
Directive 2013/33/EU 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	The law generally provides for the withdrawal of reception conditions without any progression and proportion to the contested behaviour. 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) 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.